

CELEBRATE AT THE CONVENTION • MAY 16 & 17

## Bar deals with Legal Services cuts

Page 1, 11, 18-90

And —

- Our guys try cyberspace
- How women get AV rated
- How children will fare in divorce

\$2.00

*The  
Alaska*

**BAR RAG**

VOLUME 20, NO. 3

*Dignitas, semper dignitas*

MAY-JUNE, 1996

## Cutbacks threaten Pro Bono

By KEVIN CALLAHAN

Precipitous cuts in federal and state funding for the Alaska Legal Services Corporation (ALSC) are posing an unprecedented challenge for the Alaska Pro Bono Program.

Under the recently enacted federal budget and pending appropriation bills in the Alaska Legislature, government funding for ALSC will be essentially cut in half from levels of last year. The aggregate cuts exceed \$1 million. In response, Alaska Legal Services has instituted deep cuts in attorneys, staff, and offices. Branches in Nome and Kotzebue have been shut down, following on the heels of the closure of Dillingham and Kodiak offices in the previous two years. Remaining offices will face increased workloads and broader geographic responsibilities with reduced resources.

The result is likely to be a significant reduction in the provision of legal services to Alaska's poor — unless an increased commitment to the Pro Bono Program can help fill the gap.

The Pro Bono Program already completes 1,200 cases a year. Begun in 1983 as a Reagan-era initiative to privatize a portion of ALSC litigation, it has grown in Alaska to a present level of 20% of the ALSC's caseload. The program also sponsors legal clinics and special initiatives such as the "elder law" program. While closely associated with ALSC, and relying upon its attorneys and staff as resources, pro bono is separately funded. A present budget of about \$160,000 covers out-of-pocket costs of litigation as well as intake, screening, and other administrative expenses. Much of this money comes from optional donations of interest from funds in lawyers' trust accounts — "IOLTA" — authorized by court administrative rules in Alaska and elsewhere.

According to Pro Bono Coordinator Seth Eames, support for the program from the bar and the community in Alaska has been strong. Approximately 950 attorneys and 250 other professionals have made their time and services available for pro bono work. The percentage of participation by the Alaska bar in the program is the second highest of any

*continued on page 19*

## NEW COURTHOUSE READY TO OPEN



John Tuckey

The new Anchorage Courthouse is scheduled to open during a dedication ceremony on May 18 at 2:30p.m. All members of the Bar and public are invited.

## "Budget cutbacks, and all that"

By ERIN LILLIE

Alaska Legal Service Corporation attorney Margaret Thomas sits at her secretary's old desk opening today's mail because she hasn't had a secretary since January. Budget cutbacks and all that.

Soon, she won't have to open her own mail anymore, or make her own copies, or get her own files, or answer the phone. Soon, on May 3, she will close the door for the last time and be out of the job she has had for 13 years. The job Thomas has done is to provide to the poorest people in Nome and the surrounding villages the services of an attorney they otherwise could not afford.

Usually it was nothing sensational: wills, titles, deeds, certificates, and so forth. Domestic disputes and public benefits hassles provided little juice. Sometimes much more important things were at stake: a house, or the future of young lives.

The desk Thomas sits at is for sale. So is the computer and the typewriter table and the coat rack and the

copier. She wrote the classified ad herself.

Not that the closure of an ALSC office is anything new. They've already shut down the ones in Ketchikan, Kodiak, Dillingham, and Kotzebue. Nome and Kotzebue and their surrounding villages will be served by a toll-free number to a Fairbanks office staffed by two attorneys.

Budget cutbacks, and all that.

"That's the real tragedy," Thomas said. "Not just what's happening to this office, but what's happening to the entire state." What's happening is the contraction of a service, like so many in rural Alaska, that depended upon federal grants and oil money.

*continued on page 20*

Alaska Bar Association  
P.O. Box 100279  
Anchorage, Alaska 99510

Non-Profit Organization  
U.S. Postage Paid  
Permit No. 401  
Anchorage, Alaska

# Editor's Column

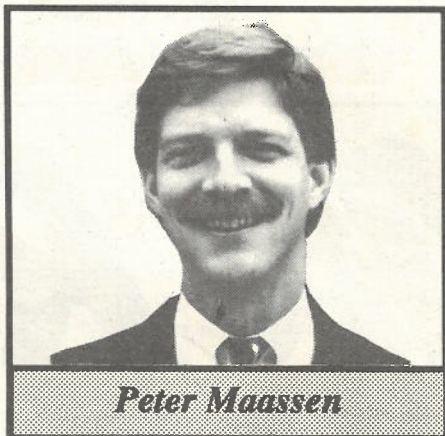
## West to the future; the editor heads south

The Desert Southwest has long presented an odd juxtaposition of ancient culture and techno-future — Anasazis and atomic bombs, pueblos and Lake Powell. The contrast was even starker in early April, when the legal publishing industry, including your hidebound editor, met the Internet in the shadow of Squaw Peak on the outskirts of Phoenix, Arizona. The shock still reverberates.

The only perquisite of the *Bar Rag* editorship, as ought to be remembered by all of you who are fighting to replace me, is West Publishing Company's annual Editor Exchange, my attendance at which is paid for not by your bar dues, nor by my own meager independent means, but by West itself.

Why does West do that? you ask. Two reasons: (1) the Exchange has built an excellent and personal relationship between West's marketing folks and that segment of the news media that can do the most to tout new West products and services; and (2) West is headquartered in Minnesota. That last fact means both that its personnel are very hospitable by nature and that they'd just as soon be hospitable someplace else, like Arizona in April.

Editors who've been to the Exchange before look forward to the party favors, which this year included a t-shirt, a canvas bag, a clip-board, a



Peter Maassen

box of cactus candy (tastes like Gummi-Bears, only moister), and a pen shaped like a cactus. Just add a compass and a few flares, and this kit could keep you alive in the desert for weeks, if not — well — hours, anyway. But that's a different and highly personal story unsuited to the high tone of these pages.

The focus of this year's Exchange was the Internet. The issues were waaaay Out There: Should our paper be on line, or can a solely print medium successfully ride out the flood of news in Cyberspace? How do we use the Internet to augment our story base? Should our paper have a Web Site? What the heck is a Web Site? How do you turn this thing on?

We played with computers a lot. We ran asset checks on potential bene-

factors, stuttered into temperamental voice-command software, envied other law firms' home pages, warped through Cyberspace just to get used to the ride. There was a brief moment — I think it was in the late afternoon of Day Two — when I actually felt computer literate, or if not literate at least educable. The moment passed. I reached for my cactus candy and ordered another Tecate to wash it down.

Between surf sessions, we tried to learn from our betters. Professor Arthur Harkins, a "futurist" from the University of Minnesota (yes, even Minnesota has one), helped us pretend that we could figure out what the future holds for the legal publishing industry. Although the stated theme of the conference was "The Role of the Editor in the Information Age," Harkin told us that we were already leaving the Information Age for the Knowledge Age. Where every Jane Doe with a modem has immediate access to all the information on the World-Wide Web, it is the people who know what to do with that information who will get ahead. Information Is A Confusing Swamp; Knowledge Is Power.

A panel of publishers talked about the hazards and challenges of bringing a newspaper on-line. A pollster talked mostly about how the tort reform debate in California was twisted

by misleading TV ads. A journalism professor from Northwestern University told us not to have abusive relationships with our college interns, something which I vowed to remember if the *Bar Rag* ever has the cachet to attract one. A former U.S. Attorney told us all the possible ways that an on-line publication can be criminally and tortiously victimized and, although enormously witty and entertaining, made us all very nervous.

Did I mention dinner under the stars at the Rawhide Ranch, complete with a wagon ride, gunfights on Main Street, and linedancing lessons? If not, I guess it's just as well.

Something else that the Editor Exchange brings is the chance to hear what people Outside think about the *Bar Rag*. Believe it or not, other editors sometimes read it. Their most frequently asked questions ("FAQ", in computer lingo) are these two: "Is it really called the *Bar Rag*?" and "You don't take yourselves very seriously up there, do you?"

Which sometimes makes one wonder whether one is being successful at maintaining the aforementioned high tone of this newspaper.

So now you're all asking when the *Bar Rag* is going to appear on-line and quit cluttering your desktop with its ink-smudged and solidly corporeal presence. Not any time soon, given the limits of money and the even stricter limits of your editor's imaginative powers. Hurling the *Rag* into Cyberspace is just one more of those facets of legal publishing that we'll investigate further once we've established ourselves as a hard-hitting, timely daily with eye-popping photospreads and late-breaking news stories.

Maybe even within our lifetimes.

## Letters from the Bar

### Appleseed Center forms

We would like to extend an invitation to join us in organizing an Alaskan Appleseed Center for Law and Justice.

Appleseed Centers for Law and Justice have presently been established in Massachusetts, New Jersey and Washington, D.C.. Each center attempts to address structural issues in social, political or economic institutions which generate or contribute to egregious unfairness or injustice.

At one time, the Alaska Legal Service Corporation met much of the need which the Appleseed Center is intended to fulfill. But financial and federally mandated restraints now limit ALSC to serving individual clients with problems of singular import. Of course, the class action law suit is a tool only of last resort. Frequently a problem can be resolved through the development of a persuasive non-litigious solution, by the undertaking of a study and report, or by public exposure of an unnoticed injustice.

In the District of Columbia, an Appleseed Report recommended standards for the annual federal payment to the District. In Massachusetts, the Appleseed Center undertook a variety of measures to ensure enforcement of the "motor voter" registration law in that state. In New Jersey, the Appleseed center prevailed in a suit preventing the governor from diverting housing funds appropriated for low and moderate income groups.

The activities that might be undertaken after screening by a board (in which you will have an elective voice), naturally engage skills beyond lawyering. Paralegals and citizens

with a professional interest in improving Alaskan institutions are welcome to join in this effort. If you have an interest, please write us at 608 W. 4th Avenue, Suite 21, Anchorage, AK 99501-2229 or call the office at 276-1916.

— John E. Havelock

### We've come full circle

I grinned from ear to ear when I saw the 100-year-old photograph on the cover of the 1996 Alaska Bar Convention program booklet.

The photo was taken in Skagway. It shows a dapper man standing in front of a wooden shed with a canvas roof, under a sign reading: "J. G. Price, Attorney at Law, Real Estate and Typewriting."

I showed the photo to my secretary and she said, "Boy, you attorneys sure have come a long way." She was referring to the advent of law office support staff who do the "typewriting" for attorneys in the modern era.

But I protested that she missed the point, at least that I saw in the photo: Not that attorneys have come a long way, but that we have come full circle. The attorney shingle in that 100-year-old photo states exactly what I do every day: "Real Estate and Typewriting." I concentrate my practice in real estate law. For years, I have produced all my own work product from my computer and printer. I no longer struggle with the inefficiencies of getting my work done by an overloaded, underpaid legal secretary. I am proud to tell my clients that I do my own typing!

I am going to cut out that photo, frame it, and hang it by my desk.

When people ask me, "What do you do?", I will just point to the photo: "Real Estate and Typewriting" (1990's style!)

— Francine Harbour

### FYI: No rooms at the court

As you know there are no interview rooms available in the Nesbett Courthouse for inmates and their attorneys. This will require all attorneys or investigators to contact their clients/defendants at the correctional institution in which the inmate is housed. In the past, some defense attorneys scheduled court appearances for the purpose of interviewing an inmate/client rather than going to the institution. This will not be possible in the new courthouse.

No request for interview of any inmate will be granted in the Nesbett Courthouse.

— Lieutenant Jay V. Yakopatz  
Deputy Commander G  
Detachment  
Anchorage Judicial Services  
Alaska State Troopers

### ALSC election

An "ALERT" I received from the American Bar Association a few days ago, giving me an update on the Congressional scene with regard to Legal Services Corporation funding, looks pretty grim. (And our state legislature is not only not filling in the gap, it is also drastically cutting our state appropriation.) Apparently, a vigorous, vocal minority in Congress is renewing its effort to zero out LSC funding altogether. Letters to our Congressional delegation, urging sup-

port for at least the current level of funding, might help.

I hope that we're not about to see the demise of the current system of providing legal services to poor people.

— Arthur H. Peterson

### The Alaska BAR RAG

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

**President:** Diane Vallentine  
**President Elect:** Elizabeth Kerttula  
**Vice President:** David H. Bundy  
**Secretary:** Ethel Staton, Public Member  
**Treasurer:** J. John Franich, Jr.

**Members:**  
Ray R. Brown  
Joseph Faulhaber, Public Member  
Dennis L. McCarty  
Barbara Miklos, Public Member  
Venable Vermont, Jr.  
Philip R. Volland  
Daniel E. Winfree

**Executive Director:**  
Deborah O'Regan  
**Editor in Chief:** Peter J. Maassen  
**Managing Editor:** Sally J. Suddock  
**Editor Emeritus:** Harry Branson  
**Contributing Writers:**

Dan Branch  
Drew Peterson  
Mary K. Hughes  
William Satterberg  
Scott Brandt-Erichsen  
Walt Arden  
Michael J. Schneider  
Daniel Patrick O'Tierney  
Steven T. O'Hara  
Thomas J. Yerbich  
Steven Pradell  
Joyce Weaver Johnson  
**Contributing Cartoonist:**  
Mark Andrews  
**Design & Production:**  
Sue Bybee & Kathy Scheid-Graupe  
**Advertising Agent:**  
Linda Brown  
507 E. St., Suite 213  
Anchorage, Alaska 99501  
(907) 272-7500 • Fax 279-1037

LEXIS®-NEXIS®

# ADVANTAGE

For Small Law Firms

The most affordable online legal research service for small law firms, offering case law, statutes, law reviews, the LEXSEE®/LEXSTAT® features and more — Flexible Choices for your practice.

LEXIS® MVP is now LEXIS-NEXIS ADVANTAGE For Small Law Firms — with more features, more flexibility and more *affordability* for solo practitioners and small law firms on a budget. Consider the ADVANTAGE:

- **LOW, FLAT MONTHLY RATES** ... affordable, predictable pricing, for as little as \$110 per month\*.
- **UNLIMITED ACCESS** ... search as much as you want and as often as you need — at home or in the office.
- **THE LEXSEE®/LEXSTAT® FEATURES** ... an easy and convenient way to retrieve individual cases or statute sections from virtually any jurisdiction simply by using the citation.
- **COMPREHENSIVE** ... state and specialty libraries, statutes, administrative materials, law reviews and more.
- **FLEXIBLE CHOICES** ... select any combination of Flat-Rate libraries to meet the individual information needs of every attorney in your firm.
- **CURRENT** ... case law always up-to-date.
- **ONLINE EXPERTISE** ... allows you to compete with even the largest firms.

Give yourself the ADVANTAGE you need to compete — and win!

For more information, call  
**1-800-356-6548**

LEXIS·NEXIS®  
**ADVANTAGE**  
FOR SMALL LAW FIRMS

**ALASKA BAR**  
ASSOCIATION



LEXIS·NEXIS®  
A member of the Reed Elsevier plc group

\*All pricing includes applicable subscription fee. Prices in California, Michigan, New Jersey, New York and Ohio begin at \$150 per month. Price quoted is for one attorney. Additional charge applies for each attorney in the firm. Note: state and local taxes not included. Some restrictions apply. Prices subject to change. LEXIS, NEXIS, LEXSEE and LEXSTAT are registered trademarks of Reed Elsevier Properties Inc., used under license. The INFORMATION ARRAY logo is a trademark of Reed Elsevier Properties Inc., used under license. ©1996 LEXIS-NEXIS, a division of Reed Elsevier Inc. All rights reserved.

# Alaska's AV-rated women and men tell how they got their ratings

By PAMELA CRAVEZ, REPORTER  
ALASKA JOINT STATE-FEDERAL COURTS  
GENDER EQUALITY TASK FORCE

Even if you are the best lawyer in the world, if you are rude and obnoxious it is unlikely your peers will recommend that you be AV-rated, agreed panelists discussing Martindale-Hubbell's attorney ratings system at a fund-raiser for the Joint State-Federal Courts Gender Equality Task Force on March 27 in Anchorage.

The program, presented by the Task Force and sponsored by the Anchorage Association of Women Lawyers, Anchorage Bar Association and Martindale-Hubbell, provided women and men with information on Martindale-Hubbell's rating system—a system which only recently has bestowed its highest rating on women attorneys in Alaska.

*One advantage is that the AV rating can bring in business from clients outside of Alaska, said Patricia Zobel.*

Women on the panel represented all the AV-rated women attorneys in Alaska except for Susan Burke in Juneau. Sharon Gleason, Susan Wright Mason, Susan Orlansky, Susan Reeves, Sandra Saville and Patricia Zobel, along with two AV-rated men, Hal Brown and Eric Sanders, told a crowd of about 50 people at the Fourth Avenue Theatre how the rating system worked for them.

Martindale-Hubbell, a legal directory which has rated attorneys for

more than 100 years, uses several methods to assess attorneys' capabilities. In some cases, the company randomly polls attorneys about their fellow practitioners. Attorneys are rated AV, BV or CV with the V representing "very high" professional responsibility and the A, B, & C rating legal ability — A is "from very high to preeminent," B is "from high to very high," and C is "from fair to high." All rated attorneys must pass the V-rating portion, which assesses ethical standards, before they can go on to A, B or C.

The directory more frequently rates attorneys who practice in big law firms, said Saville, who moderated the discussion. When she first went through the directory a few years ago, she noticed that there were a lot of highly rated older practitioners and they were all men. It wasn't until 1988 that Justice Dana Fabe became what is believed to be the first AV-rated woman in Alaska. However, judges are not rated, so Fabe lost her rating when she took the Superior Court bench that same year.

Saville told the audience that when her former partner, Wendell Kay, was nearing retirement, he offered to help her get an AV rating. She turned him down, believing she would get it on merit, that it would "fall from the sky." Years later, when it had still not happened and no women were getting the highest rating, Saville spoke to the Martindale-Hubbell representative. She questioned what sort of marketing tool the directory could be without women among those highest rated. Saville eventually canceled her subscription in protest and handed the representative a list of women she thought should be AV rated.

Saville asked the panelists at the luncheon what the AV rating meant to them. One advantage is that the AV rating can bring in business from clients outside of Alaska, said Patricia Zobel. Zobel (the first woman to be AV rated after Fabe) remembered getting a call from one client who called her because they had seen she was from Shreveport, Louisiana—the client was also from Shreveport. But Zobel wonders if that client would have stopped at her firm's name or hers if she hadn't been AV rated.

