The Alaska BAR RAG

VOLUME 21, NO. 6 | *Dignitas, semper dignitas* | $2.00 | NOVEMBER-DECEMBER, 1997

Inside:

Stewart joins Court of Appeals

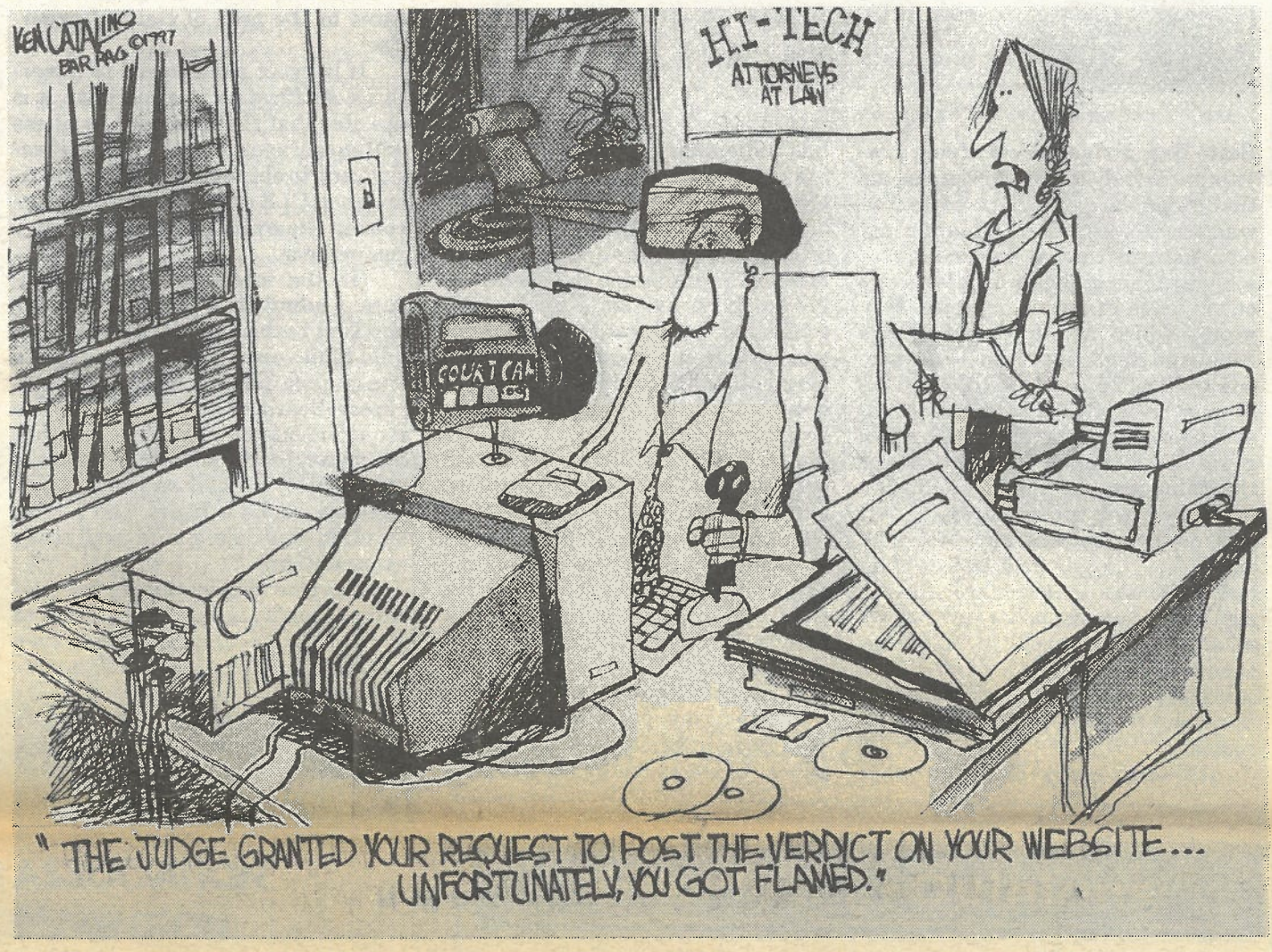
By Peter Maassen

On the afternoon of Friday, September 26, 1997, David C. Stewart was sworn in as a Judge of the Alaska Court of Appeals, replacing Judge (now Supreme Court Justice) Alex Bryner. The investiture marks a return to the bench for the 49-year-old Stewart, who served as a district court judge in Anchorage from 1984-90. Stewart had been in private practice in Anchorage for the past several years, but he has also served as an assistant district attorney in Fairbanks, Nome, and Anchorage; an assistant public defender in Fairbanks; and a special prosecutor in Anchorage.

Justice Warren Matthews presided over the swearing-in. In an undoubtedly tardy attempt to mold Stewart's judicial philosophy, Matthews likened the subordinate Court of Appeals to a canoe in the hands of experienced paddlers, with the decisions of the Supreme Court playing the role of rocks in the river's flow. Most often, according to Matthews, the canoe passes over the rocks without even bumping them. Other times, if made to acknowledge a particular rock's existence, the canoe will find a way to pass around it. One way or another, the canoe's destination never changes.

Stewart's selection was lauded by a number of colleagues, including Judges Robert Coats, Thomas Jahnke, and Natalie Finn; Fairbanks D.A. Harry Davis; Assistant P.D. Margie Mock; Stewart's former law partner, Dan Hickey; Ray Brown, representing the Alaska Bar Association's Board of Governors; and Ken Legacki, representing the Anchorage Bar Association. Speakers from both sides of the criminal bar were short on humorous anecdotes but praised Stewart's civility, compassion, and professionalism, attributes which might come in handier in the years ahead. There was also unanimous assurance that Stewart will make an excellent judge once again, and that he will probably not regret never having to make another run to Costco for his firm's soda ration (what are law clerks for?) or to spend another winter in a snowmachine shed in Kotzebue (ask Margie Mock).

Judge Stewart was robed by his son Elliot and his brother Don. He thanked his family, his supporters, his colleagues, and his adversaries, and promised that he would not forget where he came from.



Memorable visit

By Barbara Hood

Justice Sandra Day O'Connor, the first woman appointed to the U.S. Supreme Court, celebrated the 16th anniversary of her appointment while visiting Anchorage on Sept. 22.

In Alaska to attend a meeting of the American Judges' Association, Justice O'Connor was honored at a reception sponsored by the Anchorage Bar Association, where she spent several hours meeting members of the bar and their families.

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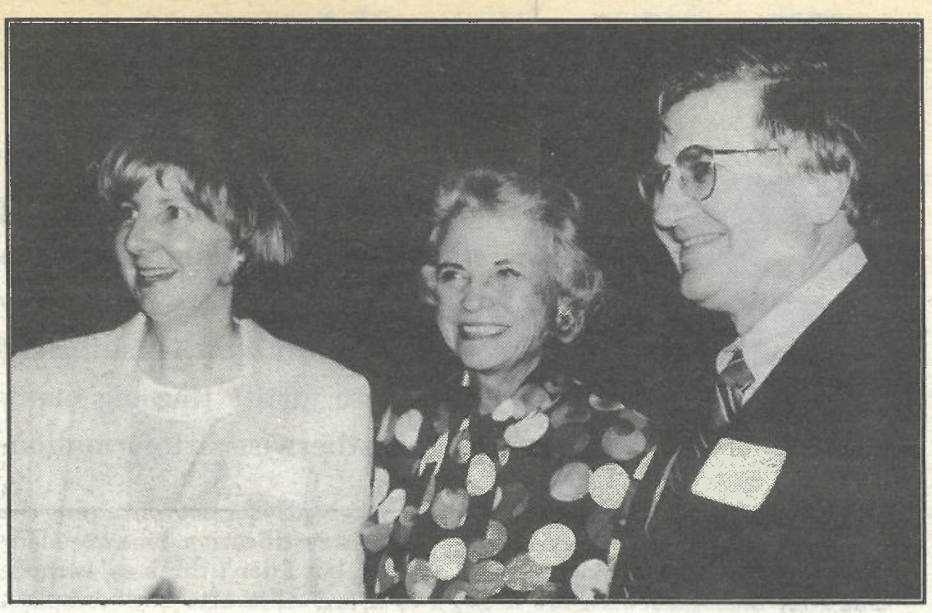
When asked during her remarks if she had any words of wisdom for women in the law, she first replied, "I am so thrilled that in my lifetime I've seen the changes I've seen."

