

The Alaska BAR RAG

VOLUME 23, NO. 2

Dignitas, semper dignitas

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Tribal & youth courts, ADR growing statewide

By MARCIA VANDERCOOK

The Alaska Judicial Council has just published *A Directory of Dispute Resolution in Alaska Outside Federal and State Courts*, a report describing the work of tribal courts, youth courts, community courts, and alternative dispute resolution organizations in Alaska. The report is based on interviews with 190 people active in these fields.

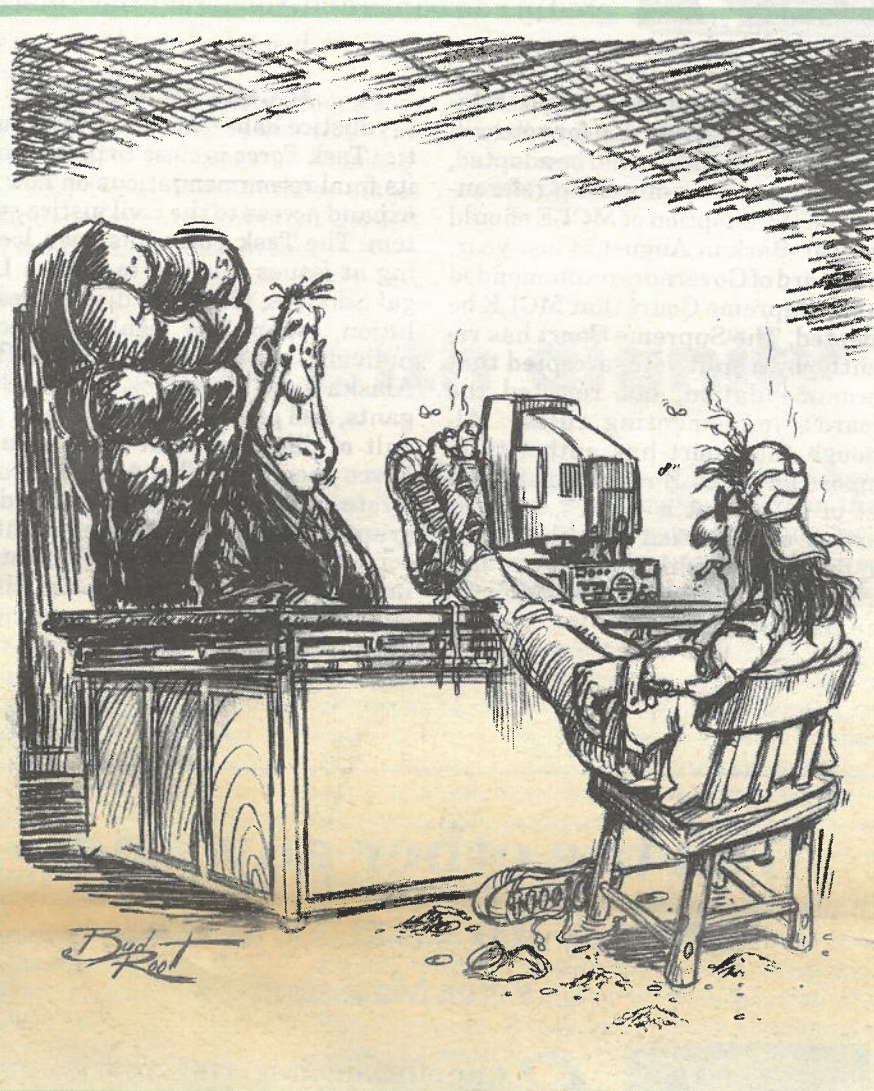
The Alaska Judicial Council published a similar report in 1993. At that time, a number of tribal councils reported dispute resolution activities and an interest in tribal court development, but few villages had large caseloads or separate tribal courts. Despite jurisdictional uncertainties, tribal court organizational activity has increased over the last five years. Today more tribal councils are taking an active hand in dispute resolution and there are at least 23 tribal courts established separately from their tribal councils.

The proliferation of youth courts, where teenagers adjudicate the criminal offenses of their peers, has been another striking development. In 1993, only Anchorage had a youth court; in 1998, youth courts for juvenile offenses were operating in most

of the bigger cities. A related development is the formation of community courts, which use collaborative agreements between state, municipal, and tribal governments to resolve juvenile delinquency cases on a local level. Interest in alternative dispute resolution has greatly increased over the last six years.

These rapid changes can be attributed to many factors. There is a growing awareness of juvenile offenses and the need for early intervention. The same is true for child in need of aid cases, which have received a great deal of attention in the last several years. State executive agencies have become acutely aware how difficult it is to provide adequate law enforcement and children's services to remote villages. At the same time, many villages have been working to enhance self-governance and local control, particularly through tribal governments. Tribes are looking to Native culture and traditions for ways of handling social problems like child neglect, crime, and property disputes. Across the country, communities are experimenting with variations on traditional adjudication and law enforcement, including mediation, community policing, restorative

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CLOTHES MAKE THE CLIENT

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Mandatory CLE isn't a "done deal"

By VENABLE VERMONT, JR.

Many people have been calling Bar staff with questions, or making comments to members of the Board of Governors, as if mandatory CLE were a done deal. It is not. The Alaska Supreme Court has the authority to promulgate Bar rules, and the Court has yet to take an official position on the referral made to it by the Board of Governors (BOG).

Here's where we are and how we got here. At its August 1998 meeting, the Board voted seven to four to recommend to the Court a Bar rule calling for MCLE. The attorney members split evenly (for - Bundy, Kirsch, Long, Tinglum; against - Ostrovsky, Schumann, Vermont, Weyrauch); all three public members voted in favor. The motion for the rule's adoption had been made and seconded by public members.

The proposed rule is currently under consideration by the Alaska Supreme Court. The Court has asked for and received from Bar staff various articles, opinions, studies, and assorted data on MCLE. There has also been an informal lunch meeting between the Court and the BOG.

Court, Credits Update

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MCLE Convention Resolutions — Page 13

There is no set time limit for the Court to accept or reject the proposal.

In the meantime, the BOG is meeting again in May, just before the Bar convention in Fairbanks. One item on the agenda is whether or not to conduct a referendum among the membership, under Art. IV, Sec. 13 of the Bar Bylaws. This would allow the entire Bar membership to vote, and perhaps give the Supreme Court a better feel for what the majority sentiment is among the members.

The business meeting of the Association, to be held on Thursday, May 13, 1999, at noon, as part of the convention, will consider two resolutions put forth by groups of members under Art. VIII, sec. 4 of the Bylaws. One resolution seeks to put the membership, as represented by those present and voting at the meeting, on record against MCLE. A second resolution seeks to direct the BOG to conduct a referendum of the entire

membership. This latter resolution will be technically moot if the Board has already decided to conduct the referendum. If you feel strongly about any of this, it's another good reason to go the Bar convention — or at least to the business meeting lunch!

President Will Schendel has written a letter to Chief Justice Matthews,

informing him of the resolutions and the referendum issue on the BOG's agenda. It is possible, indeed seems likely, that the Court will hold off until these events have come to pass.

So, there is where we are. The clock is not yet ticking for MCLE but it could begin to do so at any time, if the Supreme Court decides to act by imposing the rule. The resolutions and referendum issues will give you an opportunity to let the BOG — and the Court — know where you stand. If you don't speak up, you waive your right to grumble when you pay the \$450!

The opinions expressed in this article are the views of the writer.

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PRESIDENT'S COLUMN

Some events and issues ahead ☐ Will Schendel

MCLE: This year's Annual Bar Business Meeting, to be held Thursday noon during the Bar Convention in Fairbanks, may be more exciting than usual. Petition signatures gathered in Fairbanks and Anchorage have placed

Mandatory Continuing Legal Education on the agenda. Up for vote will be whether MCLE should be adopted, and whether a membership referendum on the adoption of MCLE should be held. Back in August of last year, the Board of Governors recommended to the Supreme Court that MCLE be adopted. The Supreme Court has recently, by a split vote, accepted that recommendation, but rejected the Board's implementing rules. Although the Court has authority to impose any MCLE requirement and set of rules that it wishes, without further consultation with the Board or the membership, the Court has promised to continue to consult with the Bar on this issue.

ACCESS TO JUSTICE
Justice Fabe's Access to Civil Justice Task Force is close to presenting its final recommendations on how to expand access to the civil justice system. The Task Force has been looking at issues relating to Alaska Legal Services, alternate dispute resolution, community legal education, individuals who are not eligible for Alaska Legal Services, pro se litigants, and pro bono services. As a result of discussions at earlier Task Force meetings, the Alaska Court System has already submitted a grant proposal for an experimental screening and referral office, located in the Anchorage Courthouse, that will service a number of agencies. Those discussions also resulted in the

Alaska Bar Association presenting a CLE on immigration law at no charge to attorneys who registered and agreed to take a pro bono political asylum case. The Task Force meets March 31 to discuss final prioritization of the recommendations. The final report of the Task Force will be issued following that meeting.

BAR INTERNET COMMITTEE WORK

Among the most active of the Bar Association's various committees is the Internet Committee chaired by Jim DeWitt. One of the Committee's recent projects is the Trial Court Opinions searchable database; it can be found on the Internet at www.alaskabar.org. The Internet Committee is also working on setting priorities among the many suggested additions to the Bar's website. If you have any ideas for additions to the website, please contact the Bar office or e-mail the Bar at alaskabar@alaskabar.org. The Bar couldn't get along without the volunteer work done by hundreds of members.

THE BAR CONVENTION

You will soon be receiving registration materials for this year's Bar Convention, scheduled for May 12-14 in Fairbanks. We're experimenting

this year with co-sponsorship of a program with other professional groups. The Bar, the Trial Lawyers Association, the PDs (federal and state), and OPA are jointly presenting a trial skills program on interviewing Alaska Native clients and witnesses. This program is open to all Bar members. We're not ignoring the prosecutors either; they and other members of the Bar are working with the Alaska Court System to put on a program Wednesday afternoon that explores the standards of admissibility of scientific expert testimony, a timely topic now that the U.S. Supreme Court has issued its opinion in *Kumho Tire Co.*, and our own Supreme Court has issued its opinion in the *State v. Coon* matter, where it adopted the *Daubert* test. The Convention, as it has for years, also features the annual U.S. Supreme Court summaries provided by Professors Arenella and Chemerinsky; a Domestic Relations appellate update; and a smorgasbord of shorter sessions, including presentations on citizens' private rights of action, legal ethics, appellate practice, legal research (with hands-on training), legal writing (Bryan Garner is back), and the Alaska Trust Act.

I'm pleased that the federal bench will join us, for the first time, at a non-Anchorage convention. I'd like to see you, too.

EDITOR'S COLUMN

Tax the other guy, and really make it hurt ☐ Peter Maassen

State officialdom is cringing at the prospect of having to require Alaskans to actually shoulder a part of the cost of their own governance, and the *Bar Rag* has been asked if it can help grease the chute, at least with its own limited readership

(limited in numbers, that is, not in the intellectual capacity to understand matters of government finance). The *Rag* was first asked to gauge readers' acceptance of a tax on the incomes of one particular professional group, viz. (naturally) lawyers. The rationale for this narrow focus comes from a certain branch of government that firmly believes that a certain other branch of government is in the pocket of the "trial lawyers," whoever they are, and that taking money out of said pocket will lessen that certain other branch's eagerness to remain nestled in there so snugly among the loose coinage and lint.

The *Bar Rag* took it upon itself to reject this proposal out of hand. (In so doing — please note — it lost the \$1.2 million grant that was to accompany the campaign for reader acceptance.) One has to admit, however, that the proposal was not without its logic. A modest tax might make us lawyers pass on the next art auction at Sotheby's, or raise the rent on our string of villas on the Côte d'Azur, but we'd still have enough of the green left over to get our suits pressed and put duck a l'orange on the table.

No. The problem is that we, as lawyers, are professionally empathetic; we daily live the fight

against injustice to others. We could not help but consider the plight of those vast untaxed — the doctors, the dentists, the oil execs — who would feel not only disenfranchised but also guilty at not pulling their weight in society, a guilt that is currently distributed fairly among us all. Lawyers must, on principle, refuse to shed that guilt until it can be shed by everyone, standing together, hand in hand, our faces turned uniformly to a sunnier future.

A better idea is a tax on lawsuits. As always, there are two camps on this: the "lawsuits are a pernicious evil, let's tax them out of existence" camp and the "lawsuits are a great potential source of income, let's encourage them" camp. In that way it's much like the tobacco controversy, except that minors are encouraged to participate, and people don't have to do it outside when it's 20 below.

What Juneau appears to have overlooked is that the mechanism for funding state government via lawsuits is already in place. You may recall that the legislature passed, a few years ago, a law that "[i]f a person receives an award of punitive damages, the court shall require that 50 percent of the award be deposited into the general fund of the state." AS 09.17.020(j). This was one of a

number of "tort reform" measures designed to make private lawsuits against tortfeasors less attractive to lawyers, thereby unclogging the courts for the more urgent business of overturning unconstitutional legislation. With the right push from the state, however, the law could flood government coffers with cash that would make the Permanent Fund look like something the Tooth Fairy left under Dennis the Menace's pillow.

The *Bar Rag* (or one of its unauthorized mouthpieces, anyway) therefore endorses the following proposal. First, allow an immediate 30-day grace period in which all complaints pending in Alaska's courts may be amended to allege punitive damages, regardless of the nature of the underlying claims. Revise AS 09.17.020 to remove the caps on recovery, and lighten up a little on that darn "clear and convincing" standard of proof. Add the requirement that all punitive damages claims be allowed to go to the jury.

Next, launch an intensive advertising campaign to let the public, *qua* jury pool, know where its interests lie.

Here's a sample TV ad: The scene is a kitchen, where husband and wife sit anguished over open checkbooks and children cry hungrily from every corner. A solemn voice-over intones, "That mean old Governor Knowles wants to [tax your hard-earned income/take away your permanent fund dividend/destroy your children's future/all three]." The scene switches to a corporate boardroom, where stereotypical fat-cats gloat over stacks of cash. The voice-over continues: "Meanwhile, the products and practices of Outside corporations are killing and injuring Alaskans every day. Why shouldn't we make these people pay instead of you?"

Fade to message on screen: "When you serve on a jury, remember: Our government needs money to continue to provide essential ser-

vices. Do your part to ensure that it's someone else's money."

The law is on the books. It's our duty as lawyers to make it work for everyone equally. Especially us.

The Alaska BAR RAG

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News from the Federal District Court

Obtaining Information from the court:

There are three (3) methods that you can obtain case related information from the Federal District Court.

PACER [907-271-6212] The U.S. District Court is providing Public Access to Court Electronic Records (PACER). The system provides information for cases filed in the Anchorage, Fairbanks, Juneau, Ketchikan and Nome divisional offices. PACER provides the following case related information: Civil and Criminal case lists; Court Calendar for the current and next day events; Party Name Search; Case Number Search. This information is available for viewing, printing or faxing. To establish an account for PACER use, contact the PACER Service Center in San Antonio at telephone number 800-676-6856. The PACER Service Center will establish a billing account for you and is available to help you telephonically with questions and to provide "help line" assistance.

VCIS [907-271-13361] The U.S. District Court is providing public access to electronic court records through Voice Case Information System (VCIS). This system provides information for both civil and criminal cases filed in the Anchorage, Fairbanks, Juneau, Ketchikan and Nome divisional offices. VCIS provide information over the phone using a computer-synthesized voice.

WEB Page [www'.akd.uscourts.gov] The U.S. District Court has established a Web Page to provide public information about the District Court. The major categories on the Web Page are Court Information, Documents, Links, Telephone Lists, Docket Information and Calendar Information.

Additional information on the above three items can be found on the U.S. District Court Web Page [w'vw.akd.uscourts.gov] under the category Court Info, Public Notices.

Evidence Presentation:

The District Court has installed a Digital Evidence Presentation System (DEPS) that allows counsel to present exhibits, video recordings or multimedia presentations. The DEPS "Caddy" includes the following:

- A document camera that can be used to display exhibits such as documents or medium sized three-dimensional objects.
- VGA connections to display multimedia presentations or images from Laptop computers. Documents, images etc. can be displayed on any of the four monitors and large jury projector screen in the courtroom.
- A Trial Illustrator "John Madden" or electronic tablet allowing on-screen drawing and highlighting to emphasize specific details is available at the podium and the witness box. Information presented via the Trial Illustrator is displayed on the monitors and jury screen in the courtroom.
- A Video cassette recorder is available as part of the DEPS caddy.

Attorneys are encouraged to familiarize themselves and their witnesses with the use of the DEPS equipment. If you would like to schedule a date and time to familiarize yourself with the equipment, contact Tracy Whitaker at 271-5574 or in her absence Marvel Hansbraugh at 271-5575.

Attorney Admission Fees:

Effective July 1, 1998, the District Court increased Attorney Admission Fee to the Federal Bar from the one time fee of \$75 to \$100.

Effective January 1, 1999, the Court will initiate an annual Federal Bar Renewal Fee of \$25.

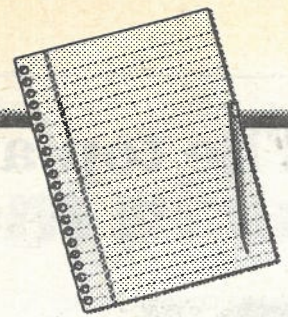
Annual Renewal Fee:

The Court has established an Annual Renewal Fee of \$25 for attorneys who practice in the District Court for the District of Alaska. This fee, with the one time Attorney Admission Fee, is used in support of attorney-court programs. Recent programs include the Technology CLE session held in January, the 9th Circuit "Off the Record" CLE programs, and the Annual Joint Alaska Bar Association, Alaska Court System and Federal Court Conference. The U.S. District Court has for the past two years paid one third of the Conference expenses. The U.S. District Court will again this year be paying for one third of the Conference expenses to support bringing in high caliber presenters for all of the programs.

Change of Address:

Counsel are responsible for keeping the court and parties informed of a change of an address. This can be done by filing a "notice of change of an address" for each pending case. If there are no pending cases, then a letter to the Clerk's Office [Attention T. Whitaker, 222 W. 7th Ave., Room 229, Anchorage, AK 99513] will be sufficient.

Bar Letters



Hail to the Editor

You out do yourself in your Jan./Feb. Editor's Column. I read it during lunch, and I've spent the last two hours smiling—despite the fact that the judicial and governmental oddities you chronicle seem depressingly familiar to me.

A few years back, the business of salting ballots with "voter information" reached fever pitch here in Maine. Incumbents' voting records on the issue of term limitations drew the most attention. As a Democrat of course, I favored labelling all Republican incumbents with something like "Probably voted against everything you were for the last time around."

Our own bar association, being voluntary, could have any motto it wanted, and therefore has, to my knowledge, never wanted one. If I had a vote in your bar, of course, I would be solidly in the "Resistance is futile" camp. I like to think that this is not entirely because of my familiarity with Star Trek.

Anyway, I just wanted to let you know how much I enjoyed your column.

—Peter Sampson
Editor, Maine Bar Journal

Blair rides again

Though not an item of interest to run-of-the-mill brethren, I pass along for the benefit of the codger set, Fairbanksans, and other eccentrics news of the Hon. James R. Blair, Superior Court Judge (retired).

I am reliably informed that Blair is again robed and riding the bench: This time as Presiding Judge of the Municipal Court of Rifle, Colorado. For the benefit of the poorly informed, Rifle is known for its static population, close proximity to Parachute, Colorado, and a profitable section of I-70. For those who feel a need to know more about Rifle, visit its community page at www.garfieldre2.k12.us/community/community.html. For those who feel a need to know more about Blair, contact a health care professional immediately.

—Ken Jensen

MCLE Rule update

STATUS

MCLE for Alaska Bar members has been **approved in concept** by the Alaska Supreme Court. **The actual provisions of the Rule are still under review by the Court.**

"BANKING" PERIOD FOR CLE CREDITS

We have received many calls about this.

The proposed Rule allows members to "bank" approved CLE credit hours earned in the 12 months prior to the beginning of their first reporting period. These credits would apply toward satisfying the requirement for the first reporting period.

If the Rule is approved, the Bar office can not predict when the 12-month "banking" period would begin. The dates for the 12-month "banking" period will depend on

1. the effective date of the Rule — it could be January or July
2. the actual reporting period for each member. The proposed regulation calls for Bar membership to be divided into 3 groups each reporting

in a different month: April, August OR November.

Your "banking" period could begin by counting back from April, August OR November.

Until the Supreme Court acts on this proposed Rule, it is not possible to predict when your 12-month "banking" period would end or begin.

Bar members should keep a record of all non-Alaska Bar CLE attendance. We automatically keep records of your attendance at an Alaska Bar CLE.

If you want to request that a non-Alaska Bar CLE activity be considered for CLE credit, call Barbara Armstrong, CLE Director or Rachel Tobin, CLE Assistant, at the Bar office: 907-272-2932/e-mail armstrongb@alaskabar.org OR tobinr@alaskabar.org

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The top and bottom lines

□ Arthur H. Peterson



"Equal access to justice, regardless of income level." That's the top line—a basic principle almost universally accepted in this country, and often cited in one form or another by judges, scholars, and politicians.

It takes money and effort to achieve it.

That's the bottom line. It's more troublesome, but it's one that shows some recent success by Alaska Legal Services Corporation and members of the Alaska Bar.