*A firm is rated according to the highest rating of its partners.*

Zobel went after an AV rating after her partner, Stephen DeLisio, decided to retire. A firm is rated according to the highest rating of its partners. If a firm does not have an AV-rated partner it does not get an AV rating. Rather than have the directory do a random polling of attorneys, Zobel took charge of the rating process. She asked for a ratings review and then gave Martindale-Hubbell a list of attorneys she practiced with and who knew her work.

Susan Mason's male partners at Atkinson Conway & Gagnon are AV rated and had been for a long time before she got hers, she said. When she received her AV rating last year it felt good. It gave her a psychological boost, she said.

Mason told women three things which would probably help them rating. First, get on Sandy Saville's list; second, have/get a first name that begins with the letter S (six of the seven AV-rated women's names begin with S). But more seriously, she advised women to get involved in bar activities and take leadership roles in CLEs. The more a woman is known in the bar association, especially for doing a good job, the more likely she will be rated by people who know her and her work, Mason said.

Sharon Gleason, who practices domestic relations law, said it is probably more likely that out-of-state clients will find her name in The American Academy of Matrimonial Lawyers Directory than in Martindale-Hubbell.

Hal Brown, recently named to the Kenai Superior Court, said he did use Martindale-Hubbell's listing to get lawyers from out of state. It gives you some idea that they are competent.

He added that when he got his rating he was still practicing in Southeast. Among the relatively small community of lawyers in Southeast, Brown believed that civility played a role in how attorneys rated their peers.

Up until the past few years Susan Orlansky spent much of her career in the public sector as an assistant public defender. Because of this emphasis she said she knew little about the Martindale-Hubbell process. Since leaving the public sector, Orlansky has worked both in insurance defense and personal injury and believes she has become more well known and easier to rate. She added that it didn't hurt to have AV-rated attorneys in the firm where she now works—Young, Sanders and Feldman. Although it is not usual for an associate to get an AV rating, Orlansky has one.

Eric Sanders, sitting next to his associate, Orlansky, cautioned the audience not to expect to go out and get an AV rating. There are steps, he said. Attorneys practicing a few years may start with a CV and then a BV rating, eventually working up to an AV rating. It takes a certain number of years in practice and a certain amount of people knowing your work, Sanders said.

Ann Portzner representing Martindale-Hubbell, said that typically an attorney needed to practice at least 10 years before receiving an AV rating. She added that only a small percentage of attorneys get AV ratings.

Nationally, 18 percent of rated attorneys are AV, according to John Agel, Martindale-Hubbell's vice president in charge of ratings. Less than 10% of Alaskan men AV rated and far fewer women.

Susan Reeves remembered hearing from Saville that no women had AV ratings. She went home and told her husband, Jim Reeves, himself an AV-rated attorney. Reeves remembered her husband flippantly asking whether she knew any women who should be AV rated. That lit a fire under her. She added that it is important for women to get involved in the community or to serve on nonprofit boards. As a woman attorney people will listen to you, she added.

Reeves, who serves on the task force fund-raising committee, solicited support from Martindale-Hubbell for task force work and the ratings presentation. Through her efforts the task force received a \$1,000 donation from Martindale-Hubbell. Other attendees at the fund-raiser donated more than \$600.

## Your Search Ends Here.

*Need We Say More.....*

**(800) 460-9044**  
Toll Free / North America

**(214) 404-9005    (214) 404-1842**  
Main Office                      Fax Line

**SKIP TRACING & LOCATION OF WITNESSES, DEFENDANTS & HEIRS AT REASONABLE FLAT RATE FEES**  
*(Worldwide Service)*

**UNLISTED TELEPHONE SEARCHES**

**CRIMINAL DEFENSE REPRESENTATION**  
*(Former 1984 '60 Minutes' Segment - Lynell Geier Case)*

**BACKGROUND INVESTIGATIONS**  
*(For Pre-Employment, Marital, Business Investment Or Any Other Legitimate Reason)*

**WORLDWIDE PROCESS SERVING HANDLED IN OVER 450 CITIES AND 97 COUNTRIES**

**ON-LINE COMPUTER SEARCHES AT REASONABLE FEES**

**CORPORATE LOSS PREVENTION**

**BANK ACCOUNTS LOCATED ANYWHERE INCLUDING ACCOUNT NUMBERS AND BALANCES AS OF THE DATE OF OUR INQUIRY**  
*(Individuals Or Companies)*

**STOCK, BOND & MUTUAL FUND PORTFOLIOS LOCATED ON ANYONE IN THE UNITED STATES**  
*(Including Accounts & Balances)*

**EXECUTIVE PROTECTION AGENTS AVAILABLE FOR DIPLOMATS & EXECUTIVES**  
*(One Day To One Year Assignments)*

**COPYRIGHT & TRADEMARK INFRINGEMENT CASES**  
*(Former 1983 '60 Minutes' Segment - Jordache Case)*

**DRIVERS HISTORIES & ACCIDENT FILINGS**

**CRIMINAL HISTORY & RECORD SEARCHES**

**CORPORATE FRAUD INVESTIGATIONS**

**Anyone having knowledge of the existence of a Will or who may have assisted in the preparation of a Will for Byron Franklin Wheat AKA Frankie Wheat, who deceased at Anchorage, AK, on April 15, 1995, is requested to contact Marshall K. Coryell, 277-7679. Mr. Wheat was a principal in Consolidated Body Works for many years prior to his death.**

### FURNITURE & BOOKS

COMPLETE with 8 station telephone system. Secretarial & attorney desks, refrigerator, antique storage cabinet, credenzas and dictating equipment. Specialized Family Law & Adoption library. Brock Shambert 345-1581

### Medical-Legal Consultant



**Litigation Support Services**

Office  
(907) 562-2161 ext. 348  
FAX  
(907) 563-6789  
3705 Arctic Blvd.  
Suite 348  
Anchorage, AK 99503

**DEBORAH C. LACOMBE, RN, JD**

### Forensic Document Examiner

Full service lab to assist you with handwriting comparisons, alterations, obliterations, charred documents, indented writing and typewriting comparisons.

**Jim Green - Eugene, OR**  
**Phone/Fax: (541) 485-0832**

# Getting Together

## Between love and hate

Lois Gold, M.S.W., is a practicing mediator and therapist in Portland, Oregon. She also is a past President of the Academy of Family Mediators. Her book about divorce, *Between Love and Hate: A Guide to Civilized Divorce* (Plenum Press, 1992) is a wonderful addition to the literature available to assist people as they are going through the divorcing process.

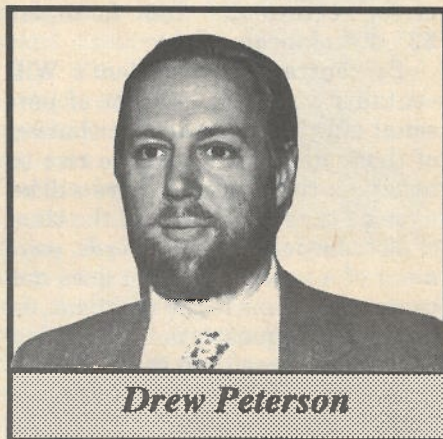
*Between Love and Hate* begins by noting that more and more couples are striving for a new way of divorcing. They are looking for a civilized divorce, with spouses cast as joint decision makers rather than as adversarial opponents in a legal war. The goal of the book is to help couples learn how to deal with each other while divorcing, without making themselves into lifelong enemies. The process is not easy, but it is learnable.

Chapter 2 turns to a discussion of common myths about divorce which get in the way of a productive divorcing process. Myths such as having to be friends in order to work together or that your emotional entanglements end when you get divorced are powerful, but false, messages that must be seen through, especially when children are involved. Such myths distract from an essential fact, which is that the quality of relationship between divorcing parents is the critical factor for successful adjustment of children of divorce.

Gold includes an excellent chapter on the emotions of ending a marriage. These emotions can be baffling and confusing to individuals who do not understand that they are normal part to the grieving process. Another chapter describes seven keys to a constructive divorce that divorcing parties, themselves, control; another chapter describes and analyzes the healing process.

Part II of *Between Love and Hate* then focuses directly on the issues of parenting and children, including detailed information on children's needs at divorce, and how to meet such needs to keep the children from becoming victims of the divorce. Part II also includes specific chapters on parenting plans and how to establish a new working relationship with your ex-spouse to facilitate a lasting parenting relationship.

Part III of Gold's book focuses on conflict, and especially on how to improve communications to avoid the escalation of conflict through the legal divorcing process and thereafter. It includes general information on



Drew Peterson

win-win conflict resolution methods, and chapters on how to talk so your spouse will listen, and how to diagnose a dispute to determine what it is really about.

Part IV instructs people on the fundamentals of win-win negotiating: making preparations for

negotiating; win-win negotiating strategies; working towards a settlement; and the mediation process. It also includes a chapter on lawyers and the legal process, with useful advice on lawyer selection and a brief summary of the primary legal issues to be resolved at divorce. The chapter on lawyers and the legal process ends with a fascinating discussion of the "myth of justice" and the huge gap between what most people expect to happen in court and what really happens.

Part V, the final section of the book, focuses on moving forward. It discusses common conflicts that happen after the divorce, and how to deal constructively with difficult ex-spouses. It also includes detailed and useful strategies for coping with difficult people in all aspects of your life.

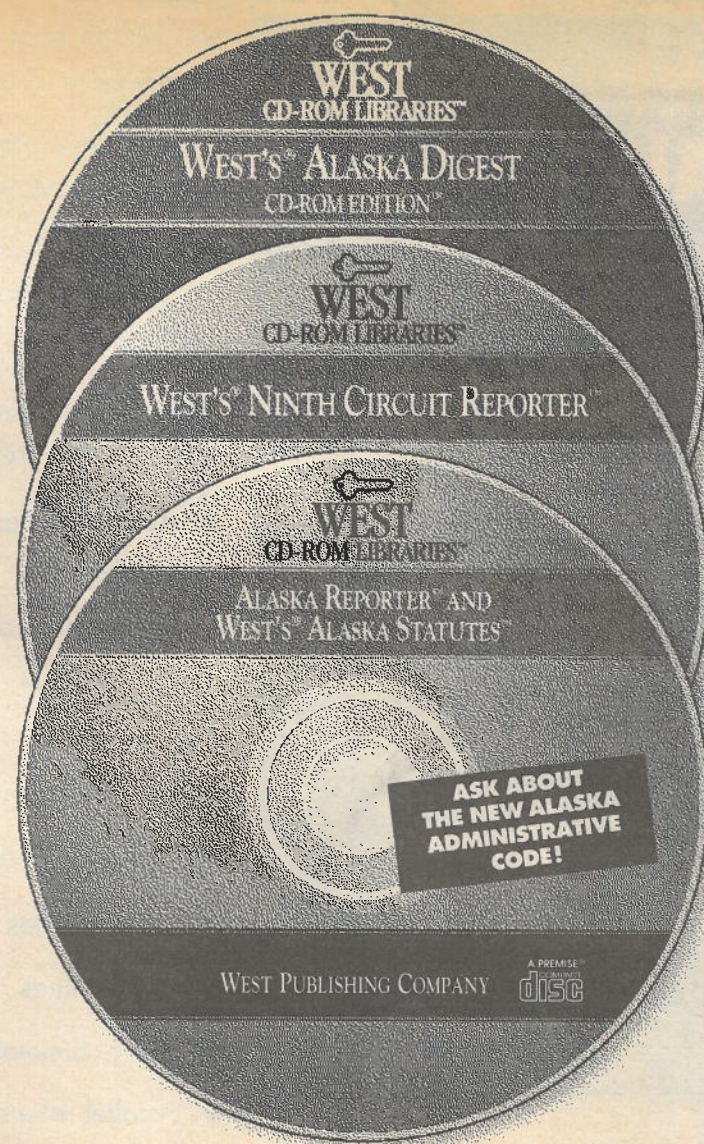
Throughout the book, Gold has included numerous questionnaires,

lists of tips, checklists, exercises, and worksheets. These make the book user-friendly and can provide assistance in gaining further insights in areas of particular concern. They also make the book usable as a reference guide, or textbook. The questionnaires and exercises can be used as homework assignments by divorcing parties, family mediators, or collaborative family attorneys.

Gold ends her book with a tale of people walking through a roomful of demons, dark except for a sliver of light under the door at the end of the room. The keys to surviving the ordeal are to keep on moving, and to never lose sight of the light. Gold uses the tale as a metaphor for surviving the divorcing process.

The goal of divorcing parties should be to move towards the light by handling their pain in a healthy way, acting constructively, and making decisions for the good of the entire family. By keeping a focus on the light, it is possible to survive divorce in a way that is healthy for the individual experiencing the divorce, and also for the rest of the family, notably the children. Lois Gold has written an excellent book describing how to make such a journey.

## West. The most complete CD-ROM library in Alaska.



### ALASKA REPORTER™ AND WEST'S® ALASKA STATUTES™ ON CD-ROM GIVES YOU

- ▶ Reported decisions from 1959 to date
- ▶ Slip opinions
- ▶ Alaska Attorney General opinions from 1977 to date
- ▶ Weekly advance sheets and monthly disc updates
- ▶ State statutes and Constitution
- ▶ Alaska court rules and court orders
- ▶ Session laws as appropriate
- ▶ Northwest Personal Injury Reports

### NOW AVAILABLE ON CD-ROM!

West's® Alaska Digest CD-ROM Edition™

West CD-ROM Libraries™ give you West's exclusive editorial enhancements, including West Topics and Key Numbers, for focused results and faster research. And, of course, a subscription to West CD-ROM Libraries includes the direct connection to WESTLAW®.

### ASK ABOUT

West's® Ninth Circuit Reporter™ and West's® Federal District Court Reporter™—Ninth Circuit.

### FIND OUT MORE ABOUT WEST CD-ROM LIBRARIES FOR ALASKA

1-800-255-2549 EXT. 215

**WEST**  
CD-ROM  
LIBRARIES™



### Have you filed your Rule 64 Affidavit? Affidavit Due July 15, 1996

Alaska Bar Rule 64 requires all active members of the Alaska Bar Association to file an affidavit with the Bar by July 15, 1996 stating that they have read and are familiar with the Alaska Rules of Professional Conduct.

Any member who fails to comply with this rule is subject to suspension for noncompliance.

Form affidavits may be obtained from the Bar office. Call 272-7469.

For information about other West Publishing products and services, visit us on the Internet at the URL: <http://www.westpub.com>

© 1996 West Publishing

6-9510-7/4-96 630823  
1-230-354-8

# Estate Planning Corner

## Give personal effects by specific bequest

Even where the client desires to give everything to a single beneficiary, it can be advantageous to place a specific bequest of personal effects in the client's Will or Living Trust, rather than having one clause pass everything.

Consider a client with assets of \$525,000, consisting of a \$500,000 brokerage account and \$25,000 in personal effects. The client has no life insurance or other asset that passes by beneficiary designation. He is not married and has never made a taxable gift. His assets are all within the State of Alaska.

The client wants a basic Will giving everything outright to his adult child. With assets under \$600,000, the client realizes that under current law, there would be no estate taxes payable by reason of his death (IRC §§ 2001 & 2010 & AS 43.31.011).

The client's Will could have one clause giving everything to his child. On the other hand, from a tax standpoint, it could be advantageous to insert the following specific bequest:

I give my personal effects not otherwise effectively disposed of, subject to any encumbrance that constitutes a lien thereon, to my child, if he survives me. For purposes of this instrument, the term "my personal effects" means all clothing, jewelry, automobiles, household furniture and furnishings, household appliances, home entertainment equipment, recreational equipment, firearms, silverware, glassware, china, text-



Steven T. O'Hara

books, pictures and other works of art, coin collections, stone collections, family memorabilia, personal papers, and all other similar articles of personal or household use or ornament that I own at my death.

By way of background, if an estate or trust has income, a distribution to a beneficiary generally entitles the estate or trust to a deduction on its tax return, with a corresponding obligation on the beneficiary to report the income on his tax return (IRC §§ 661, 662 & 643(e) (2)).

For example, suppose the client dies and his estate generates \$25,000 of income during its first year. Suppose the estate makes no distribution that year except the distribution of all personal effects (worth \$25,000 and having a tax basis in the same amount) to the decedent's child. If the Will contains no specific bequest, but rather has one clause passing every-

thing, then the distribution will generally require the child to report \$25,000 of income (*Id.*).

By contrast, if the client's Will contains a specific bequest of personal effects, then the distribution of those items will not give rise to income to the child and there will be no need to revalue them at the time of distribution. In other words, payment of a specific bequest does not carry out income to the recipient, as long as the bequest is not required to be made in more than three installments (IRC § 663(a) (1), Treas. Reg. § 1.663 (a) -1 & IRC § 643 (e) (4) ).

by me. I direct that my wishes as set forth in the Memorandum shall be observed. I give the balance of my personal effects, being all my personal effects not otherwise effectively disposed of by Memorandum or otherwise, subject to any encumbrance that constitutes a lien thereon, to my child, if he survives me.

The client's Memorandum may then provide:

I make this Memorandum for the purpose of giving, on my death, certain items of my personal effects (also known as tangible personal property). If a named beneficiary does not survive me, the bequest (otherwise made hereunder to that person) shall lapse.