She then recounted how she had worried about the future of her career after taking a five-year break from practicing law when her children were young. Over the years, she faced the strain of balancing professional demands with the needs of family common to many women in the profession. But she encouraged women not to lose heart.

"Things have a way of working out," she said to the laughter of the crowd.



Justice Dana Fabe, of the Alaska Supreme Court (l), and Chief Judge James Singleton, U.S. District Court for Alaska (r), enjoy a moment with Justice Sandra Day O'Connor during a September reception in her honor. Justice Fabe, the first women appointed to the Alaska Supreme Court, introduced Justice O'Connor to the overflowing crowd. Justice Fabe and Judge Singleton are co-chairs of the Alaska Joint Federal-State Courts Gender Equality Task Force.

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President's Column

Lawyer certification and member response

☐ David H. Bundy

At the most recent Board meeting we again considered the issue of lawyer certification. This was first proposed last Spring when the Board decided to adopt a program currently in effect in Idaho, under which the Idaho State Bar, instead of certifying lawyers as specialists, certifies programs that certify lawyers. A program that wants to be recognized in Idaho must demonstrate that it has adequate standards for judging an attorney's competence in a specific field. Programs which are approved by the American Bar Association have a presumption of approval in Idaho. This seemed to the Board to be a practical way to implement a certification program in Alaska, as our bar is about the same size as Idaho's, and, like Idaho, we lack the resources to test and qualify lawyers as specialists ourselves. Larger bars can do this, but for Alaska that would involve a significant increase in bar staff (which means dues) as well as volunteer time from attorneys who would be asked to prepare and grade examinations, and check references and experience.

Although every Board member has individual reasons for supporting (or opposing in some cases) the idea of a specialist certification, I believe that it comes down to (a) consumer protection and (b) advancement of the profession. Lawyers have always been available to the well-connected and prosperous. (I am currently in the middle of the recent biography of Daniel Webster, and it is truly incredible, what he, as perhaps the most influential lawyer of his day, was allowed to do for his prominent clients, generally without blushing.) But for the rest of society, choosing a lawyer has always been a chancy proposition, relying on recommendations from friends and relatives, or simply random selection. Lawyer advertising, which many in our profession heartily despise, has at least made finding a lawyer easier, though whether it has made the process more informed can well be debated. Lawyers are free to advertise that they "concentrate in" or that they "practice is limited to" personal injury, family law, or whatever, by which they presumably mean to imply expertise in those areas, expertise which they should, but (we all know) occasionally do not actually possess to the extent the advertising suggests. A certification in a particular field provides some assurance that the attorney does actually have the experience and qualifications to handle with some competence the cases in the area of claimed expertise.

If lawyers are allowed to advertise a certification in a specialty, it is possible that the increased business will encourage more to seek certification, and to obtain the needed experience and CLE credits to qualify, thus raising the overall level of attorney competence.

(In the interests of full disclosure, I admit that a couple of years ago Tom Yerbich, Jan Ostrovsky and I did achieve certification in business bankruptcy from the American Bankruptcy Board of Certification. The requirements included several years of practice in the field in all aspects of the subject, as well as peer recommendations, CLE hours, and a combination multiple choice and essay examination.)

Lawyers in this country are presumed (legally at least) competent to practice law in any area once they pass the bar exam and are sworn in. We have to admit this is a polite fiction. I assisted at the recent admission ceremony for this summer's crop, and was reminded how little I actually knew about practicing law when I was admitted, and (the process having changed a little) how little these new admittees probably know either. Yet they are allowed to walk into court tomorrow and make decisions upon which the liberty or fortune of their clients will depend. Agencies and law firms know how risky this is, and do not allow unsupervised practice until a new attorney has acquired the practical skills you can't learn in the classroom and the confidence to manage independently. The clients of large law departments and law firms can expect that the institution they are working through will provide competent representation, but most attorneys practice alone or in small firms and the idea that admission to the bar guarantees expertise in any area of the law is little comfort when it turns out not to be reality.

I have recently had the opportunity to undergo more than my fair share of medical treatment, and whatever the downside of that experience, I did find it reassuring that the doctors I dealt with not only appeared knowledgeable, they had impressive parchments stating that they had post-graduate training through specialized research and fellowship programs, and had passed the board certification examinations in their chosen specialties. Whatever its faults, the medical profession has far surpassed the lawyers in developing systems under which

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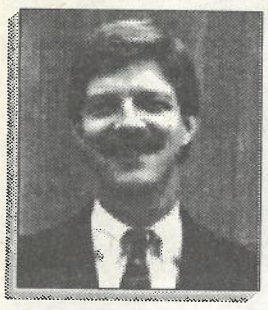
Editor's Column

Why this space is empty

☐ Peter Maassen



A number of you may be wondering why no editor's column appears in this issue. There are essentially three reasons, no one of which is sufficient in and of itself to justify this big blank space in what is otherwise an information-packed newspaper. Collectively, however, I hope they explain why I just haven't had the time to write.

The first has to do with the new certification that has to accompany any voluntary dismissal under Civil Rule 41, by which attorneys are required to attest that the settlement information required by AS 09.68.130 has been provided to the Alaska Judicial Council. The Council's form, which I'm sure we'll get used to eventually (we got used to Fast-Track, didn't we?), looks like it should have come with a pair of dice and colorful plastic game pieces. It requires us to act as captive data collectors for the Legislative majority by furnishing information which is apparently hoped to support, *ex post facto*, the Legislature's past actions on Tort Reform.

The most surprising thing about the Rule change is that the court system is taking it seriously. I confess (I'm blushing here) that I've had a few stipulations for dismissal rejected recently for not containing the required certification. I may be alone in this, but I don't think so, because I've heard other attorneys complain about it too. Some have suggested filling in every blank with the words "confidential." Still others have suggested that we stop voluntarily dismissing cases. (Think about it: You've got your settlement agreement and release, so what do you care if it lingers forever?) Others suggest that we bill the Legislature directly for the extra time needed to dismiss cases (fat chance of collecting on that one).

My own suggestion is that we all, in open cabal, charge our clients a flat $2500 form-filling-out fee for any forms required for political rather than litigation purposes. That should have lots of people complaining to their State representatives in no time at all. I will lead the way on this. But remember, it will only work if you follow.

The second reason there's no editor's column this month also has to do with paperwork, though of the client-imposed variety. Like many of you, I represent some institutional clients who have turned their attorneys' billings over to "bill review" services that guarantee to reduce our horrendous, bilking overcharges by probing every time entry for weak spots. We now spend an average of an hour a day buttressing and resubmitting previously rejected charges. The irony is, we have to call that hour something else if we expect to get paid for it. We call it "Fill out forms for Judicial Council to satisfy Legislative requirements—flat fee $2500." Out-of-State clients don't know what we're talking about and don't dare challenge a "legislative requirement." As a firm, we're gradually edging into the black.

Finally, the most important reason there's no editor's column this month is that I quit the editor's post a few days ago. What with the new Rule 41 and those pesky bill reviewers, I just don't have the time anymore. My resignation was met with a storm of protest — well, okay, not a "storm." Well, okay, not a "protest" either.

Well, okay, I didn't really resign. But if I had, then I could've written the farewell column that I had all mapped out in my head, and this space wouldn't be empty. So the next time you complain about the editor's abject failure to contribute to rational dialogue on issues of the day, think about this: Would you rather have a blank spot in the paper?

Don't answer that.

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).

Bar Letters

Dear "Craving Authority"...

After reading your letter in the recent issue of the *Alaska Bar Rag*, describing the sovereign authority for a Canadian summons, I could not help humming a few bars of "Oh, Canada." However, have you considered the following old, but still effective, law in our country, which derives from a much greater sovereign authority?