"PARTNERS IN JUSTICE" SUCCESS

\$144,288 is a bottom line—the amount contributed by individuals, law firms, corporations, and local bar associations in the first annual Partners in Justice fundraising campaign, which ended this past January 29. That amount is roughly \$112,000 more than ALSC had collected in the best previous year of seeking private contributions. ALSC had been advised by other legal services organizations and other nonprofits around the country to hire a "development director." We did so—Jim Minnery, whom many of you have already met—and the idea seems to have worked. (See the May/June 1998 *Bar Rag* for a description of the campaign.)

Of the \$144,288, almost \$60,000 went into ALSC's endowment fund, which is being managed by Merrill Lynch. Thirty-eight donors specified that they wanted 100 percent of their donations to go to the endowment fund (20 percent of gifts went into the endowment fund unless the donor specified otherwise.) Under the present arrangement, when the fund reaches \$1 million, we will begin using the earnings of the fund for operating expenses.

Helping this first effort to a successful conclusion were six individuals who contributed \$1,000 each, two law firms that put in \$5,000 each, and the \$30,000 matching grant contributed by the Anchorage Bar Association. In addition, 27 individuals contributed between \$300 and \$658, 11 firms contributed between \$1,000 and \$4,000, and 422 other donors helped achieve this remarkable result. THANK YOU ALL.

FEDERAL AND STATE PARTICIPATION

Once again, President Clinton has requested \$340 million for the Legal Services Corporation, to be distributed among the legal services programs around the country, as well as for its own administrative costs. Last year's appropriation was \$300 million.

This year, it is difficult to predict what will happen in the House of Representatives since two key players have changed status. Rep. Fox (R - Pa.) was not reelected and Rep. Mollohan (D. W.Va.) has moved to another subcommittee. Fox and Mollohan presented for four years in a row the successful floor amendment

to raise the appropriations committee recommendation to \$250 million.

Senate support appears to be more predictable.

And, once again, Gov. Tony Knowles has requested \$125,000 for the Alaska Legal Services Corpora-

tion. This is the amount that he requested last year, and the amount passed by the legislature.

It is still necessary to help our elected representatives understand that the only significant way to achieve the top line mentioned above is to support that bottom one. Although the Partners in Justice campaign was very successful, the amount collected does not make up for the million dollars lost by ALSC in recent federal and state funding cuts. And, since those cuts necessitate cutting legal services staff, which, in turn, necessitates more *pro se* litigation by the indigent, creating delays and serious difficulties for the court system, other litigants and the whole community suffer.

Keep in mind what Congress did to the legal services providers around the country. First, it drastically reduced the funding. Then it imposed draconian restrictions on clients and services. And, to twist the knife in the wound even more maliciously, it prohibited LSC-funded providers from collecting attorney fees from the losing side in litigation (such as under Alaska's Civil Rule 82)—thus precluding a major source of supplemental money (annual average of about \$250,000 for ALSC). Yet the other side can still get attorney fees from the legal services provider when the other side wins. Is that fair or justified?!

The governmental budget-cutting frenzy cannot be allowed to relegate to last priority the lives and needs of our low-income neighbors. The economy is booming; yet their legal needs persist. We cannot let them down.

THE FORCE IS WITH US

The Alaska Supreme Court recognized the problem, citing in its Nov. 25, 1997 resolution creating the Access to Civil Justice Task Force the "recent precipitous funding declines for legal services to the poor" as having "triggered a crisis in the access to justice." (See the March/April 1998 *Bar Rag*.)

The Task Force, chaired by Justice Dana Fabe, has continued working. On February 26 and 27 of this year, the Force's steering committee and several "at-large" members of the Force met in Anchorage. They reviewed, discussed, and debated

some 90 recommendations of the six (well, seven) subcommittees, approving some, rejecting some, consolidating some, and, in fact, assigning priority ranking to some. As of this writing (early March), a follow-up teleconference is set for March 31. Anchorage Attorney Iona Besseney is working with Justice Fabe in developing the final report and presenting cohesive recommendations.

Our low-income people are in the most dire straits, and it is necessary to give their lack of access to legal advice and representation the highest priority. However, the Task Force has also been addressing the problems of those whose income precludes, under federal law, assistance by ALSC, yet who cannot afford substantial legal fees—the "modest means" problems.

POST-LASH DELIBERATIONS

We lost the LASH case—*Legal Aid Society of Hawaii et al. v. Legal Services Corporation*. (See the March/April 1997 *Bar Rag*.) That's the one challenging the large number of restrictions Congress placed on the types of clients helped and the types of matters handled by LSC-funded recipients even as to activities financed with *nonfederal* money. ALSC was a party plaintiff. The U. S. Supreme Court denied certiorari after we lost in the 9th Circuit.

Under the Legal Services Corporation's regulations (45 C.F.R. 1610), an LSC-funded recipient may establish a separate entity that will be free of the restrictions, so long as certain requirements are met and "program integrity" is maintained. The separate entity could then represent, for example, indigent aliens, people in prison, people needing help with legislative or administrative advocacy, and people advocating or opposing redistricting.

The crying need for legal assistance for people in these categories was one of the major topics in the Task Force's discussions. The ALSC board of directors has named a committee of board members and ALSC staff to research the issues and explore the possibility of creating such a separate entity. One of the points of the committee's deliberations is how to deal with the *pro bono* program, since, currently, even *pro bono* attorneys are covered by the federal restrictions. So creation of this new entity might be another bottom line.

THE BOARD MET AGAIN

The ALSC board of directors met in Anchorage on Feb. 20. We did not have to close any offices or fire any staff members due to funding cuts. In fact, thanks to substantial contributions from Bristol Bay Native Association and Kawerak, Inc., we received reports on the recently reopened offices in Dillingham and Nome. The board dealt with fairly routine business and scheduled the next meeting for May 8 in Anchorage.

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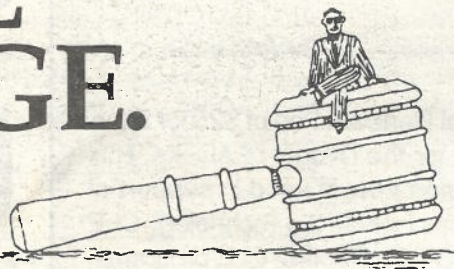
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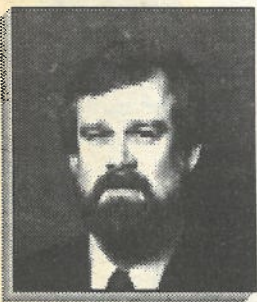
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A matter of ethics □ Steve Van Goor



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But what do you do when the insurance company that's retained you to represent

one of its insureds asks you to send your billings to a third party auditing firm for review? You have a duty to preserve the confidences and secrets of your clients in the billings, but you also need to get paid to take care of that expensive overhead, your staff, your partners, your family, and yourself.

Fortunately, there's some help in recently adopted Alaska Bar Association Ethics Opinion 99-1. Assuming that the billings do contain confidences and secrets and that the auditing firm is hired only to review the bills and is not directly involved in the litigation, the Ethics Committee advises that lawyers may not provide that information in their billing records to the auditing firm without the specific consent of their clients—the insureds. Alaska joins a host of other jurisdictions coming to the same conclusion.

The main problem facing practitioners here is the potential waiver of the attorney-client privilege or the work product doctrine. As the Ethics Committee wrote in a footnote, the First Circuit decision in *United States v. Massachusetts Institute of Technology*, 129 F.3d 681 (1st Cir. 1997), has prompted some commentators to suggest that disclosure to a third party engaged as a billing auditor will waive the attorney-client privilege. Others contend that disclosure

to an auditor selected by an insurer are protected by evidence rules comparable to Alaska Evidence Rule 503(a)(5) and that the privilege is not lost.

Since this evidentiary issue is a question for the courts, the Ethics Committee advised that it could not express an opinion on the waiver issue. It did say that an attorney's ethical duty in this situation is clear. Where privilege questions are unresolved, attorneys must act cautiously and choose the option least likely to result in an unintended waiver. That means not providing the confidences and secrets of an insured in billing

records without the express consent of the insured.

What does this mean as a practical matter? The Committee wrote that the attorney should explain to the insured the purpose of providing the information, how providing or not providing the information could affect the attorney's representation, and how the attorney-client privilege and work product doctrine might be waived by disclosure. The Committee recognized that the extent of the disclosures needed for an informed consent can vary from case to case.

Outside review of defense counsel billings has been criticized by some as an additional burden placed on defense counsel by insurance companies in an effort to keep costs down. Others comment that insurance companies are using this procedure because of past abuses. However you feel about this issue, I think Ethics Opinion 99-1 will prompt both law firms and insurance companies to look seriously at the way this problem is being addressed.

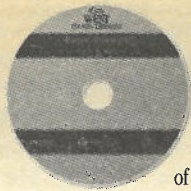
As a footnote, I saw a presentation by one of these auditing companies at

a National Organization of Bar Counsel meeting. They had offices on both coasts, were very well dressed (certainly by the standards of your average bar counsel), and very focused on what they were trying to do. Their clients included large institutional clients looking for control over the massive legal bills arriving in their accounting departments each month, so I'm sure their focus wasn't only on firms doing defense work.

As I was listening to them rattle off the list of things law firms had been doing, I was thankful that I hadn't seen similar abuses in the fee arbitration decisions coming across my desk here in Alaska. Some abuses bordered on the surreal: charging separately for office heating and ventilation; charging for a lawyer's health club membership; charging one client for cell phone rental on a trip so that the lawyer could work on other clients' cases; charging for neckties purchased by the lawyer; and charging a client for political action committee contributions.

Guess there's an advantage to being at the edge of the known universe sometimes, eh?

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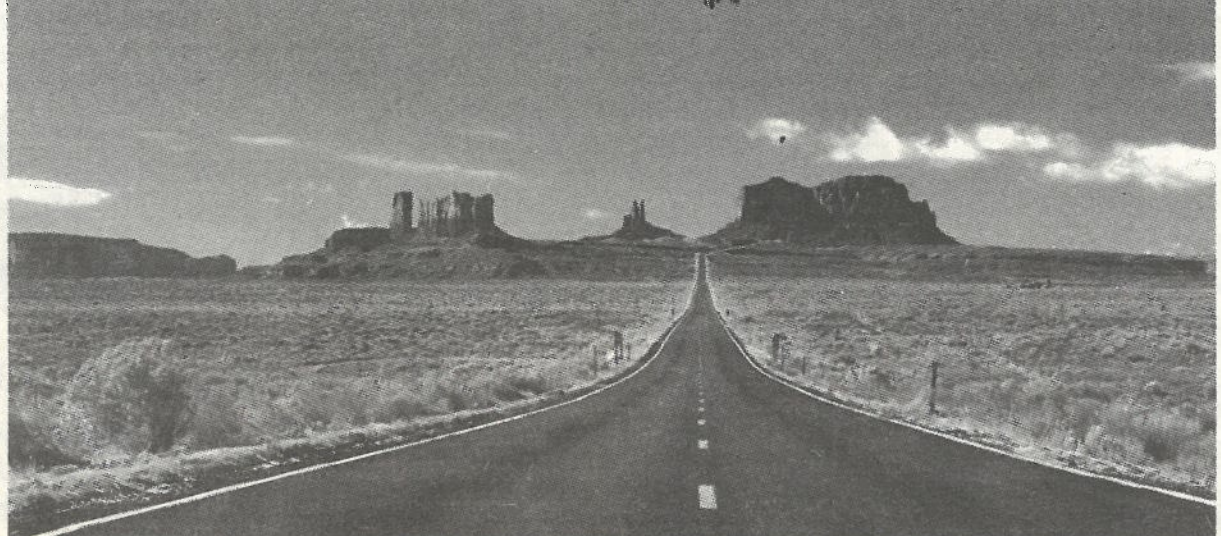
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Second-to-die insurance

□ Steven T. O'Hara



A life insurance product that has gained popularity since the early 1980's is second-to-die insurance.

This type of policy insures the lives of two people, typically husband and wife, and pays the death benefit only after both insureds

have died. Clients like that the premiums on this type of policy are less than a policy that pays the death benefit earlier. But in order to make an informed decision about second-to-die insurance, clients must consider the benefits of having liquidity on the death of the first spouse to die.

Since 1982, a married couple (both U.S. citizens) generally can defer federal estate tax until both have died. This deferral occurs by reason of the unlimited marital deduction available to the estate of the first spouse to die for qualified transfers to or for the benefit of the surviving spouse who is a U.S. citizen (IRC Sec. 2056(d) and 2056A).

By way of further background, families often acquire life insurance as a source of cash to pay estate taxes. They often find that the life insurance will be less expensive than liquidating assets or borrowing in order to pay estate taxes. Life insurance is frequently acquired through an irrevocable trust. With trust ownership, the life insurance proceeds

generally can be insulated from estate taxes, generation-skipping taxes, creditors, and predators.

Since estate taxes generally can be deferred until both spouses have died, second-to-die insurance may be a logical life insurance product for families to buy.

Families need to take into consideration, however, that the marital deduction is not always desirable. The marital deduction generally results in tax deferral, rather than tax avoidance, since the property for which the deduction is taken is includable in the surviving spouse's gross estate (IRC Sec. 2033, 2041 and 2044). This tax deferral may actually increase estate taxes insofar as it wastes the lowest marginal estate tax brackets. The marginal estate tax brackets begin at 18% and generally go up to 55% (IRC Sec. 2001(c)).

Consider a father and mother, legally married, both U.S. citizens. Neither has ever made a taxable gift. Each has assets of \$3,000,000. So

their combined assets total \$6,000,000. Their assets are relatively illiquid and consist primarily of real estate. All their assets are located in Alaska.

Their wills or revocable living trusts contain the so-called A-B plan. This plan consists of the A share and the B share. On the death of the first spouse to die, the A share passes to or for the benefit of the surviving spouse, can qualify for the marital deduction, and generally can defer estate taxes until the death of the surviving spouse. The B share is the amount or fraction of property that avoids estate taxes altogether, currently \$650,000 (IRC Sec. 2010(c)). The B share passes to or for the benefit of one or more persons in a way that does not qualify for the marital deduction.

Suppose father dies in 1999. Suppose his personal representative claims the marital deduction for the entire A share under father's A-B plan. Suppose the A share, which passes to or for the benefit of mother, is \$2,350,000 (i.e., father's \$3,000,000 in assets minus the \$650,000 B share). Here no estate taxes would be due by reason of father's death (IRC Sec. 2001 and 2010).

Then suppose mother dies in 2001 with \$5,350,000 subject to estate taxes (i.e., her \$3,000,000 in assets plus father's A share of \$2,350,000). Now \$2,362,750 in estate taxes would be due by reason of mother's death (*Id.*, IRC Sec. 2011 and AS 43.31.011).

By contrast, suppose father's personal representative had not claimed the marital deduction. Then the total estate taxes for both estates would have been \$213,000 less.

If father's personal representative had not claimed the marital deduction, the estate taxes on father's \$3,000,000 in assets would have been \$1,079,500 (*Id.*). Then none of father's assets would be subject to estate taxes at mother's death. So on her death in 2001 her separate assets of \$3,000,000 would generate an estate tax of \$1,070,250 (*Id.*). Thus with no marital deduction claimed, the total estate taxes would be \$2,149,750 (i.e., \$1,079,500 plus \$1,070,250). This \$2,149,750 is \$213,000 less than the \$2,362,750 in estate taxes that would have been due if the full marital deduction had been claimed on father's death.

Thus a significant benefit of having cash to pay estate taxes on the death of the first spouse to die is being able to use the lowest marginal estate tax brackets. Using the lowest tax brackets at the first death can, as in the above example, avoid substantial estate taxes.

Substantially more estate-tax savings can be obtained if mother's estate is able to use the credit for estate tax paid at father's death (IRC Sec. 2013). This credit may be available to the extent mother is given an income

interest over father's A share or B share (or both) and no marital deduction is elected with respect to either share (see Pennell and Williamson, *The Economics Of Prepaying Wealth Transfer Tax*, 136 *Trusts & Estates* 49, 58 (1997)).

Another significant benefit, if not the most significant benefit, of having cash on the death of the first spouse to die is to provide a reserve for the surviving spouse. Father and mother may be wealthy on paper, but with illiquid assets they may feel cash poor. So the cash proceeds on a one-life insurance policy held in trust for the benefit of the surviving spouse (as well as other beneficiaries) may be of great comfort to the surviving spouse.

This writer recalls meeting with a client whose family had previously bought a second-to-die policy. We were discussing the policy when the client said, "You mean the insurance company does not pay until I die, too?" She appeared totally surprised and, later, disappointed. Apparently she had not been in the loop when the family was deciding what type of life insurance to buy.

By the same token, the surviving spouse may dislike having to come up with the cash to continue to pay, after her spouse's death, the premiums on a second-to-die policy.

If the client has descendants from a previous marriage, another benefit of having cash at the client's death is to provide at that time an inheritance for those descendants. The descendants may otherwise resent having what they consider to be their inheritance tied up until the death of a step-parent. Here a one-life insurance policy for the benefit of the insured's descendants may help avoid conflict between them and the step-parent.

As mentioned, premiums on a second-to-die policy generally are less than a one-life policy. Second-to-die insurance has other advantages as well. For example, a trust that owns a second-to-die policy initially has two contributors, the two insureds. By contrast, a trust that owns a one-life policy generally has only one contributor, the insured, since his spouse is typically a trust beneficiary (Cf. IRC Sec. 2036). So the trust that owns the second-to-die policy generally can be packed with more non-taxable gifts, if trust contributions qualify for the annual gift-tax exclusion, at least as long as both insureds are alive.

When deciding what type of life insurance to buy, families need to consider planning opportunities that will exist on the death of the first spouse to die. Depending on the facts and circumstances, one-life insurance may make more sense than second-to-die insurance.

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THE PUBLIC LAWS

Hijacking the initiative and referendum process

□ Scott Brandt-Erichsen



I recently was perusing an advance sheet of U.S. Supreme Court opinions and was surprised to find that the Court's decision in *Buckley v. American Constitutional Law Foundation*, 525 U.S. ____, 142 L.Ed.2d 599, 119 U.S. S.Ct ____, decided

January 12, 1999, had not come to my attention either through normal media or discussions with government officials.

The impact of this decision for Alaska, with its small member of voters and growing penchant for direct legislation, is quite significant.

In *Buckley v. ACLF*, the majority of the Court held that the following requirements for circulators of initiative petitions were invalid as a violation of the freedom of speech guarantee in the Federal Constitution based upon:

1. The requirement that a circulator of an initiative petition be a registered voter;

2. The requirement that the circulator of an initiative petition wear an identification badge bearing the circulator's name while soliciting signatures;

3. The requirement that proponents of an initiative report the names and addresses of all paid circulators and the amount paid to each circulator.

In a direct application of this ruling to the procedures in the State of Alaska, the same rationale would invalidate numerous provisions applicable to initiative petitions both on the state level, in AS Chapter 15.45, and on the municipal level in AS Chapter 29.26. By local extension, the referendum and recall process would be subject to the same

limitations.

As currently constituted, AS 15.45.060 requires initiative petition sponsors to be qualified voters. AS 15.45.110 requires a sponsor to display identification containing the sponsor's name when circulating a petition. This section also places limitations on payment for signatures.

The payment provisions became effective September 7, 1998. Under AS 15.45.130, each sponsor is required to submit an affidavit setting out, among other things, whether the sponsor received payment or agreed to receive payment for

collection of signatures and the name of the organization that was paying for the signatures. Turning to initiative petitions in Title 29, under AS 29.26.110, sponsors are also required to be registered voters.

While referendum or recall petitions were not included in the Court's discussion in *Buckley v. ACLF*, referendum petitions are virtually identical to initiatives. Both are examples of direct legislation.

A recall petition, on the other hand, is arguably a distinct process for which voter registration may be supported by additional arguments. The statutes currently call for recall petition sponsors to be registered voters as well. See AS 29.26.260 and AS 15.45.500.

The Court did not specifically address whether a residency require-

ment for petition circulators would violate First Amendment protections. This issue was not raised or briefed to the Court. The Court also did not address the Colorado restrictions that required circulators to be at least 18 years old and require all signatures to be gathered within six months. These restrictions were upheld by the District Court and were not at issue. If, for example, the registered voter requirement is eliminated, the statutes lack a clear requirement that petition sponsors be residents.

While this decision does not automatically invalidate Alaska's regulatory scheme for initiative and referendum petitions, it does create a problem that will need to be resolved by legislation. Until suitable controls are enacted that regulate the circulation of initiative and referendum petitions consistent with the restric-

tions discussed by the Court in *Buckley v. ACLF*, the state and municipal initiative and referendum petition processes stand open to hijacking by well-financed political action committees. If, for example, the registered voter requirement is eliminated, the statutes lack a clear requirement that petition sponsors be residents.

I would suggest that, as part of any legislative revision, the role of municipal clerks and the director of elections be modified to ease the "gatekeepers" function that seems to land municipal clerks in court almost as often as it does not. Providing a clearer guide for the election officials for any substantive review of petitions, and an administrative review process, could ease the official's burden.

PROVIDING A CLEARER GUIDE FOR THE ELECTION OFFICIALS FOR ANY SUBSTANTIVE REVIEW OF PETITIONS, AND AN ADMINISTRATIVE REVIEW PROCESS, COULD EASE THE OFFICIAL'S BURDEN.

THE IMPACT OF THIS DECISION FOR ALASKA, WITH ITS SMALL MEMBER OF VOTERS AND GROWING PENCHANT FOR DIRECT LEGISLATION, IS QUITE SIGNIFICANT.