The Memorandum must then describe the items and the persons to receive the items with reasonable certainty (*Id.*)

Alaska's law authorizing a Will to

*Even with basic Wills or Living Trusts that do not give rise to any estate tax, consider possible income tax considerations and recommending a specific bequest for personal effects.*

Under Alaska law, clients may refer in their Wills to a written statement or list to dispose of tangible personal property (AS 13.11.210). For example, a client's Will may provide:

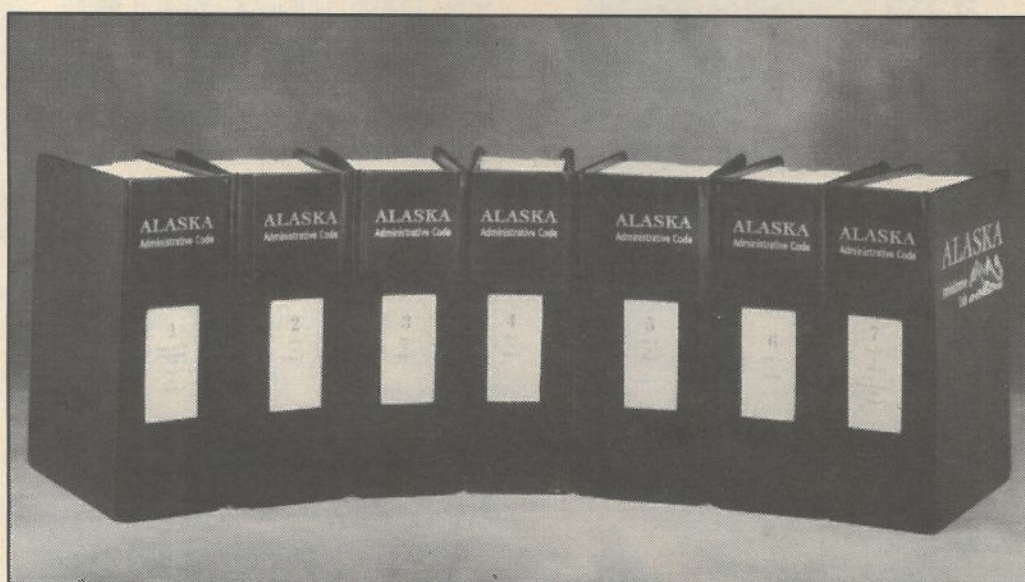
I intend to leave a Memorandum listing some or all of my personal effects not otherwise effectively disposed of, which I wish certain persons to have, subject to any encumbrance that constitutes a lien thereon ("Memorandum"). The Memorandum shall be signed

refer to a tangible personal property Memorandum is, in effect, an incorporation by reference statute that affords the property given by Memorandum the same treatment as if the bequests had been typed or written directly into the Will.

Even with basic Wills or Living Trusts that do not give rise to any estate tax, consider possible income tax considerations and recommending a specific bequest for personal effects.

Copyright 1996 by Steven T. O'Hara. All rights reserved.

## Get the advantages of Michie's Alaska Administrative Code...



- ✓ Official state publication, prepared under the direction of the Lieutenant Governor's Office
- ✓ 22 titles, with all permanent and emergency regulations adopted by state agencies
- ✓ Seven cloth-covered looseleaf binders — each title in a separate pamphlet with its own supplement
- ✓ Updated quarterly with cumulative supplements and replacement pamphlets
- ✓ Authority lines, citing statutory authority for the regulation
- ✓ Contents card serves as a checklist for parts of the set
- ✓ User Guide
- ✓ Cross-references
- ✓ Publisher's notes
- ✓ Editor's notes
- ✓ History lines
- ✓ Index, cumulatively supplemented each quarter
- ✓ Parallel reference tables
- ✓ Repealed, expired, and deleted regulations

Call today for prices and more information

**800-562-1215**

MICHIE

# Eclectic Blues

## Living in CyberSpace

We pulled into the Lemon Creek parking lot at two in the afternoon. Inside, Costco temptation-stations were heavily pushing the processed convenient foods. Drawn by the sounds of microwaves and deep-fat fryers, we made our way to cholesterol row.

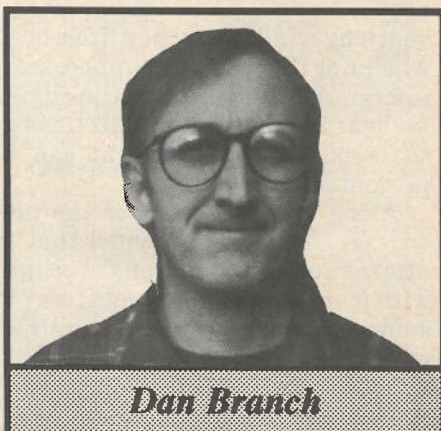
First came amputated corn dogs crowded into the kind of paper cups a dentist hands to you just before he says, "spit." From there we tried for some deep-fried halibut smothered in Yoshida special sauce. When a big crowd blocked off the fish table, we made our way to the rib sandwich guy.

After sampling the amazing tender ribs swimming in a snappy southwestern-style sauce, Susan and Anna still wanted some jelly beans. My stomach needed a break so I turned my back on corporal temptation and headed over to the software table. After 10 minutes of reading box labels, I figured out that most of the stuff would only run on a Windows machine and not the family's ancient MacIntosh.

*At work the Web provides an easy way to read appellate court advance sheets (Alaska Court System Page) and the Alaska Statutes and regulations (Alaska Legislature Page).*

A pasty white man with glazed-over eyes suggested I walk over to card table where they display the MacIntosh stuff. There, among hyperviolent games and tax programs, I found something that fired my imagination. It was a CD-ROM encyclopedia. The teaser on the box claimed that the disk held all the information contained in a multiple-volume, printed encyclopedia.

We had a real encyclopedia when I was a kid. Mom brought it home one volume at a time from the Safeway store. Volume AA-AM cost 49 cents. All the rest went for a penny short of



Dan Branch

dollar. Each week the store put out another volume. Mom shopped there for a whole year to get the full set, returning to the neighborhood Shop Easy Market only after volume ZN-ZZ was safely placed in the Studebaker by a Safeway box boy.

When she returned from her weekly trip to Safeway, I would grab the book of the week, crawl into the space between our couch and the wall and look at all the pictures. I, like Thomas Aquinas, believed that all the knowledge in the world was contained in my library.

A few years later, a real encyclopedia salesman came to the door. He sniffed with condescension at our grocery store set and said they were already out of date. What had been my compilation of the world's wisdom and accomplishments instantly became an obsolete collection of dust collectors. We didn't buy the salesman's fancy books, but I no longer used our Safeway encyclopedias for school work.

Thirty years later, in the Juneau Costco store, the memories of that grocery store encyclopedia came home. The CD encyclopedia would bring my kid the same magic for only for \$39.95. When the information on the disk became dated, we could toss it and buy another one.

I was already in the parking lot when I realized that we didn't have a CD drive for the Mac; \$200 and a call to a Mac catalogue store solved that problem. With Anna on my lap, I fired up the old Mac and started exploring our electronic encyclopedia. While reading an entry on the blue-footed booby (Anna's favorite bird) I noticed an icon on the screen entitled, "on-line." Of course, I thought, we

don't need this stinking little CD. A huge encyclopedia called the Internet is out there. All we need is a modem and a server.

The next day I mail-ordered the modem and signed up with PTI for an Internet connection. On the first try we found Yahoo, and used it to look for information about Nova Scotia Duck Trolling Retrievers. Yahoo kicked out 10 query responses. One was for a home page devoted entirely to the dog. There was no turning back after that.

In a few months of exploring, I found some magic out there on the World Wide Web. With the Netscape browser and some spare time you can usually find the information you need. Unfortunately, there is a lot of junk.

For example, tell the browser to open to <http://deepthought.armory.com:80/~deadslug/jihad/jihad.html> and you will find yourself at [The Jihad to Destroy Barney on the WWW Homepage](http://www.jihadtodestroybarney.com). Ask a search engine, like Yahoo or Lycos to find information about Star Trek and you will end up sorting through more than 300 query answers. One of these is a home page devoted to the original series which lets you download the sound of Doctor McCoy saying, "He's dead, Jim." After stumbling on that gem, I wondered how we ever survived without cyberspace.

For every useful landing strip on the World Wide Web, like Le Web-Museum, (<http://sunsite.unc.edu/wm>)

there is a frivolous time-waster like *Godzilla*, (<http://www.ama.caltech.edu/users/mrm/godzilla.html>), a Web site devoted entirely to Godzilla and his 21 movies.

Anyone thinking of hitting the silicon trail should be prepared to waste a lot of time. Susan, after watching me spend hours on the WWW trying to find the answer to a MacDonald's Donald Duck trivia question, pointed to our computer screen, and announced that Internet was the pool hall of the 90's. I was concentrating on a Norwegian homepage honoring the contributions of Donald Duck to Scandinavian unity at the time and barely heard her comment.

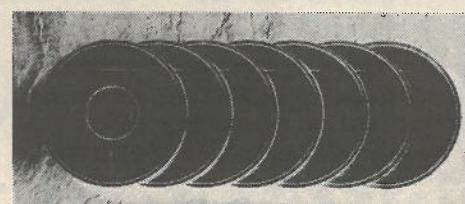
Aside from a few pointless drifts, my experience with the Internet has been positive. I now enjoy instant access to newspapers and magazines using *Ecola's 24 Hour Newsstand*, (<http://www.ecola.com/news/htm>).

At work the Web provides an easy way to read appellate court advance sheets ([Alaska Court System Page](http://www.alaska.courtsystem.net)) and the Alaska Statutes and regulations ([Alaska Legislature Page](http://www.alaska.gov)). Other sources provide access to federal court rules and a huge federal governmental data base.

Since my visits to the electronic world were so much fun I decided to virtually move to the Web. When a friend in Ketchikan put together a home page for writers called, *Writer's Block*, I asked him to add a URL for me. He did, and now relatives as far away as Bad Attitude, New Zealand can surf over to <http://ktn.net/wb/> and read samples of my writing. It may not be as fun as the [The Monty Python Page](http://alfred.u.washington.edu:8080/~uffda/python.html), (<http://alfred.u.washington.edu:8080/~uffda/python.html>), but it's more pleasant than [Big Black Hole of Pain](http://offworld.wwa.com/bighole.html), (<http://offworld.wwa.com/bighole.html>).

Introducing...

**Norman Mochinaga,**  
your Lawyers Cooperative Publishing  
representative, and **LawDesk®**



Say "hello" to **LawDesk**, Lawyers Cooperative Publishing's "close-knit" family of superior electronic products.

With unprecedented speed and accuracy, these powerful CD-ROM research tools will help you locate pertinent, on-point information that will lead to the successful handling of your case. Plus, the **LawDesk** products are electronically cross-linked to each other, to form a powerful integrated legal research system that will make your job easier and more productive.

Also, say "hello" to **Norman Mochinaga**, the new LCP sales representative in Alaska. Norman has been providing legal research professionals with results-oriented legal research products for over 15 years. He is an authority on the full line of LCP print and electronic products including *Am Jur 2d*, *ALR*, *Am Jur Legal Forms 2d*, *USCS*, *CFR* and many other useful titles.

To schedule an appointment with Norman or for more information, call 1-800-762-5272 today!



**Lawyers Cooperative Publishing**

MEETINGS	VIDEO TAPING	COMPRESSED/INDEXING	
APPEALS	 <b>KRON ASSOCIATES COURT REPORTING</b>		DEPOSITIONS
	<i>ACS Certified</i> Member of American Association of Electronic Reporters & Transcribers		
	Depositions, Transcripts, Hearings, Appeals, Meetings, Video Taping, CompuServe File Transfer, Conference Room Available, Compressed/Indexing		
	<b>Ph: 276-3554</b>		
	1113 W. Fireweed Lane, Suite 200 • Anchorage, Alaska 99503 Fax: (907) 276-5172 • CompuServe 102375,2063		
DEPOSITIONS	TRANSCRIPTS	APPEALS	HEARINGS

# Family Law

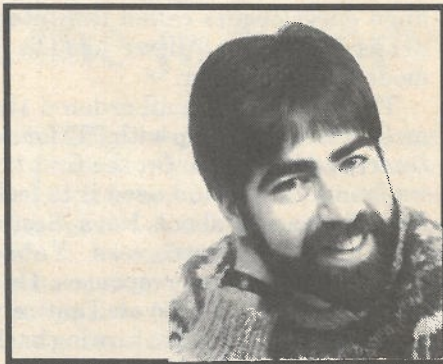
## Sweeping changes in Alaska's divorce procedure

Alaska exceeds the national average in the per capita number of divorce filings. Changes are occurring at great speed in an attempt to simplify and streamline the process of divorce and dissolution in this state.

Last summer, the child support laws were modified. Recently, the number of judges who normally handle the domestic relations calendar has more than tripled, and seven judges are now routinely assigned to resolve divorce cases, which are tried without a jury.

The new rules will effect all divorce and custody proceedings filed on or after March 4, 1996. They limit the appointment of custody investigators, which in the past have often been routinely ordered to perform investigations in cases involving the issue of custody. The large volume of files previously assigned to the custody investigator's office have exhausted its limited resources and greatly slowed down the investigation process. In the future, parents will have to demonstrate to the court before any appointment is made that a custody investigator is necessary and that they cannot afford to hire a private custody investigator.

Perhaps the most sweeping change in the new rules is the court's effort to streamline the divorce process in a newly created Trial Setting Order specifically designed for use in domestic cases. The order is modeled after procedures which have been used in Fairbanks, and it will require



Steve Pradell

that information is automatically disclosed by the parties to one another prior to trial. Court-ordered disclosure is an attempt to avoid the stalling and ambush tactics often used by lawyers to either hide information or overwhelm the other party with numerous documents at the last minute so that it is impossible to adequately prepare for trial.

Once a divorce or case is filed, a Pretrial Order is immediately issued preventing the parties from taking children outside of the state without consent, and from unilaterally disposing of marital assets. The new rule extends the order to prevent parents from canceling or changing the terms of any insurance policies without permission. In a further effort to streamline the divorce process, the new order sets page limits for legal pleadings and affidavits, to pre-

vent long-winded attorneys from overwhelming the court with unnecessary information, and imposes time limits for hearings and other limitations on the types of evidence that can be presented.

Along with the bark of the new order is a bite, for it provides that an attorney or party who fails to comply with it or follow the civil rules may be subjected to sanctions, including costs or attorney fees.

## FYI: Final judgment headings

In 1982, in an attempt to resolve a confusing situation which had developed regarding the proper denomination of final and appealable judgments, the trial judges agreed that a judgment, to be considered final, would have to bear the designation "final" in the heading. If this language is not present in the heading, the Clerk's office will not treat the judgment as final and appealable; neither will the Clerk of the Supreme Court and Court of Appeals. It should be understood that this does not apply to judgments on confession and default judgments.

Whether or not a judgment is appealable is, of course, a matter for judicial determination. Until 1982, the decision was made at several levels for varying reasons, often with conflicting results, by persons not trained to handle this responsibility. The procedure adopted in 1982 al-

The new changes will benefit Alaskans involved in divorce and custody disputes. The "fast track" system of simplifying the legal process has been successfully applied in other types of cases, and there is good reason to implement it in domestic disputes, which often drag on endlessly at great expense to parties who often do not have the funds to fuel a bitter battle over property and custody issues.

The new requirements regarding limitations to evidence and accurate documentation supporting each party's requests will make domestic law attorneys more accountable, and, hopefully, result in court orders that are issued more quickly, based upon sufficient evidence properly presented to the court.

lows personnel in the Court System to determine ministerially whether a judgement is final and appealable.

Proposed final judgments should include this language in the heading. Where such designation is required but neglected, the judge should add the language *sua sponte*, or the matter will have to be appropriately brought back to his or her attention for correction. If, of course, the judge refuses such action, the party will have to seek review of this action by a higher court before an appeal may be taken. By copy of this memo, non-judicial personnel are instructed not to make this determination independently and attorneys are reminded to submit judgments which are intended to be final with the caption "Final Judgment."

— Karl S. Johnstone  
Presiding Judge  
Third Judicial District

# To find potential liability problems in your law office, you'd need an insurance expert and a lawyer.

Bob Reis, CPCU,  
Head of Risk  
Management.



Bob Martin, JD,  
Assistant  
Risk Manager.

You'd need the ALPS  
Risk Management team.

At your invitation, they  
visit your office to assess  
your systems - and show you  
how to catch problems *before*  
they reach litigation.

It's just one of a full line  
of attorney-oriented services  
available to ALPS members.

Call 1-800-FOR-ALPS.

**ALPS**  
*Experts in Insurance  
Partners in Law*

1-800-367-2577, P.O. Box 9169, Missoula, MT 59807-9169  
Attorneys Liability Protection Society. A Mutual Risk Retention Group

# Tales from the Interior

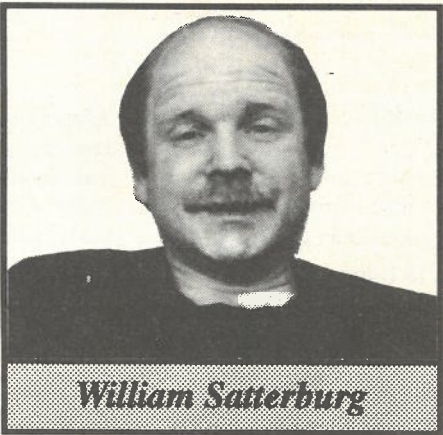
## Bar complaints

One of every attorney's fears, coming close to clients who don't pay their bills and malpractice suits, are Bar complaints. After all, even though we are human, and might even succumb to the temptations of a client, we are still held to a strict standard of care, and should not have relations with a client, unless it is tape-recorded, according to the most recent Bar Ethics, at least to the point that I understand them.

I suspect that all of us have had a Bar complaint from time to time. In some sense, it is sort of like skiing. If you don't have at least one Bar complaint to your name by the time you have completed practicing, then maybe you haven't been practicing law, or have been working for the government instead. On the other hand, Bar complaints are truly an item to be avoided, and fall well within the scope of the Alaska Bar Association's duty to provide discipline to its attorneys.

Then again, there are some complaints which fall strictly on the side of humor.

As for myself, I guess I will create a Bar complaint by stating that I have had two Bar complaints filed against me. I will keep the names of the individuals who made the complaints, however, strictly confidential in order to avoid scrutiny, and I can assure the reader that I have also spoken with Bar counsel, and have received an opinion that this article is not, by and of itself, something which ordinarily would be subject to a Bar complaint simply through the



William Satterburg

discussion of the issues.

Although I may or may not have had additional Bar complaints, one particular grievance which I recall stands out.

Several years ago, I represented an individual who was accused of a very serious crime. Several counts of an unclassified felony had been filed, and my client was facing some very real and serious jail time. I will not say whether or not my client did or did not deserve the time which he ultimately received, although I will indicate that the Court felt that the client was getting off quite lightly. This was especially true, recognizing that the client had not paid his fees.