Enacted in 1777, the General Statutes of North Carolina, General Provisions, Article I, Section 11-1 provides for the taking of oaths as follows:

"Whereas, lawful oaths for discovery of truth and establishing right are necessary and highly conducive to the important end of good government, and being most solemn appeals to Almighty God, as the omniscient witness of truth and the just and omnipotent avenger of falsehood, and whereas, lawful affirmations for the discovery of truth and establishing the right are necessary and highly conducive to the important end of good government, therefore, such oaths and affirmations ought to be taken and administered with the utmost solemnity."

Interpreting the provision, the North Carolina Supreme Court has held that it requires two guarantees of the truth of what a witness is about to state. First that he must be in fear of punishment by the laws of men. And second, that he must also be in fear of punishment by the laws of God, if he states what is false. See *Shaw v. Moore, 49 N.C. 25 (1856).*

As indicated, the sovereign referred to in the North Carolina law is all-powerful, omnipotent, and omniscient. But, in contrast to the Canadian sovereign, this authority is neither aloof nor does it hold a jewel-encrusted mace.

Keep craving!

—Pelegrinus

We need 12th Circuit

I am writing to send you a copy of an opinion-editorial page column that I wrote and the Christian Science Monitor published October 14 concerning the need for a breakup in the Ninth Circuit of the federal Court of Appeals. (See article this page)

I believe we are making good progress on this issue, and I hope that by this time next year a new 12th Circuit has a real chance of being a reality. I would be interested in your views on any better arguments we could be making to forward this proposal, or any other comments you might wish to make.

Best wishes.

Sincerely
Sen. Frank H. Murkowski,
Oct. 29, 1997

President's Column

Continued from page 2

consumers can believe that a claimed specialist will actually know what he or she professes to know. Our clients deal with us on matters which are often as important as their health, and they need to have the same degree of confidence in selection of an attorney as they would in choosing a physician.

The publication of the Board's initial specialization rule attracted no member reaction, even though it contained the disclaimer requirement, under which an attorney who advertised a field of practice but was not certified as a specialist under the rule was required to so state. We had anticipated this was going to get a reaction and were surprised when it did not. Perhaps this was because the rule was published in the summer and without fanfare. Ordinarily, when we get no comments on a rule we simply send it to the Supreme Court for their consideration. (Bar Rules, though recommended by the Board, are adopted by the Court, so to implement any rule there are only five votes that really count.) However, when we met in September we realized that something had misfired. There was no way something so potentially controversial should have gone by the entire membership without comment. So we decided to publish the rule with greater prominence and with the point-counterpoint articles by two board members.

This had the desired effect. Our executive director, who has held her post through many administrations, advised me that she could not recall a rule proposal that provoked more of a reaction. Most of the comments dealt with the disclaimer provision, and complained that it was unfair, especially in a state where it is difficult for an attorney in a small community to meet certification requirements, to require a disclaimer with the implication perhaps being that the lawyer lacked expertise, even though the proper inference should be that the claimed expertise had not been tested under the rules of the Alaska Bar. In any event, the Board considered the comments and again debated the rule. We have tabled it until the January meeting, so that the rule and the procedures for certifying programs can be considered together. If the sentiments expressed in October hold together, I expect the Board will recommend the rule, without the disclaimer, to the Supreme Court. What the Court will do with it, and when, remains to be seen.

I want to thank all of you who took the time to comment, even the person who did so anonymously out of fear of some unnamed retaliation (like we're going after someone's license because they disagree with us??) I am pleased that the Board was able to have a dialogue with the membership on this important subject and I hope that this can continue. Your reaction definitely affected the Board's approach. As I said, we are not done with this subject, so if there is more anyone wants to say, have at it. Assume we do send a proposal to the Court, I will ask the Board to include all the comments we received as part of the submission.

Just in case that was not controversial enough, I expect the Board will soon consider one of the several malpractice insurance ideas that was contained in the advisory poll of the membership a few years ago: the option under consideration is that attorneys who are not insured will be required to so advise their clients. From the poll response I'm sure we won't need to make sure you are awake before we ask for comments on this idea!

FROM ARCTIC TO MEXICO, NINTH CIRCUIT TOO BIG TO DO JUSTICE

By Frank H. Murkowski

"An unmanageable administrative monstrosity," is how former Chief Justice Warren E. Burger described the state of the Ninth Circuit US Court of Appeals. His characterization is understated.

Justice isn't swift and not always served in the Ninth Circuit.

By far the largest of the 13 circuits, it encompasses nine states and stretches from the Arctic Circle to the Mexican border and across the International Dateline. The only factor more disturbing than proportions of the circuit is the magnitude of its ever-expanding docket. It serves a population of more than 49 million, almost 60 percent more than the next largest circuit.

Former Chief Judge Wallace of the Ninth Circuit stated it took four months longer to complete an appeal in the Ninth compared with the national median time.

The massive size of the circuit means judges have a hard time keeping abreast of legal developments within their jurisdiction. The large number of judges scattered over a large area inevitably results in difficulty in reaching consistent circuit decisions. U.S. Supreme Court Justice Anthony M. Kennedy stated during a recent congressional hearing that the Ninth Circuit is "too large to have the discipline and control that's necessary for an effective court."

This judicial inconsistency has led to an astounding reversal rate of Ninth Circuit decisions by the U.S. Supreme Court —19 of the 20 cases it heard from the Ninth Circuit last session were reversed.

The circuit is simply too big. Ninth Circuit Judge Diramuid O'Scannlain said: "An appellate court must function as a unified body, and it must speak with a unified voice. It must maintain and shape a coherent body of law... In short, bigger is not better."

Another Ninth Circuit judge, Andrew Kleinfeld, agreed: "With so many judges on the Ninth Circuit and so many cases, there is no way a judge can read all other judges' opinions ... it's an impossibility."

The concept of dividing the Ninth Circuit has been studied, debated, and analyzed since before World War II. It's time for action.

Those who oppose legislation to bifurcate the Ninth Circuit contend what's needed is more federal dollars for more federal judges. But as early as 1954, Supreme Court Justice Felix Frankfurter warned that the courts' growing business could not "be met by a steady increase in the number of federal judges" because this increase was "bound to depreciate the quality of the federal judiciary and thereby adversely affect the whole system."

The uniqueness of the Northwest, and in particular, Alaska, can't be overstated. An effective appellate process demands mastery of state law and state issues relative to the geographic land mass, population and native cultures unique to a region.

A division of the Ninth Circuit will enable judges and lawyers to master a more manageable and predictable universe of relevant case law. And it would honor Congress' original intent in establishing appellate court boundaries that respect and reflect a regional identity. For example, the East Coast, alone, has five federal circuits.

In spite of efforts to modernize the administration of the Ninth Circuit, its size works against the purpose of its creation: the uniform, coherent and efficient development and application of federal law in the region.

No one court can effectively exercise its power in such a large area.

Legislation dividing the Ninth Circuit will create a regional commonality that will lead to greater uniformity and consistency in the development of federal law, and will ultimately strengthen the constitutional guarantee of justice to all.

Frank H. Murkowski is a Republican senator from Alaska.

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TO GIVE AWAY

ALSC President's Report

Whose responsibility is it, anyway?

Arthur H. Peterson

The representative for all Alaska, Don Young, apparently does not think that it is his or Congress' responsibility. And some lawyers and some judges don't think it's theirs. I'm talking about responsibility for maintaining a legal system that assures access to that system regardless of a person's ability to pay for a lawyer. The buzzword (or "buzzphrase") is "equal access to justice."

On September 25th, Rep. Young voted *against* a floor amendment in the U. S. House of Representatives that raised the Appropriations Committee's recommended $141 million appropriation to the Legal Services Corporation to $250 million. President Clinton had requested $340 million, and the Senate had already passed a bill containing $300 million for LSC. Don was given information explaining that this appropriation meant a lot to the poor people of Alaska. To this date (November 5, 1997), he has not responded. (He has supported an appropriation for ALSC's work on allotments, however.)