Exemplary Volunteer Award



Ingrid Varenbrink, former Chair of the Advisory Board for the Immigration and Refugee Services (I&RS) Program of Catholic Social Services (CSS), was recently honored as CSS Exemplary Volunteer at a luncheon in Anchorage sponsored by BP Exploration. Celebrating the award with Ingrid are, L-R: Barbara Hood, I&RS Advisory Board member; Babbie Jacobs, CSS Development Associate; Joe Moran, CSS Board of Trustees; Shalini Gujavarthy, I&RS Domestic Violence Attorney; Robin Bronen, I&RS Program Director; Ingrid Varenbrink; David McDowell, BP Exploration; Trang Duong, I&RS Advisory Board Chair; Maria Teresa Amaya, I&RS Paralegal; and Mara Kimmel, I&RS Immigration Attorney. When not volunteering her time to the community, Ingrid works for the Alaska Bar Association. She and her husband, attorney Dan Lowery of the Anchorage Public Defender's office, have a daughter, Zoe, and new-born son, Gabriel. Congratulations, Ingrid!

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GETTING TOGETHER

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The Resolution Center, Anchorage's community mediation center, has recently become a membership organization. For as little as \$10 per year, individuals and organizations can become a working part of the transformative justice

and collaborative problem-solving movement in Alaska.

One of the exciting things about being involved with the mediation movement in Alaska since 1987 is that I have seen mediation breaking out all over the place, in many different settings. One of the most memorable of such events was to have been invited to a series of meetings in the early 1990s at McLaughlin Youth Center.

These meetings were the first that I was aware of to involve the Alaska criminal justice community in the mediation movement. The eventual outcome of the meetings was the creation of Anchorage's first victim-offender mediation program (VOMP), leading to the creation of the Community Dispute Resolution Center (CDRC), now operating as The Resolution Center.

A clear memory of those early meetings was of the wonderful food, including fried chicken, casseroles, fruits, and chocolate chip cookies prepared by the kitchen staff at McLaughlin. Even more memorable was the process of going through two or three levels of security before admittance to the conference room in the maximum security section of the institution.

The initial impetus for the meetings, I believe, came from Donnis Morris, then supervisor and now superintendent of McLaughlin, and her good friend, Janice Leinhart, co-founder of Victims for Justice, in my mind the most effective victim's rights organization in the country.

Janice and Donnis had heard about victim offender programs operating in other parts of the country, and thought that such a program might suit both of their needs, to bring real consequences and accountability to offenders, especially first-time juvenile offenders. They thought such a program also could bring closure to victims, and answer some of their

questions.

In addition to Janice and Donnis, these initial planning meetings included a Who's Who of juvenile justice in Anchorage, including Bill Hitchcock, Children's Court Master; Suzanne Cole of the Public Defender's Office; Bob Buttane and Ed Simpson of Juvenile Probation; Susanne DiPietro of the Alaska Judicial Council; Pat Cunningham from UAA's School of Social Work; Larry Trostle, from the UAA Justice Center; Sigurd Murphy, District Court Judge; Sharon Leon, Anchorage Youth Court; Fay Moore, Alaska Division of Youth and Families (DFYS); Colleen Ray, private attorney; Jay Page, First National Bank; Bob Federoff; Mary Ann Dearborn, Robert Lane, Tony Lopez; and others.

From the work of the ad hoc committee, the VOMP program was launched initially with a short-term faculty development grant through UAA. CDRC was formed as a non profit, 501 (c)(3) tax exempt organization, and Nikishka Stewart was hired as the original part-time executive director. Throughout these early days, Diana Seropian and Charlotte Phelps provided substantial additional services as part-time unpaid interns through the UAA School of Social work.

The Center began on a shoestring budget, and even that was uncertain. On one or two occasions Niki went without salary for a time until promised program grants were finally approved and formalized. Eventually some small grants for the VOMP program were obtained through DFYS, and funding became at least a little bit more stable.

The program was expanded and additional private funding received through the Make a Difference program, spearheaded by Anchorage Assembly Chair Nick Begich. In more recent years, Sharon Sturges replaced Niki Stewart as CDRC execu-

tive director, and Sharon was herself replaced by the current executive director, Kris Conquergood, in the summer of 1998. Jenni Hearne, Debbie Hassell, Sean Mannion, Eric Johnson, and Jessie Kullberg have worked for the center as poorly paid but very professional and productive employees.

The heart of The Resolution Center mediation program has been a cadre of volunteer mediators. Working in co-mediation teams, more than 50 Anchorage community members have been trained and have worked as volunteer mediators over the years.

Since 1997, the center has expanded from its Original VOMP caseload to begin handling parent-adolescent cases, through a second grant from DFYS. More recently the Center has taken its first neighborhood disputes.

In the future, the Center is planning an adult offender VOMP program, and is looking for other appropriate opportunities to serve the community.

Susanne DiPietro is the current CDRC board president. Other board members include Cynthia Wick, Eric Kahklen, Pat Parnell, Ethan Berkowitz, Tom Stearns, Emery Rashad, Toni Kahklen-Jones, and myself.

The Resolution Center continues to be incorporated as CDRC, but has recently decided to do business as The Resolution Center—for simplic-

ity and increased name recognition in the community.

As a part of its continued dual quest for more stable funding and increased recognition, the center has recently become a membership organization. For as little as \$10 per year, individuals and organizations can become members, receive the quarterly newsletter, attend various open houses and other events, and otherwise participate in activities of a wonderful community center.

In the early 1980s, Anchorage had a community mediation center, funded by a Federal Office of Economic Opportunity seed grant. When

the federal funds ran out, however, the center closed, due to limited community exposure and services demand. The Resolution Center, in contrast, has developed out of the grass roots of the Anchorage community. It has devel-

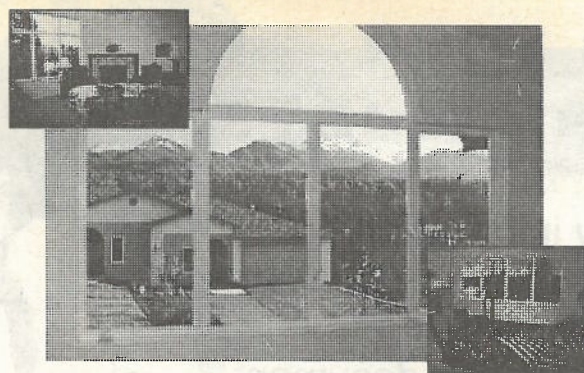
oped its own credibility and track record, while keeping a low profile. It is now here to stay. Those who choose to become members in The Resolution Center can know that they have played a part in the early growth of transformative justice and win-win problem solving in the Anchorage community.

For information on membership, contact the Resolution Center at 505 W. Northern Lights Blvd., Anchorage, Alaska, 99503. (907) 274-1542.

Drew Peterson is a volunteer mediator and board member for The Resolution Center.

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New laws address Alaska dependency exemption

□ Steve Pradell



In the past, there has been some friction between federal and state law in dealing with which parent is entitled to claim a child as an exempt dependent for purposes of federal tax law.

Two newly enacted Alaska laws, which

become effective July 1, 1999, attempt to solve this problem.

Under federal law, the general rule in a post-1984 decree or agreement is that the "custodial parent" is entitled to the exemption. The parent who has custody of the child for the greater portion of the year is considered the "custodial parent." See 26 U.S.C. § 152(e)(1), and Temp. Reg. § 1.152-4T(a)(26 C.F.R., Q-1).

A noncustodial parent is entitled to the dependency exemption under a post-1984 decree or agreement if the claim to the exemption is released by the custodial parent. To release the exemption, the custodial parent must execute Form 8332 (Release of Claim to Exemption for Child of Divorced or Separated Parents) or an equivalent document. Courts have grappled with the question of whether a state court can order the custodial parent to give up to the noncustodial parent the dependency exemption.

Alaska courts have attempted to

deal with this issue in the past absent a clear mandate from the legislature. Generally, the court has allowed the parties to come to an agreement themselves in dissolution and settlement documents which would give the exemptions to either parent in an agreeable fashion. However, absent such agreement, the court has followed federal law.

Alaska's legislature has set forth rules which will soon control when a state court judge can and cannot allow a noncustodial parent to claim the dependency deduction. AS 25.24.232 prevents the court from granting a final decree of dissolution which incorporates an agreement between the parties if the agreement unconditionally entitles a noncustodial parent to claim a child as a dependent under federal income tax laws.

The court may allow an agreement to stand for a tax year if the agreement provides that a noncustodial parent satisfies the require-

ments of federal law and was not in arrears at the end of the tax year in an amount more than four times the monthly obligation under a support order or payment schedule established for payment of continuing support and accumulated arrearages. AS 25.24.152 applies to actions for divorce, dissolution, or to declare a marriage void, and allows the court the power to grant a noncustodial parent the right to claim a child as a dependent under federal tax laws. The claim may be asserted when a noncustodial parent satisfies the requirements of federal law and was not in arrears at the end of the tax year in an amount more than four times the monthly obligation under a support order or payment schedule established for payment of continuing support and accumulated arrearages. Both statutes define "noncustodial parent" as the parent

who has actual physical custody of the child for less time than the other parent.

The new laws are a welcome addition to Alaska's family law statutes. Attorneys and judges now have guidance as to when a noncustodial parent may claim dependency exemptions. Dissolution agreements which grant the right to claim exemptions to noncustodial parents should contain language that is consistent with the wording of the new laws. Finally, there is another incentive for noncustodial parents to pay timely support payments; failure to do so for over four months can result in a loss of the right to claim the exemption.

©1999 by Steven Pradell. Steve's recent book, *The Alaska Family Law Handbook*, (1998) is available for family law attorneys to assist their clients in understanding domestic law issues.

Event scheduled for 1999 National Victims Rights Week

FRED GOLDMAN, KEYNOTE SPEAKER
April 23, Captin Cook Hotel
Dinner & Auction

This year marks the 13th anniversary of Victims for Justice (VFJ). To celebrate this important milestone, the organization will be holding a dinner and auction scheduled for April 23, from 6:30 p.m. until 10:00 p.m. at the Captain Cook Hotel. The event will kick off National Victims Rights' Week with all proceeds going to support VFJ programs.

The highlight of the evening will be a presentation made by the keynote speaker, Fred Goldman, the man who obtained justice by pursuing a civil conviction of O.J. Simpson for the wrongful deaths of Nicole Brown Simpson and his son Ron Goldman. Having made numerous appearances on national television, including *Larry King Live*, Fred Goldman has tirelessly pursued community-wide education and crime prevention issues.

As a strong advocate for victim's rights, Arizona Atty. Gen. Grant Woods recently appointed Goldman to the position of Special Assistant in Arizona's Office of Victims Services.

The Special Assistant is responsible for advocating for victims rights and representing the interests of the Attorney General in matters of public policy and the fair treatment of victims by governmental bodies in the aftermath of crime.

"It is because of Fred Goldman that so many people are aware of the victims of crime, the families that are left behind when a life is taken," said Woods. "He has put a human face on the vast number of Americans who live with the devastating effects of violent crime every day".

The Victims for Justice 13th Anniversary celebration is open to the public. Individual tickets, at \$50, and

company tables can be purchased at their office located at 619 E 5th Avenue. Phone reservations can be made at 278-0977. In addition, Victims for Justice is seeking donations for auction items.

During 1997, Victims for Justice received over 2400 requests for help. VFJ, a United Way agency, serves people who have no other place to go at their time of greatest need and are suddenly faced with the prospect of radical changes in their lives. Services include:

- Crisis intervention which consists of one on one work with a Victim Service Advocate who is trained in Critical Incident Stress Debriefing. In 1997, 162 new clients were served. That number increased to 237 in 1998 representing multiple hours with each client.
- Grief counseling and advocacy throughout the law enforcement, criminal justice and medical Systems. In 1997, VFJ with its Victims Services Advocates had 1017 contacts with new and continuing clients providing 764 hours of service.
- Court accompaniment, victim compensation and other direct services designed to assist clients through the legal processes and emotional turmoil associated with violent crime. In 1997 VFJ assisted 460 individuals providing 694 hours of service.
- Community education and information designed to prevent violent crime.
- Facilitation of referrals. In 1997, VFJ provided over 900 information referrals to other community resources.
- Monitoring and public evaluation reports on the criminal justice system through the neutral Court Watch Program.

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| • Valerie M. Therrien | 452-6195 | | |

Tribal & youth courts, ADR growing statewide

Continued from page 1

justice concepts, drug courts, stronger tribal law enforcement, and greater local creativity and control. The Alaska developments are in keeping with these trends.

Historically, the various Alaska Native societies had traditional laws dealing with crimes, property disputes, domestic relations, and other issues. Today, many tribal governments exercise judicial or mediation functions to resolve similar disputes. The decision to take on or expand this role often originates in concern for community law enforcement or child protection, coupled with the belief that the state does not address all the problems that villages face. In some cases both parties agree on tribal courts or councils as their choice of forum, and in some cases defendants consent to appear. However, tribal jurisdiction over these matters is an unsettled area of the law in Alaska which the report does not address. The Alaska Supreme Court currently is considering the extent of tribal jurisdiction over child custody cases.

There is a wide variation in tribal dispute resolution methods, court structure, and caseload. In some villages, the dispute resolution function is informal and takes the form of the tribal council providing advice. The council may summon a family to talk about child in need of aid problems, hear the concerns of relatives, recommend treatment, and provide advice and counseling. Or it may summon a village troublemaker and demand that he stop drinking, ask him to leave town, or threaten to report him to the state for the next offense. In Inupiat villages, members of elders' councils are called on for advice and support. Most villages do not call these judicial or court functions, but they serve a peacekeeping and preventive role.

A number of Alaska villages have tribal councils that convene them-

selves formally to sit as a court. These councils often are empowered to sit as courts through a provision of the tribal children's code, law and order code, or a separate judicial ordinance. Councils sitting as courts most commonly handle children's cases, where they make custody orders and foster care placements, require treatment and counseling, and monitor family progress. Not all tribal councils handle criminal cases, but those that do will hear charges under the village code, take evidence, talk with the offender and others concerned, and impose fines, community work service, and treatment recommendations. Some councils that sit as courts have a regular caseload, while others convene from time to time as the need arises. The law applied may be a combination of village ordinances, traditional law, state law, and federal law. Most tribes do not have a separate source of funding for their judicial operations and rely heavily on volunteer support.

The formation of tribal courts as a separate branch of government is a relatively recent development. Although some villages established tribal courts under the Indian Reorganization Act (made applicable to Alaska in 1936), most separate courts have become active in the last five years. These courts have a wide range of activity, depending on the size of the village and the funding available. In Metlakatla, where the court is over 100 years old and has a significant BIA budget, the tribal council pays three judges and three clerks to handle 1000 civil and criminal cases per year. At the other end of the scale is the Mekoryuk Tribal Court, four years old, which has three volunteer judges, a \$600 annual budget, and handles about three children's cases each year.

Tribal court judges sometimes are elected and sometimes appointed by the tribal council. Most courts operate with panels of judges, although there are a few single judges in loca-

tions where the caseload is larger or more routine. A few courts have been activated for only one case involving ownership of clan property, artifacts, or tribal tax collection, with a law-trained judge from outside the village hired to assist the local judges or council members.

An interesting new development is the formation of community courts to handle juvenile offenses. These courts are formed as partnerships between tribal councils, the state, and local city or borough governments. Cases may be screened by DFYS or may be referred directly by the state troopers or local police officers. The community court provides a hearing and sentencing, with the understanding that if the juvenile does not comply with the court's conditions the case will be sent to DFYS for action in state court. Community courts currently are active in Togiak and Barrow, are reorganizing in Elim and Koyuk, and are under discussion in Bethel, Kotlik, and Galena.

In many Alaska cities, youth courts combine a legal training program for high school students with peer adjudication of juvenile offenses referred by DFYS. These courts use an adversarial system of student prosecutors, defense attorneys, and judges, modeled on the state court system. Youth courts are active in Anchorage, Mat-Su, Kenai, Homer, Fairbanks, Nome, Kodiak, and Sitka, and are under discussion in Valdez and Juneau.

Youth courts also are developing in Alaska villages. The Alaska Native Justice Center in Anchorage recently received a federal grant to develop tribal youth courts in Tetlin and Napakiak. These courts will follow a tribal court model, with young people as judges and elders actively involved. Youth courts generally have many youth and adult volunteers and strong community support.

The field of alternative dispute resolution has seen an increasing

number of private practitioners, mediation pilot programs, and court rules designed to resolve legal problems without litigation. In Anchorage, the Community Dispute Resolution Center offers victim-offender mediation, which provides victims and juvenile offenders the opportunity to meet face-to-face to discuss the offense and negotiate its consequences. Juveniles often are referred to this program as part of a juvenile delinquency disposition or a youth court sentence. Similar programs are under discussion in Fairbanks and on the Kenai Peninsula. The Anchorage center also offers parent-adolescent mediation for families with communication problems.

While the desire for a local dispute resolution mechanism comes from within a city or village, development assistance often is provided from outside. Over the past five years, regional nonprofits and individual tribes have pursued increased formalization of village ordinances and court structures, while attempting to retain their roots in Native culture and traditional law. Alaska tribes have formed a statewide consortium, the Alaska Tribal Judicial Conference, to promote the development of tribal justice systems. Many regions are discussing the formation of regional courts serving more than one village, to pool resources, avoid conflicts of interest, and provide for appeals. Federal funding has recently increased for tribal court development, local domestic violence programs, drug courts, and youth courts. The State of Alaska provides organizational assistance and training for youth courts and community courts.

The Judicial Council report discusses individual dispute resolution organizations and describes how they interact with state justice agencies. The report is available from the Alaska Judicial Council at 279-2526 and on the Judicial Council Internet site at www.ajc.state.ak.us.

REVIEW YOUR 1099s

Under a recent change in the law, you should now begin receiving information returns (Forms 1099) from businesses that make payments to you in connection with legal services rendered during 1998 and thereafter. See 26 USC 6045(f). Before the change in the law, businesses were only required to report legal fees paid on Form 1099-MISC if the fees paid during a year to each attorney or firm exceeded \$600 and the attorney or firm was not a corporation.

The exemption from reporting payments made to corporations no longer applies to payments for legal services, beginning in 1998. Therefore, for 1998 and later years, you should expect to receive Forms 1099-MISC from clients, even if you are incorporated.

Further, if a business makes a payment to an attorney or law firm in connection with legal services, and the attorney's fee portion of the payment cannot be determined by the payer, the total amount paid to the attorney or firm must be reported. For example, if an insurance company makes a payment to an attorney or an attorney's trust account to settle a claim, and the insurance company does not know what portion of the payment is the attorney's fee, the insurance company must report the full amount of the payment on Form 1099-MISC.

Payments which are fees for legal services are reported in box 7 of the Form 1099-MISC. For payments where the attorney's fee portion is not known to the payer, the full amount of the payment is reported in box 13 of Form 1099-MISC with a code "A".

As you receive Forms 1099 for 1998, you should review them carefully. Mistakes are possible in this first year of many new requirements. For example, if a payer reported the gross proceeds of a settlement paid to you in box 7 of the Form 1099-MISC rather than in box 13 where it belongs, this could lead the IRS to believe that you received more income for the year than you actually earned. This could also lead the IRS to think that you received more income than you report on your income tax return.

In connection with meeting their Form 1099 filing requirements, businesses may contact you to request your taxpayer identification number.

They may send you a Form W-9, Request for Taxpayer Identification Number and Certification. An attorney is required to promptly supply its taxpayer identification number whether it is a corporation or other entity. An attorney's taxpayer identification number is their employer identification number. If you do not have an employer identification number, your taxpayer identification number is your social security number.

In general, Forms 1099 are required to be sent to the payee by January 31, and to the Internal Revenue Service by February 28 of each year. As a practical matter, some businesses do not send out all of their Forms 1099 by the January 31 due date, so you may continue to receive Forms 1099 as well as requests for your taxpayer identification number.

YOUR REQUIREMENT TO ISSUE 1099's

Form 1099 reporting is also required for "Other Income" items which are required to be reported in box 3 of the Form 1099-MISC. Other income items required to be reported in box 3 include all punitive damages, any damages for nonphysical injuries or sickness, and any other taxable damages. You may receive Forms 1099-MISC reporting such damages if the payer made payment of the damages to you on behalf of your client. You may also be required to issue Forms 1099-MISC if you made payments of damages to your client on behalf of another payer. This would apply to payments made from your trust account, where you receive the gross proceeds of a settlement and then issue payment to your client.

A business required to report certain payments on Forms 1099 is subject to penalties for each Form 1099 which is required but is not filed. The penalty is generally \$50 per Form 1099 not filed. The penalty can be substantially higher, generally 10% of the dollar amount of the items required to be reported, if it is determined that the failure to file is due to intentional or willful disregard of the requirement to file.

—Kevin E. Branson, CPA

Board invites comments on rules changes

The Board of Governors invites member comments concerning the following proposed amendments to the Alaska Bar Rules and the Alaska Rules of Professional Conduct:

The amendment to **Bar Rule 34** was proposed by the Fee Arbitration Executive Committee to eliminate an after-hearing declaration that a matter was complex arbitration in the absence of the agreement of the parties.

The amendment to **ARPC 5.4** was proposed by the Alaska Rules of Professional Conduct Committee as a housekeeping amendment to make that rule consistent with ARPC 1.17 on Sale of a Law Practice.

Please send comments to: Executive Director, Alaska Bar Association, PO Box 100279, Anchorage, AK 99510 or e-mail to alaskabar@alaskabar.org by April 23, 1999.

BAR RULE 34(h)

PROPOSED AMENDMENT RELATING TO THE DETERMINATION OF A MATTER TO BE A COMPLEX FEE ARBITRATION

(Additions italicized; deletions bracketed and capitalized)

Rule 34. General Principles and Jurisdiction.