At this point, it should be noted that Bar complaints and fee disputes seem to go hand in hand. So do malpractice suits. Obtaining one's fees in advance, especially in criminal defense matters, seems to be one way of avoiding the Bar complaint issue. Not representing clients is another

method. Certainly, going into the used car business will avoid many of those issues, as well.

In this particular case, I was successful, after extensive negotiations, motion practice, and my standard routine of groveling, begging, and pleading, to have my client's charges reduced to a Class B felony of one count only. To say that he received a deal would be an understatement. It was a gift from above.

Rather than facing the mandatory time of this particular unclassified felony, which was several years, my client was instead sentenced to a much more lenient time, with eligibility of parole in a relatively short period of time. He furthermore stood convicted of only one count, as opposed to several, and avoided the social stigmas attached to the trial.

Quite candidly, I was rather proud of myself, and strutted around my office like a Bantam rooster for several days.

It was then that the Bar complaint arrived.

Bar complaints have a strange way of arriving. They always arrive in an envelope marked on the large outside cover **CONFIDENTIAL**. As soon as one arrives, needless to say, all the members of the firm hold it up to the light, grab their steamers, or attempt other means to try to determine what is within this rather innocuous-looking envelope. I have long felt that if

the Bar Association wanted to allow confidentiality to Bar complaints, the complaints should be sent in an envelope announcing some sort of new publication from Shepards.

When I opened up this particular envelope, I was faced with what amounted to a 28-page diatribe. My client commenced by indicating that he had preached to himself in the mirror for several hours before deciding to bring this particular complaint, and that he was now bringing it because he felt that he had been poorly represented. Although he recognized that the counts with which he had been charged had been reduced to one count of lesser quality, my client pointed out that he should have, in fact, not been convicted of anything.

He then proceeded for the next several pages to outline in graphic detail the crime which he had committed, listing witnesses, events, dates, and other relevant items, but pointing out to the Bar Association, in essence, that I would have had to keep the matters confidential, regardless, and he therefore should have been able to testify at trial and win the case.

Needless to say, this created a rather perplexing situation. Because my client was unrepresented by counsel in the filing of his complaint, he received a kind letter back from the Bar Association indicating to him that, given the grievance of criminal crimes to which he was now confessing publicly, he should probably seek the services of an attorney before he refiled his complaint. To say that the Bar Association did this client a service would be most gentle. It was his second gift from above, and he must have apparently sought the advice of someone, since it never reappeared.

### 1996 CLE Calendar

DATE/CLEs	TITLE	CITY/LOCATION
#17 May 3 2.0 cles	Federal Bench/Bar Off The Record	Anchorage Hotel Captain Cook
#34 May 8 0.0 cles	Alaska Native Law Lunch & Annual Meeting	Anchorage Hotel Captain Cook
#37 May 10-11 9.5 cles	AATL Dynamic Cross Examination	Anchorage Sheraton Hotel
#33 June 13 4.5 cles	Depositions with Paul Lisnek	Anchorage Hotel Captain Cook
#32 June 13-14 cles tba	Beyond the Border: Regional and Environmental Issues & Policies (SONREEL) (NV)	Seattle
#05 June 20 3.75 cles	3rd Annual Workers Comp Update	Anchorage Hotel Captain Cook
#35 June 24 5.5 cles	The Attorney's Guide to Understanding the Internet (NV)	Anchorage Sheraton Anchorage Hotel
#36 July 23 cles tba	Education Law Issues	Anchorage Hotel Captain Cook
#13 Aug. 23-24 14.0 cles	Estate Planning Techniques (NV)	Anchorage Regal Alaskan Hotel
#12 Sept. 23 3.0 cles	Professional Responsibility With ALPS & Video vignettes	Juneau Centennial Hall
#88 Sept. 23 3.0 cles	Mandatory Ethics for Applicants (NV)	Juneau Centennial Hall
#88 Sept. 25 3.0 cles	Mandatory Ethics for Applicants	Anchorage Hotel Captain Cook
#12 Sept. 25 3.0 cles	Professional Responsibility With ALPS & Video Vignettes	Anchorage Hotel Captain Cook
#7 Sept. 26 2.0 cles	Court Rules Update TELESEMINAR (NV)	State-Wide
#12 Sept. 27 3.0 cles	Professional Responsibility With ALPS & Video Vignettes	Fairbanks Westmark Hotel
#88 Sept. 27 3.0 cles	Mandatory Ethics for Applicants (NV)	Fairbanks Westmark Hotel

### Weekly Slip Opinions

## ALASKA SUPREME COURT

• \$325 per year (\$6.25 per week) •

## ALASKA SUPREME COURT & COURT OF APPEALS

• \$375 per year (\$7.21 per week) •

CALL NOW

FREE TRIAL SUBSCRIPTION

(907) 274-8633



*Serving the Alaska Legal Community for 18 years*

To order by fax or mail, send form to:

- ☐ ALASKA SUPREME COURT  
☐ ALASKA SUPREME COURT &  
COURT OF APPEALS  
Printed in 8.5" x 11" format

**Todd Communications**

203 W. 15th Ave. Suite 102  
Anchorage, AK 99501  
FAX (907) 276-6858

Name to appear on opinion label

Contact name if different from above

Firm Name

Address

City

State

Zip

Phone

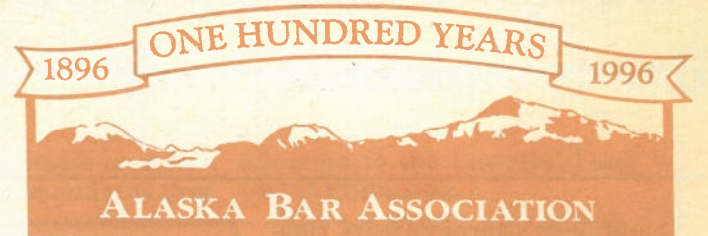
Fax

# COME HELP US CELEBRATE 100 YEARS

## 1996 Alaska Bar Convention Highlights

May 16-17, 1996

Hotel Captain Cook — Anchorage



### CLEs

#### Thursday, May 16

Join us for a day with Jay Foonberg, nationally known law office management expert!



**Jay Foonberg**  
Law Office  
Management Expert

#### Morning

"What Clients Really Want and How to Give It to Them"

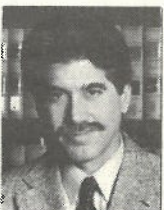
#### Afternoon

"Quality of Life and Practicing Law: Balancing Family, Profession & Self"

#### Friday, May 17

#### Morning

They're back! Professors Arenella and Chermerinsky return once more to give us the latest on "Recent U.S. Supreme Court Opinions"



**Peter Arenella**  
UCLA School of Law



**Erwin Chermerinsky**  
USC Law Center

#### Afternoon

#### History of the Bench and Bar

Take a look back in time-- learn about "Bad Company: Tales of the Territorial Alaska Bar" with Bill Hunt, UAF Professor Emeritus of History; "Bringing Law to the State of Alaska" with Stephen Haycox, UAA Professor of History; "Relentless Problems in the Federal Territorial Judicial System" with Claus-M. Naske, UAF Professor of History; and "The 1964 Court Bar Fight" with Pamela Cravez, Alaska lawyer and historian.

### SPECIAL EVENTS

#### Thursday, May 16

6:00 p.m., Performing Arts Center

President's Reception

7:00 - 10:00 p.m.

**Movie Magic: How the Masters Try Cases.** It's an evening of fun and education -- Hollywood-style!

Bring family and friends to the Discovery Theater for a look at courtroom scenes from such movies as "To Kill a Mockingbird," "My Cousin Vinny," and more. Judge Karen Hunt, Ray Brown, Carmen Gutierrez, and moderator Steve Rosen critique the film clips and discuss litigation strategy. You don't even have to be a lawyer to enjoy the movies and commentary!

#### Friday, May 17

**Awards Banquet and Reception**

6:00 p.m. - 10:00 p.m.

**Ballroom, Hotel Captain Cook**

"Reminiscences of the Early Alaska Bar" with Senator Ted Stevens, U.S. District Court Senior Judge James von der Heydt, Alaska Superior Court Judge Tom Stewart (ret.), and former Attorney General Charlie Cole.

Call the Alaska Bar office 907-272-7469 or fax 907-272-2932 for more information.

### Update to Alaska Civil Pattern Jury Instructions Available

The latest update to the Alaska Civil Pattern Jury Instructions is now available from the Bar office. The supplement is \$20 and includes revised versions of Article 7 on products liability, Article 26 on will contests and Article 27 on eminent domain.

The complete set of Civil Jury Instructions, as revised, is also available on disk (IBM format only: Wordperfect 5.1 and Word for Windows 6.0) for \$75. For more information, call the Bar office at 272-7469.

### Have you filed your Rule 64 Affidavit? Affidavit Due July 15, 1996

Alaska Bar Rule 64 requires all active members of the Alaska Bar Association to file an affidavit with the Bar by July 15, 1996 stating that they have read and are familiar with the Alaska Rules of Professional Conduct.

Any member who fails to comply with this rule is subject to suspension for noncompliance.

Form affidavits may be obtained from the Bar office. Call 272-7469.

### Election/Advisory Polls

#### Board of Governors: 3rd Judicial District

Monica Jenicek*	222
Mark Rindner	90
Kirsten Tinglum*	231
Michael D. White	100
*Run-off election	
Monica Jenicek	229
Kirsten Tinglum	338

#### Board of Governors: 2nd & 4th Judicial District

John J. Burns	14
William B. Schendel	99

#### Alaska Legal Services: 1st Judicial District

Arthur H. Peterson	65
Richard Whittaker	15

**Alternate:** Sheri L. Hazeltine (unopposed)

#### Alaska Legal Services: 4th Judicial District

Mason Damrau, regular seat (unopposed)	
Cameron Leonard, alternate seat (unopposed)	

#### Alaska Legal Services: Kenai/Kodiak Seat

Gregory P. Razo, regular seat (unopposed)	
Steve Cole, alternate seat (unopposed)	

**ABA Delegate:** Lynn M. Allingham (unopposed)

## U. S. District Court announces rules change

James K. Singleton, Chief Judge of the United States District Court for the District of Alaska, today announced proposed revisions to the Local Admiralty Rules of that Court. If approved, the proposed changes will take effect on Friday, September 6, 1996. Beginning Monday, May 1 1996, interested parties may review the proposed Local Admiralty Rules at the offices of the Clerk of the District Court which are located in the federal courthouses at 222 W. Seventh Avenue, Anchorage, Alaska; 101 12th Avenue, Fairbanks, Alaska; 709 W. 9th, Room 979, Juneau, Alaska; 648 Mission Street, Ketchikan, Alaska; and Second Floor, Federal Building, Front Street, Nome, Alaska. Copies can also be reviewed at all state and federal law libraries and at the office of the Alaska Bar Association in Anchorage. Those wishing to review the rules at a particular location should check on office hours to determine when the facility is open to

the public.

The proposed revisions are the result of a number of years work by an advisory committee of Alaska lawyers chaired by Morgan Christen. Sitting on the Committee are U.S. Magistrate Judge John D. Roberts, Neil T. O'Donnell, Marc G. Wilhelm, Mark C. Manning, Steve J. Shamburck, Lanning M. Treub, Suzanne R. Lobardi and Randy Johnson, Chief Deputy U.S. Marshal.

Chief Judge Singleton encourages the public, and particularly members of the Alaska Bar Association, to comment on the proposed rules and suggest worthwhile modifications or changes. In order to be considered by the court, comments should be in writing and should be delivered or mailed to the Clerk of the United States District Court, 222 W. Seventh Ave., No. 4, Anchorage, Alaska 99513. Comments must be received on or before Monday, July 1, 1996, at 4:30 p.m. in order to be considered.



### WORKPERFECT ENTERPRISES

*If you have a work overload,  
WE have a cost-effective  
solution for your firm.*

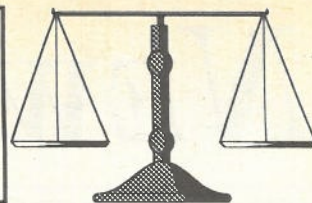
#### OUTSIDE TRANSCRIBING SERVICES

#### KEEP YOUR WORKLOAD CURRENT

- Word Processing
- Legal Transcription
- Legal Correspondence & Memos
- Appeals/Briefs
- Directories/Newsletters
- Resumes & Term Papers

FREE PICKUP & DELIVERY • FAST TURNAROUND  
243-4623 • Fax 345-9596

# NEWS FROM THE BAR



The Board of Governors invites comments concerning the first in a series of proposed amendments to the Bar Rules and proposed guidelines from the Consumer Assistance Program/Lawyer Assistance Program (CAPLAP) Committee.

This series relates to the mediation of disputes between attorneys and their clients or other persons.

The Committee started with the present conciliation rule in Bar Rule 13 and discussed modifications to that rule which more appropriately reflect the reality of modern mediation.

**Bar Rule 11:** This amendment would change the word "conciliator" to "mediator" and eliminate the restriction that a referred matter cannot concern fee disputes or misconduct under Bar Rule 15.

**Bar Rule 13:** The words "conciliation" and "conciliator" would be changed to "mediation" and "mediator" throughout the amendment.

(a) Mediation would involve disputes between attorneys and clients or other persons referred to panels in bar counsel's discretion under guidelines set by the Board.

(b) Mediation panels would include nonattorney members qualified under guidelines set by the Board.

(c) Mediators would be able to end a mediation if they determined that further efforts would be unwarranted. In addition, they would be able to refer an attorney to a lawyer's assistance program (e.g., Substance Abuse Committee or the Lawyer's Assistance Program if established). Finally, mediators could not be subpoenaed to testify about the substance of a mediation in other proceedings.

(d) Name changes only.

(e) An agreement reached in a mediation would be enforceable as any other civil contract.

(f) The requirements that a panel member express an opinion on the merits of the dispute and an opinion whether the attorney participated in good faith would be deleted as inconsistent with the goal of mediation.

(g) The statement that failure of

the attorney to participate in good faith may be grounds for discipline under Bar Rule 15 would be eliminated.

**Bar Rule 15:** This amendment would eliminate the failure of an attorney to cooperate in a conciliation (mediation) as a basis for discipline. Remaining sections would be renumbered.

**Board Guidelines for Referring Matters to Mediation.** These proposed guidelines are patterned after a May 1995 draft Colorado proposal. They set out the criteria which bar counsel would apply in determining whether a matter should be referred to mediation.

**Bar Rule 39:** This amendment would modify the notice to clients currently required whenever an attorney files a civil action against a client for fees. It would add a right of the client to request mediation of the fee dispute as an alternative to the fee arbitration process.

**Bar Rule 40:** This amendment would permit bar counsel to stay action on a fee arbitration petition during a mediation. If the dispute is resolved by the parties, the fee arbitration petition would be closed by settlement. On the other hand, if mediation was unsuccessful, the stay would be lifted and the matter would be set for arbitration.

Please submit your comments to Deborah O'Regan, Executive Director, Alaska Bar Association, PO Box 100279, Anchorage, AK 99510-0279 by July 1, 1996.

**PROPOSED AMENDMENT TO BAR RULE 11 RELATING TO MEDIATION OF ATTORNEY-CLIENT DISPUTES** (Additions italicized, deletions bracketed and capitalized) Rule 11. Bar Counsel of the Alaska Bar Association.

(a) Powers and Duties.

The Board will appoint an attorney admitted to the practice of law in Alaska to be the Bar Counsel of the Alaska Bar Association (hereinafter "Bar Counsel") who

will serve at the pleasure of the Board.

Bar Counsel will:

(11) \*in his or her discretion, refer a grievance to a [CONCILIATOR] mediator, for proceedings under Rule 13[*IF THE GRIEVANCE CONCERNS MATTERS OTHER THAN A FEE DISPUTE OR CONDUCT REFERRED TO IN RULE 15*];

## PROPOSED AMENDMENTS TO BAR RULE 13 TO PROVIDE FOR MEDIATION OF ATTORNEY-CLIENT DISPUTES

(Additions italicized; deletions bracketed and capitalized)

Rule 13. [CONCILIATION] Mediation Panels

(a) Definition.

[CONCILIATION] Mediation panels will be established for the purpose of settling disputes between attorneys and their clients or other persons [NOT CONCERNING FEE DISPUTES OR MISCONDUCT AS SET OUT IN RULE 15] referred to the panels in Bar Counsel's discretion under guidelines set by the Board. At least one [CONCILIATION] mediation panel will be established in each area defined in Rule 9(d).

(b) Terms.

Each [CONCILIATION] mediation panel will consist of at least three [ACTIVE] members [IN GOOD STANDING OF THE BAR], qualified under guidelines set by the Board, each of whom [MAINTAINS AN OFFICE FOR THE PRACTICE OF LAW] resides in the area for which he or she is appointed. The members of each [CONCILIATION] mediation panel will be appointed by the President subject to ratification by the Board. The members will serve staggered terms of three years, each to commence on July 1 and expire on June 30th of the third year.

(c) Powers and Duties.

A member of a [CONCILIATION] mediation panel will be

known as a [CONCILIATOR] mediator. Only one [CONCILIATOR] mediator need act on any single matter. [CONCILIATORS] mediators will have the power and duty to mediate disputes referred to them by Bar Counsel pursuant to Rule 11(a)(11). A mediator will have the power to end a mediation if the mediator determines that further efforts at mediation would be unwarranted. A mediator may recommend that the attorney seek the services of a lawyer's assistance program. A mediator may not be subpoenaed to testify concerning the substance of the mediation.

(d) Informal Proceedings.

Proceedings before a [CONCILIATOR] mediator will be informal and confidential. A [CONCILIATOR] mediator will not have subpoena power or the power to swear witnesses. A [CONCILIATOR] mediator does not have the authority to impose a resolution upon any party to the dispute.

(e) Written Agreement.

If proceedings before a [CONCILIATOR] mediator produce resolution of the dispute in whole or in part, the [CONCILIATOR] mediator will prepare a written agreement containing the resolution which will be signed by the parties to the dispute and which will be legally enforceable as any other civil contract.

(f) Report to Bar Counsel.