CONGRESS HAS NOT ONLY DRASTICALLY CUT THE SUPPLY OF FEDERAL MONEY, IT HAS ALSO PROHIBITED US FROM RELYING ON THIS OTHER SOURCE OF SUPPORT!

The vote in the House was 246 in favor and 176 opposed to the increase. Forty-five Republicans joined 200 Democrats and the one Independent to adopt the amendment to increase the LSC appropriation. As of this writing, the bill is in conference committee to work out the differences between the Senate and House versions.

It appears unlikely that Congress will remove its prohibition on legal services programs, such as ALSC, receiving attorney fees from the losing side. In Alaska, with our Civil Rule 82, that prohibition has a substantial impact; those attorney fees have been a significant supplement to our funding. Congress has not only drastically cut the supply of federal money, it has also prohibited us from relying on this other source of support!

Some members of Congress have declared their opposition to federal funding of a nationwide system of providing free legal services, saying that it's up to the local areas and "the private sector." Essentially, "private sector" means individual attorneys and law firms.

Which brings us to the ***Alaska*** Legal Services Corporation's seventh annual direct fund-raising drive. By the time this issue of the *Bar Rag* is published, you should have received my letter requesting a donation. Please read it, and please donate. The situation is still desperate!

Last year, ALSC received $24,484 from attorneys and firms, not counting the $9,120 from a single couple. There are 2,607 attorneys with active membership in the Alaska Bar. Thus we received an average contribution of $9.39 per attorney, or two and a half cents a day per attorney. (Not counting that one couple, 120 attorneys contributed, for an average of $204.03.) We need to encourage more attorneys to accept the responsibility for maintaining this system. Our *pro bono* program, providing in-kind services, is great, but we also need money.

We invite your suggestions for fundraising. One idea that some lawyers have suggested is including a line on the Alaska Bar Association's annual dues notice for a voluntary contribution to ALSC. We have presented this idea to the Bar, and the Board of Governors will be considering it at their next meeting.

And beyond money, we need the philosophical, political, and functional support of institutions — such as the court system. Supporting the concept of equal access to justice does not compromise the court system's neutrality between litigants.

For example, the chief justice could include a pitch for ALSC in the State of the Judiciary message delivered to the legislature each winter. Sometimes the chief has done so, sometimes not. A brief explanation of the kinds of legal assistance that poor people need and how that assistance facilitates court proceedings, and a description of the structure and funding circumstances of ALSC, along with a statement of strong support for the state appropriation for ALSC, could help.

In a number of states, including (according to my information) Georgia, Louisiana, Massachusetts, Nevada, New York, North Carolina, Utah, Washington, and Wisconsin, the supreme court is involved in an active effort to develop a plan to assure access to justice. They have been responding to the precipitous drop in federal (and state) funding. In some states (e.g., Arizona, Illinois, Iowa), the courts have created commissions to address the problem, with some (e.g., Maine, Michigan, New York) having committees chaired by members of the judiciary.

October 8,1997, the presiding judges of our four judicial districts and the court of appeals unanimously adopted the following resolution: "We, the Presiding Judges, ask the Alaska Supreme Court to support the concept of an Alaska Civil Justice Committee and to move promptly to cooperate in its creation." Such a committee or "task force" would work on several aspects of the problem. It would consider, among other matters, changes in court rules and statutes, bar association action, administrative remedies, and community education. The resolution has been transmitted to Chief Justice Mathews; I will try to keep you informed of developments.

The fifth paragraph of the preamble to the Alaska Rules of Professional Conduct includes this statement:

> A lawyer should be mindful of deficiencies in the administration of justice and of the fact that the poor, and sometimes persons who are not poor, cannot afford competent legal assistance, and should therefore devote professional time and civic influence in their behalf

So, the responsibility for assuring access to justice, regardless of ability to pay, rests on all of us. We can try to fulfill that responsibility by contributing money, providing *pro bono* services, and exerting political influence on government officials and entities to support free legal services to the poor. It's not a burden to be borne by the legal services staff alone.

Following briefing, and oral argument on July 28, the federal judge in the *LASH* case (see my report in the March/April 1997 *Bar Rag*, on *Legal Aid Society of Hawaii, et al. v. Legal Services Corporation*) granted the LSC's motion for summary judgment and lifted the injunction against LSC's enforcing several of the restrictions imposed on legal services programs. Essentially, he found that the LSC's amendment of its regulations (45 C.F.R. Part 16I0), to allow for separate entities to operate with non-federal money free of the Congressional restrictions, rendered the matter moot. He held that the LSC complied with *Rust v. Sullivan*, the U.S. Supreme Court case that set standards regarding non-federal money. The case is now on appeal.

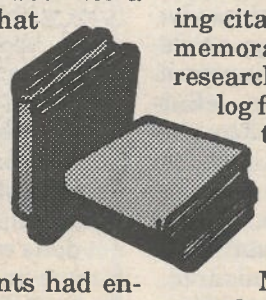
We hear that some members of Congress still are offended by the fact that legal services programs have challenged in court the validity of some of the product of Congressional wisdom. Pressure is being brought to get out of, or drop, cases such as *LASH*. Your support is crucial.

Book Review

By David A. Ingram

Hein, Edward H., *Legal Research for Paralegals,* West Publishing Company, 1996, paperback, 407 pp., ISBN 0-314-06740-X, $35.

Ed Hein, the author of Legal Research for Paralegals, is an Alaska attorney, but that's not the reason I recently switched to his book for a course in legal research that I teach at the University of Alaska Southeast. After reviewing a courtesy copy provided by the publisher, I became convinced that the book would be a much-appreciated replacement for the arid tome my students had endured for the past decade. As it happens, I was right. My students gave it excellent marks.



Mr. Hein packs a wealth of information into just 407 pages, including appendices and index. He explains all the relevant research tools and shows the reader how to use them most effectively. While the book is designed primarily for paralegals, it would be useful to anyone who wants to learn, or review, the methods and techniques of legal research. It begins by explaining what constitutes legal research as well as the paralegal's role in performing that research and provides the reader with a basic approach for finding the law. It then identifies the sources of the law and explains the interrelationship of laws; explains how to research constitutions, statutes, and regulations; and explains case law and the use of the various tools that provide access to the cases (digests, A.L.R.s, encyclopedias, etc.). It concludes with chapters on performing computer-assisted research, using additional sources outside the law library, using citations, and drafting research memoranda. Appendices provide research checklists, a listing of Dialog files (computer databases), citations to state freedom of information acts, a listing of legal resources on the Internet, and a handy glossary.

Mr. Hein taught legal research for a number of years, and it shows. He strives to put the initiate at ease and to downplay the difficulties that legal research can present ("Any learning experience can engender fear and anxiety at the beginning. For a while, you may be uncomfortable, frustrated, and confused. This is normal and is to be expected. Just work your way through it."). Writing in a highly readable style and a conversational tone, he provides numerous tips that help the reader perform research in a quick, yet thorough, manner. Real-world research problems included in each chapter give the reader a chance to practice the skills they have learned.

Due process overdue in hearing process

By Rep. Scott Ogan

Like many citizens, my basic understanding of legal issues is limited to special interest research or secondary exposure through public service positions.

When I was first elected to the state house in 1994, my initial challenge was to better understand the origin of law. Soon, I also felt the need to better understand the application and evolution of our governing decrees. As I considered the current state of our government I discovered at least one important evolution within our administrative branch which threatens fundamental due process rights of Alaskans.

Many scholars, lawyers, politicians and social engineers have commented on the importance of our three formally recognized branches of government.

As our society has allowed more and more responsibilities to reside with the administrative arm of government, interpretation and application of the laws established to carry out regulatory functions have received more attention. It soon became apparent, to many who legally or politically represent those being governed, that their clients' or constituents' due process rights were at higher risk when hearing officers were too closely connected to the agencies promulgating and enforcing regulations.

It was also becoming clear that a challenging new dimension of administrative law would provide opportunities for those seeking to keep a *healthy balance* between public interest and due process rights of the individual. Without this balance the bureaucracy becomes much like a fourth branch of government, wielding not only administrative, but legislative and adjudicatory powers as well.