(h) Complex Arbitration.

NEW LIFE FELLOWS OF THE AMERICAN BAR FOUNDATION

Five Alaska Fellows were recently given plaques in recognition of achieving Life Fellowship in The Fellows of the American Bar Foundation. They are:

- The Honorable Harold M. Brown of Kenai
- Mary K. Hughes of Anchorage
- The Honorable Karen L. Hunt of Anchorage
- William B. Rozell of Juneau
- The Honorable Richard D. Savell of Fairbanks

The Fellows is an honorary organization of practicing attorneys, judges and law teachers whose professional, public, and private careers have demonstrated outstanding dedication to the welfare of their communities and to the highest principles of the legal profession. Established in 1955, members of The Fellows encourage and support the research program of the American Bar Foundation.

The objective of the Foundation is the improvement of the legal system through research concerning the law, the administration of justice and the legal profession.

Both Judge Brown and Judge Hunt serve on the Alaska Superior Court, Third Judicial District.

Judge Savell is on the Alaska Superior Court, Fourth Judicial District.

Ms. Hughes is a member of the Municipal Attorney's Office in Anchorage.

Mr. Rozell is a member of the firm Faulkner Banfield P.C. in Juneau.

(1) Upon recommendation by bar counsel or a panel [CHAIR], the executive committee may determine that a dispute constitutes a complex arbitration based on any of the following factors:

(A) complex legal or factual issues are presented;

(B) the hearing is reasonably expected to [OR DOES] exceed eight (8) hours; or

(C) the amount in dispute exceeds \$50,000.00.

Such determination may be made at any time after the filing of a petition but before the main hearing on the petition is commenced unless the parties otherwise agree [A DECISION IN THE MATTER IS FINAL. IF THE DETERMINATION IS MADE AFTER THE HEARING COMMENCES, A CONTINUANCE OF THE HEARING FOR AT LEAST FIFTEEN (15) DAYS SHALL BE GRANTED UPON THE REQUEST OF A PARTY].

(2) When a case is determined to be complex [PRIOR TO HEARING], the executive committee may require payment by one or both parties for reasonable costs of administration and arbitration. [THE PARTIES WILL BE NOTIFIED OF THE ESTIMATED COSTS (FIFTEEN) 15 DAYS PRIOR TO HEARING].

ARPC 5.4

PROPOSED AMENDMENT TO ARPC 5.4: PROFESSIONAL INDEPENDENCE OF A LAWYER TO MAKE THE RULE CONSISTENT WITH ARPC 1.17*

(Additions italicized; deletions bracketed and capitalized)

Rule 5.4 Professional Independence of a Lawyer

(a) A lawyer or law firm shall not share legal fees with a nonlawyer, except that:

(1) an agreement by a lawyer with the lawyer's firm, partner, or associate may provide for the payment of money, over a reasonable period of time after the lawyer's death, to the lawyer's estate or to one or more specified persons;

(2) a lawyer who purchases the practice of a deceased, disabled, or disappeared lawyer may, pursuant to the provisions of Rule 1.17, pay to the estate or other representative of that lawyer the agreed-upon purchase price [UNDERTAKES TO COMPLETE UNFINISHED LEGAL BUSINESS OF A DECEASED LAWYER MAY PAY TO THE ESTATE OF THE DECEASED LAWYER THAT PROPORTION OF THE TOTAL COMPENSATION WHICH FAIRLY REPRESENTS THE SERVICES RENDERED BY THE DECEASED LAWYER]; and

(3) a lawyer or law firm may include nonlawyer employees in a compensation or retirement plan, even though the plan is based in whole or in part on a profit-sharing arrangement.

(b) A lawyer shall not form a partnership with a nonlawyer if any of the activities of the partnership consist of the practice of law.

(c) A lawyer shall not permit a person who recommends, employs, or pays the lawyer to render legal services for another to direct or regulate the lawyer's professional judgment in rendering such legal services.

(d) A lawyer shall not practice with or in the form of a professional corporation or association authorized to practice law for a profit, if:

(1) a nonlawyer owns any interest therein, except that a fiduciary representative of the estate of a lawyer may hold the stock or interest of the lawyer for a reasonable time during administration;

(2) a nonlawyer is a corporate director or officer thereof; or

(3) a nonlawyer has the right to direct or control the professional judgment of a lawyer.

*RULE 1.17 SALE OF LAW PRACTICE

A lawyer or a law firm may sell or purchase a law practice, including good will, if the following conditions are satisfied:

(a) The seller ceases to engage in the private practice of law in the judicial district in which the practice has been conducted;

(b) The practice is sold as an entirety to another lawyer or law firm;

(c) Actual written notice is given to each of the seller's clients regarding:

(1) the proposed sale;

(2) the terms of any proposed change in the fee arrangement authorized by paragraph (d);

(3) the client's right to retain other counsel or to take possession of the file; and

(4) the fact that the client's consent to representation by the purchaser will be presumed if the client does not take any action or does not otherwise object within ninety (90) days of receipt of the notice.

If a client cannot be given notice, the representation of that client may be transferred to the purchaser only upon entry of an order so authorizing by a court having jurisdiction. The seller may disclose to the court in camera information relating to the representation only to the extent necessary to obtain an order authorizing the transfer of a file.

(d) The fees charged clients shall not be increased by reason of the sale. The purchaser may, however, refuse to undertake the representation unless the client consents to pay the purchaser fees at a rate not exceeding the fees charged by the purchaser for rendering substantially similar services prior to the initiation of the purchase negotiations.

Board of Governors acts on 20+ items

At the Board of Governors meeting on March 5, 1999, the Board took the following action:

• Approved reciprocity applicant Kathleen Tobin.

• Approved a Rule 43 (ALSC) waiver for Shalini Gujartary.

• Reviewed a potential applicant's request for a determination on whether she was eligible for admission on reciprocity and determined that, at this time, she was not eligible.

• Completed the character investigation on an applicant and recommended him for admission.

• Heard from Dean James Huffman from Northwestern College of Law on his proposal for the *Alaska Law Review*; decided to send out an RFP to all accredited law schools to publish the *Law Review*.

• Approved formation of an Aviation Law Section.

• Met with members of the Lawyers' Assistance Committee, and expressed interest in having the committee draft Memorandums of Agreement between The Bar Association

and lawyers and Bar applicants regarding substance abuse and conditions for discipline or admission.

• Voted to publish amendments to: ARPC 1.4 regarding insurance amounts; Bar Rule 61 regarding suspension for failure to make child support payments; Bar Rule 40(u) regarding Fee Arbitration appeals

• Adopted an amendment to the Standing Policies regarding the Discipline Liaison and the deferral policy.

• Decided on the recipients for the Board's Distinguished Service award and the new Layperson Service awards; delegated to the Professionalism award subcommittee the authority to decide on that recipient.

• Made no objection to ARPC 2.1 which would advise clients on ADR, on moving the language to the comment.

• Approved the draft of the Client's Rights brochure and its distribution to Bar members.

• Agreed to send a letter to Lexis

that the Board agrees that it's important that the ethics opinions have as wide a dissemination as possible.

• Approved the January meeting minutes as corrected.

• Asked to schedule a meeting of the UPL subcommittee.

• Reviewed the chart of inactive dues by all state bar associations and asked to have this put on the May agenda.

• Agreed to monitor the legislative resolutions regarding the appointment of Appellate judges and Judicial Council lawyer members and to offer to assist the court regarding testifying.

• Agreed to amend the Standing Policies to state that the Bar will not send out ballots with a provision for write-in elections.

• Appointed the candidates who submitted their names for the ALSC Board of Directors.

• Approved a recommendation to the Court for a 5 year suspension for Frances Purdy

• Decided to invite attorneys who do Workers Comp to the May meeting.

• Agreed to provide a free set of mailing labels for a disability law survey.

NEWS FROM THE BAR

Board of Governors invites rules comments

Following its March 5, 1999 meeting, the Board of Governors voted to invite member comments concerning the following proposed amendments to the Alaska Bar Rules and the Alaska Rules of Professional Conduct:

The amendment to **Bar Rule 40(u)** corrects an error in the fee arbitration rules regarding appeals. The Appellate Rules Committee has previously concluded that the Uniform Arbitration Act does not allow a direct appeal of an arbitrator's decision. Essentially, a party may ask the court to confirm an award, vacate an award or modify or correct an award. However, it is only the court's action that can be appealed, not the arbitrator's award.

The amendment to **Bar Rule 61** would bring Alaska into compliance with a federal law which requires the states to suspend the state licenses of individuals who are delinquent in their support obligations. Essentially, the Child Support Enforcement Division (CSED) would notify the bar that a member is not in substantial compliance with a child support order or payment schedule and the executive director would serve that notice on the member. If the executive director has not received a release from CSED within 150 days of the mailing or personal service of that notice, the executive director would then petition the Supreme Court for an order administratively suspending the member. The member could not be reinstated until CSED issues a release to the director and the director certifies to the Court that a release has been issued.

The amendment to **ARPC 1.4** would change the words "claimant" to "claim" and "total" to "aggregate amount" in the notices to clients, if required, regarding malpractice insurance coverage. These words more accurately state the intent of the rule and bring it in line with standard insurance industry usage.

Please send comments to: Executive Director, Alaska Bar Association, PO Box 100279, Anchorage, AK 99510 or e-mail to alaskabar@alaskabar.org by April 23, 1999.

BAR RULE 40(u)

PROPOSED TECHNICAL AMENDMENTS TO CONFORM RULE TO UNIFORM ARBITRATION ACT
(Additions italicized; deletions bracketed and capitalized)

Rule 40. Procedure.

(u) Appeal.

Should [EITHER] a party appeal the decision of [AN ARBITRATOR OR PANEL TO] the [SUPERIOR] court concerning an arbitration award under the provisions of [AS 09.43.120 THROUGH AS 09.43.180] AS 09.43.160, [THE APPEAL SHALL BE FILED WITH THE CLERK OF THE SUPERIOR COURT IN ACCORDANCE WITH APPELLATE RULES 601 THROUGH 609, AND] the party

must serve a copy of the notice of [SUCH] appeal [WILL BE FILED WITH] upon bar counsel. If a matter on appeal is remanded to the arbitrator or panel, a decision on remand will be issued within thirty (30) days after remand or further hearing.

BAR RULE 61

PROPOSED AMENDMENT ADDING SUSPENSION FOR FAILURE TO PAY CHILD SUPPORT OBLIGATION

(Additions italicized; deletions bracketed and capitalized)

Rule 61. Suspension for Nonpayment of Alaska Bar Membership Fees, [AND] Fee Arbitration Awards, and Child Support Obligation.

(e)

(1) *If notified by the Child Support Enforcement Division that any member is not in substantial compliance with his or her child support order or a payment schedule negotiated with the Child Support Enforcement Division, the Executive Director shall serve such notice on the member.*

(2) *If the Executive Director has not received a release from the Child Support Enforcement Division within 150 days of the mailing or personal service of the notice in (1) of this paragraph, the Executive Director shall petition the Supreme Court of Alaska for an order suspending such member for substantial noncompliance with his or her child support order or payment agreement negotiated with the Child Support Enforcement Division. Upon suspension of the member for this reason, the member shall not be reinstated until the Child Support Enforcement Division issues a release to the Executive Director and the Executive Director has certified to the Supreme Court and the clerks of court that a release has been issued by the Child Support Enforcement Division.*

RPC 1.4

PROPOSED AMENDMENT CLARIFYING "CLAIM" AND "ANNUAL AGGREGATE" FOR PURPOSES OF MANDATORY DISCLOSURE OF MALPRACTICE INSURANCE COVERAGE

(Additions italicized; deletions bracketed and capitalized)

Rule 1.4 Communication.

(a) A lawyer shall keep a client reasonably informed about the status of a matter undertaken on the client's behalf and promptly comply with reasonable requests for information.

(b) A lawyer shall explain a mat-

ter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

(c) A lawyer shall inform an existing client in writing if the lawyer does not have malpractice insurance of at least \$100,000 per [CLAIMANT] claim and \$300,000 [TOTAL] annual aggregate and shall inform the client in writing at any time the lawyer's malpractice insurance drops below these amounts or the lawyer's malpractice insurance is terminated. A lawyer shall maintain a record of these disclosures for six years from the termination of the client's representation.

ALASKA COMMENT

Subsection (c) does not apply to lawyers in government practice or lawyers employed as in-house counsel.

Lawyers may use the following language in making the disclosures required by this rule:

(1) no insurance: "Alaska Rule of Professional Conduct 1.4(c) requires that you, as the client, be informed in writing if a lawyer does not have malpractice insurance of at least \$100,000 per [CLAIMANT] claim and \$300,000 [TOTAL] annual aggregate and if, at any time, a lawyer's malpractice insurance drops below these amounts or a lawyer's malpractice insurance coverage is terminated. You are therefore advised that

(name of attorney or firm) does not have malpractice insurance coverage of at least \$100,000 per [CLAIMANT] claim and \$300,000 [TOTAL] annual aggregate."

(2) insurance below amounts: "Alaska Rule of Professional Conduct 1.4(c) requires that you, as the client, be informed in writing if a lawyer does not have malpractice insurance of at least \$100,000 per [CLAIMANT] claim and \$300,000 [TOTAL] annual aggregate and if, at any time, a lawyer's malpractice insurance drops below these amounts or a lawyer's malpractice insurance coverage is terminated. You are therefore advised that (name of attorney or firm)'s malpractice insurance has dropped below at least \$100,000 per [CLAIMANT] claim and \$300,000 [TOTAL] annual aggregate."

(3) insurance terminated: "Alaska Rule of Professional Conduct 1.4(c) requires that you, as the client, be informed in writing if a lawyer does not have malpractice insurance of at least \$100,000 per [CLAIMANT] claim and \$300,000 [TOTAL] annual aggregate and if, at any time, a lawyer's malpractice insurance drops below these amounts or a lawyer's malpractice insurance coverage is terminated. You are therefore advised that (name of attorney or firm)'s malpractice insurance has been terminated."

PROPOSED RESOLUTION FOR THE ANNUAL CONVENTION OF THE ALASKA BAR ASSOCIATION • MAY 13, 1999

Be it resolved:

That the membership of the Alaska Bar Association requests the Board of Governors to conduct a referendum of the members, pursuant to Article IV, Section 13 of the Alaska Bar Bylaws, on the issue of whether any kind of mandatory continuing legal education rule should be adopted.

Respectfully submitted by:

Charles D. Silvey
Ron Smith
Barry Donnellan
Bob Groseclose
Jo Kuchle
Barbara Schuhmann

Bret Cook
Zane Wilson
Mike Kramer
Stephanie D. Galbraith
Robert A. K. Doehl
Kristin S. Knudsen

¹ Alaska Bar Bylaws, Art. VIII, §4, allows resolutions to be introduced at the annual business meeting if signed by at least 10 active members of the Association, or sponsored by a local bar association or substantive law section. Proposed resolutions shall be received in the office of the Association at least 45 days prior to the date of the annual business meeting.

PROPOSED RESOLUTION FOR THE ANNUAL CONVENTION OF THE ALASKA BAR ASSOCIATION • MAY 13, 1999

Be it resolved:

That the membership of the Alaska Bar Association is opposed to a mandatory continuing legal education rule and requests that the Alaska Supreme Court not adopt any rule that would make continuing legal education mandatory.

Respectfully submitted by:

Kenneth L. Covell
Andrew J. Kleinfeld
Lori Bodwell
Zane D. Wilson
Robert Groseclose
Jo A. Kuchle
Sheila Doody Bishop

Barbara Schuhmann
Bret Cook
Michael C. Kramer
Stephanie D. Galbraith
Robert A. K. Doehl
Kristin S. Knudsen

¹ Alaska Bar Bylaws, Art. VIII, §4, allows resolutions to be introduced at the annual business meeting if signed by at least 10 active members of the Association, or sponsored by a local bar association or substantive law section. Proposed resolutions shall be received in the office of the Association at least 45 days prior to the date of the annual business meeting.

Support
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1999 Alaska Bar Association Annual Convention Highlights

Fairbanks Princess Hotel – Fairbanks, Alaska
Wednesday – Friday, May 12-14, 1999

CLEs

WEDNESDAY, MAY 12

Morning
Trial Advocacy Skills Series, Part 3
Bridging the Cultural Gap: Interviewing
Alaska Native Clients & Witnesses
Presented in cooperation with the Alaska Academy of Trial Lawyers, the Federal Defender's Office, the Alaska Public Defender Agency, and the Office of Public Advocacy (see details on p.15).

Afternoon (Bench and Bar)
Science & Technology in the Courtroom:
The Judge's Role as "Gate-Keeper"
Join us for a presentation developed by Harvard Law School as a part of The Fred Friendly Seminars Series. Ever since the Daubert case, questions have raged about assessing the admissibility of expert scientific testimony and about the reach of the judge's role to other forms of expert and non-expert testimony. Explore these issues during a Socratic dialogue between Professor Charles Ogletree of Harvard and a blue ribbon panel of justices, judges, attorneys, and experts.

THURSDAY, MAY 13

Morning (Bench and Bar)
9th Circuit, U.S. District Court, and Alaska
State Court Appellate Practice Issues – An
Informal Bench and Bar Exchange
This continental breakfast program brings together bench and bar for a look at appellate practice issues including appellate judges' expectations regarding briefs, oral argument, and motion practice. Faculty: Judge Andrew J. Kleinfeld, U.S. Court of Appeals, 9th Circuit; Chief Judge James K. Singleton, Jr., U.S. District Court, Moderator; Senior Judge James M. Fitzgerald, U.S. District Court; Justice Alexander O. Bryner, Alaska Supreme Court; and Judge David Mannheimer, Alaska Court of Appeals

U.S. Supreme Court Opinions Update (Bench and Bar)

Professor Peter Arenella, UCLA School of Law and Professor Erwin Chemerinsky, USC Law Center once again give us the latest. Hear two great legal minds interpret what is happening in the highest court in the land.

Lunch

Alaska Bar Association Annual Business Meeting

Afternoon – Concurrent Sessions

Alaska Domestic Relations Appellate Update (Bench and Bar)

Professor Milton Regan of Georgetown University Law Center reviews recent Alaska cases and discusses how Alaska fits into national family law trends.



Peter Arenella



Erwin Chemerinsky



Milton Regan

Legal Research – in cooperation with West Group

Hands-on program at UAF Microlab and Technology Center. Spend an afternoon with trainers from West at a hands-on program to familiarize lawyers and judges with the latest techniques, strategies, and products. This CLE begins with an overview in the UAF Multimedia Classroom and moves across the hall for a hands-on session in the Microlab. This program will be offered on both Thursday and Friday afternoon. Seating is limited! Sign up early!

New Issues in Legal Ethics

Bar Counsel Steve Van Goor, Ethics Committee Members Lance Parrish and Dan Winfree, and Defense Counsel of Alaska President Gary Zipkin. Our panel reviews recent developments in legal ethics, including insurer review of retained counsel's bill, advertising of legal specialties, and multiple representation by governmental attorneys.

FRIDAY, MAY 14

Morning

Concurrent Sessions
Citizen Suits: Private Right of Action – Initial Response Through Litigation
Section Chair Randal Buckendorf, Susan Reeves and Barbara Schuhmann and Section Members. Topics include how and why citizen groups bring actions under various state and federal laws, sending and responding to notice letters, and a discussion of general defenses as well as statute-specific defenses. Presented by the Environmental/Natural Resources Law Section.

Advanced Legal Writing and Editing, Part 1 (Bench and Bar)

Bryan Garner, nationally known lawyer and teacher, is back for two sessions to address framing issues, combating clutter, achieving continuity, using quotations effectively, and the writing process. Part 1 is a prerequisite for Part 2 in the afternoon.



Bryan Garner

Lunch (Bench and Bar)

Special Events

Wednesday, May 12
Dine in the home of a Tanana Valley Bar Member! See flyer inside brochure for details.

Thursday, May 13
5 p.m. – 6 p.m.
Alaska Bar Family Fun Run
7p.m. – 10 p.m.
Awards Reception and Banquet
10:30 p.m.
Poetry Reading
Hear verses serious and not-so-serious from members of the bench and bar.

Friday, May 14
12 noon – 4p.m.
Afternoon Tour of Fort Knox Gold Mine
6:30 - 8:00 p.m.
President's Reception
Join us at the UAF Museum!
8:00 p.m.
Tanana Valley Bar Association Post-Reception Reception
At the River's Edge – on the way to the airport! Come for dessert, fruit, cheese, and beverages. See flyer inside brochure for details.

Watch for the convention brochure in the mail!

State of the Judiciaries Address
Chief Judge James K. Singleton, Jr., U.S. District Court
Chief Justice Warren W. Matthews, Alaska Supreme Court

Afternoon - Concurrent Sessions
Alaska – First in Trusts: An Update on the Alaska Trust Act, Alaska Community Property Act, and Other Trust Legislation
Douglas Blattmachr, Alaska Trust Co.; Richard Hompesch, Jo Kuchle and Richard Thwaites. Our panel looks at recent important Alaska legislative changes that affect tax, financial, and estate planning: the 1998 Alaska Omnibus Estate and Trust Improvement Act, Alaska Community Property Act, and the Prudent Investor Act.

Advanced Legal Writing and Editing, Part 2 (Bench and Bar) – Part 1 in the morning is a prerequisite for Part 2
Bryan Garner

Legal Research – in cooperation with West Group
Hands-on program at UAF Microlab and Technology Center. This program is a repeat of Thursday afternoon.

Come to the Golden Heart of Alaska for the 1999 Convention!