When the dispute has been resolved, or when in the judgment of the [CONCILIATOR] mediator further efforts at [CONCILIATION] mediation would be unwarranted, the [CONCILIATOR] mediator will submit a written report to the Bar Counsel which will include:

- (1) a summary of the dispute;
- (2) the contentions of the parties to the dispute;
- (3) any agreement which may have been reached; and
- (4) any matters upon which

*Continued on page 12*

## RESOLUTION OF THE ALASKA BAR ASSOCIATION PRO BONO SERVICE COMMITTEE SUPPORTING THE ADOPTION OF A REVISED ARPC 6.1

WHEREAS, every lawyer has a basic responsibility to provide public service to indigent persons as lawyers alone possess the skills, education, and license to provide legal services;

WHEREAS, the current ARPC 6.1 does not provide sufficient guidance for lawyers wishing to provide pro bono service;

WHEREAS, federal, state, and local funding for pro bono legal services continues to dwindle while the need for such services increasingly exceeds the level of service;

WHEREAS, the American, state, and local bars are establishing guidelines for the provision of pro bono legal services,

BE IT ENACTED, that the Board of Governors of the Alaska Bar Association hereby adopts the following rule of professional conduct:

### Rule 6.1. Pro Bono Public Service.

ALL LAWYERS, REGARDLESS OF PROFESSIONAL PROMINENCE, POSITION, OR WORKLOAD, SHOULD ASPIRE TO RENDER 50 HOURS OF PUBLIC INTEREST LEGAL SERVICE PER YEAR. THIS RULE APPLIES TO PUBLIC SECTOR AND PRIVATE ATTORNEYS AS WELL AS THE JUDICIARY. THIS RESPONSIBILITY MAY BE DISCHARGED BY PROVIDING PROFESSIONAL SERVICES AT NO FEE AS FOLLOWS:

A) DIRECT PROVISION OF SERVICES TO INDIGENT PERSONS WITHOUT EXPECTATION OF PAY,

B) LEGAL SERVICES TO ORGANIZATIONS THAT PROVIDE SERVICES TO INDIGENT PERSONS,

C) TEACHING CLASSES OR CLINICS FOR INDIGENT PERSONS, D) PROVISION OF SERVICES THROUGH ALASKA LEGAL SERVICES CORPORATION,

E) PERFORMING RESEARCH OR OTHER SERVICES FOR ATTORNEYS PROVIDING PRO BONO SERVICES, OR

F) PERFORMING MEDIATION SERVICES FOR PRO BONO CLIENTS.

(Signed by 10 Bar members)

## WILL YOUR KID GET PASSED BY ON THE INFORMATION SUPER HIGHWAY?

You may get through the rest of your life without having to learn technology, but your kids won't be as lucky.

The fact is that computer technology has already woven itself into every aspect of life as we know it. It's here to stay. It's growing.

The only question is, will your child know what to do with it?

At Futurekids, children from three to fifteen years old enjoy the thrill of



**FUTUREKIDS**  
COMPUTER LEARNING CENTERS  
Brighter futures for a better planet.

learning, along with the huge amount of self-esteem that comes with mastering a new skill. Even adults take our classes.

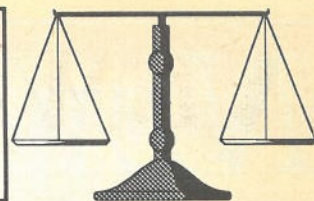
Right now, you can get one free month of children's classes. Call our toll-free number for details.

But do it today.

Because if you don't prepare your kids to navigate the Information Super-highway, the long road to success could end up being a very rough ride.

OLD SEWARD HWY AT HUFFMAN, CALL 345-0997 TODAY!

# NEWS FROM THE BAR



Continued from page 11

agreement was not reached[;

(5) THE OPINION OF THE CONCILIATOR ON THE MERITS OF THE DISPUTE; AND

(6) THE OPINION OF THE CONCILIATOR ON THE GOOD FAITH OR LACK OF GOOD FAITH OF THE EFFORTS MADE BY ANY ATTORNEY TO RESOLVE THE DISPUTE].

(g) [FAILURE] Obligation of Attorney to Participate in Good Faith.

Any attorney involved in a dispute referred to a [CONCILIATOR] mediator has the obligation to confer expeditiously with the [CONCILIATOR] mediator and with all other parties to the dispute and to cooperate in good faith with the [CONCILIATOR] mediator in an effort to resolve the dispute. [FAILURE BY ANY ATTORNEY TO PARTICIPATE IN GOOD FAITH IN AN EFFORT TO RESOLVE A DISPUTE SUBMITTED TO A CONCILIATOR MAY BE GROUNDS FOR DISCIPLINARY ACTION UNDER THESE RULES.]

## PROPOSED AMENDMENT TO BAR RULE 15 RELATING TO MEDIATION OF ATTORNEY-CLIENT DISPUTES

(Additions italicized; deletions bracketed and capitalized)

### Rule 15. Grounds for Discipline.

#### (a) Grounds for Discipline.

In addition to those standards of conduct prescribed by the Alaska Rules of Professional Conduct, Ethics Opinions adopted by the Board of Governors of the Bar, and the Code of Judicial Conduct, the following acts or omissions by a member of the Alaska Bar Association, or by any attorney who appears, participates, or otherwise engages in the practice of law in this State, individually or in concert with any other person or persons, will constitute misconduct and will be grounds for discipline whether or not the act or omission occurred in the course of an attorney-client relationship:

(5) [FAILURE TO COOPERATE IN A CONCILIATION, AS REQUIRED BY RULE 13(G);]

(Remaining sections renumbered)  
PROPOSED BOARD GUIDE-

## LINES FOR REFERRING MATTERS TO MEDIATION

(Patterned after May 23, 1995 draft colorado criteria:

### Board Guidelines For Bar Counsel Referral of Mediation Cases:

1. If the case were to be handled through the disciplinary process, it would likely result in either a dismissal or discipline no greater than a written private admonition. Examples would be failure to communicate or minor neglect.
2. No case alleging intentional dishonesty or misrepresentation would be referred to mediation.
3. The case should involve a small number of issues (1-3), rather than numerous allegations.
4. The harm, if any, caused by the attorney's conduct should be minor.
5. The complaining party should be a client or an adverse attorney or a successor attorney.
6. The case should involve a dispute between the complaining party and the respondent-attorney which would appear to be able to be resolved by mediation and both parties agree to mediation.
7. The respondent (lawyer) cannot be one who a) has been the subject of more than two other mediation referrals within the last two years; b) has failed to abide by the terms of any previous mediation; c) who has been disciplined by a private censure or by any public discipline within the last two years.

## PROPOSED AMENDMENT TO BAR RULE 39 RELATING TO MEDIATION OF ATTORNEY-CLIENT DISPUTES

(Additions italicized; deletions bracketed and capitalized)

### Rule 39. Notice of Right to Arbitration; Stay of Proceedings; Waiver by Client.

#### (a) Notice Requirement by Attorney to Client.

At the time of service of a summons in a civil action against his or her client for the recovery of fees for professional services rendered, an attorney will serve upon the client a written "notice of client's right to arbitrate or mediate," which will state:

You are notified that you have a right to file a Petition for Arbitration of Fee Dispute or a Request for Mediation and stay this civil action. Forms and instructions for filing a Petition for Arbitration of Fee Dispute or a Request for Mediation and a motion for stay are available from the Alaska Bar Association, 510 L Street, Suite 602, Anchorage, AK 99501-1958, (907) 272-7469. If you do not file the Petition for Arbitration of Fee Dispute or a Request for Mediation within twenty (20) days after your receipt of this notice, you will waive your right to arbitration or mediation.

Failure to give this notice will be grounds for dismissal of the civil action.

## PROPOSED AMENDMENTS TO BAR RULE 40 RELATING TO MEDIATION OF ATTORNEY-CLIENT DISPUTES

(Additions italicized; deletions bracketed and capitalized)

### Rule 40. Procedure.

#### (c) Petition Accepted; Notification.

If Bar Counsel accepts a petition, (s)he will promptly notify both the petitioner and the respondent of the acceptance of the petition and that the matter will be held in abeyance for a period of ten days in order for both parties to have the opportunity to settle the dispute without action by an arbitrator or panel or to request mediation under Bar Rule 13. The notice will include a copy of the accepted petition and will advise both parties that if the matter is not settled or mediation requested within the ten-day period that it will be set for arbitration. *Further action on the petition will be stayed during mediation. If the dispute is resolved through mediation, the matter will be closed by settlement by the parties. If mediation is unsuccessful, the stay will be lifted and the matter set for arbitration.*

#### (e) Assignment to Arbitration.

If, at the end of the ten-day period, Bar Counsel has not been informed that the matter has been settled or mediation requested, in accordance with Rule 37(c) or (e), (s)he will select and assign an arbitrator or arbitration panel from the members of the appropriate area division to consider the matter.

## PROPOSED AMENDMENT TO BYLAWS, ARTICLE III, SEC. 1 (A) REGARDING REDUCTION IN DUES FOR PRO BONO SERVICE

(Additions italicized; deletions bracketed and capitalized)

### Article III. Membership Fees and Penalties

#### Section 1. ANNUAL DUES.

(a) Active Members. The annual membership fee for an active member is \$450.00, \$10.00 of which is allocated to the Lawyers' Fund for Client Protection. The annual membership fee for an active member, who is 70 years of age or more and who has practiced law in Alaska for a total of 25 years or more, is one half of the total amount assessed to each active member, \$10.00 of which is

allocated to the Lawyers' Fund for Client Protection.

Active members who provide 400 hours or more of pro bono services in a calendar year (January through December) as confirmed by the Alaska Pro Bono Program, or as approved by the Alaska Bar Association Pro Bono Service Committee, may pay 30% of the annual active fee for the membership year immediately following the year these services were provided subject to the following limitations: 1) the request for 30% active dues must be made in writing no later than February 1st; and 2) confirmation by the Alaska Pro Bono Program, or approval by the Alaska Bar Association Pro Bono Service Committee, must be provided to the Bar Association no later than February 1st.

The Board of Governors invites comments concerning the following proposed amendment to Bar Rule 26(h).

The proposal would permit an attorney convicted of a crime involving alcohol or drug abuse to appeal a recommendation of the Substance Abuse Committee to the Board of Governors. On appeal, the Board will be able to approve, disapprove or modify the recommendation. The attorney would then be able to appeal the board's decision by filing a petition for review with the Supreme Court.

Please submit your comments to Deborah O'Regan, Executive Director, Alaska Bar Association, PO Box 100279, Anchorage, AK 99510-0279 by July 1, 1996.

## PROPOSED AMENDMENT TO BAR RULE 26(h) PROVIDING FOR APPEAL OF SUBSTANCE ABUSE COMMITTEE RECOMMENDATIONS

(additions italicized; deletions bracketed and capitalized)

### Rule 26. Criminal Conviction; Interim Suspension.

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

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

## A Guide to Survival in the Practice of Law

### PAPER TRAILS OF PROTECTION:

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

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

BONNIE HENKEL  
Vice President, ALPS Claims Manager

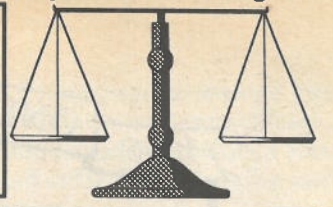


Bonnie Henkel  
Vice President,  
Claims Manager

**ALPS**

Experts in Insurance  
Partners in Law

# NEWS FROM THE BAR



## ALASKA BAR ASSOCIATION ETHICS OPINION NO. 96-3 DISCLOSURE OF CLIENT FILES

The Committee has been asked to define the extent of an attorney's duty to disclose client files pursuant to a subpoena in circumstances where the client has specifically declined the release of those materials, or where it is not possible to obtain the client's consent.

It is the Committee's view that an attorney may, in response to a valid subpoena, disclose non-privileged material without the client's consent. However, care should be taken to remove and/or redact confidential and privileged material or communications. This information should not be disclosed absent a specific court order.

### ANALYSIS

Rule 1.6 of the Alaska Rules of Professional Conduct states:

(a) a lawyer shall not reveal information relating to representation of a client unless the client consents after consultation, except for disclosures that are impliedly authorized in order to carry out the representation . . .

By design, Rule 1.6 imposes a duty on the lawyer which is much broader than the traditional attorney-client privilege. The broader obligation is derived from agency law governing obligations arising from fiduciary relationships. See Restatement (Second) of Agency § 396 (1957). It is also reflected in other aspects of the Model Code. See e.g. Rule 1.8(b).

The Comment to Rule 1.6 states, in part:

The attorney-client privilege applies in judicial and other proceedings in which a lawyer may be called as a witness or otherwise required to produce evidence concerning a client. The rule of client-lawyer confidentiality applies in situations other than those where evidence is sought from the lawyer through compulsion of law. The confidentiality rule applies not merely to matters communicated in confidence by the client but also to all information relating to the representation, whatever its source. A lawyer may not disclose such information except as authorized or required by the rules of professional conduct or other law.

(Emphasis added).

This important distinction has been recognized by the Alaska courts. In *Downie v. Super. Ct.*, 888 P.2d 1306 (Alaska Ct. App. 1995), a public defender refused to testify whether she had informed her client of a trial date on the basis that it would violate the attorney-client privilege. Downie conceded that the law was uniformly to the effect that the attorney-client privilege does not bar an attorney from testifying as to whether he or she informed a client of a court date, but she nonetheless contended that the scope of the attorney-client privilege must be re-evaluated in light of the adoption of the Alaska Rules of Professional Conduct and, in particular, Rule 1.6. The court of appeals rejected this interpretation. Because Downie was testifying pursuant to a grand jury subpoena, this was not a situation where the client-lawyer confidentiality contemplated by Rule 1.6 applied; i.e. it was a situation "where

evidence is sought from the lawyer through compulsion of law." Accordingly, "in the final analysis . . . the lawyer's obligation to testify is governed by the attorney-client privilege as defined in that jurisdiction's law of evidence." *Id.* at pg. 1309.

Likewise, in the hypothetical presented to the committee, the attorney's files relating to his former representation have been subpoenaed.

### DISCUSSION

In reaching its opinion in this case, the Committee believes it is important to emphasize several points:

1. This opinion does not address the situation of whether an attorney might be required to voluntarily disclose information if "necessary to avoid assisting a criminal or fraudulent act by the client." See Rule 3.3(a)(2). This is a far different scenario than that presented to the Committee, and no opinion is offered on the scope of an attorney's obligations in those circumstances, which may be problematic.

2. Nothing in this opinion should be construed as excusing an obligation on the part of the attorney to seek the client's consent to disclosure whenever that avenue is available. In the question presented to the Committee, we have been asked to assume that consent was either declined or was impossible to obtain.

3. This opinion only deals with information and/or material which was not disclosed with the client's implied authorization during the attorney's representation of the client. For instance, in a matter in litigation, the Committee believes that pleadings filed in court or with an administrative body including, for instance, affidavits signed by the client, would be materials which the client "impliedly authorized" for disclosure. Once that material enters the public domain, we see no reason why it would be necessary for an attorney to obtain the client's consent to provide copies of those materials upon request to a third-party.<sup>1</sup>

From the premises, the Committee believes an attorney is ethically obliged to follow these steps in responding to a request for client files:

A. If there is an informal request for information relating to representation of a client, the attorney may only reveal that information or materials, if any, which the client "impliedly authorized" the attorney to disclose "in order to carry out the representation . . .".<sup>2</sup>

B. With respect to all other materials or information, the lawyer must try to obtain the client's consent. If that consent is not forthcoming, the attorney may not honor the informal request.

C. If the attorney receives a validly issued subpoena, he is authorized under Rule 1.6 to disclose all non-privileged information and/or materials, but the attorney should take care to redact and/or remove privileged information and/or communications.

D. With respect to attorney-client materials and/or communications, that information should never be disclosed absent a specific court order.<sup>3</sup>

In summary, an attorney has a broad duty to prevent the disclosure of all information relating to representation of a client except those disclosures "impliedly authorized" by

the client in order to carry out the representation. With respect to other information and materials in the attorney's possession, non-privileged information and/or materials may be produced in response to a validly issued subpoena; materials and/or information otherwise within the scope of the attorney-client privilege should not be disclosed under any circumstances without the client's consent unless there is a specific court order compelling the disclosure.

Approved by the Alaska Bar Association Ethics Committee on March 6, 1996.

Adopted by the Board of Governors on March 22, 1996.

<sup>1</sup>This approach is consistent with an opinion already adopted by the Board of Governors which discusses the propriety of "shop talk" and providing courtesy copies of pleadings to other lawyers. See Alaska Bar Association Ethics Opinions 95-1.

<sup>2</sup>In the Committee's view, a practitioner would be well advised to nonetheless inform the client of the request as a courtesy, if nothing else. The Committee notes that in the Comment to Rule 1.6, the following are offered as examples of disclosures "impliedly authorized" by the client: "In litigation, for example, a lawyer may disclose information by admitting a fact that cannot properly be disputed, or in negotiation by making a disclo-

sure that facilitates a satisfactory conclusion."

The Committee believes the former situation may be different from the latter. The client who authorizes a concession during a negotiation with a private party may have a reasonable expectation that the disclosure will not go beyond the parameters of that private dispute. On the other hand, a pleading filed in state court or with an administrative body, unless filed and/or maintained under seal, would not support a similar expectation. If there are doubts, the Committee believes the attorney should err on the side of non-disclosure.

<sup>3</sup>Alaska R. Civ. P. 45 authorizes issuance of a subpoena duces tecum by the clerk of court. Technically, non-compliance with a subpoena is deemed a contempt of the court from which the subpoena issued. The Committee is uncomfortable in allowing attorneys to disclose confidential and privileged communications pursuant to a subpoena. We believe a lawyer has the duty to protect those materials and/or information at all time, unless consent is provided by the client. Absent that consent, an attorney should not disclose that information unless a judge has had an opportunity to evaluate the merits, and otherwise ordered the disclosure.

If it makes sense  
to 40,000  
lawyers, it  
probably makes  
sense to you

© 1993 Poe & Brown, Inc.

We insure a lot of very smart, very successful people. The wisdom of their business decision to choose the Lawyer's Protector Plan® is obvious.

Through the Lawyer's Protector Plan, you get the experience and expertise of the CNA Insurance Companies as well as the service of the local independent agent of your choice.

The CNA Insurance Companies underwrite the professional liability insurance for over 40,000 lawyers in 49 states...an impressive position in the lawyers malpractice market. And CNA has been defending lawyers against malpractice allegations for more than 30 years.

To find out what you've been missing, call us.