Not long into my first term, constituents expressed serious concerns with the system of administrative hearings we have in Alaska. Having sat as a member on a quasi-judicial state board myself, I knew the uneasy feeling I had with the rubberstamp procedure involved with administrative appeals which came before us. In most instances we had no ability to consider the facts or any particular point of view in a case. The administrative hearing officer for the agency handled those details. We as board members could either endorse or deny the hearing officer's decision. This procedure remains largely in place today.

To better understand options available to achieve the highest standards of due process within the administrative law system, I contacted Mr. Ed Felter, the senior Administrative Law Judge for the State of Colorado. He also put me in touch with John Hardwicke, his counterpart in the State of Maryland. These two distinguished individuals have provided me a great deal of information necessary to establish a fairer, more impartial system of administrative hearings in Alaska. Their testimony and surveys reveal widespread public support for the establishment of independent hearing offices. Legal representatives from both providers' and recipients' point of view praise the independent system. Senior administrators within state governments also have noted their satisfaction. State bar associations are equally enthusiastic with the changes brought about through a more autonomous system of hearings.

The statistics provided by Judge Felter were truly astounding. Initial public approval of independent hearings and the subsequent levels of satisfaction maintained have anchored my resolve to establish a better process here in Alaska.

In my opinion nothing more acutely hinders attempts at better governing than a widespread lack of confidence in the fairness of those who govern.

WITHOUT THIS BALANCE THE BUREAUCRACY BECOMES MUCH LIKE A FOURTH BRANCH OF GOVERNMENT...

In addition, long delays on hearing decisions create a sense of helplessness in those who need resolution both on a personal and business level. It is extremely difficult to attract and keep business when regulations and rules are dilatory and unpredictable.

Mr. Felter was pleased to provide me with a copy of the newest and most highly touted central hearing panel model law, which had recently received unanimous support from the American Bar Association. We are the first state to use this model, which has been many years in the making, to restructure our administrative hearing functions. Mr. Felter has also graciously offered his assistance in the practical installation efforts necessary for independent hearing office success in Alaska. I have passed on those offers to Governor Knowles and Administration Commissioner Mark Boyer as we move forward to separate the adjudicatory functions from the prosecutorial functions of the current administration.

At present the model act is before the Legislative House Judiciary Committee, chaired by Representative Joe Green as House Bill 232. We have had one hearing on the bill and have been working with our legal services staff to encompass the full spectrum of administrative adjudications which should be included in the new Independent Hearing Division. The corpus of the HB-232 is approximately 12 pages.

Finally, it should be noted that the decision to place the new central hearing office within the Department of Administration is not etched in stone, but does serve to reduce cost and provide a logical place within the existing framework of government. The location of central panels in other states has not been as critical as the standards of conduct and autonomy established by the executive officer within the hearing division. I urge those within the legal profession who have not reviewed HB-232 to study the bill and offer your opinion on how the new model addresses your sense of fairness and due process in our state administrative hearing process. Should any person desire more detail on the history and origin of the national movement toward independent hearing offices, I would suggest Ed Felter as an excellent source of information. He has traveled extensively extolling the virtues of central panels and has offered to educate those in Alaska who are interested in the workings of such. Mr. Felter can be reached at 303-894-3300.

The author is a state representative from Palmer.

ESTATE PLANNING CORNER

The Grantor Trust Rules - Part II

☐ Steven T. O'Hara

When triggered, the grantor trust rules treat, for federal income tax purposes, the grantor as the owner of the trust she created (IRC Sec. 671 *et seq.*). While the funding of an irrevocable trust may be a completed transfer for gift, estate and generation-skipping tax purposes, and while the trust assets may be off the grantor's financial statement from a state-law and creditor standpoint, all of the trust's income, gain, loss, deduction or credit may be reportable on the grantor's individual tax return.

As discussed in the last issue of this column, it may be advantageous for the grantor to be treated as the owner of a trust for income tax purposes. Grantor trust status may result in less income tax, more assets available to fulfill the grantor's intent in setting up the trust, and more flexibility in structuring transactions between the grantor and the trust. For example, if the grantor is treated as the owner for income tax purposes of the irrevocable trust she created, she may be able to substitute her own assets for trust assets without recognizing gain or loss.

In determining whether the grantor trust rules apply to an irrevocable trust, consider what powers or interests the grantor has retained for herself or granted to her spouse. If the grantor retains or grants her spouse the power to purchase, exchange, or otherwise deal with or dispose of trust income or principal for less than adequate consideration, the trust's income may be taxable to the grantor (IRC Sec. 675(1) and 672(e))). This may also be true where the grantor gives this power to anyone who does not have a substantial beneficial interest in the trust.

If the grantor names herself or her spouse as a current beneficiary, or if trust income may be accumulated for future distribution to the grantor or her spouse, the trust's income may be taxable to the grantor (IRC Sec. 677(a) (1) and (2)). By the same token, if the grantor retains the right to get the trust property back on the happening of certain events, and if the value of this reversionary interest is worth more than five percent of the trust's value as of the trust's inception, the trust's income may be taxable to the grantor (IRC Sec. 673(a)). If, instead of retaining a reversionary interest, the grantor gives her spouse the right to receive the trust property on the happening of certain events, the trust's income may be taxable to the grantor (*Id.* and IRC Sec. 672(e)).

Also consider whether the grantor has given anybody the power to add any one or more persons to the class of trust beneficiaries. If the grantor has given anyone this power, the trust's income may be taxable to the grantor (IRC Sec. 674(b), (c) and (d)). A possible exception to this rule is where this power is exercised in order to add children born or adopted after the trust's creation (*Id.*).

Grantor-retained interests or powers that result in grantor-trust status include some that are less obvious than retained beneficial interests or dispositive powers. For example, if the trustee may apply trust income to the payment of premiums on a policy insuring the life of the grantor or her spouse, the trust's income may be taxable to the grantor (IRC Sec. 677(a) (3)). This rule will generally not apply if the insurance policy is irrevocably payable for a qualified charitable purpose (*Id.*).

If the grantor or her spouse has borrowed from the trust and has not repaid the loan prior to the current taxable year, the trust's income may be taxable to the grantor (IRC Sec. 675(3)). This rule will generally not apply where the trustee is not the grantor, her spouse or a related or subordinate party subservient to the grantor and the loan provides for adequate interest and security (*Id.*).

Even if a loan is not made but the grantor retains for herself or grants her spouse the power to borrow trust principal or income without adequate interest or security, the trust's income may be taxable to the grantor (IRC Sec. 675(2) and 672(e)). This rule will generally not apply where the trustee is neither the grantor nor her spouse and the trustee is authorized under a general lending power to make loans to anyone without regard to interest or security (*Id.*).

If the trustee may use trust income to discharge the grantor's or her spouse's legal obligation to support, for example, the grantor's children, the trust's income may be taxable to the grantor to the extent trust income is used to discharge that support obligation (Treas. Reg. Sec. 1.677(b)-1). Moreover, if the trustee may use trust income to discharge any other legal obligation of the grantor or her spouse, the trust's income may be taxable to the grantor to the extent of that obligation (Treas. Reg. Sec. 1.677(a)-l(d)).

If the grantor retains or grants anyone a so-called power of administration that is exercisable in a *nonfiduciary* capacity, the trust's income may be taxable to the grantor (IRC Sec. 675(4)). For these purposes, a "power of administration" is (1) a power to reacquire trust assets by substituting other assets of equivalent value, (2) a power to control the investment of trust assets to the extent trust assets consist of corporate interests in which the holdings of the grantor and the trust are significant from the viewpoint of voting control, or (3) a power to vote such corporate interests.

In situations where the grantor would prefer to be treated as a trust's owner for income tax purposes, the grantor trust rules can present significant planning opportunities. But where the grantor trust rules are ignored during a trust's drafting stage, they can present traps for the unwary.

Elvis certified dead

The Bar Rag from time to time has reported on sightings of Elvis, particularly by members of the Tanana Valley Bar Association, said sightings purported to be evidence that the King is not deceased as has been reported in the media.