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Convention Information

HOTEL

The Fairbanks Princess Hotel is the convention hotel for 1999. The hotel is located at 4477 Pikes Landing Road, Fairbanks, AK 99709, phone 907-455-4477/fax 907-455-4476.

A block of rooms has been reserved for the Alaska Bar. Rates are \$85 plus 8% tax single/double.

Please make your reservations by April 5. Space is limited. Book your reservations now!

To make a reservation, please call Princess Tours at 1-800-426-0500 and be sure to state that you are with the Alaska Bar Association. Please make reservations through the 800 number only.

Check-in time is 2:30 p.m. and check-out time is 11:00 a.m..

NOTE: If you will be attending only the Wednesday, May 12 CLE: "Bridging the Cultural Gap: Interviewing Alaska Native Clients and Witnesses" held at the Westmark Fairbanks Hotel, you may reserve a room at the Westmark by calling 800-478-1111 or 907-456-7722. Please state you are with the Alaska Bar Association. The rate is \$85 plus 8% tax. Please make your reservation by April 5.

SHUTTLE SERVICE

When you arrive at the Fairbanks Airport, call the Princess Hotel at 455-4477 to request free shuttle service. Or you may request shuttle service in advance by calling the hotel and leaving your name, date and time of arrival, and flight number.

TRAVEL

JAY MOFFETT at World Express Travel, phone 907-786-3274/fax 907-786-3279, is our official convention travel agent. Please contact Jay for assistance in making your travel reservations.

CAR RENTAL

AVIS Rent a Car is the official convention car rental agency. Special car rental rates are available for all Alaska Bar members. Call AVIS direct in Fairbanks at 907-474-0900 to reserve a car. Be sure to indicate you are with the Alaska Bar Association and give the Alaska Bar discount number A677400.

HOSPITALITY SUITE

The Hospitality Suite hosted by the Anchorage Bar Association in cooperation with the Tanana Valley Bar Association will be open starting Thursday, May 13 from 4:00 p.m. daily in the Board Room, Lobby Level, Fairbanks Princess Hotel.

VISIT THE CONVENTION EXHIBITORS AND WIN A NORDSTROM SHOPPING SPREE COURTESY OF ALPS!

Visit the exhibitors to qualify for a Nordstrom shopping spree! Three Nordstrom gift certificates donated by ALPS will be raffled off at the convention! Details will be at the convention registration desk.

REGISTRATION FEES

CLEs
All 3 days: \$175
Any one full day of CLE: \$90
Any half day CLE (morning OR afternoon): \$50

Special Events

Lunches: \$19 — no programs/speakers are scheduled during lunches

President's Reception: \$25

Awards Reception and Banquet: \$40

Poetry Reading: No charge

Fort Knox Gold Mine Tour: \$5 transportation fee

State of Judiciaries Address: No charge

Alaska Bar Association Annual Business Meeting: No charge

Call the Alaska Bar office
907-272-7469/fax 907-272-2932
or e-mail alaskabar@alaskabar.org
for more information.

TRIAL ADVOCACY SKILLS, PART 3: INTERVIEWING ALASKA NATIVE CLIENTS AND WITNESSES

Alaska Bar Association Annual Convention - Fairbanks
Wednesday, May 12, 1999, 8:00 a.m. - 12:00 noon
Westmark Fairbanks Hotel
3.75 CLE Credits

Registration Fee for this CLE: \$50

Presented in cooperation with the Alaska Academy of Trial Lawyers, the Federal Defender's Office, the Alaska Public Defender Agency, and the Office of Public Advocacy

This seminar focuses on the cultural differences between Natives and non-Natives, especially in the non-Native legal culture. Our panel uses demonstrations and discussion to illustrate communication issues and strategies in both civil and criminal situations. Topics include Getting Information, Giving Advice, Non-verbal Communication, and Utilizing Support Staff as Other Cultural Bridges. Panelists include Alaska Natives and non-Natives, lawyers, and non-lawyers.

Faculty Members:

Harold Brown, General Counsel, Tanana Chiefs Conference, Fairbanks
Margaret Cimino, Facilitator
Ana Hoffman, Cultural Navigator, Alaska Court System, Bethel
Marcia Holland, Assistant Public Defender, Public Defender's Office, Fairbanks
Phyllis Morrow, Professor of Anthropology, University of Alaska Fairbanks
Jeffery O'Bryant, Assistant District Attorney, District Attorney's Office, Fairbanks
Diane Payne, Child Protection Services Coordinator, Chugachmiut, Anchorage
Gail Schubert, Private practice, Foster Pepper Rubini & Reeves, Anchorage
David Snyder, Assistant Public Defender, Public Defender's Office, Dillingham

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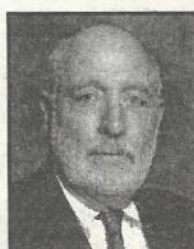
Nina M. Mitchell has recently joined the law firm Holmes Weddle & Barcott as an associate. A 1997 Magna Cum Laude graduate of Seattle University School of Law, Ms. Mitchell was admitted to the Washington Bar in 1998. During law school she externed for Judge William Dywer of the U.S. District Court for the Western District of Washington. Ms. Mitchell practices in the firm's Seattle office in the areas of admiralty and maritime law.



Nina M. Mitchell

.....

Paul N. Daigle has recently joined the firm Holmes Weddle & Barcott as a senior attorney. A 1968 graduate of the University of California Hastings School of Law, Mr. Daigle was admitted to the Oregon State Bar in 1968, and the Washington State Bar in 1972. Prior to joining Holmes Weddle & Barcott, he was a partner in the firm Schwabe, Williamson & Wyatt of Seattle. Mr. Daigle practices in Holmes Weddle & Barcott's Seattle office in the areas of commercial, maritime and insurance litigation.



Paul N. Daigle

.....

Jon K. Goltz has recently joined the law firm Holmes Weddle & Barcott as an associate. A 1996 graduate of the University of Washington School of Law, Mr. Goltz was admitted to the Washington Bar in 1996, and the Alaska Bar in 1998. Prior to joining the firm, Mr. Goltz served as a law clerk to the Honorable Mary Kay Becker of the Washington State Court of Appeals in Seattle. Mr. Goltz practices in the firm's Anchorage office in the areas of civil litigation, workers' compensation defense and fisheries law.



Jon K. Goltz

New firm name

The attorneys at the law firm of Wohlforth, Argetsinger, Johnson & Brecht are pleased to announce that our new firm name is Wohlforth, Vassar, Johnson & Brecht, A Professional Corporation. The name change reflects Peter Argetsinger's retirement from the firm and recognizes Kenneth Vassar's many years of practice in public finance with our firm.

The law firm of Wohlforth, Vassar, Johnson & Brecht has built a diverse and comprehensive public finance, business, commercial, and government law practice. The firm remains located at 900 West Fifth Avenue, Suite 600, Anchorage, Alaska 99501. Members of the firm may be contacted by telephone at 276.6401, by facsimile at 276.5093, or by email at wvjb@alaska.net.

International law firm opens Anchorage office

Dorsey & Whitney LLP, an international law firm based in Minneapolis, announce the expansion of its Pacific Northwest practice with the opening of an Anchorage office.

Dorsey & Whitney—which has 600 lawyers practicing in 18 offices worldwide—opened the new office in Anchorage on March 1. In addition, the firm announced that it has opened a new office in Vancouver, B. C., and has added 50 new lawyers to its existing Seattle office.

The attorneys in the new Dorsey & Whitney Anchorage office previously practiced in the Bogle & Gates law firm's Anchorage office. The Anchorage lawyers joining Dorsey & Whitney will continue to provide legal services to their Alaskan and national-based clients in a broad range of areas including general arid commercial litigation, real estate, natural resources, oil and gas, and environmental regulation, telecommunications and public utility regulation, labor and employment law, bankruptcy, general business and construction law.

"We are pleased to have joined a firm of the high quality of Dorsey & Whitney,"

said Anchorage partner Jim Reeves. "The larger firm complements our local lawyers' abilities with considerable resources and expertise to handle complicated legal projects." He added that the attorneys in the Dorsey & Whitney Anchorage office would benefit from continued association with a large number of their former Bogle & Gates colleagues in Seattle who have joined Dorsey & Whitney's Seattle office. "This will allow us to continue to provide coordinated legal services in both cities for a number of our Alaska clients with Seattle connections."

"Dorsey & Whitney is committed to providing a full range of professional legal services to our clients in the Pacific Northwest," said Tom Moe, Dorsey & Whitney's managing partner. "We are pleased to be able to add these outstanding attorneys to our Seattle and Anchorage offices, and we look forward to serving new and existing clients. Our new colleagues are well known and justifiably respected in Alaska."

The new Dorsey & Whitney office in Anchorage is comprised of 12 lawyers and 20 support staff. Anchor-

age attorneys joining Dorsey & Whitney are James N. Reeves, Douglas S. Parker, Heather H. Grahame, Spencer C. Sneed, Richard M. Rosston, Steven E. Mulder, William J. Evans, Kathleen Schaechterle, Kathleen Tobin, Kevin Feldis, Amy W. Limeres, and Jahna Lindemuth.

Dorsey & Whitney opened an office in Seattle in 1995, but Anchorage and Vancouver are new offices for the firm. Together with its offices in California and Hong Kong, as well as the greatly expanded Seattle office, the new Alaskan and Canadian offices make Dorsey & Whitney one of the strongest Asia Pacific practices in the country.

"Anchorage is a great place for us to be," said Walter F. Mondale, former Vice President and former U.S. Ambassador to Japan. Now a Dorsey & Whitney partner, Mondale chairs the firm's Asia Law Practice Group. He added, "Together with our strong presence in our other strategic Pacific Rim locations, we are in a position to offer outstanding service to our domestic and foreign clients." (www.dorseylaw.com)

Law firm celebrates 60 years in Alaska

Hughes Thorsness Powell Huddleston & Bauman LLC, one of the oldest and largest law firms in Alaska, is celebrating its 60th anniversary.

Founded in 1939, the firm has grown and developed with Alaska from its days as a territory, through statehood, into the period of oil resource development, to the eve of the millennium.

Over the years, it has gone through several name variations, but for a long time has been known simply as Hughes Thorsness.

Throughout its history, many of the leaders in Alaska's legal community have come from the firm. Today, these include Anchorage Municipal Attorney, Mary Hughes; State Superior Court Judges Karen Hunt, Ralph Beistline, and Jonathan Link; and State District Court Judges Sigurd Murphy and Charles Pengilly. Many of the firm's members also serve the community and state in prominent positions on various boards and commissions.

The firm serves a broad spectrum of business and industry clients, from small family enterprises to international conglomerates.

The areas in which Hughes Thorsness practices include: alternative dispute resolution; banking and finance; corporate counsel, tax and real estate; insurance defense; labor and employment law; litigation; municipal and education law; natural resources, mining, and environmental law; and probate and estate planning.

—Press release items submitted by firms

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Bar People

Lisa Crum, former clerk of Judge Reese, is now at the A.G.'s office in Bethel.....**Edw. Attala** is now with Keesal, Young & Logan.....**Louis Agi** is now with the AG's office, Division of Oil, Gas & Mining.....**Connie Aschenbrenner**, formerly with Fortier & Mikko, is now with Calista Corp.

Philip Blumstein and **Kim Dunn**, formerly with Birch, Horton, et.al., are now with the firm of Blumstein & Dunn.....**Dennis Cummings** is now with Gorton & Associates.....**Valli Fisher**, formerly with Guess & Rudd, is now with Tindall, Bennett, and Shoup.

Lewis Gordon has relocated to Palo Alto, CA.....**Peter Galbraith** has relocated to Las Vegas, NV.....**James Hopper**, formerly with Hopper & Holt, is now with the AG's office, Human Services Section.....**Barbara Jones**, formerly with Lee Holen Law Office, is now with the Anchorage Equal Rights Commission.

Karl Johnstone has relocated to Prescott,

AZ.....**Tim Jannott** has relocated to Unalaska.....**Katherine Kurtz**, formerly with Simpson, Tillinghast, et.al., is now with Legislative Affairs Agency.....**Guy Kerner** is now with the PD in Anchorage.....**Brad Leutwyler** has relocated to Albuquerque, NM.

Mike Moberly is now with the PD in Anchorage.....**Rebecca Pauli**, formerly with Kempel, Huffman & Ellis, is now with Birch, Horton, et.al.....**David Roderick** has relocated to Tacoma, WA.....**Bruce Roberts**, formerly with Holmes, Weddle & Barcott, is now with the Municipal Prosecutors Office in Anchorage.

Midori Shaw, formerly with Stone, Jenicek & Budzinski, is now with the Municipal Prosecutors Office in Anchorage.....**Scott Sterling** and **Ann DeArmond** have formed the firm of Sterling & DeArmond in Wasilla.....The Law Office of Margaret Stock & Associates has changed its name to **Stock & Moeller**, with Jeff Moeller becoming a partner.



The firm formerly known as Wohlforth, Argetsinger, Johnson & Brecht, is now known as **Wohlforth, Vassar, Johnson & Brecht**.

Max F. Gruenberg, Jr. and **Joan M. Clover**, partners for the past 15 years in Gruenberg & Clover, are pleased to announce that their associate of the past five years, **Jennifer L. Holland**, has joined them as a partner. The firm, now known as Gruenberg, Clover and Holland, practices family law and general appellate law.

Elisabeth Cuadra is serving as a horticulture extensionist/volunteer with the Peace Corps in eastern Nepal.

New office established

Faulkner Banfield, P.C., founded in Juneau, has established an office in Ketchikan. It is the first Southeastern Alaskan firm with full time offices in more than one Southeastern Alaska community.

Trevor Stephens and **Will Woodell** have joined the firm and will assist clients in Ketchikan and throughout the region. Stephens most recently served as the Ketchikan District Attorney and also has practiced since 1985 as a private attorney, a public defender and an assistant district attorney. He received his undergraduate and law degrees from Willamette University.

Woodell most recently was associated with the firm of Keene & Currall, and has been in private practice since 1983. He is a graduate of the University of Utah and the University of Wyoming School of law.

Both previously were partners in the Ketchikan firm now known as the Ziegler Law Firm. The Ketchikan office of Faulkner Banfield is located at 300 Mill Street, Suite 22, and the telephone number is (907)247-2210.

With their extensive experience in litigation and natural resources issues, Stephens and Woodell complement Faulkner Banfield's notable practice in those areas. The Ketchikan office also will help the firm to provide estate planning services to clients in Ketchikan and the surrounding region. Faulkner Banfield has represented individual, business and governmental clients throughout Alaska for over 80 years.



Trevor Stephens



Will Woodell

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Hugh Fleischer & I&RS Advisory Board member Lupe Chavez share a toast.



Colleen Ray & John Murtagh admire the skills of Celebrity Waiter John Bernitz.

A VERY SPECIAL THANKS TO SNOW CITY CAFE AND THE CELEBRITY IMMIGRATION WAITERS;
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TALES FROM THE INTERIOR

Clothes make the client

□ William Satterberg



A technique that I have used for years for judging jurors is to evaluate their clothing, paying specific attention to their shoes. A person's clothing can tell you a lot. In fact, the concept is so reliably unique that I have previously

written about the practice, emphasizing the role footwear plays in the system.

My authoritarian comments on feet have been so well received that many young attorneys now will stare at the floor for hours during jury selections, with the hopes of catching a rare glimpse of a scuffed loafer or an untied shoelace, providing some unique untold insight into the psychology of the potential juror. But shoes are not the only clue to the psyche.

Clothes also can tell you a lot about your clients, to boot. Recently, I was voluntarily forced to submit to the obligatory malpractice review by my concerned carrier, "OOPS." At one point, I was asked to be candid about how I evaluated clients. My response was simple. I stated that, after ensuring that the client was sitting slightly lopsided due to what I hoped to be an overly full wallet in a rear pants pocket, I would take the case, provided, of course, that the list was obvious. And the greater the lop-

sided list, the greater my affection.

When in Los Angeles recently I viewed the local free entertainment tabloid and was intrigued to find a lawyer whose ad was tucked tightly into the massage services section, advertising that he specialized in crimes of solicitation and alleged prostitution. This led me to query how he judged his prospective clients. Maybe he had a better method, but I was afraid to call.

Several years ago, I learned to fly. All young pilots are taught to check out their craft before takeoff, paying special attention to fittings, wires and other minutiae. My dad once taught me that after the walk-through, the most important thing is simply to stand back and look at the thing. He told me, "Ask yourself, Will this fly? Is it sitting right side up? If the answers are 'no,' you probably are not looking at an airplane." End of first lesson. As always, dad was good at understating the obvious.

To some degree, I have adopted the same approach in evaluating cli-

ents. I ask myself, "Will they fly? Are they sitting right side up?" If the answers are "yes," I am probably looking at an airplane.

Well, maybe not exactly, but somewhat close. Instead I ask myself, "Will they pay? Will they hire me?" If they have money, I give them a name change. I call them "Mr. or Ms." Client. Being politically correct, I usually overlook any other insufficiencies, not wanting to be rude or discourteous. Like a healthy dose of alcohol, money can cure anything.

But how do you tell if the client has money? At initial client evaluations, I always judge the client's clothing. Not that it is much of a key to net worth. Still, it is a guide.

For example, is the client wearing gaudy name brands, like Pierre Cardin, Brooks Brothers, or J.C. Penney? Or is the attire more financially reliable brands like Carhart, Woolrich, or Levi? And how much can I get for the leather jacket? Usually, the more impoverished a client looks, the richer he or she is. Clearly, an inverse relationship exists—at least in Fairbanks. I call it the "Burglin Effect".

Smells can also tell you a lot at the initial client interviews. Have clients showered? Are they wearing expensive perfumes or after-shaves? Or are they reeking of WD-40 and stove oil? Although the after-shaves and perfumes are nice, I will take a walking environmental spill any day of the week. Those people have money, even if they are somewhat explosive in temperament and otherwise. Again it is the "Burglin Effect" although some others call it the "McKay Factor," which is different from the "Mack Factor," which deals only with truck drivers.

I have one client in particular who runs a fuel distribution company. In all fairness, I can always tell when he comes into the office. The clue is a captivating and exotic blend of both No.1 and No.2 diesel bouquet, enhanced with just an ever-so-subtle hint of ethylene glycol. He always wears a baseball hat, but no one can tell what it says, the logo having long since been obliterated by 90-weight grease and a tinge of recycled motor oil. Although I'm not certain, I think he wears the hat because, like me, he is bald and cold on top. Virtually everyone who wears a hat in Fairbanks is either: 1) bald, 2) a cowboy, or 3) a punk (if the baseball cap faces to the rear).

Presently, I am in the process of replacing the carpet in my office. Although I try religiously to replace my carpeting at least every 30 to 40 years, I have had to accelerate the process. Once again, one of my clients bears the blame. Although one client vomited in my office once, the carpet has another cause.

The offending client is a furnace repairman, who leaves a trail of soot everywhere. Furnace repairmen are more dangerous than fuel distributors, who smell and can leave greasy smudges. Furnace repairmen are literally the humanization of "Pigpen" of the *Peanuts* cartoon column. Literally, they're the chimney sweeps of the 90s. Looking every bit like Dick Van Dyke on *Mary Poppins*, a furnace repairman can literally stand still in the office and black soot will cling magnetically to everything within 100 miles. The only thing that is worse is a septic pumping client,

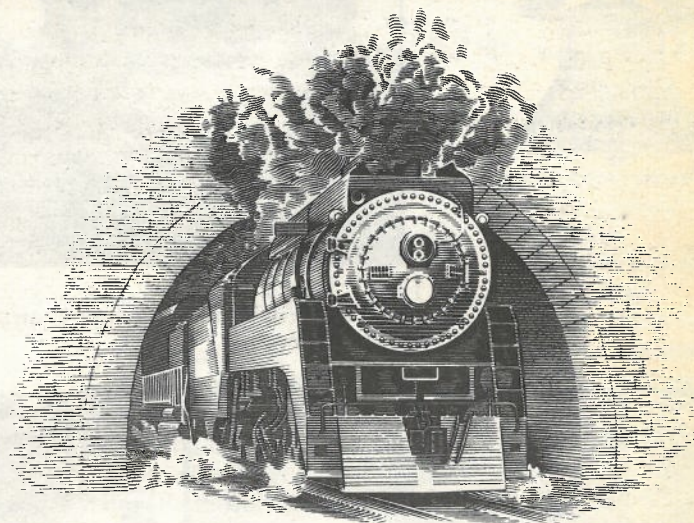
Continued on page 19

Malpractice suits *don't appear* out of nowhere. IT JUST SEEMS that way.

The most common reaction to a professional liability suit is, "Where did that come from?" It's no wonder. Lawsuits can arise from mistakes made years prior to the suit being filed, and they frequently stem from small things that could easily have been avoided. That's why Attorneys Liability Protection Society offers services to help you avoid potential problems:

- **Confidential Risk Management** - Our Risk Management professionals can help to identify day-to-day practices and patterns that may be exposing your firm to costly lawsuits.
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TALES FROM THE INTERIOR

Continued from page 18

and, yes, we represented one of those, also.

But back to the furnace repairman. After I finished my interview with the client, I dusted myself off and went into the outer office to search for a new victim. A pall had descended into the reception area. White, unfeeling eyes stared at me from behind blackened faces, which I later recognized to be my staff. The carpet, although felt under my feet, was nowhere to be seen

By contrast, I sometimes am visited by young, attractive clients of the opposite sex seeking my most capable assistance. Since these rare visitors usually do not have a place for wallets in their mini-skirts, I force myself to ignore my all-important financial evaluation criteria and sign them up on the spot. After all, I never want to be accused of not being egalitarian.