**Ribelin Lowell & Company**  
INSURANCE BROKERS, INC.

3111 C Street Suite 300 Anchorage, Alaska 99503  
Phone 907/561-1250 In State 800/478-1251 Fax 907/561-4315

**CNA**

For All the Commitments You Make®

The Lawyer's Protector Plan® is a trademark of Poe & Brown, Inc., Tampa, Florida, and is underwritten by the Continental Casualty Company, one of the CNA Insurance Companies, CNA Plaza, Chicago, IL 60685. CNA is a registered service mark of the CNA Financial Corporation, the parent company for the CNA Insurance Companies.





## 'The mudsill of the judiciary'

By RUSS ARNETT

Some scamp (I think it was H.L. Mencken) described Baptists and the Methodists as "the mudsill of the Lord." Borrowing from this calumny, during Territorial days the United States Commissioners were "the mudsill of the judiciary."

The District Court in and for the District of Alaska was established in 1884 under Ward McAllister Jr., District Judge. He remained the only District Judge in Alaska until 1900, when the number of judges was increased to three.

The District Judge appointed United States Commissioners whose jurisdiction included probate, misdemeanors, felony arraignments, held to answer proceedings, civil jurisdiction with a limit of \$1000, coroner duties, vital statistics, sanity hearings, adoptions, elections, recorder, marriages, and hunting and fishing licenses when they became necessary.

In Judge Wickersham's courtroom that still stands at Eagle is a letter he wrote to Washington, strongly urging that the sad conditions of Commissioners be improved. This still had not been done at the time of statehood.

Few of the Commissioners had legal training, but then many of the lawyers and some District Judges had not gone to law school. When I came to Anchorage in 1953 the Commissioner was a likable grandmotherly type, Rose Walsh. Roger Cremo was trying a case before her and argued the testimony of an FBI agent should be given no greater weight than that of the defense witness. Rose said, "Why not? He's on our side, isn't he?"

I served as Commissioner for nine months in Nome in 1952. The appointment was political and I was of the wrong party, but they had been unable to fill the position. Pay was by fees. I believe you received \$2.75 for

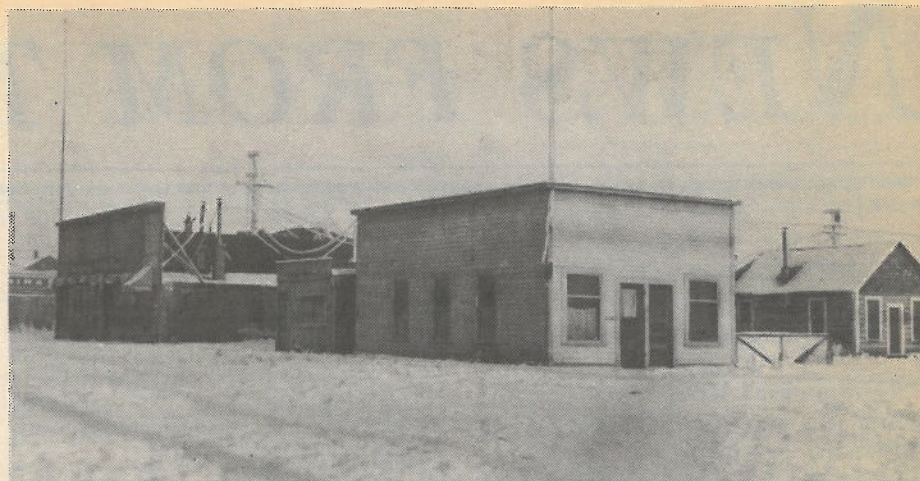
recording a deed. This included typing the deed in the deed book before returning the deed. If you hired the typing done, this came out of the \$2.75. By hiring someone to do part-time typing, you might earn \$4,000 per year in Nome.

In the early 1950's the maximum that Commissioners were permitted to keep was raised from \$5,000 to \$7,500, but Anchorage and possibly Fairbanks were the only places where you could earn that much. Record keeping was a great annoyance. I once spoke with a former Commissioner recently released from prison, where he had been sent because of an offense related to the office. He seemed very decent though still angry. I believe the main reason the "offense" occurred was the vile system of compensation.

I conducted two inquests of multiple deaths. My friend, the local head of the Native Service, survived a plane crash in which three others perished. He told me they flew into whiteout conditions. He died not long after my interview. Another inquest involved drownings of a liberty party from a ship anchored offshore. Their boat was swamped in heavy seas. After the inquest a very obnoxious Coast Guard legal officer questioned whether I had gone to law school and told me I had no jurisdiction.

When elections were scheduled we were sent a bunch of original Territorial ballots to distribute to the villages. I did not know to whom they should be sent. I remember one village had an Abraham Lincoln so I went with Old Abe. If there had been an inclination toward vote fraud, or even to influence the election, it would have been child's play. (I had learned voting politics in the river wards of Chicago.)

Non-support of one's children was handled by the Commissioners as a crime. The delinquent parent was



U.S. Commissioner's office in Anchorage in 1924.

convicted but as long as he paid support would not be jailed. Lack of employment was often the problem. I spent most of my time in Nome enforcing one support order for which I received only the \$10 fee for the conviction.

There was a Territorial bounty on hair seals even though there was no commercial fishery in the area. The Eskimo would bring in the face skin which was mailed with an affidavit to Juneau. I would assist in this and was compensated with a \$1 notary fee. The Eskimo hunters were fine people.

I remember very clearly one felony held to answer hearing. Jim von der Heydt as U.S. Attorney presented the case, in which a G.I. was charged with having sex with an Eskimo teenager. The young girl was very beautiful but had TB and coughed up blood. The evidence showed that after the act he walked into the barracks and proudly threw the girl's panties on the table in front of his buddies. I later inquired as to what medical treatment the girl could receive for the TB and was told that none was available.

I conducted a sanity hearing at Gambell that went very well. An Eskimo from Barrow married a white CAA [now FAA] employee. We flew over in a National Guard plane as did a Presbyterian official. We had a deputy marshal with us as well as the wife of the marshal, who had been a nurse, in case we needed a matron to accompany the woman accused of insanity to Morningside Hospital in Oregon. She'd had a big row with her husband and had cut off her hair, and appeared at the trial with a bandana on her head. The jurors were leaders

of the community who appeared and deliberated in their furs. They concluded that the defendant was distraught but not insane, which was probably correct. The jury deliberated in Eskimo. They were men of the highest character and intelligence. They had what I consider to be the highest human virtues in larger measure than that of the leaders in my society.

You appreciate the importance of lawyers in court when you operate in an area where there were none in private practice and no legal aid services or public defender. You would advise an accused of his right to counsel but then, in effect, tell him it did not really mean anything. A father came in and described behavior of his daughter which warranted a sanity hearing. At the hearing, the father looked at his daughter and could not repeat what he had told me. My attempt to cross-examine him was challenged by a juror who claimed a judge should be impartial. One saving grace was that the Eskimos were so incredibly honest that you often reached a just conclusion. I fear that through the intervening years their standards of honesty have become more like ours.

Our two wonderful Eskimo midwives would come in for birth certificates. They believed the procedure included informing me of any difficulties encountered in the deliveries.

Once an Eskimo woman came in and held out her newborn for me to take. She had been told that I handled adoptions. "Eskimo adoptions" involved little stigma, usually no paper work, but much love.

Even in the bush, proper decorum is essential. At the marriage of a bartender to a waitress I would not hear of drinking before the ceremony. Later at the reception at the Board of Trade Bar, I was photographed drinking "French 75's," consisting of gin and champagne, from the punch bowl.

## Civil Rule 82 and excess exposure

By MICHAEL J. SCHNEIDER

On April 26, 1996, our supreme court issued its Opinion No. 4342 (*Donna Sue Russell v. Criterion Insurance Co.*). In earlier articles, I have suggested that a carrier's failure to "clearly disclose to its insured the limitation [of its Civil Rule 82 exposure to an amount based upon the nominal policy limits] and the insured's potential liability for attorney's fees if judgment exceeds the liability limits of the policy" could invalidate the limitation. 3 AAC 29.010(a) and (d). A carrier relying on the limitation and refusing to pay Civil Rule 82 attorney's fees based upon the verdict expectancy could thus be placed in an excess position. Criterion's Civil Rule 82 limiting endorsement is not a model of perfection in terms of warning insureds of their potential exposure.

On the other hand, as the court found, it does a pretty good job of putting an insurance consumer on

inquiry notice that the consumer faces a significant problem in certain circumstances. The warning language in the endorsement states:

If a judgment rendered against you in excess of your policy limits, you will be responsible for attorney's fees awarded under Rule 82(a)(1) which exceeds [sic] that which would be allowable if judgment rendered were within your policy limits. (Emphasis in original.)

For an endorsement to pass muster: (1) it must clearly disclose the limitation itself, and (2) it must clearly disclose the insured's potential liability for attorney's fees if the judgment exceeds the liability limits of the policy. 3 AAC 29.010(d). The court found that the language quoted above made the grade.

What follows is Civil Rule 82-limiting language in an unrelated policy using language fairly common in the industry:

If a payment exceeding the sum insured has to be made to dispose of a claim, the liability of insurers to pay any costs, charges and expenses, including court-awarded attorney's fees under Alaska Civil Rule 82 or otherwise, in connection therewith shall be limited to such proportion of the said costs, charges and expenses, including court-awarded attorney's fees under Alaska Civil Rule 82 or otherwise as the sum insured by this policy bears to the amount paid to dispose of the claim.

The first question that comes to mind is "who writes these things . . . ?" It is unlikely that language like that quoted immediately above will pass the analysis just set forth by the supreme court in *Russell v. Criterion*.

The *Russell* case is important. It endorses the vitality of 3 AAC 29.010 and gives practitioners guidance when evaluating Rule 82 limiting endorsements.

### HOUSE FOR SALE

SOUTH ADDITION—3,000 sq. ft. split level, superb Chugach Mt. view. Street level entry on 2 full city lots. Lower lot area suitable for building. One block Inlet View School. Good neighbors, cul-de-sac street, no through traffic. Varnished cedar siding with furniture finish. Elegant lawn, many built-ins, cedar lined closets, touch plate lighting. Multiple closets, gas hot water baseboard heating, natural gas fireplace, ample storage, 5 bedrooms, 2.5 baths, hard wall plaster throughout. Ceramic tile in baths and kitchen. Selling account owner's age buyer must be able to afford luxury living in superb surroundings.

Call Jack Anderson 272-9293

# Bar People

**Martin Barrack**, formerly with Partnow, Sharrock & Tindall, is now in-house counsel and vice president of Alaska Power Systems, Inc....**Catherine Bachelder**, formerly with the P.D.'s office in Fairbanks, is now with the District Court....**Janelle Calhoun** has married and changed her name to Janelle Christian, and has relocated to Wrangell....**Susan Carse** has joined the firm of Pradell & Associates....**Ann Courtney** is now with the Office of the General Counsel of the Alaska Railroad Corporation....The Federal Public Defender in Anchorage has relocated their office to the Bank of America Building, 550 W. 7th Avenue, Ste. 1600. The phone remains the same....**Susan Crocker** has relocated from Kenai, and is now with the P.D.'s office in Ketchikan....**Donald Ellis** has become a principal in the firm now known as Kemppel, Huffman & Ellis, and **Rebecca Paul**, formerly with the Municipal Attorney's Office has joined the firm as an associate. **Peter Ginder** has left the firm and has opened his own law office in Anchorage.

**Valli Fisher**, formerly with Call, Barret & Burbank in Fairbanks, is now with Lane, Powell, Spears & Lubersky....**Gregory Fisher**, formerly with the D.A.'s office in Fairbanks, is now with Owens & Turner....**Saul Friedman**, formerly with Hedland, Fleischer, et.al., is now with Jermain, Dunnagan & Owens....**Bernie Kelly** has relocated to Olympia, WA, and still working with Mike Flanigan on an Of Counsel basis....**Laura Heston**, formerly with Heller, Ehrman, et.al., has relocated to Spokane, WA....**Laurence Keyes**, formerly with Russell, Tesche & Wagg, is now with Crosby & Sisson....**Kathryn King**, formerly with Ruddy, Bradley & Kolkhorst, has opened her own law practice in Juneau....**Christina Lee**, formerly with the Law Offices of Peter Aschenbrenner, has opened her own law office in Fairbanks....**Heather O'Brien** has transferred from the P.D.'s office in Bethel to the Anchorage office....**James Parrish** is the new General Counsel at the University of Alaska Fairbanks....**Jay Seymour**, formerly with Lane, Powell, et.al., is now with Foster Pepper & Shefelman....**David Wallace** has transferred from the D.A.'s office in Sitka to the Anchorage office.

**Kevin Fitzgerald**, who served the State of Alaska as Assistant District Attorney for more than seven years, has joined the Anchorage office of Bogle & Gates. His appointment was announced by **Douglas Parker**, managing attorney of the Anchorage office.

"Mr. Fitzgerald brings a wealth of trial experience to our firm, and his background will be of enormous value to clients," Parker said. "More importantly, he is a lifelong Alaskan and therefore bolsters our ranks of home-grown lawyers."

During Fitzgerald's tenure with the State's Attorney's Office, he tried nearly 50 jury cases.

He serves on the board of directors for Victims for Justice and is a member of the Anchorage Inns of Court.

The attorneys of Bogle & Gates' Anchorage office concentrate on civil and oil spill litigation, business transactions, employment, natural resources, admiralty, and telecommunications law.

**Lee Goodman Jr.** has joined the firm of Pradell & Associates. His practice will include civil and criminal law with an emphasis in domestic matters.

He has worked as an adjunct professor at the University of Alaska Fairbanks, teaching courses which include family law. He served as the attorney for the Tanana Chiefs Conference, practicing Native law, and was in private practice in Anchorage prior to that time. He will practice primarily at the South Anchorage office of Pradell and Associates, a law firm with four attorneys, whose practice includes domestic and criminal law, as well as personal injury.

Chief Judge James K. Singleton of the U.S. District Court has announced the appointment of **Patricia Collins** as U.S. Magistrate Judge at Ketchikan and **David Walker** as U.S. Magistrate Judge at Juneau.



Lee Goodman Jr.

**Patricia Collins** is currently a State District Court Judge at Ketchikan. Judge Collins has replaced Judge George Gucker as State District Court Judge and as U.S. Magistrate Judge at Ketchikan. Before her move to Ketchikan, Judge Collins served as U.S. Magistrate Judge at Juneau.

**David Walker**, U.S. Magistrate Judge at Juneau, and his wife Barbara have resided in Juneau since 1974. Magistrate Judge Walker has previously held various offices of the Juneau Bar Association, including the office of president. Magistrate Judge Walker began his law career as a staff attorney for the Alaska Legislature and in 1982 entered private practice. He will be sworn in at a ceremony to be held at 4 p.m. May 10 in the U.S. Courtroom in Juneau with a reception to follow hosted by the Juneau Bar Association.

Gov. Tony Knowles has named former Alaska Atty. Gen. **Harold M. "Hal" Brown** as Superior Court Judge in Kenai.

"Hal Brown has all the qualifications that are required of the judiciary," Knowles said. "He brings to the bench years of public and private service, thorough knowledge of

the law, plus the qualities of integrity, impartiality and compassion."

Brown, moved to Alaska in 1971 and worked for two years as district attorney in Ketchikan. In 1974, Brown joined a private law practice in Ketchikan where he worked until his appointment as attorney general by Gov. Bill Sheffield.

Following the change of administration, Brown served as director of the Alaska Judicial Council for two years before returning to private practice with the Anchorage firm of Heller, Ehman, White and McAuliffe.

Gov. Tony Knowles also named Peters Creek attorney **Eric Smith** to serve on the Superior Court bench in Palmer.

"The Palmer court has one of highest caseloads in the state and needs a second judge," Knowles said. "Eric Smith has qualities of integrity, fairness and the experience that we seek on the bench. Choosing from among the many excellent candidates for this new Post was difficult, but I believe Eric Smith will make an excellent judge for Palmer."

*continued on page 20*

## YOU CAN Cut Your Overhead! AND Increase Your Productivity! Sound Too Good To Be True? *Come See For Yourself*

**O**FFICE CENTERS, OR EXECUTIVE SUITES, are a popular concept all over the world. They give small and independent practices all of the advantages of corporate office support at an incredibly affordable price - a fraction of what it would cost to duplicate the same level of support on your own! For as little as \$675 per month **Pacific Office Center** clients will enjoy an efficient and professional office environment, *plus*-

- A spacious, brand-new office (many with excellent views!).
- Your business line answered promptly by the center's receptionist, plus state-of-the-art voice mail, multi-function phone and daily mail service.
- A tasteful, well-appointed office environment which includes large and small conference rooms, a comfortable reception area and a lunchroom. Janitorial and all utilities are also included.
- Access to on-site secretarial, paralegal and administrative assistance available when you need us.
- Part-time programs also available.

What this adds up to is more time for you to focus on your business - let us take care of the details and the overhead!

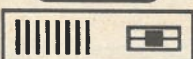
Great Staff - No Payroll  
Great Equipment - No Financing  
Great Offices - No Worries

**PACIFIC OFFICE CENTER**

310 K Street, Suite 200 • Anchorage, AK 99501  
907-264-6600



# Hi-TECH IN THE LAW OFFICE



## Tech tips on installing Ethernet networks

By JOSEPH L. KASHI

Ethernet is by far the most commonly used networking hardware today and probably the most cost-effective. Even though the basic electrical signalling and communication protocols are common to all variations of Ethernet, Ethernet hardware has several variations and the more popular network interface cards work with almost any simple or advanced network operating system.

The older Ethernet versions are constantly losing ground to more reliable spoke and hub 10Base-T Ethernet and its faster sibling, Fast Ethernet 100 Base-TX. 100Base-TX is installed and works just like slow 10Base-T except that a higher grade of cable, Level 5, must be used and the faster network hardware is somewhat more expensive.

Linear bus networking systems are slightly less expensive to cable because small networks can avoid installing intermediate amplifying hubs, which now often cost less than \$150, a false saving in my opinion. Linear bus networks suffer, however, from a serious reliability problem compared to 10Base-T: If the network connection is broken anywhere on the bus, or if any network card fails, then you can lose connections throughout the entire network. Troubleshooting is difficult and time-consuming.