A Bar Rag staff member has discovered incontrovertible proof that Elvis is, in fact, dead.

While preparing a personal mailing in November, the staffer selected a supersonic flight commemorative stamp, with its nifty little jet airplane, to affix upon the envelopes of said mailing. "How come Chuck Yeager isn't on this stamp?" the staffer enquired of the elderly postmistress. "He actually flew this airplane and broke the sound barrier."

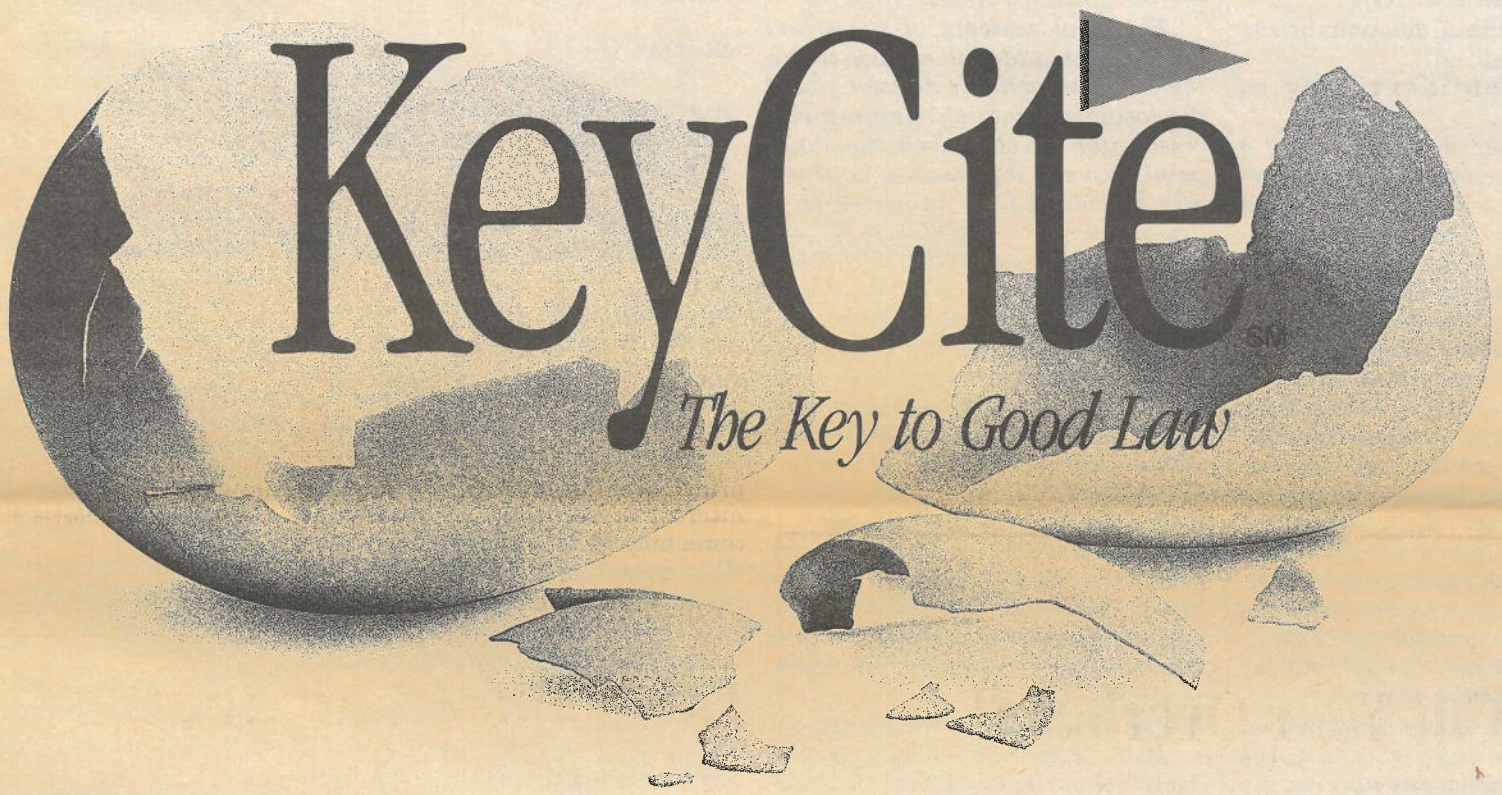
"No one can be on a postage stamp until they've been dead 10 years," said the postmistress.

"That can't be true--Elvis is on a stamp," our staffer argued.

"Honey, if Elvis is on a U.S. Postal Service stamp, he is dead," the postmistress declared.

There you have it. Elvis is dead. Save a stamp and cross him off your Christmas card list.

A powerful new research breakthrough is here.



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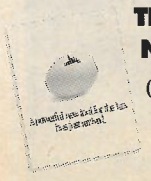

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News from the Bar

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

The recommended change to **ARPC 1.6 and related rules** would change the definition of a client's confidential information from the broad "information related to the representation" back to the more workable concepts of "confidence and secret." The Alaska Rules of Professional Conduct Committee comment can be found immediately following the amendment to Rule 1.6.

Please submit your comments to Deborah O'Regan, Executive Director, Alaska Bar Association, PO Box 100279, Anchorage, AK 99510 by December 31, 1997.

ARPC 1.6 & Related Rules
PROPOSED AMENDMENTS RELATING TO DEFINITION OF CONFIDENTIAL INFORMATION

(Additions italicized, deletions bracketed and capitalized)

RULE 1.6. Confidentiality of Information.

(a) A lawyer shall not reveal *a confidence or secret* [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, and except as stated in paragraph (b) or Rule 3.3(a)(2). *For purposes of this rule, "confidence" means information protected by the attorney-client privilege under applicable law, and "secret" means other information gained in the professional relationship if the client has requested it be held confidential or if it is reasonably foreseeable that disclosure of the information would be embarrassing or detrimental to the client. In determining whether information relating to representation of a client is protected from disclosure under this rule, the lawyer shall resolve any uncertainty about whether such information can be revealed against revealing the information.*

(b) A lawyer may reveal *a confidence or secret* [such information] to the extent the lawyer reasonably believes necessary:

(1) to prevent the client from committing a criminal or fraudulent act that the lawyer believes is likely to result in death or substantial bodily harm, or substantial injury to the financial interest or property of another; or

(2) to establish a claim or defense on behalf of the lawyer in a controversy between the lawyer and the client, to establish a defense to a criminal charge or civil claim against the lawyer based upon conduct in which the client was involved, or to respond to allegations in any proceeding concerning the lawyer's representation of the client.

***ALASKA COMMENT* [New]**

The Committee has amended this rule to tie the lawyer's confidentiality obligation to a "confidence" or "secret" of the client. The Committee concluded the language used in Model Rule 1.6 ("information" relating to representation of a client) was excessively broad. The terms "confidence" and "secret" are defined in the amended rule in substantively the same way as those terms were defined in DR 4-101(A) of the ABA Model Code of Professional Responsibility. The Committee expects that court decisions interpreting "confidence" and "secret" under DR 4-101(A) will be persuasive authority for interpreting the amended Alaska rule.

The final sentence of subsection (a) has been added to require that a lawyer approach any decision about disclosing information relating to representation of a client from the standpoint that the information is generally presumed to be protected from disclosure.

The lawyer's decision to disclose information under this rule is governed by objectively reasonable standards (see Rule 9.1(i) & (j)) and by all the facts and circumstances of which the lawyer is aware or reasonably should be aware at the time the decision is made.

COMMENT

Paragraph 4, first sentence:

A fundamental principle in the client-lawyer relationship is that the lawyer maintain *the client's confidences and secrets* [confidentiality of information] relating to the representation.

Paragraph 5, fourth sentence:

The confidentiality rule applies not merely to matters communicated in confidence by the client but also to all *confidences and secrets* [information] relating to the representation, whatever *their* [its] source.

Paragraph 6:

The requirement of maintaining *confidences and secrets* [confidentiality of information] relating to representation applies to government lawyers who may disagree with the policy goals that their representation is designed to advance.