Admittedly, dress codes can change and often do. One of my past clients, who now wears blue cotton pajamas, didn't always dress that way. In fact, during his days of freer fancy, he was quite the dandy. A rather handsome black man, this gentleman preferred to wear what he termed "ethnically-enhanced" clothing to augment his personality. On one occasion, in preparation for an important hearing, he showed up at my office in a black suit interwoven with bright golden threads that actually glistened in the light. His ensemble included glossy black shoes with silver metal points that would have shamed the most jaded North Pole cowboy. To top it off, he was festooned with a ruffled yellow shirt. In short, he looked like a canary.

It would be and understatement to say that it was an outfit not easily forgotten. It also unfortunately made a lasting impression on the judge, who eventually concluded that my client would also look good in solid blue, which was later traded for highway department orange.

But wait! There was more! To accent the visual, my client had also liberally anointed himself with a very healthy dose of *Davidoff* cologne (or a Woolworth's imitation). It actu-

ally brought tears to the eyes. Unknown to me, one of my secretaries was allergic to perfume. In minutes, she developed a rash and went home, giving rise to one of the most unique potential worker's compensation claims anywhere since my very first secretary fell into her IBM Selectric typewriter in 1977. But that is another story. (Alaska National, eat your heart out!)

I was told that it took more than an hour to air out the office. When I returned home later that evening, my mongrel dog, "Puppy," immediately launched into a fierce, uncontrolled sneezing fit, pawing painfully at his eyes and scooting supersonorically across the living room floor supported in front only by his face. In a rare moment of politically incorrect comments, I called my client and politely suggested that he should tone down for his next visit. On the next appointment, he graciously wore purple. In an abundance of caution, however, my staff kept the windows open.

I previously wrote about a client who wore a suit with tennis shoes at a marijuana trial. In general, I recommend suits for my male clients, especially at trial. Often after paying my bill, however, my clients complain that they cannot buy a suit. Sometimes, I will recommend Val Village, but lately I have been receiving calls from certain similar stores kindly asking me to cease the referrals. Uncompensated inventory seems to be disappearing.

When a client cannot afford a suit, I magnanimously let him borrow my "Lucky Jacket." It is a J.C. Penney blue-gray tweed special, 42R, which has endured many major trials. Many of my clients have walked out wear-

ing the lucky jacket. It is a proven favorite. As such, I have had to hunt it down and retrieve it more than once. Because of its extensive history of use, I plan to wash it in Woolite again soon. Hopefully, it won't shrink

like the last time.

Then again, the "ape" look also sends a message of sorts, since every suit has a purpose. If all else fails, I plan to use those clients to collect my fees.

"HONORING THE PIONEERS"



Over 100 members of the legal community gathered in Anchorage on March 8, 1999, for the 1st Annual International Women's Day Luncheon, sponsored by the Anchorage Association of Women Lawyers, the Alaska Bar Association, and the Alaska Joint State-Federal Courts Gender Equality Task Force. To commemorate Women's History Month, the program featured a panel discussion by four of the pioneering women lawyers of Alaska, who shared their inspiring and often amusing stories of practicing law in the early days. For the pioneering paths they chose, which helped open doors for the many women who followed, the panelists received a standing ovation from all in attendance. Standing (L-R): Susan Reeves, Panel Moderator; Grace Berg Schaible (Admitted 1960); Esther C. Wunnicke (Admitted New Mexico 1950; Admitted Alaska 1972). Seated (L-R): M. Ashley Dickerson (Admitted 1959); Juliana D. "Jan" Wilson (Admitted 1951).

ALASKA BAR ASSOCIATION
MARCH - AUGUST 1999 CLE CALENDAR

(NV) denotes No Video

| Program #, Date & CLE Credits | Program Title | Program Location | In Cooperation With | Section |
|--|---|--|-------------------------------------|-----------------|
| #08 March 25-26 9.75 CLE Credits | The Impact of Domestic Violence on Your Practice (NV) | Hilton Hotel Anchorage | ANDVSA Legal Advocacy Project | |
| #88 March 26 3.0 CLE Credits Morning | Mandatory Ethics: Professionalism in Alaska (NV) | Westmark Hotel Fairbanks | | |
| #03 March 26 3.25 CLE Credits | Commercial Leasing: Search for Just Clauses | Hotel Captain Cook Anchorage | Real Estate Commission | Real Estate Law |
| # 88 April 13 3.0 CLE Credits Afternoon | Mandatory Ethics: Professionalism in Alaska (NV) | Juneau Centennial Hall | | |
| #16 April 19 1.0 CLE Credits Evening | Anchorage Inn of Court - Topic TBA (NV) | Boney Courthouse Third Floor Anchorage | Anchorage Inns of Court | |
| #17 May 17 1.0 CLE Credits Evening | Anchorage Inn of Court - Topic TBA (NV) | Boney Courthouse Third Floor Anchorage | Anchorage Inns of Court | |
| #11 June 10 - 11 CLE Credits TBA Two Full Days | Estate Planning Seminar | Regal Alaska Hotel Anchorage | ALI-ABA | |
| #20 July 14 CLE Credits TBA Morning | REVIA Alcohol Treatment Drug Program | Hotel Captain Cook Anchorage | Anchorage Bar Association | |
| #32 August 5 CLE Credits TBA Evening | Off the Record with the 9th Circuit Court of Appeals | Museum of History & Art Anchorage | US District Court | |
| #10 August 26 CLE Credits TBA Afternoon | Technology in the Courtroom | Hotel Captain Cook Anchorage | US District Court | |

FINDING AND CHOOSING LAWYERS

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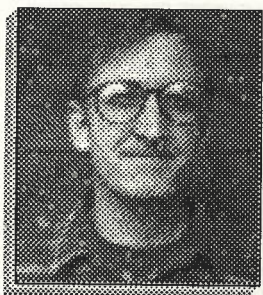
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An Admiralty journal, part II □ Dan Branch



Another sunny day, I got up early and had my coffee ceremony as Ric would say. It is a bit of a ceremony, I guess—

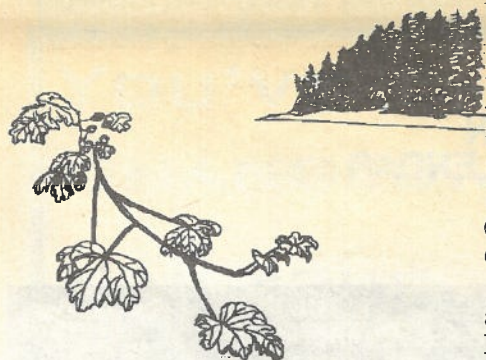
assembling the pot, filling it with water and coffee, pressing down the grounds, setting the Svea stove on fire to start it, waiting for

steam then dead black liquid to drizzle into the catch pitcher—Steam and noise and smell of black coffee in the morning. The coffee tastes good, too.

This camp has a great view—one expanse of water running right and left in front of a beach paved with smooth, flat stones. Across the water are the highlands of Glass Peninsula. The water is calm, catching the color of sky and forest. To the south is Sore Finger Point—the north, Bug and Swan Islands. Behind them is the Juneau Icefield.

Now that the beach is flooded with sun, I am struck by the image last night of our beach in shadow and the world in front of it in sun—of Ric and Mark meditating on the grey beach while the sunlight exploded off the water in front of them. (just heard sandhill cranes make their ratcheting, but beautiful call)

Still waiting for the tide to turn. A very shy sea otter is fishing



front of camp. He dives down, grabs a little something, surfaces, floats on his back and eats—his feet, belly and head above water—he is quick about everything he does.”

Tiedeman Island Camp, 6/29 a.m.

“After a long, hard paddle, we are back at this little island. We had a great trip from Tiedeman Island Camp to the Bug Islands. There, after gathering water, we battled a headwind all the way here. Ric wanted to camp at Bug Island but Mark and I were concerned about a rising wind pinning us down. So, we paddled 7 miles into a headwind. It took over three hours. **Ric’s Island 6/29 p.m.**

“I slept for 11 hours last night and it took 2 mugs of coffee to get me going this morning. It is mostly overcast now which pleases me. Too much sun yesterday. It quick-dried the sea water on our clothes and skin, leaving thick deposits of salt on everything. This afternoon we will paddle over to King Salmon Bay with light boats and return with fresh water. We will have another sleep here and then make for the cabin at the head of Seymour tomorrow. As usual, the tides will be everything.” **Ric’s Island 6/30 a.m.**

“This afternoon we carried our kayaks over the mud reef in front of Ric’s Island and paddled to King Salmon Bay—mainly to get good drinking water—partly to explore. It was hot and muggy—some overcast—some sun. We hung out for a couple of hours in the shade in front of a cabin to keep out of the sun. Then we paddled into the mouth of the river and back to this island. While in King Salmon Bay, I called Frederick on the ham radio. He went over to the house and let me speak with Susan and Anna. It was good to hear their voices.

Now we are watching the sunset. The sun is dropping behind the left shoulder of a triangle mountain. Lamb’s wool clouds hang over the mountain. The clouds are bleached white on top, and yellow on the bottom. The water in front of camp (now covered with the high tide) is shot with gold which sets off the orange-yellow of rock weed. Little islands to the north of camp form black outlines. The low pass to Oliver’s Inlet at the head of Seymour, is filled with the brightest white light—pure—which spreads to obscure the view of the mountains of Douglas Island and the Juneau Icefields beyond. Birds sing strongly now and a loon laughs. Crows complain, eagles scream and God is good.

I can no longer sit and watch. Ric and Mark do, for another hour.”

Ric’s Island 6/30 p.m.

“Ric, Mark and I talked this morning about last night’s sunset. I asked them what they were thinking about while watching the sunset. ‘Nothing,’ was their reply. Ric said he approached a state where he felt as if he were a newborn baby rising and falling with each breath of his mother. I could see the colors, the amazing lighting, the thrilling changes but I could not simply sit and watch it.

While I draw a picture, two kingfishers use the snag as a fishing perch. They dive down into the water in repeated attempts to spear fish. Each time they return, fishless, to dry out on the snag. It is hot and sunny again with a slight north wind. This afternoon we must leave here and paddle to the end of Seymour Canal. Tomorrow, Stephens Passage.” **Ric’s Island, 7/1 a.m.**

“I am on the raven side of this island now—on the beach that forms one bank of the west channel. Across from me is the point that where King Salmon Bay begins. Earlier, we saw two deer, richly colored by early light, stand on this point, then wade tentatively into the water and return to land. They must have been after the tender growth on the reef but the tide was too high.

On this side, raven’s song is all I hear—that and the wind blowing through trees. His feathers are on the ground, his feces on the rocks. While I draw, I hear the whirling flap of his wing beats as he flies over. He is not a pretty bird, but if you hold his feathers in bright light, you can see all the colors—more than we saw in last night’s sunset.

From here on, after we leave, we will return to our lives in Juneau. The meal has been eaten. Now we must clean the dishes and sweep up. Last night’s sunset was desert. **Ric’s Island, 7/1 p.m.**

“We left Ric’s Island at about 3 p.m. and paddled into a headwind to this waterfall near the head of Seymour Canal. It is warm and sunny so the wind feels good. It didn’t slow us down much because of the tidal surge through the reefs. After taking a shower in the waterfall, we paddled over to the little island where we made first camp in Seymour last year. Here we are waiting for the high tide to arrive in a couple of hours.

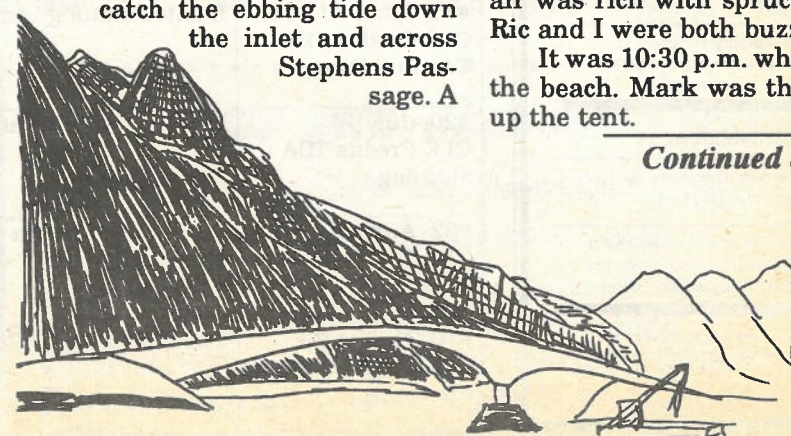
Last year this little island was controlled by eagles. This year it is the domain of crows. We can see the state cabin from here, a mile or so away. It marks the transition point from here to Oliver’s where we reenter our everyday lives. This week we made the transition from real world to tidal time. Once you make the adjustment, it is a peaceful way to travel, except when the wind closes a tidal opening.

Ric tells me that a tree on this island was just tiny when he first visited Seymour 20 years ago. He has seen just about all of this place. Still, we stumbled upon a couple of spots that were new to him. He pays for his knowledge—having to adjust to changes made—trees burned and fallen—more airplanes, government rules, tourists at Pack Creek.

Small Island, Seymour Canal, 7/1 p.m.

We left the little island just before high tide and crossed over the big mud flat to the head of Seymour Canal. Since the tide was only 14 feet, there wasn’t enough water to float our kayaks up to stream to the tramway terminus. We packed the boats and gear past the cabin and set everything down next to the hand tram. A family from Juneau has the cabin, so we set up the tent. The cabin and area around it are heavily used. Our trip to Seymour was over.

“We woke up this morning at 5 a.m. so we could pack, load the tram and be at Oliver’s Inlet in time to catch the ebbing tide down the inlet and across Stephens Passage. A



25-20 mile headwind slowed up down and now has us stuck here at the mouth. We decided to wait for the next high tide tonight. I called home on the radio.

This is not a bad place to kill time—lots of salmon berries, an active brown bear. At one point, while we were on the beach, we spotted a deer walking down the opposite side of the Oliver’s outlet. The deer passed us, turned around, sniffed the air, and turned around. She then walked back down the inlet, swam across the outlet stream, bobbing up and down in the two foot standing waves, then walked right up to us. She stopped when she neared

Mark’s kayak, then walked cautiously into the woods.

Later, a guy in a Feathercraft kayak finished crossing Stephens Passage from the Douglas side and landed near us. Ric was puzzled because he had made the crossing against the tide but with a headwind. Interesting guy—he has paddled solo all over Southeast but doesn’t seem to know much about kayaking. Said he was writing a guide book.

The time passes quickly even though we have done little. It is 80 degrees out on the beach but the wind keeps it cool. In the forest, where we ate dinner, it is quite delightful. We had miso soup with fresh lavender seaweed, dried tofu and beer. It is still windy but appears to be dying down. I think we will try to make the crossing when the tide turns tonight.” **Oliver’s Inlet, 7/2**

“Bad omens appeared as we got ready to cross Stephens Passage last night. At about 8:30, the rudder cable on Ric’s kayak snapped, Mark turned over his boat when trying to launch, and I fell down watching. Nevertheless, we pushed off after Ric made repairs and Mark changed his clothes. The wind was still blowing 25-30 knots but the waves were coming at us and were only 3 feet tall. It was manageable but exciting.

It got more exciting when we turned to run with the seas to Marmion. I don’t think I’ve ever gone faster in a kayak. The sun had dropped behind Douglas Island by then, but we had enough light to see the waves over our shoulders. At one point Ric called out, ‘Here’s a big one.’ I looked behind me to see him take a 4-foot breaker abeam. To avoid being pushed into Taku Inlet we surfed down the waves at an angle. A couple of times I starting to go over and then caught myself. Near Douglas I got caught in a rip tide but broke free. It took 2 hours to make Douglas Island, near Marmion. The air was rich with spruce resin and Ric and I were both buzzed.

It was 10:30 p.m. when we made the beach. Mark was there, setting up the tent.

Continued on page 21

HI-TECH IN THE LAW OFFICE

Breaking the sound barrier without breaking the bank: 1999

By JOE KASHI
PART II

THE SYSTEM BOARD

Avoid trying to get better performance by installing expensive "Over-drive" or other upgrade processors into your existing system. A new system board designed to handle a 366 MHz Celeron or 350 MHz or faster AMD K6-2, when used with fast PC100 SDRAM, will cost less money, run faster, and work much better. Older system boards can't do this.

The "chipset" used on the system board can be very important because the chipset model determines the performance and features of a system board. Intel used to have 90% of the system board chipset market but stopped development of Socket 7 chipsets used for all current AMD and IBM/Cyrix processors when Intel shifted its production and marketing to the Pentium II and Celeron.

Most new computer systems using a classic Pentium, AMD K6-2 or IBM/Cyrix 6x86 M II system now use third party system boards built around the SIS 595 or ALI chipsets. These are fast and reliable in practice, which is just as well, because they're now the only game in town.

Current desktop Pentium II systems should use the newer 440BX or 440GX chipsets. Compared to the

earlier 440FX and 440LX systems, the 440BX chipset has noticeably better performance.

If available, use a system board that includes crucial CPU and cooling fans that plug directly into the system board and that are monitored for possible failure by the system board. Newer CPUs run so hot that they'll essentially melt down if any fans fail. Because CPU heat buildup is such a problem now, get a larger volume mid-tower computer case and, if you can, add extra cooling fans inside.

32 BIT OPERATING SYSTEMS

Most new systems are shipping with Windows 98 but, so far, Windows 98 is not as stable as the last OSR 2.5 version of Windows 95. Our own office uses Windows 95 OSR 2.5 for the paralegal and clerical staff, mostly because scanners work better with Windows 95/98 compared to Windows NT. The attorneys are using Windows NT for its generally superior stability. Current 300 MHz and faster computers perform quite adequate with Windows NT, particularly when using at least 128 megabytes PC100 SDRAM.

HARD DISKS

CPU processors are not the only component where today's average performance leaps ahead of last year's premium products. Hard disks seem

to become larger, faster and cheaper by the day. I'll give you my recommendations below.

Older Enhanced IDE (EIDE) hard disks have a maximum burst transfer speed of 16.6 megabytes per second. They use the computer's CPU to move data, which can be a real drag on system performance. SCSI hard disks, typically used in more expensive systems, often perform better under heavy use because the SCSI controller typically has its own specialized CPU and places a much lighter load on the computer's processor.

Almost all new hard disks use Ultra DMA electronics, an improved version of the EIDE hardware interface. UDMA not only has a higher maximum transfer rate, 33.6 megabytes per second, but also doesn't place the same heavy demands upon the computer's CPU. Instead, UDMA hard disks transfer data directly to the system's DRAM. UDMA hard disks perform very well. In 1999, vendors will begin shipping UDMA2 hard disks that double the maximum electronic transfer rate.

Your hard disk's performance depends primarily upon its sustained data transfer rate rather than the hard disk's maximum electronic transfer capabilities. The most important factors affecting sustained data transfer rate are mechanical: how fast the disk spins and how tightly the data is packed upon the rotating disk platters. Mechanical limitations are always the bottleneck. All modern electronic interfaces can

transfer data to the computer far faster than the spinning hard disk platters serve it up. All other things being equal, UDMA hard disks that have a higher storage capacity (i.e., 6.4 gigabytes and up) and that have a faster rotational speed (i.e., 7200 or 10,000 rpms) will exhibit a better sustained data transfer rate. Quite simply, more data is moved under the read-write heads in a given period of time.

High capacity drives, like the newest 22 GB IBM Ultra2 SCSI drives aimed at network file servers, use extremely dense data patterns that transfer data faster. All other things being equal, these drives will perform better than smaller 5,400 rpm hard disks typically used in desktop computers. Fast drive head seek performance, the single most hyped hard disk parameter, also helps but is less important than the sustained transfer rate.

Generally, you'll trade off a higher RPM rate against higher cost and possibly lower long term reliability caused by greater mechanical stress. For desktop computers, I prefer hard disks with a 5,400 to 7,200 rpm speed. These are a good compromise between performance, cost and reliability.

Much of what I've said about UDMA hard disks pertains to SCSI drives as well, but there are a few distinctions. Using SCSI hard drives is typically more expensive because you'll need a separate PCI hard disk

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An Admiralty journal

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Happy to be dry and to have the crossing behind us, we slept for a few hours and then, at 5 a.m. paddled down the calm waters of Gastineau Channel to Juneau. One of the big Princess boats passed us at Lucky Me, setting up a three-foot wake that we had to take by steering into it. The water, at the time, was a warm grey, with the colors of the coming dawn. It was hard to make out the edges of the boat wake so I just gave myself and the kayak to it.

There was no wind and little traffic until we passed Mayflower Island. By then the sun had hit the

south wall of the valley drained by Gold Creek and forced a 30-knot wind down on us. We fought the winds and small white caps all the way to Ric's house.

I'm tired—beat really. The paddle from Mayflower took it out of me. After moving the boats and gear from the beach, Ric and I went to Channel Bowl for a greasy spoon breakfast. Mark, who had pulled out in front of his house on the Douglas side of the bridge, opted out of the breakfast plan. It will be good to sleep."

Ric's House, North Douglas Highway, 7/3.

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(e)(1)-(e)(2). Compensation for these services is made pursuant to the guidelines in Administrative Rule 12(e)(5).