Modern 10Base-T and 100Base-TX Ethernet hardware, on the other hand, have excellent resistance to a general network crash. If one card's wiring connection is damaged, or if a network interface card fails, then only that single desktop system usually loses its network connection. Most hubs detect the failures and isolate the errant station. Even if the hub fails to do that, you'll be able to identify the failure point quickly and easily by determining which user has lost his or her network connection. Just disconnect any potentially troublesome computers at the hub and attempt to connect the other network users until you've determined where the failure lies.

10Base-T Ethernet is a reliable, low-cost means of networking for small law offices that don't expect to make heavy demands upon their hardware. On the other hand, if your office is larger or likely to use demanding applications like document imaging, then the extra cost of

100Base-TX makes sense. I've suggested a cost-effective 100Base-TX growth strategy below.

(One benefit of 10Base-T is that network interface cards and hubs from different vendors are often compatible and the market is mature. As a result, competition is stiff, prices for quality hardware are plummeting, and you can tailor hardware purchases more closely to your actual requirements. 100Base-TX hardware may not be as compatible across manufacturers' lines, so try to use hardware only from one vendor.)

### Segmenting Your Network

Segmentation is crucial to good performance after your network has about 10 or so workstations. Segmenting the network also enhances the overall resistance of the network to an office-wide crash. A segment is nothing more than a group of physically connected desktop computer network cards and their associated amplifying hubs connected to the file server through a network card in the file server. Some network operating systems, such as Netware, allow you to use up to four network interface cards in a single file server, with each such card serving a different segment.

Segmentation is the easiest, most reliable and least expensive means of improving the overall performance of your Ethernet network. It works for all types of 10Base-T and 100Base-TX networking hardware.

Differing Ethernet types are not directly interchangeable although they can be interconnected through hubs containing the correct circuitry and connectors. In fact, many Ethernet network interface cards and hubs contain the connectors and circuitry allowing them to be used with any of several different types of Ethernet cabling. Interoperability varies from product to product, so you'll need to check compatibility carefully.

### Amplifying Hubs

Every 10Base-T and 100Base-TX segment should be connected to an amplifying hub connected to the file server through its own separate network card. If a correct hub is not installed, then the workstations will not sync with the network and will not even see the file server. Ideally, each segment will have its own hub that's directly connected to the file server rather than through other in-

termediate hubs.

Although many expensive central hubs claim high performance, none of them can exceed Ethernet's total bandwidth unless the hub itself includes a special, faster connection to the file server. Generally, I have found that segmenting the network into several small segments, each with 7-15 desktop computers, is the most cost effective, and often fastest, design. In that case, you can use basic low-cost 10Base-T hubs.

More expensive hubs include remote management and control features and are worth a look for large offices with several dozen connected desktop computers and commensurate troubleshooting and network management problems. High bandwidth Ethernet switches are another option for a large office but they tend to be rather expensive and, I believe, overtaken by less expensive, less complex technology in the average law firm.

Even simple, non-managed hubs, though, have a series of indicator lights that show whether each port is working, if that cable connection is live, and if excessive Ethernet collisions are occurring. Looking at the diagnostic lights on the network interface cards and on the hub itself will usually tell you whether or not there is a problem with the particular station or if the segment is generating too many collisions. This eyeball approach to small Ethernet networks usually works just fine.

Avoid cascading hubs into another intermediate one. This often slows down the network and introduces potentially difficult troubleshooting and reliability problems. Never cascade 10Base-T hubs more than two levels deep on any network segment. Transmissions will not cross more than a total of four hubs, so if one user must cross three hubs to connect with the file server, that user will not be able to connect with anyone else on another segment.

When you are first installing the network, label each workstation cabling connection at each hub with the name and network address of the station which that cable serves and with the segment number. I cannot overemphasize how important it is to label each wire pair with some sort of permanent label when you first install the cabling and verify its proper connection to a particular user's location. This will save a great deal of trial and error during troubleshooting later.

### Workstation Interface Cards

10Base-T Ethernet now sets the standard for Ethernet for good economic and technical reasons although 100Base-TX is coming on fast. Use whatever hardware best fits the demands that you are likely to place upon a system. I suggest that you use the same brand and model network interface cards throughout your system if at all possible because this helps minimize potential incompatibilities and possible confusion. Buy brand name network cards. Ideally, you should choose 10Base-T cards that include both an NE2000 or NE2100 compatibility mode and also an enhanced mode using network driver software optimized for that particular card. The NE2000 mode allows the broadest compatibility with Ethernet drivers, while enhanced performance modes are often quite a bit

faster.

There are many excellent 10Base-T cards. Here are some examples that have worked well for me, but this discussion is merely illustrative rather than definitive. Any of the network interface cards discussed below should work well.

Some excellent cards, like the Intel EtherExpress Pro 10Base-T and 100Base-TX series, do not include an NE2000 compatibility mode but are shipped with already optimized drivers certified for all mainstream network operating systems and workstation clients. When choosing any network card, broad driver software support is always a major plus.

3Com's network interface cards are fast, reliable and pretty much an industry standard. Most network interface cards include excellent software setup and diagnostics, but software setup seems to be reliable only for the more expensive products. If you use generic NE2000-compatible 10Base-T cards, which often cost as little as \$30 each, then choose cards that use hardware jumpers to set the card. That's usually more reliable.

SMC and Hewlett-Packard also make excellent Ethernet cards. These are among the fastest 10Base-T cards that I've seen to date. Both SMC and HP make several different types of Ethernet, so be careful that everything matches. 10Base-T, 100Base-TX and 100VGAnyLan (another version of fast Ethernet) usually do not work with each other.

### Low-cost 10Base-T Hubs

Most brand name 10Base-T Ethernet hubs work well and often cost under \$150 for eight connections. 100Base-TX Fast Ethernet hubs are still overpriced but I expect the price to drop significantly in the near future. In the meantime, here's a good strategy that's economical and that maximizes your future ability to grow.

You can often save a great deal of money, and get better, more mature products, if you install network hardware in a phased manner. For example, many brand name 100Base-TX Ethernet cards, such as the Intel EtherExpress Pro 10/100 series will work at both standard 10 Mbps transmission rates and at the Fast Ethernet standard of 100 Mbps. These high-speed switching cards usually cost only a little more than their slower siblings. Use such 100Base-TX speed-switching cards throughout your desktop computers and your file server. If you have had the foresight to correctly install only highest grade Level 5 networking cable throughout your firm, then switching these faster cards from 10Mbps to fast 100 Mbps performance is merely a matter of changing out the intermediate amplifying "hubs." The speed-switching cards themselves cost little more than slow brand name cards and they'll automatically adjust their performance to the capability of the intermediate hubs. Thus, a very appropriate networking strategy would be to install highest grade Level 5 10Base-T cabling everywhere in the firm, purchase the same model speed-switching 10/100 Ethernet cards for every computer and file server, but use inexpensive 10Mbps intermediate hubs as a short-term expedient. When you upgrade to high-speed hubs, the inexpensive temporary hubs can be retired with little financial loss.

LLR Technologies  
& Rex Data present...

### Executive Computing Seminars

Small Classes  
Personal Attention

EXECUTIVE WINDOWS SEMINAR

(4 HRS) \$160\*\*

BASIC INTERNET SEMINAR

(2 HRS) \$ 50\*\*

Call 272-7477

THESE SEMINARS DIDN'T INUNDATE US WITH ALL THE TECHNICAL DETAILS AND JARGON, BUT CONCENTRATED ON THE INFORMATION AND TOOLS WE NEED TO MANAGE, LEARN, AND USE COMPUTERS. SMALL CLASSES (ALWAYS LESS THAN 10 PERSONS, USUALLY LESS THAN 6) AND PERSONAL ATTENTION ARE THE RULE.

\*\* ASK ABOUT GROUP DISCOUNTS!



# Bankruptcy Briefs

## Debtor in possession conflicts

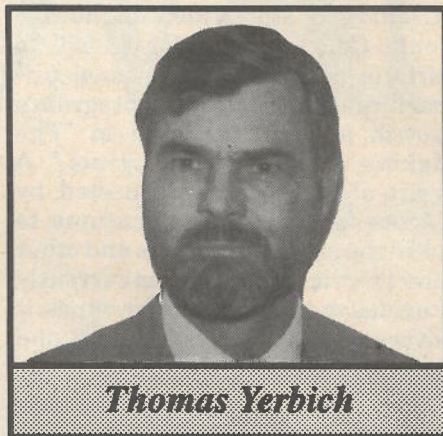
When the attorney representing a debtor in possession ("DIP") has a conflict of interest, the rules are quite explicit and certain: an attorney with a conflict is disqualified. *Thus, e.g.*, where an attorney represents the principals in a partnership or a corporation, he or she can not also represent the DIP. However, where the DIP itself has a conflict, the rules are, for the most part, nonexistent.

A classic example of an inherent conflict is the situation involving "brother-sister" corporations or corporations with wholly-owned subsidiaries where both have filed a chapter 11 petition and: (1) common management exists; (2) there have been continuous, systematic transactions between the two; and (3) one holds a substantial claim against the other.

As was noted in the last article, a DIP in a chapter 11 case is the functional equivalent of a trustee, a fiduciary of the bankruptcy estate and its beneficiaries, the creditors. Officers and general partners of the DIP are also considered officers of the court having fiduciary obligations to the estate as a whole. When there is common management, as is almost universally the case in "brother-sister" or "parent-subsidiary" situations, the same individuals are wearing two hats: a fiduciary with respect to the separate estates, in other words, serving two masters.

This potential conflict between the two estates where there have been substantial inter-company transactions arises in three areas: (1) preferential transfers; (2) fraudulent transfers; and (3) equitable subordination. In any one of the three situations, what is in the best interest of one bankruptcy estate and its beneficiaries (the creditors) is almost invariably detrimental to the other. To illustrate: Assume Company A owes Company B \$1,000,000 on a loan made 18 months before the petitions were filed, secured by a "blanket" UCC-1, recorded 8 months after the loan was made (noncontemporaneous filing). Company A paid Company B \$250,000 5 months prior to the date the petition was filed. Company A and Company B have a history of inter-company loans covering a period of several years, *i.e.*, money loaned from the "cash-flush" company to the "cash-starved" company, sometimes secured and sometimes unsecured, with repayments being made on an irregular basis as cash-flow permitted. Also present is the usual mix of cross-guarantees by Company A and Company B of each other's obligations, as well as guarantees by the principals of the obligations of both Companies, plus, of course, some loans to both Companies by the principals. Conflicts doth abound!

It is probably in the best overall interests of the "outside" creditors of Company A that it avoid the UCC-1 and recoup the \$250,000 payment as



Thomas Yerbich

a preferential transfer. On the other hand, the estate of Company B is best served if it retains the \$250,000 and its security interest. In addition, it may very well be in the best interests of the "outside" creditors of Company A that the \$1,000,000 obligation be subordinated while such subordination is definitely not in the best interests of the estate of Company B.

When an inter-company conflict situation arises, although specific rules may be virtually nonexistent, remedies do exist. First, as a rule in such cases separate counsel must be retained for each DIP. Otherwise, there is a definite conflict of interest that runs afoul of § 327 (a). Thus, management will have independent counsel in both capacities, as DIP for Company A and DIP for Company B. This independent counsel is a fiduciary to solely the estate of the particular DIP represented. In addition, in such cases the principals should have independent counsel to advise each of them with respect to their rights, duties and obligations. However, having separate counsel for Company A only solves part of the potential problem: *i.e.*, identification of the potential preferential transfers (the grant of the security interest and payment to Company B within 1 year). It does not get the DIP to act on the advice given by counsel.

Counsel for Company A of course advises management that the security interest and \$250,000 are both preferential transfers and management is required to bring an action to avoid them. Assume that management, being forced to make a Solomonesque decision, in the exercise of its business judgment determines in good faith on overall balance that: (1) reorganization of Company B will be seriously jeopardized in the event Company A avoids the preferential transfers; and (2) although the dividend to be paid to the general unsecured creditors of Company A will be reduced if the preferential transfers are not avoided, it may still be successfully reorganized. Company A management, therefore, declines to bring an adversary action to avoid the transfers.

If counsel for Company A follows the "advice" of the Ninth Circuit in *In re Perez*, 30 F3d 1209 (CA9 1994), he or she may resign. However, this does nothing to rectify the situation and

may very well be not only inappropriate, but detrimental to Company A as well. So what is the remedy in this situation? First, as discussed in the last article, in this author's opinion, counsel for Company A has an ethical and legal responsibility to report the intransigence of Company A management to the U.S. trustee and the court (and, if there be an active Creditors' Committee, the Committee also). However, unlike Pontius Pilate, counsel may not then simply wash his or her hands of the matter; counsel, being the closest to problem should also recommend a course of action - but what course of action?

If there is an active Creditors' Committee for Company A, the Committee must, of necessity, be consulted - the Creditors' Committee is also a fiduciary representing the creditors whose ox may be gored. If, after due consultation and deliberation, the consensus of the U.S. trustee and the Creditors' Committee is that the preferential transfer should be avoided (or, perhaps alternatively, the obligation owed to Company B be subordinated), the Creditors' Committee may petition the court for leave to bring the avoidance action by reason of the failure of the DIP to so do. [*Matter of Pointer*, 952 F2d 52 (CA5 1992)] Because the transgression is neither pervasive nor indicative that management of Company A is incapable of otherwise carrying out its fiduciary obligations as a DIP, this solves the conflict problem with minimal

disruption of the rehabilitation/reorganization efforts of Company A. The problem is now thrown to the court to decide, upon all the facts and taking into due consideration the impact on both estates, whether to avoid the transfers. Because the Creditors' Committee for Company B has a right to intervene in the avoidance action, all interested parties will be before the court and the court as well advised of all the facts as circumstances as is humanly possible.

What if there is no active Creditors' Committee for Company A or the Creditors' Committee itself has an inherent conflict being made up of creditors who are creditors of both companies? In that case the U.S. trustee may petition the court for authorization to appoint an independent chapter 11 trustee. [*In re Tel-Net Hawaii, Inc.*, 105 B.R. 594 (Bank.Hawaii 1989)] However, unless the U.S. trustee appoints itself as trustee after being authorized by the court to appoint a chapter 11 trustee, the U.S. trustee has no apparent standing to bring the avoidance action under § 547.

As a practical matter, the situation in which the Creditors' Committee has an inherent conflict should rarely arise. First, the U.S. trustee in such situations makes a substantial effort to avoid appointing "common" creditors to the respective Committees. Second, where that is not practicable or necessarily in the best interests of the unsecured creditors, substantive consolidation of the estates is probably indicated. [Substantive consolidation was discussed in Bankruptcy Briefs — Joint Administration and Consolidation, 18 *Alaska Bar Rag* No. 2, page 12 (Mar/Apr 1994)]

## FREE AUDIO TAPE

### for Estate Planning Attorneys...

- ✓ If you want a steady stream of new, qualified clients coming in—so you can relax knowing you'll have consistent cash flow every month...
- ✓ If you want to work fewer hours—so you can spend more time with your friends & family...
- ✓ If you want a systematized way to produce documents and stay on top of the law—so you can feel in control of your life and your business...
- ✓ If you want to follow a proven, step-by-step practice-building system that's *guaranteed* to increase your income and the quality of your life...

You'll want to find out more about membership in the **American Academy of Estate Planning Attorneys** and the "Executive Training Program" which is starting soon.

Call Toll Free  
**1-800-846-1555**

For a "free information package & audio tape"

 **AMERICAN  
ACADEMY**  
of  
Estate Planning Attorneys

**Call Now...Because Membership is Limited...**

The Academy limits the number of members in each geographic area. Call now to find out if membership in your area is available.

**Have you filed your  
Rule 64 Affidavit?**

**Affidavit Due July 15, 1996**

# Solid Foundations

## Seven applicants pursue IOLTA funds

The Alaska Bar Foundation received seven applications for 1996-97 IOLTA grants. The applicants are: Alaska Pro Bono Program; Anchorage Youth Court; CASAs for Children; Catholic Social Services' Immigration Refugee Services; Alaska Justice Research Center; Alaska Women's Resource Center; and Alaska Department of Law History Project. A total funding of \$245,000 is requested of the Foundation.

The Alaska Pro Bono Program requested \$180,000 to support all aspects of the program in order that it may continue to achieve the goal of assisting over 1,200 economically dis-



Mary Hughes

advantaged statewide. Anchorage Youth Court applied for \$3,000 to perform a curriculum revision primarily necessitated by the program's growth and participation in "The Making a Difference Program." A grant of \$4,000 was requested by CASAs for Children to continue to fulfill the emergency needs and other direct services the program currently provides to the children for which it advocates in Anchorage, Kenai and the Matanuska-Susitna Valley.

Catholic Social Services' Immigration Refugee Services, the only service available in Southcentral Alaska for those new to the United States or

who find themselves in conflict with the Immigration and Naturalization Service, applied for \$20,400 to assist in the transition of its program director. The Alaska Justice Resource Center requested \$20,000 to support the development of a legal education program as a component of its existing data basis and to provide Alaskans computer access to Alaska law. A grant of \$5,000 was requested by the Alaska Women's Resource Center to partially support and maintain the position of Information and Referral Counselor, a coordinator of attorney referral and volunteer attorneys. The Alaska Department of Law History Project is hopeful of documenting the role of the Office of Attorney General, especially since Statehood, in the state government process. The project applied for IOLTA funds of \$12,610.

The Trustees of the Foundation will meet in May to award IOLTA grants which may serve two purposes: the provisioning of legal services to the disadvantaged and the administration of justice. IOLTA funds of approximately \$180,000 are available to distribute.

## Attorneys tackle lack of legal services

By KAREN HUNT

Recent news reports have explained the crisis in delivery of legal services to the indigent. The refusal of both Congress and the Alaska Legislature to fund legal services for the indigent has decimated this service in Alaska.

See full text of the resolution to come before the ABA Convention on page 10

Alaskan attorneys heard the wake-up call. At their annual meeting in May, they will vote on a resolution holding that "every lawyer has a basic responsibility to provide public

service to indigent persons, as lawyers alone possess the skills, education, and license to provide legal services."

This resolution should trigger healthy discussion about the nature and scope of a licensed attorney's responsibility to provide legal services.