Paragraph 19, fifth (last) sentence:

As stated above, the lawyer must make every effort practicable to avoid unnecessary disclosure of *confidences and secrets* [information] relating to a representation, to limit disclosure to those having a need to know it, and to obtain protective orders or make other arrangements minimizing the risk of disclosure.

Paragraph 21, first sentence:

The rules of professional conduct in various circumstances permit or require a lawyer to disclose *confidences or secrets* [information] relating to the representation.

AMENDMENTS TO RELATED ALASKA RULES OF PROFESSIONAL CONDUCT CORRESPONDING TO AMENDED ARPC 1.6

Preamble: A Lawyer's Responsibilities

Paragraph 3, third sentence:

A lawyer should keep *a client's confidences and secrets* [in confidence information] relating to representation [of a client] except so far as disclosure is required or permitted by the Rules of Professional Conduct or other law.

ARPC 1.8

Conflict of Interest: Prohibited Transactions

Section (f)(3):

(3) *the client's confidences and secrets are* [information relating to representation of a client is] protected as required by Rule 1.6.

ARPC 1.9

Conflict of Interest: Former Client

Section (c):

(c) A lawyer who has formerly represented a client in a matter or whose present or former firm has formerly represented a client in a matter shall not thereafter:

(1) use *a confidence or secret* [information] relating to the representation to the disadvantage of the former client except as Rule 1.6 or Rule 3.3 would permit or require with respect to a client, or when the *confidence or secret* [information] has become generally known; or

(2) reveal *a confidence or secret* [information] relating to the representation except as Rule 1.6 or Rule 3.3 would permit or require with respect to a client.

ARPC 1.13

Organization as Client

Section (b):

(b) If a lawyer for an organization knows that an officer, employee or other person associated with the organization is engaged in action, intends to act or refuses to act in a matter related to the representation that is a violation of a legal obligation to the organization, or a violation of law which reasonably might be imputed to the organization, and is likely to result in substantial injury to the organization, the lawyer shall proceed as is reasonably necessary in the best interest of the organization. In determining how to proceed, the lawyer shall give due consideration to the seriousness of the violation and its consequences, the scope and nature of the lawyer's representation, the responsibility in the organization and the apparent motivation of the person involved, the policies of the organization concerning such matters and any other relevant considerations. Any measures taken shall be designed to minimize disruption of the organization and the risk of revealing *a confidence or secret* [information] relating to the representation to persons outside the organization. Such measures may include among others:

(1) asking for reconsideration of the matter;

(2) advising that a separate legal opinion on the matter be sought for presentation to appropriate authority in the organization; and

(3) referring the matter to higher authority in the organization, including, if warranted by the seriousness of the matter, referral to the highest authority that can act in behalf of the organization as determined by applicable law.

COMMENT

Paragraph 3, fourth (last) sentence:

The lawyer may not disclose to such constituents *a confidence or secret* [information] relating to the representation except for disclosures explicitly or impliedly authorized by the organizational client in order to carry out the representation or as otherwise permitted by Rule 1.6.

ARPC 1.17

Sale of Law Practice

Subsection (c), final paragraph:

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

COMMENT

Paragraph 6, first and second sentences:

Negotiations between seller and prospective purchaser prior to disclosure of *a confidence or secret* [information] relating to a specific representation of an identifiable client no more violate the confidentiality provisions of Model Rule 1.6 than do preliminary discussions concerning the possible association of another lawyer or mergers between firms, with respect to which client consent is not required. Providing the purchaser access to a client-specific *confidence or secret* [information] relating to representation and to the file, however, requires client consent.

Paragraph 11, second (last) sentence:

These include, for example, the seller's obligation to exercise competence in identifying a purchaser qualified to assume the practice and the purchaser's obligation to undertake the representation competently (*see* Rule 1.1); the obligation to avoid disqualifying conflicts, and to secure client consent after consultation for those conflicts which can be agreed to (*see* Rule 1.7); and the obligation to protect *confidences and secrets* [information] relating to representation (*see* Rules 1.6 and 1.9).

COMMENT

Paragraph 6, second sentence:

In a common representation, the lawyer is still required to keep each client adequately informed and to maintain *the client's confidences and secrets* [confidentiality of information] relating to the representation.

ARPC 5.3

Responsibilities Regarding Nonlawyer Assistants

COMMENT

Paragraph 1, third sentence:

A lawyer should give such assistants appropriate instruction and supervision concerning the ethical aspects of their employment, particularly regarding the obligation not to disclose *a confidence or secret* [information] relating to representation of the client, and should be responsible for their work product.

January 1, 1998
is the deadline to transfer to inactive status.

For more information,
or to receive an affidavit to transfer to inactive status, contact the

Alaska Bar Association
P.O. Box 100279
Anchorage, AK 99501
or 510 L Street, Suite 602
272-7469 • Fax: 272-2932
e-mail: alaskabar@alaskabar.org

Board of Governors meeting takes actions

At its meeting on October 24 & 25, 1997 the Board took the following actions:

• Approved the results of the July 1997 Bar Exam.

• Approved a stipulation for a disbarment.

• Adopted the proposed 1998 budget.

• Approved a stipulation for a disbarment.

• Adopted the 401(k) pension plan for Bar staff.

• Rejected a stipulation in a discipline matter and requested further information on 2 possible aggravating factors.

• Voted to publish an amendment to Rule 43.1, which would allow military lawyers to do pro bono cases.

• Endorsed a Humanities Forum conference on the Permanent Fund.

• Tabled Rule 7.4 until the January meeting (this proposed amendment would allow the Bar to certify organizations which certify lawyers as specialists); the Board deleted the section of the proposed rule which would require a disclaimer in advertising by lawyers if they were not certified; established a subcommittee to review regulations to set up a certification program.

• Established a committee to review the issue of Mandatory CLE.

• Approved a request to form an Intellectual Property Section.

• Approved a request for a dues waiver due to hardship.

• Approved the minutes of the September Board meeting.

• Approved a Rule 43 waiver for an attorney to work for ALSC.

• Asked Rob Stone to draft suggested procedures for appointing the New Lawyer Liaison position on the Board.

Attorney Discipline Summaries

ATTORNEY DISCIPLINED FOR WRITING TO OPPOSING PARTY

Attorney X was across from Opposing Counsel and Opposing Party in a civil case. The attorneys scheduled a meeting at Attorney X's office to review discovery. Opposing Attorney later notified Attorney X that Opposing Party would attend alone.

Attorney X believed that Opposing Party had illegally obtained an item of evidence for use in the civil case. At the discovery review, Attorney X warned Opposing Party against destruction or loss of the item, which Attorney X contended was evidence of a crime by Opposing Party. After the meeting, Attorney X wrote directly to Opposing Party and again demanded that Opposing Party preserve the item. Attorney X copied Opposing Counsel with the letter.

Bar Counsel concluded that Attorney X violated ARPC 4.2, the rule that prohibits a lawyer from communicating with a person represented by counsel. The attorney argued that under Rule 4.2 the alleged crime by Opposing Party constituted a separate "matter," as to which Opposing Counsel did not represent Opposing Party. Bar Counsel found that Attorney X's criminal allegations arose from and were tactically related to the original civil matter. Opposing Counsel may have tacitly consented to some communication by Attorney X with Opposing Party at the discovery review, but there was no excuse under the legal ethics rules for writing a letter directly to Opposing Party. Copying an opposing lawyer with impermissible correspondence is not a defense; to the contrary, it signifies awareness of the Rule 4.2 prohibition.

Attorney X's improper contact caused no harm. The attorney had no prior discipline history. Under Bar Rule 22(d) Bar Counsel requested and an Area Member granted permission to impose a written private admonition, which Attorney X accepted.

Proposal to Allow Military Attorneys to Represent Military Dependents and to Take Alaska Pro Bono Program Cases.