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 228
Fairbanks, AK 99701-4576
(907) 451-9251

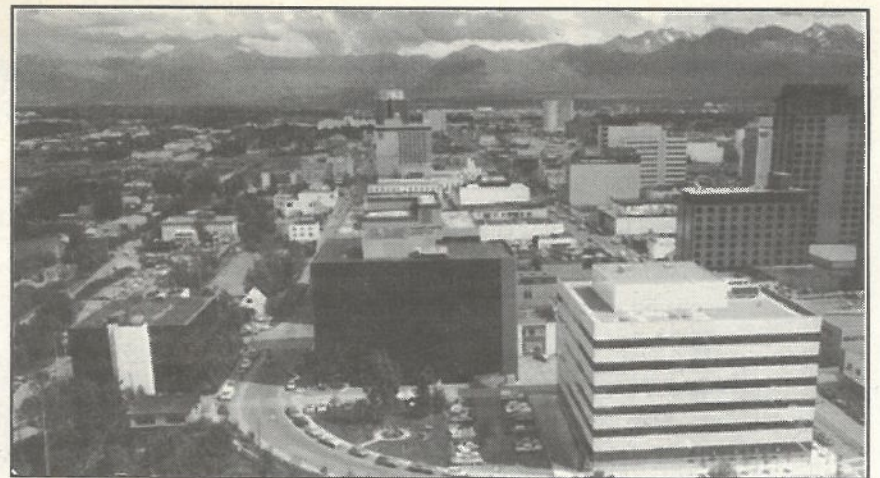
Third District:

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

Fourth District:

Ron Woods
604 Barnette St. Rm 202
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**CARR
GOTTSTEIN
PROPERTIES**

Breaking the sound barrier without breaking the bank: 1999

Continued from page 21

controller card, which can also run other SCSI peripherals like scanners and tape drives. Because SCSI hard disks cost more, manufacturers generally use their most reliable hard disk mechanical assemblages to build them. SCSI hard disks are aimed at more demanding, critical shared network environments and overall reliability tends to be accordingly higher. SCSI hard disks can perform several tasks concurrently, making them particularly suited for Netware and Windows NT network file servers.

SCSI hard disks now come in three flavors: Ultra SCSI with a maximum burst transfer rate of 20 megabytes per second, Ultra Wide SCSI with a maximum burst transfer rate of 40 megabytes per second, and Ultra2 SCSI with a maximum burst transfer rate of 80 megabytes per second. These standards are backward compatible, but if you want your drive's maximum performance, then you'll need to use a matched high performance SCSI controller. Each SCSI standard uses different data cables.

If you are getting a new computer that uses a 430TX or 440LX chipset, then get an Ultra DMA hard disk for the average desktop computer. Higher end applications like network servers or top end desktop computers should consider Ultra2 Wide SCSI using a matched Adaptec SCSI PCI controller. For proven reliability, I prefer the IBM, Western Digital and Quantum brands in both UDMA and SCSI hard disks. Always put hard disk reliability ahead of cutting edge

performance. If it's not working, faster theoretical performance quickly loses its value.

VIDEO AND SOUND CARDS

Another determinant of apparent computer system performance is the speed of your video card. It's actually less important than you might believe, though, unless your work consists mainly of action games, 3-D engineering or live desktop conferencing. In fact, for the average attorney, video performance is not really that important. Whether the screen repaints itself in .1 second or .05 seconds is rarely even discernable by the human eye. In fact, if you're still using character-based DOS programs, video card performance is nearly irrelevant.

Having said that, we all should have a video card that's at least reasonably fast. Fast, high quality video cards are amazingly inexpensive and there are many excellent models on the market. Get a video card from a major manufacturer with a commitment to constantly improving the quality of the "driver" software that interfaces the video card with your specific Windows or other operating system. The quality of the video card's driver software is, in fact, one of the most important factors affecting video performance. In fact, without good quality software to take advantage of your card's special features, you'll probably be limited to plain vanilla VGA resolution and performance.

If allowed by your system board, your video card should use the dedi-

cated AGP video bus. The video card should contain at least four to eight megabytes of high speed video memory and have at least a 64 bit data path. A 128 bit data path is better and not much more expensive. You'll want a video card from a well-regarded manufacturer like ATI, STB or Hercules; it should be capable of at least a 1280 X 1024 non-interlaced resolution with a refresh rate of 72 Hz or faster. At early 1999 prices, a video card meeting these minimum specifications should not cost more than about \$80.

Just about all new computers include sound cards. For some, these devices are purely recreational. However, as the legal profession moves toward voice recognition, sound card compatibility will become a major issue. Many excellent sound cards work very well with Windows 95/98 in a general purpose mode but their compatibility with Dragon Naturally Speaking and IBM Via Voice cannot be assured in advance. For this reason, I recommend sticking with a brand name Creative Labs Sound Blaster, preferably a higher grade PCI version. "Sound Blaster compatible" cards may not always work properly with voice recognition software.

In 1999, we'll see a trend toward integrating sound and video components directly into new system boards. Be sure that any integrated sound and video meet these minimum specifications.

HIGH CAPACITY FLOPPY DRIVES

Several products that are vying to replace the traditional 1.44 MB floppy disk drive. Internal IDE or SCSI versions of Iomega's Zip Drive cost about \$75; they're widely available and something of a de facto standard. Current ZIP drives store about 100 MB capacity; however, Iomega has announced a new model that promises 250 MB capacity. Some newer system boards allow you to boot from a Zip drive. However, Zip drives are not backward compatible with standard floppy disks, unlike the other products discussed here.

Sony's HiFD uses a 200 MB disk and can read, write and format standard floppies, with an expected purchase price of \$200. Each disk should cost about \$15. HiFD reportedly reads and writes much faster than the other devices mentioned here. They should be available in early 1999. You may need system board level support for these devices, however, so check your hardware carefully for compatibility.

Imation's 120 MB SuperDisk, the LS-120, has been available for about one year and costs about \$120. The Super Disk can act as a boot device and is available as an option from several major computer vendors. Many system boards support the LS-120 drive but, again, check your system board's BIOS compatibility.

The current popularity of Iomega's Zip drive gives it an advantage but the ability of other products to read the 1.44 MB floppy format should help them gain ground.

CD-ROM DRIVES

CD-ROM drives have become as generic as the 3.5" floppy disk drive and almost as inexpensive. Almost

all computers now include a CD-ROM drive attached to the system board's IDE interface. Although many vendors offer notionally faster and faster rotational speeds, 32X to 36X being the current nominal standard, you'll not see a commensurate improvement in real life. That's because computer CD disks are derived from the early audio standard that was never intended to rotate very fast. Above about 12X rotational speed, CD disks tend to vibrate badly, forcing the drive to slow its rotational speed in order to reduce vibrations that interfere with reading the data. You can spend more money for a "faster" CD-ROM drive, but in most cases you'll see no improvement at all beyond a 12X drive.

Network file servers often use many SCSI CD-ROM drives. Network operating systems are often optimized for SCSI data storage devices and SCSI allows you to install numerous CD-ROM drives. In contrast, IDE is limited to only one or two drives, a real limitation for law offices that need immediate access to many different legal research CD volumes.

CD-ROM BURNERS

Burning your own CD-ROMs obviously makes a lot of sense. For example, you can carry all of the documents for a large lawsuit on a single CD. You can work at home or remotely and conveniently exchange discovery in cases which would otherwise cause Xerox's stock to go through the roof.

Until a few years ago, CD-ROM makers, also called CD burners, were incredibly expensive, not terribly reliable, and difficult to use. Recently, I spent about \$400 for a Smart & Friendly (that's the brand name, believe it or not) CD-R 4012 burner that also acts as a regular CD-ROM drive. This SCSI CD burner reads regular CD disks at 12X speed and burns them at a maximum of 4X rate although I prefer to increase reliability by burning CDs at a slower speed.

However, as the cost of blank CD recordable CD disks has plummeted, ruining a disk that cost \$2 is quite a bit different than ruining a blank disk that formerly cost \$8 or \$10.

TAPE DRIVES

Everyone needs a tape drive. If you don't have one, then your hard work is at risk, not to mention your client's well-being and your malpractice insurance. There are many good low end tape drives on the market made by Seagate, HP, Exabyte, and Aiwa among others. Avoid tape drives that use the floppy disk controller or the parallel printer port; insist upon a tape drive that uses either the SCSI or IDE interface. These are much faster and more reliable.

If at all possible, avoid any tape drives that use non-standard cartridges or proprietary tape backup software. It's likely that you'll not be able to find a compatible tape drive, tape cartridge or program when you most need it. For desktop computers and small file servers, I strongly recommend tape drives that use standard Travan TR-4 or NS-20 cartridges and that work with the backup software included in current versions of Windows NT and Windows 95/98.

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They don't call it TECHSHOW for nothing.

More than 150 vendor exhibitors showed their law profession-related products and services to the 1,000 or so attendees at the American Bar Association's TECHSHOW 99 in Chicago in March. Partially underwritten by major sponsor Shepard's/Lexis Nexis, the show attracts law practitioners from all over North America and overseas. It was a record turnout for the vendor contingent, which offered the obligatory giveaway gimmicks along with the newest tools and applications for law offices of all sizes.

More than two-thirds of the exhibitors at the Sheraton Chicago Hotel & Towers have gone digital in one way or another. And why not? Should the profession of law be any different that other sectors that are migrating with increasing speed and frequency to the digital age?

Internet applications continue to proliferate as well, enabling lawyers from solos to megafirm associates to level the playing field in research, instantaneous communication, and even in "back office" staffing.

The annual technology event is presented by the ABA's Law Practice Management Section. And there are hundreds of companies looking to help you manage every part of your business.

CASE MANAGEMENT

Take case management software and utilities, for example. They come in many flavors. AltmanWeil is marketing CaseMap, billed as a "litigation knowledge management" product and "thinking tool." (www.casesoft.com). The software helps organize timelines and chronologies and track research. It's based on a database table structure enabling filtering and searches among the assigned fields. Using Object Oriented Programming, CaseMap and another program, Once Is Enough, add good utilities for evidence analysis.

LegalEdge Software (www.legal-edge.com) offers Law Firm Suite, with its "Intake Wizard" to add prospective matters to your database. It supports Access, SQL Server, Sybase and Oracle database formats. Demos of the product are downloadable.

JFS Litigators Notebook (now a Bowne company) has carved out its niche as litigation software for workgroups, powered by Lotus Domino and Lotus Notes. The just-released 6.0 version of the software automatically synchronizes different versions of the database in a group situation, including a secure means for mobile or remote users to collaborate with the office. The user's interface looks like a tabbed notebook. Bowne backs up the software product with a full consulting service to grow your office's system and its software. To emphasize the point, the company gave visitors to its booth a window garden can of seeds. (www.jfsnet.com).

One of the most popular booths at TechShow was ProLaw Software (www.prolaw.com). Distinctive with its zebra logo, the company's software integrates front office case management with back office billing and accounting. More than that, it tracks e-mail and web page addresses, regular contact information, and documents. (The booth was popular because staffers were giving away a zebra beanie animal.)

TIME & BILLING

Time and billing packages also offer choices. Alumni Computer Group's PCLaw Jr. integrates time logs with billing and accounting; optional modules add utilities such as bank reconciliation, payroll, networking, and accounts payable. (www.pclaw.com). Sage Software has just upgraded the venerable Timeslips program to V.9 (including a built-in stopwatch timer and improved user interface). Preview it at www.timeslips.com. Amicus Attorney Pro (www.amicus.ca) strutted its time and document program management

Pro Law Software's distinctive zebra logo treatment captured attention at the ABA's TechShow 99

product at the show, touting the neat screen interface and straightforward task and file management. Time Matters 2.0 touts its seamless integration with Word and WordPerfect, and its easy synchronization with your laptop, PalmPilot and multiple offices. Demos are available at www.timematters.com.

Javelan (Barrister Information Systems Corp.) offers task-based billing software, which it promotes as a solution to budgeted matter arrangements. The program also enables tracking for alternative fee structures. Additional modules for other functions also are available. Check it at www.barrister.com.

DOCUMENT MANAGEMENT HELP

One of the show-goers commented that Microsoft was working hard to convince her law firm to switch to Office 97. She recognized many advantages to doing so, but lamented the lack of the "reveal" feature that's found in WordPerfect. "You can click on 'reveal code' in WordPerfect, and it will show you all the keystrokes you struck for your formatting—it's great for tweaking your document. Word doesn't have it." And then there's the problem of smooth conversion between the two word processing powerhouses. Levit & James, Inc.'s CrossWords software may fix the problem. It's a Word/WordPerfect conversion utility—the only product that converts paragraph numbering in WP 5.1 to a Word outline, among other features. (www.levitjames.com).

Need a proof-reader for that final commercial document? Deal Proof (www.expertease.com) sniffs out errors and inconsistencies in complex documents. It will flag errors and automatically generates reports like a defined terms index and open issues list.

Lernout & Hauspie offers VoiceXpressLegal, with new modules due out this year for general practice and several specialties. Dictate to your computer's mike, and correct and edit the ensuring document with voice, as well.

TRIAL TOOLS

Information technology is moving into the courtroom, as well. Tools at TechShow 99 bring pizzazz and virtual reality to court.

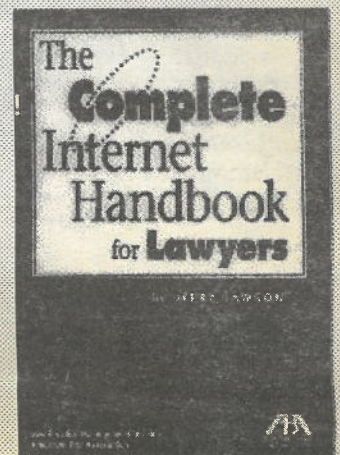
InfoTrax, Inc. has developed ViewBox (www.infotraxinc.com), an imaging system that tracks video, photos, documents, and digital sound and allows the user to manipulate and catalog them all. It's designed for personal injury and product liability cases. The scanning package was originally designed for geographic in-

Get net-savvy

The American Bar Association's Law Practice Management Section has just published the definitive guide to the Internet for lawyers.

At 472 pages, The Complete Internet Handbook for Lawyers covers everything from the basics to Internet research, websites, 'Net marketing, and e-mail encryption. Another section covers the use of extranets to manage litigation.

Written by Virginia attorney Jerry Lawson (founder of Netlawtools, Inc.), the book sells for \$49.95, or \$39.95 for ABA members. Order it at (800) 285-2221 or online at www.abanet.org/lpm/cat-alog.



Y2K Help

Despite the expected disruption, litigation, and commentary over the so-called Year 2000 (Y2K) date rollover problem, there was little evidence of the bug's presence at TechShow 99 in Chicago this month.

Many of the newer law-related programs on the market say "Year 2000 Ready" or something similar, all right, but few vendors capitalized on the issue.

SRA International was one, major exception.

The Virginia-based technology consulting and solutions company has developed a Year 2000 Consortium in Fairfax, to identify, research, test and "repair" law-related software, hardware and peripheral systems.

It's costly to join the consortium (\$30,000) but manager Janice Hall says it's worth the price, especially if several lawfirms cooperate on a membership and spread the cost.

Members get access to the consortium's database of Y2K information; sample test plans and customized programming scripts to assess, test and remediate their systems; impact analysis reports; online, e-mail consulting help from SRA's technical team; and strategies for remediation.

Hall says more than 30 law firms have committed to the consortium to date. Find out more details at www.y2k.sra.com.



Articles by Sally J. Suddock, Bar Rag managing editor.

Continued on page 25

HI-TECH IN THE LAW OFFICE

... While trial tools tout courtroom pizzazz

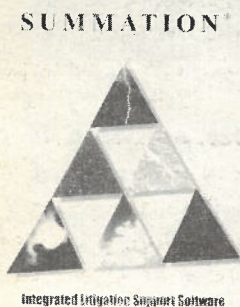
Continued from page 24

formation (GIS) system use and for forensic and scientific applications. It integrates seamlessly with Office 97 products (especially PowerPoint presentation software).

MicroMedia Corp., Unisys, and the Fibonacci Group (www.fibonaccigrp.com) have teamed up with MindSet litigation support software that handles documents and images from discovery through trial presentation. It's designed around LiveNote real-time

transcript capture in-court. LiveNote, by the way, rolled out its new upgrade that allows real-time transcript retrieval remotely over the web; (www.livenote.com).

Summation Blaze 5.2, marketed by Legal Technologies, Inc., integrates interactive real-time transcript cap-



ture (newly added feature), a transcript manager, full-text imaging, document control and retrieval and outline-style organizing in its software. (www.summation.com).

...And judging by the products, presentations and seminars at TechShow 99, Microsoft's PowerPoint presentation software has captured the market. Virtually all the image and text-capture programs demonstrated at the show integrate seamlessly with PowerPoint, to bring your information or case to digital, full-screen life.

LAWYERS ON THE WEB

We wouldn't want to overlook the Internet. Here are several products enabled by the Web:

- West Group stays on the cutting edge of information services, adding this year a new intranet toolkit, WestFile electronic court fil-

ing service and the new westlaw.com with increased search and research features. CiteLink and WestCheck are free utilities. Also announced is the new LawDesk 5.0 software upgrade.

Attorneys are always conscious of security and privacy in their communications, and Entrust Technologies (www.entrust.com) has Secure E-mail Server for major e-mail programs. Worldtalk (www.worldtalk.com), which produces World Secure Client, says 28% of all inbound e-mails contain multimedia attachments that should be scanned for security; 14% of outbound mail messages worldwide contain Word or Excel documents; and 9% of all e-mail is found to have a virus. The company's WorldSecure/ESP is a surveillance program the protect the user's assets.

- Research also can drop onto your desktop from the web. CaseStream sweeps federal district courts and finds lawsuits filed in your areas of interest and plops notice thereof into your e-mail in the morning. (The service has other informa-

tion and intelligence accessible from the desktop as well.) Find it at www.casestream.com. And Oliver's Cases surveys the appellate courts and delivers court opinions to your desktop for the interest areas you select. (www.oliverscases.com).

TechShow 99 offered more than 50 seminars and presentations to go along with the 150 products promoted by vendors for the three days. At \$695 (early registration), some attorneys commented that they'd visited for the first time after resisting the expense for several years. The cost of admission may be pricey, but if you're a lawfirm planning on migrating your office to technology, upgrading your current capability, or simply looking for new applications and gadgets, the show's well worth the admission. Why? Because the show will pay for itself with the savings you'll find from special show discounts and offers, and with the CLE credits you'll earn from the seminars.

Keep track of the plans for the next TechShow on the ABA's web page at www.abanet.org.

'Virtual' courtroom is the trend for the future

It started with the "trial of the century," the O.J. Simpson case in Los Angeles. Fredric I. Lederer calls it the "burgeoning courtroom technology revolution," the vision of the virtual courtroom of the future.

Lederer, chancellor professor of law and director of the innovative Courtroom 21 on the campus of the William & Mary Law School, gave attendees at the American Bar Association's TechShow 99 a glimpse into the future of technology at trial. "The legal system is changing," he says. "Most of the nation's lawyers, judges, legal administrators and support personnel have long ago adopted word processing, electronic legal research, time and billing programs and, increasingly, varying forms of case management software.

"Electronic filing, already in use in a number of courts (including Utah, Arizona, New Mexico and Missouri), is a topic of discussion in numerous jurisdictions. In Los Angeles and Indianapolis, motorists can pay their traffic fines...on the Internet with credit card information...there is even a virtual law firm." And Ken

Starr released his sensational Special Counsel report for instantaneous Web access in September.

And while the "virtual courtroom" like the Courtroom 21 project is likely years in the future (in which participants and jurors dial in from numerous remote sites to a courtroom loaded with technological innovations), "the trend is toward integrated high technology courtrooms," Lederer said.

In high-tech courtrooms, testimony, evidence, transcripts, and witness examination are presented or transmitted electronically, and this courtroom has arrived—complete with complex imaging and software applications that graphically reproduce evidence, crime scenes and other information. Complex images can be presented with CAD software, such as in a product liability case, or enhanced in size or for event re-enactment. Video conferencing brings remote participants into the same room.

DOAR Communications President Samuel Solomon consults with law firms across the country from his

New York office, and calls the move to technology "a paradigm shift in trial presentation." Why? Because of the persuasive power of the visual media; 75% of what we learn comes to us visually, says Solomon, and we're five times more likely to remember something seen, rather than heard.

Lederer and Solomon agree that the technology is here today to bring digital life to the courtroom, but it comes at a price (up to \$100,000 per courtroom for enabling electronic and communications technology and perhaps tens of thousands of dollars in investment for law firms that will present high-tech cases).

In Alaska, the major court facilities are ready for the sea change, says Steve Bouch, deputy director of the Alaska Court System. With one exception: bandwidth.

"Two years ago, there was not a Pentium-class system in any of our courts," he said. By mid-year, all 28 court locations and 125 courtrooms across the state will be equipped with this modern improvement for case management. The Big 6 courts (An-

chorage, Fairbanks, Juneau, Kenai, Ketchikan, and Palmer, which hear 80% of the state's cases) will be equipped with fiber optic backbones and CAD5 cabling by mid-year, as well (all Year 2000 compliant). Remaining courtrooms will be equipped with CAD5 cabling this year, too.

"We're undergoing a quiet revolution in our court system," says Bouch, in system facilities statewide ranging from "honeypots in the villages to the high-technology backbone of the Nesbett courthouse" in Anchorage (and in Fairbanks' new courthouse to be completed in the fall of 2001.)

Other improvements in the state's 18-month, \$1.5 million statewide technology upgrade:

- Improved telephone switching and sound stations for audio conferencing;
- Infrared devices for hearing-impaired jurors; and
- Digital recording for every multi-judge court statewide by May

The courts also plan to offer digital imaging for judgements over the next year. With GCI's new fiber optic cable, the courts are looking into video conferencing for the Supreme Court, to link justices from around the state. Electronic filing capabilities will be tested at the appellate court level.