This discussion is imperative because attorneys occupy a privileged role in the third branch of government: the court system. Of the three branches of government, the court system is the only one where meaningful access requires paying someone else. The court rules and procedures have evolved into a "full employment" act for attorneys.

Unfortunately, today, going into

court without an attorney is dangerous. The court system is not user-friendly. The rules are hard to find, are written in legalese, and require detailed compliance. Some legal training is necessary just to figure out how they are organized. Very few legal forms are provided which are self-explanatory or self-executing. No court employee can explain the process or time a case might take because that would be giving legal advice. Entry into the system is a mystery and to many people exiting the system is a miracle.

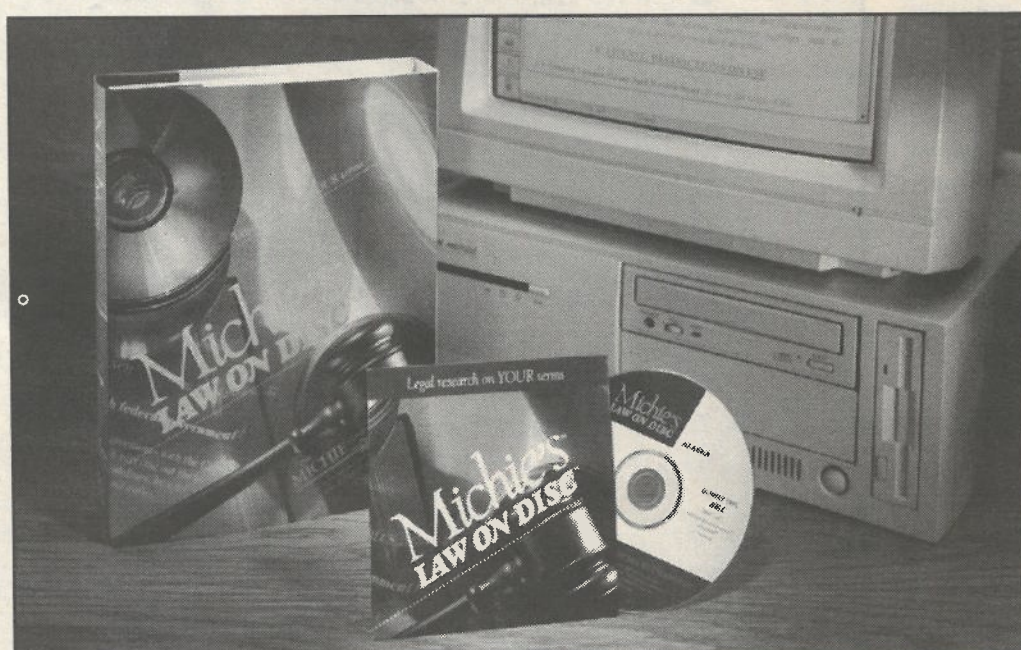
There is no conspiracy. The court system did not intend to exclude non-lawyers. The vast number of laws, regulations and ordinances required to run modern society have contrib-

uted to the complexity of the court system. The court is a highly efficient system that costs society—especially in Alaska—remarkably little to run. However, it is also a system in danger of becoming the tool of only the very rich and the other branches and levels of government. Citizens who lack substantial financial resources are excluded. The resolution recognizes that attorneys are responsible for guaranteeing meaningful access to the court for all citizens. Once this responsibility is accepted, the total system may be scrutinized. Smart attorneys will vote for it. Wise attorneys know it should be just the beginning.

— REPRINTED WITH PERMISSION OF THE ANCHORAGE BAR ASSOCIATION

## The most comprehensive coverage of Alaska's primary law! Michie's Alaska Law on Disc™

Prepare for trial with increased speed and efficiency with this powerful tool for the Alaska attorney.  
Rather than wading through stacks of publications, you can instantly access:



Decisions of the Alaska Supreme Court  
since December 1959

Decisions of the Alaska Court of Appeals  
since November 1980

Alaska Statutes Annotated

Alaska Administrative Code

The Constitution of the State of Alaska

The United States Constitution

Direct Links between cases and statute annotations

Optional Online Connection to the LEXIS service for  
the most recent court decisions

Call today for prices and more information

800-562-1215

MICHIE

## In the Kingdom of Juneau

## Royal Bar Association of Juneau



Minutes, April 5, 1996

Greetings and Salutations Friends and Colleagues:

**HEY PEOPLE ... LISTEN UP!!!**

Alaska Legal Services Corporation is going down, down, down (You don't need a weatherman to know which

*"It's a tragedy that certain elements in Congress and the state legislature fail to place sufficient value on the current, extremely successful system for providing this protection of the poor. And it's ironic that this program, making the most efficient use of government money by attracting such bright people at such low salaries, dedicated to the principle of equal access to the justice system, should be losing that funding."*

—Art Peterson

## Cutbacks threaten Pro Bono

continued from page 1

state in the country. Eames estimates that 8,000 hours of legal services, at a value of more than \$1 million, have been donated annually over the last 8 years. Now, however, Eames believes the program faces a potential doubling of its caseload, posing new attorney commitment, administrative, and funding challenges.

One proposed solution, to help encourage bar members to provide greater commitment to pro bono legal services, is a revision of the Alaska Rule of Professional Conduct 6.1. The proposed rule would call upon bar members to "aspire to render 50 hours of public interest legal services per year." The rule would explicitly apply not only to public and private sector attorneys but to the judiciary as well. Under its terms, attorneys precluded from direct representation of clients could provide assistance through teaching, clinics, mediation and similar activities. Rule 6.1 is to be considered at the Alaska Bar Convention in Anchorage this month. (See related article by Karen Hunt, p. 18)

Even with greater commitment from the bar, an increased caseload will stretch pro bono administrative resources such as case screening and monitoring. One result may be less assurance to counsel that cases will involve limited commitments of time or will be as fully reviewed for "quality control." The short term situation is further complicated by new federal restrictions upon the Legal Services caseload which must be implemented. These include prohibitions upon class actions, administrative rule-making, representation of prisoners, seeking of attorney's fees, and bringing of constitutional challenges to welfare reform programs.

Another possible answer is new funding sources for the Pro Bono Program. Obviously, increased donations from individuals and private law firms would help fill the gap. So would an increased willingness of private counsel who can afford to do so to pick up some of the out-of-pocket costs of litigation. Bar committees are studying other possible funding approaches, including expanded IOLTA

way the wind blows) and it is not enough to click your tongue and feel bad for your friends who won't have a job very soon or to pity the indigent population that ALSC serves. (Been down so very damn long that it looks like up to me.) We must take action now.

Art Peterson gave us a report of the ALSC Board's efforts to continue to provide services while meeting the brand new \$300,000 budget cut (If you take a walk, I'll tax your feet.)

Ann Gifford brought Keitha Kolbig, one of the efficient support staff at Faulkner Banfield. Ed Hine stopped in to introduce his new research text/handbook for paralegals.

With no business on the floor, we spent most of the time listening to Art tell the sad tale.

The number-crunchers started playing around again and this time they reformulated the allocations from the National Legal Services Corporation which resulted in Alaska taking a 52% cut as compared to the

national average cut of 22%. The downsizing will include:

1. eliminating seven hours per week from the statewide attorney position;
2. eliminating 15 hours from an administrative position;
3. eliminating 15 hours from a Bethel position;
4. delaying hiring a replacement attorney in Fairbanks until September;
5. establishing a reduction in the Anchorage lease;
6. reducing library subscriptions;
7. closing the Nome office at the end of April;
8. eliminating one position in Juneau (Kay Montes will be leaving soon); and
9. establishing a system of mandatory furloughs of employees over the year.

The only reason the Ketchikan office is still up and running is that the city of Ketchikan granted \$10,000 for that purpose. That is enough to keep the office there for four months. These cuts will save approximately \$200,000 and are not enough. More will follow.

So what can we do?

First and foremost: Contribute cash. We cannot sit on our laurels of the \$2000 donation from the (Juneau) bar association. Even just a drop in the bucket will help (spit, sweat, tears, whatever moisture you can squeeze out). The traditional request is for two hours worth of money, but even \$20-\$50 will help. Join me in sending a small donation to ALSC C/O Robert Hickerson, Executive Director, 1016 West Sixth Avenue, Suite 200, Anchorage 99501.

The second action to take is to contact everyone you know in the Ketchikan and Sitka Bar Associations and ask them to move their bar for a donation. They don't have to meet our \$2000, but whatever comparable donation they can make will be great.

Finally, the private bar needs to step in to help provide the services that ALSC cannot. Contact Seth at Pro Bono and Brent at O.P.A. and volunteer to take a case. Do not wait for them to call you. Now is the time.

—Mie Chinzi

**The Board of Directors and staff of Alaska Legal Services Corporation would like to thank the following contributors for their generous contributions to ALSC's Fourth Annual Fundraising Drive. The gifts received from these individuals and law firms, combined with several Memorial bequests, totaled \$38,000!**

## INDIVIDUALS

Andrews, Elaine M.	Harren, Richard L.	Peterson, Arthur H.
Aschenbrenner, Lawrence	Hartle, John W.	Pospisil, Blythe Marston
Bamberger, Joyce	Helm, Richard	Rader, John L.
Beecher, Linda R.	Hickerson, Elizabeth	Razo, Gregory
Bockmon, Julia B.	Hickerson, Robert	Reep, Janine J.
Borey, Donald E.	Hudson, Roger L.	Regan, Dickerson
Brelsford, Gregg B.	Hutchings, Ann	Ripley, Justin J.
Brennan, Elizabeth	Hutchins, James	Roberson, Holly G.
Briggs, Robert	Jackson, James R.	Rozell, William B.
Brink, Barbara	James, Joyce	Rubini, John
Bush, Judith K.	Jessee, Jeffrey L.	Sanders, Vance
Byrnes, Timothy R.	Johnson, Linda J.	Sansone, Marie
Carlson, Victor D.	Jorgensen, Eric	Sauer, Jane
Cerro, Linda M.	June, Marc W.	Saupe A. William
Chandler, Brooks	Kancewick, Mary	Saville, Sandra K.
Christianson, Warren	Katcher, Jonathon	Schaible, Grace Berg
Clover, Joan M.	Keene, Henry C. Jr.	Schmitt, Alan
Compton, Allen T.	Khalsa, Amrit K.	Simpson, Randall L.
Connolly, Cathleen	King, Rachel C.	Skilbred, Amy
Cooper, Joe	Kleinfeld, Andrew J.	Slagle, Thomas J.
Coughlin, Jennifer M.	Kleinkauf, Cecilia	Smith, Eric
Cramer, Teresa	Landau, Robert W.	Stanfill, Stan B.
Crosby, David C.	Lauterbach, Terri	Stark, Michael J.
Daniel, Carol	Leik, Jim	Stewart, Thomas B.
Daniel, Thomas	Levy, Keith B.	Stucki, Nicole D.
Eggers, Kenneth P.	Levy, Loni	Taylor, R. Scott
Felix, Sarah J.	Limon, Lynda A.	Therrien, Valerie M.
Fenerty, Dennis	Lucas, Thomas R.	Timbers, Bryan P.
Fenerty, Harriett	Maassen, Peter J.	Treinen, Charles
Fisher, James E.	May, Marilyn	Urig, Susan
Fitzpatrick, Lisa M.	McClintock, Donald W.	Van Goor, Stephen J.
Fleurant, David C.	McCready, Donna J.	Van Brocklin, Valerie
Foley, Maryann	Michalski, Peter A.	Weaver, Steven C.
Freed, Linda	Miller, Lloyd B.	Weber, Vince
Friedman, Jeff	Moody, Douglas	Whittaker, Richard
Gaguine, John	Munson, Myra M.	Willard, Donna C.
Gifford, Ann	O'Fallon, Shannon K.	Williams, D. Kevin
Gilson, Mary A.	Oechsli, Camille	Williams, Stephan H.
Groh, Clifford J., Sr.	Orlansky, Susan	Williams, Teresa E.
Groszek, Nancy J.	Owens, Shelley K.	Worchester, Mark
Hall, Stuart C.	Pegues, Rodger W.	

## LAW FIRM CONTRIBUTORS

Bogle & Gates	Kempel, Huffman & Ginder
Hoge & Lekisch	Preston Gates & Ellis
Keene & Currall	Royce & Brain

## BAR ASSOCIATIONS

Anchorage Bar Association	Juneau Bar Association
---------------------------	------------------------

## MEMORIAL BEQUESTS

Lucille Damrau	Carol Greenberg	Joseph Johnson
----------------	-----------------	----------------

# Budget cutbacks, and all that

continued from page 1

She has seen the cuts coming for so long that when the bubble in Nome finally popped, she wasn't surprised.

"But I just feel sad," said Thomas. "It's sad for the sake of the people who are not going to be able to get through to a lawyer as quickly as they've been able to do, and perhaps not at all."

For 13 years they've been able to get through to Thomas, who became interested in environmental law after a particularly interesting class in high school back home in New England. After graduating from prestigious Wesleyan University in Massachusetts, she was accepted to an even more prestigious school—Harvard University Law School.

During internships in Washington D.C., she decided the abstract nature of legal activism in the nation's capital wasn't for her, since she couldn't see the people she was fighting for.

After a clerkship with Alaska Supreme Court Justice Jay Rabinowitz, she offered her services to ALSC as a free intern. Of course they accepted, and she has been in Nome ever since, helping people.

"It's what I've always wanted to do," Thomas said.

Over those years, Thomas remembered some victories and even an early defeat. One of the most memorable concerned two sisters whose parents died when they were very young. The state had put them in a foster home.

"The case was pretty intense," recalled Thomas, "but these two little girls—their future hung in the balance."

"The state originally claimed they had to put the girls with this family because there were no relatives willing or able to take these children. With some pressure—a lot of pressure—from us, they went out and looked and found relatives in a village who could take the children." How did it turn out? "Now, as far as I know, the children are grown up and doing well there. I think that (our work) probably made a big difference. It was an uphill battle, for me. It's not easy fighting the state like that."

Thomas also worked with an elderly couple whose 1948 purchase of property in Nome never included the

deed. They needed it to take advantage of a free housing program by Nome Eskimo Community. After lots of work, however, Thomas scored a title to the property—after the program ran out of money. Years later, however, Kawerak restarted the program, and now the couple is living in their new house, thanks to the work of a Harvard lawyer they normally couldn't have afforded.

Did she ever lose?

For the quick-talking Thomas, that question gives her pause. Sitting cross legged in the chair behind her beat-up desk, she looks out the window from her office into the bright sunshine.

"Yes, very early on," she says finally. "It was an eviction case, and it was my first contested hearing. The judge decided to make my clients move out of their house. They had breached the terms of their lease agreement, and they had to move."

"My client may have ended up crying, and then I started crying," says Thomas, who laughs now at the memory.

"I think the bottom line was that the judge felt very bad about having to make these people move out of their apartment, but he was probably right on the law," she said. "So that was one where I got absolutely nothing."

For Thomas, who listens to classical music from a boombox on the floor and wears blue jeans to work, winning isn't what it's all about.

"I think more than anything the thing that stays with me are the people I have met doing this," says Thomas. "It was very rewarding."

As far as layoffs go, being jobless in Nome at the beginning of warmer weather and 24-hour daylight isn't so bad. After a summer of "having fun" at their home in Banner Creek, Thomas and her husband Conner (also a Nome attorney and a recent Iditarod finisher) plan to take a long vacation to Namibia and the Mediterranean.

When she gets back, she says hopefully, perhaps a newly elected group of lawmakers will find a way to increase funding for Alaska Legal Services Corporation, as unlikely as that seems.

Budget cutbacks and all that.

— COURTESY, THE NOME NUGGET.



Margaret Thomas talks with a Nome Nugget reporter as she packs up her office in April. Photo by Barry Jones

## Bar People

continued from page 15

Smith was a staff attorney for the Environmental Protection Agency, moving to Alaska in 1982 as executive director of Trustees for Alaska. In 1986 he went into private law practice, primarily representing non-profit agencies, Native villages, and environmental groups.

— OFFICE OF THE GOVERNOR, APR. 18

Juneau attorney **Art Peterson** has been re-elected by the attorneys in Southeast Alaska to his seventh three-year term on the board of direc-



Art Peterson

tors of Alaska Legal Services Corporation. He has also served four years as an alternate member of the board.

**David H. Thorsness** has been named chairperson of the Administration of Civil Justice Committee of the 20,000-member Defense Research Institute (DRI), the nation's largest association of civil litigation defense lawyers. A senior partner with the Anchorage-based law firm of Hughes Thorsness Gantz Powell & Brundin, Thorsness heads the firm's product liability practice.



David H. Thorsness

He is a member of the International Association of Defense Counsel and Federation of Insurance and Corporate Counsel and a Fellow of the American College of Trial Lawyers and the International Society of Barristers.

Most of DRI's members are attorneys in private practice who defend corporations, associations, insurance companies, government bodies and individuals in damage suits and other civil litigation.

## CORRECTION

Sarah Felix's name was incorrectly spelled on page 11 of the March Bar Rag.

**Depositions: Technique, Strategy & Control**  
Thursday, June 13, 1996  
9:00 a.m. - 3:15 p.m.  
Hotel Captain Cook, Anchorage

**Faculty:** Paul M. Lisnek, J.D., Ph.D.

### Topics:

- Getting the Case Underway
- Preparing to Depose: Is Your Client Ready?
- Deposing the Lay Witness: Direction, Focus & Success
- Strategies, Techniques & Control
- Ethical Considerations in Deposition Practice

Here's what Alaska lawyers who attended his 1994 "Jury Selection" CLE have to say about Paul Lisnek:

"Dynamic speaker -- very much in control and intellectually stimulating."

"Entertaining and informative -- let's bring him back soon!"

"Thanks for the excellent day. I traveled from Kodiak and it was worth it."

"Very bright, knowledgeable, witty -- he held my attention."

Dr. Lisnek, a trial lawyer and litigation consultant, recognizes that the skills necessary for effective deposition taking are not taught in law school. He steps inside the minds of the deponents and lawyers by explaining how people process information. Dr. Lisnek covers the basics, tackles the conflicts and teaches control. **By seminar's end, you'll understand depositions as the building block for a successful trial, and you'll know how to manage the complex nature of the interaction.**

Registration: \$115

CLE credits: 5.0

Call/fax the Alaska Bar office today to register: Phone: 907-272-7469/Fax: 907-272-2932