But full, virtual video link-ups from remote locations around the state are likely years away, said Bouch. It's a bandwidth, telecommunications infrastructure problem. While "virtual" videoconferencing is occurring with regularity in jurisdictions such as Missouri, he said, the cost is prohibitive in Alaska. "It costs \$800 per month for a fractional T1 line in Missouri; in Alaska, it's \$8,000 per month," he said.

Inside the local courtroom, the infrastructure is ready for attorneys to exploit. "And when the bandwidth comes, we'll be ready to jump on" for the rest of the ride to interconnected, high-tech courts, said Bouch.

Your phone as secretary

It takes a lawyer to serve a lawyer.

Richard Jackson, a general practice/solo attorney in Dallas, saw the need for a good support staff and peak workload option for his practice. And he needed something that would help him produce work while traveling, even when his office was closed. Enter Cyber Secretaries, his two-year-old company that serves road warriors and small offices nationwide (and around the world).

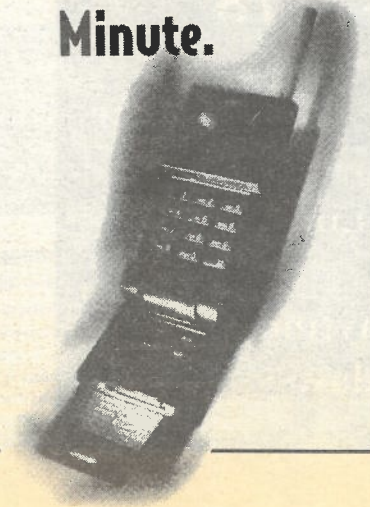
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"We have very fast turnaround, with a savings to our clients averaging 40%," says Jackson. There's no minimum for the service, no contracts to sign, and no special equipment or software. He attended his first ABA TechShow as a vendor in March.

Has his new business cut into his time as an attorney? "I still do a lot of legal work, but this business is fun," he says, although he has others manage its day-to-day operations. "We started with one secretary/transcriptionist, and now I have nearly 50 around the country who do the work," he says.

Cyber Secretaries allows you to try the service for free, by calling 1-800-962-4257 or logging on to www.voice2doc.com.

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Developing your case with electronic notes

By J. MICHAEL JIMMERSON

The difference between a good litigator and a great one is preparation, but too often we learn this lesson in the school of hard knocks. The same reasoning applies to technology usage in your litigation practice. Managing and developing your case by using technology can prove the difference between winning and losing.

CASE EVALUATION

You can begin to apply technology tools at the inception of every case. Before you take on a new case, of course, you investigate the facts and determine the applicable law. During your investigation, create an "electronic note" that details the facts of the case. These early notes can serve as the basis for your trial notebook, detailing the available facts and those requiring further development. Some litigators begin prepar-

Before you take on a new case, of course, you investigate the facts and determine the applicable law. During your investigation, create an "electronic note" that details the facts of the case.

ing their closing argument and presentation at the very inception of the case, honing and refining them up until the moment of trial.

RESEARCH

When you begin researching the law, using either automated legal research (ALR) or the Internet, you can quickly determine if there are any holes in your case and check for expert witnesses that you might consult. Also, you can check for similar cases or fact situations to your case. If your research locates any useful information, capture this data in electronic form. Doing so will allow you to quickly retrieve that information without pawing through sheaves of legal pads and random notes. Too often, we capture critical details on a yellow pad or Post-It note, throw it in the file (hopefully) and promptly forget it. If you organize the case and its information from the outset, you will have instant access to anything bearing on the case.

PLEADINGS

Naturally, you will use a word processor to draft the complaint (or answer) as well as any motions. Take the time to collect these pleadings in electronic form in a central repository set aside for the case. Consider requesting copies of any pleading filed by the other side in electronic form. You can accomplish this by offering to do the same. If interrogatories and answers are filed, these should be converted to electronic form for easy retrieval and cross-referencing.

CASE MANAGEMENT

If you are not using a document management program, you will have to make do using a system of file directories (folders) and file-naming conventions. Create a central directory for all your documents (e.g. C:\Data). Then create a

sub-directory for each of your clients (e.g. C:\Data\Smith). If you have more than one matter for any one client, create additional sub-directories. This system will make it easy for you (or your secretary or paralegal) to find client documents quickly. In the event that the folder gets too large, consider creating separate sub-folders for pleadings, deposition transcripts, memos, and other documents.

Windows 95+ / NT users can take advantage of long file names when creating documents. A file named "Smith Complaint -- First Amended.doc" is certainly easier to locate and recognize than one named "smithcmpl.doc." Windows also provides the ability to find documents by file name or contents across your entire hard disk. You have the tools -- use them.

Some specific software tools can prove invaluable in handling a hefty docket. Case management software can track the entire course of the case, apprise you of important deadlines, and organize random notes and key issues. The calendaring system in these programs often provides reason enough for purchase. Malpractice carriers have even begun requiring electronic docketing and calendaring systems.

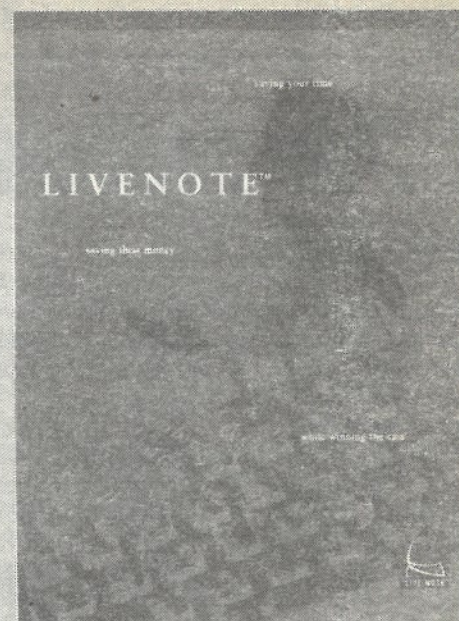
DISCOVERY

The discovery process is the ideal environment for using technology. Never leave a completed deposition without ordering a copy of the transcript on a diskette. The cost of an electronic transcript is minimal and can be quickly recouped when searching for critical information. Rather than spending hours pouring over a deposition for a certain bit of testimony, search the transcript in seconds using your computer. Your client will appreciate the cost-savings.

Also, in certain situations, you will need the transcript on a short turnaround. Many court reporters are using real-time transcription to create transcripts as the deposition proceeds. If you are linked to the court reporter's computer, you can see the questions and answers as they are given. At the end of the deposition, the court reporter gives you a diskette that you can immediately use for the next day's deposition, hearing or trial. Taking advantage of these timesaving methods can provide a winning advantage. If the other side is not using these tools, you have gained the edge in preparation. If the other side is using the latest technology, you may be committing malpractice if you are not.

DATABASES

In more complex cases, you may need to create document or image databases or use litigation support tools. You must decide early if this technology is appropriate in the case at hand. You should always err on the side of caution. Better to be over-prepared than to be caught short just before trial. If you suddenly have to organize hundreds of thousands of documents just before trial, you will not be able to do so adequately if you wait till the last minute. Deciding when to use technology is just like



LiveNote software is one of the products designed for case preparation.



applying any other resource to the litigation process. The key question is whether the cost of the resource (technology) can be justified to the client as necessary in pursuit of the claim.

DAMAGES

During pre-trial, you can continue to apply technology tools to the case. Evaluate the damages using a simple spreadsheet program. This is an effective way to summarize the various elements of the damages claim and to make updates right up to the day of trial. In cases involving structured settlements, a spreadsheet can help evaluate various "what-if" scenarios.

ELECTRONIC TRIAL NOTEBOOK

By this stage, you should have assembled an electronic file of the pertinent precedents and authorities. This information will prove invaluable as you prepare your electronic trial notebook that sets forth the elements of the case that must be proven in order to prevail. Missing an element of proof is a recipe for disaster, but an electronic checklist or outline can prevent such a grievous error. Case authorities are also valuable in preparing non-standard jury instructions. Cases are often won or lost on the instructions and too often lawyers wait until moment to prepare them.

PRESENTATION SOFTWARE DURING TRIAL

During the trial, you will have several opportunities to apply technology when presenting your case. Presentation software is extremely useful in outlining your points as you develop your argument. However, you must be comfortable using the technology and you should always have fall-back position if things go awry (remember Murphy's Law). Always check the courtroom facilities in advance of trial and get the judge's permission before using any technology in the courtroom. If possible, have an assistant with you to run the computer while you are presenting to the jury. If you are a solo, this could be your secretary, legal assistant or law clerk. If you attempt to do everything at once during trial, you will likely fail to do anything well. Only an accomplished litigator who is extremely comfortable with technology and the tools would attempt to do a trial without an assistant. And even the experienced person would probably still opt for help.

CONCLUSION

If you have a litigation practice, you must begin preparing your case at the very outset using technology tools. This method will give you complete mastery over all aspects of the case and keep you organized at every step along the way. If lawyers make one mistake using technology, it is that they start too late. So don't delay -- get going!

Michael Jimmerson is a technology consultant with Altman Weil, Milwaukee, Wisconsin.

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□ Leroy Barker



In October I attended a national conference of IOLTA representatives to discuss the future of the IOLTA program in light of the United States Supreme Court's decision in *Phillips, et al. v. Washington Legal Foundation*. At the

conference, there was virtually unanimous agreement by all of those attending that the IOLTA program would survive the efforts being made by the Washington Legal Foundation to end the program. It is my understanding that the Washington

Legal Foundation objects to IOLTA because it supports the legal services programs.

The *Phillips* case was decided on the narrow issue that the interest earned on trust accounts is "property" within the taking clause of the

Fifth Amendment. Left unresolved is the issue of whether the IOLTA programs constitute a taking for public use and, if they do, whether an individual client is entitled to just compensation. The *Phillips* case was remanded back to the Federal District Court in Texas where it is still pending. As you know, the Washington Legal Foundation also filed suit against the IOLTA program in the state of Washington. That case is still pending before the United States Court of Appeals for the Ninth Circuit. There is no indication when either of these cases will be ultimately resolved.

The Alaska IOLTA program is somewhat less vulnerable than the programs in the states of Washington and Texas. Both of those states mandate that lawyers must deposit all appropriate funds in their IOLTA

trust account. As you know, Alaska permits lawyers an election not to maintain an IOLTA account. This difference, I am advised, may save our IOLTA program in the unlikely event that the mandatory program is struck down in another state.

Just a reminder that Rule 1.15 of the Rules of Professional Conduct sets forth the requirements for the IOLTA account. Each of us is required to review those accounts at reasonable intervals to determine if we are complying with the standard. The amounts of client funds deposited into an account must be nominal and be held only for a short time. Funds which reasonably may be expected to generate in excess of \$100 in interest may not be deposited into an IOLTA account.

How to build your practice with dignity

By TREY RYDER

Lawyers often spend hundreds or thousands of dollars on complex marketing plans. Then they discover that they don't have time to implement the plan, so it gathers dust. Here's the marketing plan I recommend. It's simple, complete and effective.

STEP #1: Identify the services you want to market and the niche you want to fill. When prospects hear your name, you want them to associate you with a specific type of services. For example, John's an estate planning attorney. Or Mary's a personal injury lawyer. Frank is a corporate lawyer.

STEP #2: Identify the clients you want to attract. If you expect to hit your target, you must know where to aim. Identify your prospects by

Demographics: These are characteristics that identify individuals by who they are (including gender, age, marital and family status, and occupation) — and what they have

comprehensive mailing list. Your mailing list is your most important business asset. Whether your list contains 20 names — or 2,000 names — these people are the core around which you build a successful practice.

Your mailing list should include past, present and prospective clients, as well as referral sources. Code your mailing list so you can call up different categories of names, such as estate planning clients, business clients, referral sources — whatever categories prove useful for your marketing.

STEP #6: Set up a telephone system that welcomes calls. I suggest a voice mail system so you can answer calls 24 hours a day and receive many calls simultaneously. Make sure your system can hold enough messages for your marketing effort. Do not use answering services with live operators because often, during peak hours, callers get busy signals or no one answers.

STEP #7: Compile your information and advice into your own unique educational message. Your message should contain (1) information

that explains your prospect's problem and the solution you recommend, and (2) information that is so compelling that your prospect won't hire anyone's services until he reads what you offer.

The most effective titles help your prospects solve a problem, avoid a problem, or achieve a goal. An estate planning attorney might offer "How to avoid probate." A family attorney might offer "How to reduce the pain and expense of divorce." A business lawyer might offer "5 mistakes to avoid when choosing a lawyer for your corporation."

STEP #8: Educate your audience with written information and advice. Write your message in a form that you can send to anyone who calls your office. Then, by offering to mail copies without charge, you attract calls from genuine prospects, whose names you add to your mailing list. When creating your handout, the more information you provide, the better. The longer you keep your prospects' attention, the more likely you are to win a new client.

STEP #9: Educate your audience through articles and interviews. Media publicity provides you the opportunities to (1) educate your prospects, (2) offer your written materials to prospects who call your office, and (3) invite prospects to seminars. Today's consumers depend on the media for information and advice. When you become the center of media publicity, you establish a high level of credibility and you attract calls from prospective clients. Education-based publicity is the only method that brings you immediate inquiries from prospects through articles and interviews.

STEP #10: Educate your audience through paid advertising. To assure that your message appears at the times and places you desire, you

can buy advertising time on the broadcast media and space in the print media. Rather than promoting your services, your ads' only focus should be to persuade prospects to request your free written materials so they will call your office and give you their names and addresses.

STEP #11: Educate your audience through free seminars. Seminars save time because they allow you to present information to many prospects at once. Also, seminars greatly enhance your credibility and allow you to talk with prospects in a non-threatening, educational setting. Seminars give prospects the opportunity to ask questions, discuss problems and schedule an appointment with you.

STEP #12: Educate your audience through direct mail. One thing consumers still read, almost without exception, is first class mail. And they are more likely to open the mail if it's from a lawyer. If you can identify specific prospects you want to reach, a one-page letter from you that educates your prospects — or offers your educational materials — can be a powerful marketing tool. Make sure you review your local Bar's ethical rules about mailing information to non-clients. Usually, these rules relate to targeted direct mailings to persons known to need legal services, and do not apply to prospects who may at some time need services.

STEP #13: Educate your audience through your newsletter. In addition to clients, mail to prospects and referral sources. Your newsletter reinforces your message, continues the flow of information, and serves as an ongoing contact. It adds value to the services you provide and serves as a tangible tool to increase referrals.

STEP #14: Educate your audience with cassette tapes. If you want to reach people who cannot attend your seminars, record your information on audio cassette tape. This allows decision-makers to listen when they are in their cars on the way to work. You can either record a live seminar or read from a prepared script.

STEP #15: Educate your audience through an Internet Web site. People are turning to the Internet for everything. Its scope is so vast, and its uses so varied, most of us are just beginning to learn the many ways we can use it. When you put your information on an Internet Web site, it's there 24 hours a day, available to your prospect whenever he wants to read it.

When you use different educational methods together, they constantly reinforce and clarify your message. This brings you more new clients than when you use any one method by itself.

Cultivating referral sources, prospecting and networking can consume substantial amounts of time. These 15 steps can attract new clients, increase referrals, strengthen client loyalty and build your image as an authority — all without selling. Best of all, this plan gives you complete control over your marketing future.

The author is a law firm consultant in Payson, Arizona.

Competitive advantages can include (1) your qualifications and experience, (2) how well you meet clients' needs, and (3) the physical environment in which you serve clients.

(including education, income, car and home)

Psychographics: These are characteristics that identify individuals by what they like and how they live, such as hobbies, interests, and leisure activities — anything that will connect the right buyers with the right sellers.

Geographics: These are characteristics that identify individuals by where they live, where they work, and where you can find the prospective clients you want.

STEP #3: Identify how you and your services differ from those of your competitors. Positive differences are your competitive advantages. Negative differences are your competitive disadvantages. Identify both so you'll know your strengths and weaknesses.

Competitive advantages can include (1) your qualifications and experience, (2) how well you meet clients' needs, and (3) the physical environment in which you serve clients. As a rule, the deeper your knowledge, skill and experience, the higher the fees you can charge.

STEP #4: Learn how to establish your credibility and interact with prospects without selling. Today's clients want confidence in your abilities, personal attention, and value for their money. You build credibility when you display (1) a dignified, professional image, (2) current knowledge in your field, (3) self-confidence, (4) a positive attitude, and (5) genuine concern and understanding for your prospect.

STEP #5: Compile and keep on computer a

Excerpts from the JBA Minutes



Jan. 29, 1999 and Feb. 5, 1999

GUESTS: Feb. 5: Trevor Stephens and Will Woodell (Faulkner Banfield's new Ketchikan office) and Ron Sutcliffe.

ANNOUNCEMENTS: Tom Meyer called the Alaska Judicial Council regarding their policy on confidentiality of letters written to them regarding judges. Apparently, the answer he got was slightly different than the answer I got and reported in the previous minutes. One consistency though: If you write on your letter that you would like for it to be kept confidential, it will.

The Access to Justice meeting will be held in Anchorage sometime this month. One of the goals of the movement is to get sole practitioners to rural communities to provide services. If anyone is interested, please call Bruce Weyhrauch for more information.

Art Peterson gave us an update on the Partners in Justice campaign. A total of \$135,000 was raised statewide. The First Judicial District exceeded its goal of \$20,000 by raising \$21,000. We are the only district that made its goal. Art also reported that his term with Alaska Legal Services was up but that he had been invited to run again.

WHAT PEOPLE ARE SAYING:

"They're all preparing for Y2K."

—Shirley Kohls, when asked what was happening in Tenakee Springs lately.

"I didn't think I could pass the test."

—Tony Sholty, on why he didn't renew his notary commission.

"We're lean and mean."

—Justice Carpeneti, responding to someone's observation that the judicial branch gets a very low percentage of the state budget.

—Dawn Collinsworth

—David T. Walker

FAIRBANKS LAWYER GERARD R. LAPARLE DISBARRED

The Alaska Supreme Court on March 9, 1999 disbarred Fairbanks lawyer Gerard R. LaParle. The disciplinary action followed LaParle's March 1996 convictions for theft and perjury.

LaParle represented another Fairbanks lawyer, Dennis Bump, in a divorce. Bump had been putting money from his law practice into bank accounts that his wife did not know about. LaParle counseled Bump to disclose some of these accounts but to close one of them and give the money (over \$77,000) to LaParle as a "retainer" for legal services. Bump did so, and when the divorce case ended LaParle subtracted his fee and returned the rest of the money (over \$67,000) to Bump. The wrongdoing came out during

discovery in an unrelated case.

In July 1996 the Supreme Court ordered LaParle placed on interim suspension pending his appeal of the convictions. The Court of Appeals upheld the convictions and in October 1998 the Supreme Court denied LaParle's petition for hearing.

LaParle and Bar Counsel stipulated that his conduct violated Alaska Rule of Professional Conduct 8.4, which makes it professional misconduct for a lawyer to commit a criminal act reflecting on the lawyer's honesty, trustworthiness or fitness to practice and which also prohibits conduct involving dishonesty, fraud, deceit or misrepresentation. The parties also stipulated to discipline by disbarment. Both the Disciplinary Board and the Supreme Court reviewed and approved the stipulation.

In November 1995 Bump pleaded no contest to first-degree theft. He has been on interim suspension since July 1996. Bump's disciplinary proceedings at the Bar Association are pending.

The public record in LaParle's case is available for inspection at the Bar Association office in Anchorage.

CORRECTION TO DISCIPLINE SUMMARY

The January/February 1999 issue of the Bar Rag contained a summary of a discipline case involving an attorney who violated ARPC 1.8 by preparing a will codicil that gave him a testamentary gift. The summary stated that Attorney X's client wanted to leave his estate to his girlfriend. It should have stated that the client wanted to leave his estate to his adopted children.

The US District Court's website is up and running. Please visit it at www.akd.uscourts.gov

Alaskan crew wanted for tropical sailing

Looking for experience sailing to or from the Caribbean? Jerry and Nancy Wertzbaugher need one to four crew members to assist on two ocean passages this year aboard the sloop *Escapade*. The first, in early May, is from the Bahamas to Yorktown Va. in Chesapeake Bay. Then, in November, *Escapade* is sailing from Yorktown to the Leeward Group of the Lesser Antilles. The spring passage back to the US is 650 miles and is expected to take about four days. In November the plan is to join the Caribbean 1,500 Rally and stop over in Bermuda en route to the French West Indian island of St. Barts. That passage is expected to be 10 days at sea with several more days slotted to rest in Bermuda. Crew would be welcome to stay over for a time in St. Barts after arrival.

For anyone seeking a seagoing adventure in warm waters, *Escapade* is an ideal platform. She is a 49-foot, center cockpit, Hylas sloop designed by Sparkman & Stephens, a proven offshore passage-maker with three private staterooms. She is fully equipped for transoceanic passages including the latest computer and satellite navigation systems. The boat will cover the crew's expenses from port to port. Crew members will need to arrange transportation to and from ports.

Jerry began cruising aboard *Escapade* last year. Before that, he skippered the Anchorage Municipal Legal Department through the two Knowles mayoral administrations and then took his turn at the helm of Partnow, Shamrock and Tindall, managing that firm's oil & gas practice. Now enjoying retirement (or more likely just a five-year sabbatical), he is spending winters aboard *Escapade* and summers operating a B&B from the family's Downtown home.

Though *Escapade* is easily handled by two, a larger crew eases the burden of night-watches and makes offshore passages more enjoyable. Several Bar members sailed with *Escapade* last year and may be resources for deciding if it is the sort of adventure you are looking for: contact Steve Morrisette, Mike Ruesing, Jim Hutchins or Bill Rice.

Interested persons should contact *Escapade* via e-mail at Escapade@compuserve.com.