The Board of Governors is proposing an amendment to Alaska Bar Rule 43.1 which would allow Staff Judge Advocates (SJAs) to handle cases under the Alaska Pro Bono Program. The rule, which now allows SJA attorneys to represent military clients in state courts, would also now allow these attorneys to represent military dependents as well. This rule would apply to SJAs licensed to practice law in another state, but not in Alaska. The Board will be considering the proposal at their January 16 & 17, 1998 meeting. Please submit comments by January 2, 1998 to Executive Director, Alaska Bar Association, P.O. Box 100279, Anchorage, AK 99510 or e-mail alaskabar@alaskabar.org.

Rule 43.1. Waiver to Practice Law <u>for Staff Judge Advocates</u> [UNDER A UNITED STATES ARMED FORCES EXPANDED LEGAL ASSISTANCE PROGRAM.]

(Additions underlined; deletions bracketed and capitalized)

* * * *

Section 4. Conditions. A person granted such permission may practice law only as required in the course of representing military clients <u>or their dependents, or when accepting a case under the auspices of the Alaska Pro Bono Program</u> under <u>this rule</u>, [AN APPROVED EXPANDED LEGAL ASSISTANCE PROGRAM] and shall be subject to the provisions of Part II of these rules to the same extent as a member of the Alaska Bar Association. Such permission will cease to be effective upon the failure of the person to pass the Alaska Bar examination.

[SECTION 5. ADVISORY COUNCIL. AN ADVISORY COUNCIL COMPOSED OF ONE REPRESENTATIVE FROM EACH PARTICIPATING UNITED STATES MILITARY SERVICE AND ONE REPRESENTATIVE OF THE ALASKA BAR ASSOCIATION SHALL ESTABLISH RULES AND REGULATIONS FOR CONDUCTING THE EXPANDED LEGAL ASSISTANCE PROGRAM IN ALASKA.]

1998 Budget Summary

Projected Revenue

Admissions Fees - All	205,300
CLE	128,700
Lawyer Referral Fees	95,800
The Alaska Bar Rag	27,000
Annual Convention	50,000
100th Anniversary Projects	0
Substantive Law Sections	7,420
Ethics Opinions	3,070
Pattern Jury Instructions	5,100
Mgmt. Service/Law Library	10,479
Accounting Svc./Foundation	9,870
Special Projects	0
Membership Dues	1,241,425
Dues Installment Fees	18,800
Penalties on Late Dues	17,400
Disc. Cost Awards	0
Labels & Copying	9,400
Investment Interest	68,000
State of Alaska	0
Misc.	2,000
Total Revenue	1,899,764

Projected Expense

Admissions	189,169
CLE	281,436
Lawyer Referral Service	54,853
The Alaska Bar Rag	40,642
Annual Convention	50,000
100th Anniversary Projects	0
Substantive Law Sections	15,600
Ethics Opinions	1,500
Pattern Jury Instructions	400
Mgmt. Services/Law Library	3,724
Accounting Svc./Foundation	9,870
Special Projects	0
Board of Governors	60,101
Discipline	579,129
Fee Arbitration	49,285
Administration	414,278
Committees	8,600
Alaska Law Review (Duke)	34,000
Misc. Litigation	0
Remodeling/Moving Exp.	0
Loan Interest	0
Computer System Training	500
Lobbyist (sunset)	3,700
Misc.	0
Total Expenses	1,796,787

If you have questions or would like a copy of the entire budget detail, please contact the Bar office at 272-7469, or e-mail alaskabar@alaskabar.org.

Compensating managing partners

By Alan R. Olson

Based on Altman Weil Pensa, Inc., consultants' experience, law firms of all sizes are requiring significant time and increasing skill to be managed effectively. Attaining high standards for quality work and client service in a complex, specialized legal environment makes good practice management essential. Add to this profitability pressures from rising expenses and downward pressures on legal costs, and good management in every phase of law firm operations has become essential.

Despite recognition of its importance, law firms continue to struggle with compensation for lawyers in management. Some of the struggle is with method, but sometimes there is also the threshold question: should law firm management by lawyers be compensable?

SHOULD MANAGEMENT BE COMPENSATED?

The answer is a "qualified yes," depending on the time commitment, the skill required and the sacrifice needed for the position. We are not recommending that every management task be compensable, nor that management overshadow other contributions which make a law firm "go." But, as the following suggests, the fulfillment of management and leadership needs by lawyers cannot be assumed, nor entirely delegated.

Law firms are finding ways to improve management, and in some ways to make management more "law firm friendly." Employment of professional administrators and other management personnel is a major step. Use of technology and systems for administrative and practice management is another highly significant development. Development of structures and processes to effectively manage the practice, although relatively new and embryonic in application in many firms, is also achieving gains.

These advancements do not alleviate the need for management and leadership. In fact, advancements *require* good management--and enlightened leadership--to truly enhance a firm's position to compete. Professional managers must be given appropriate authority and, in turn, be led, supported, counseled and managed. Technology must be incorporated into a firm's planning at a strategic, as well as at a budgetary, level and then must be deployed effectively, re-planned, re-budgeted, and so on. A practice management structure needs management and leadership to be more than an org chart.

In a dynamically changing environment, successful law firms need to find the right blend of vision to forecast, embrace and champion change and solid management in all phases, to translate change into functional, successful reality (and sometimes, to identify what shouldn't be changed, or which changes should be postponed).

WHAT LEVEL OF ACTIVITY SHOULD BE COMPENSABLE?

The short response to this question is that: it depends on the firm, the general expectations of partners or shareholders, the compensation system, as well as the role and activities of the position.

Often, firms will divide management responsibilities, with: one or more partners taking the lead in financial management; others in recruiting or management of associates and paralegals; others in technology planning; and others in practice management. Sometimes, roles will change on a regular basis. A firm may evaluate this as being sufficiently equal to justify no additional compensation for a particular activity or role.

This approach may be workable in particular firms, sometimes for an extended period. At some point, however, there will be impetus for change. This may occur because some roles will clearly become time-consuming and demanding enough to limit one or more individuals' time to practice. In other instances, not everyone will have the experience, patience, or other requisite skills to manage effectively, or will want to devote the necessary time.

Certainly, the time involved in the managing partner role may be considerable. In the newly-released Altman Weil Pensa, Inc., *Survey of Law Firm Managing Partners and Chief Executive Officers* (1996 data)[1], an average of 37% of managing partners' time was devoted to "working on managerial matters" (please see Table 1 below). Considering other responsibilities, an average of only about one-half of a managing partner's total time was devoted to practicing law (which represented an increase from previous surveys). As would be expected, the reported time commitment to managing partner duties increased with firm size, with variations due to structure--relative role of executive committee, and the like.

In general, at the juncture in a law firm's history when it needs to ask an individual to step to the fore and take on a major responsibility, such as that of managing shareholder, or as active chair of an executive committee, it will be necessary to re-think that firm's compensation of that position, and of the individual called upon to assume that role.

Survey of Law Firm Managing Partners and Chief Executive Officers (1996 data)
Table 1
What is the approximate percentage of your time spent in the following firm activities, for the most recently completed fiscal year:

	Average % of Time
	MP 1996
All Firms	
Working on managerial matters	37%
Public relations, "rainmaking," or developing business	10%
Practicing law for clients	53%

THE ROLE OF MANAGING PARTNER

Even with shared responsibilities of management or executive committees, many, if not most, law firms tend to single out an individual position, often called "managing partner," sometimes "managing shareholder," "President," "Board Chairperson," or "administrative partner."

In the Altman Weil Pensa, Inc., *Survey of Law Firm Managing Partners and Chief Executive Officers*, only 6% of 1996 respondents reported having "Co-Managing Partners." Of (nonlawyer) CEO's in the same survey: 60% report to a "Managing Partner" and 37% to an "Executive of a Management Committee"; only 3% reported to a "Board of Directors" and 7% to a "Partnership."

THE "SAME AS" TEST

Other management positions may also qualify for separate compensation consideration, but should be judged to pass the "same as" test--if position X requires about the "same as" the nonbillable contributions required of other partners in other management roles, then it should not be singled out for separate compensation, and could be considered about the "same" as other partners' contributions in other areas.

A position could also be classified by type, for example, estimating that each member of a firm's executive committee will devote about 200 hours of nonbillable time to the position, over and above "average"--same as--partner contributions.

Whether a particular position should be singled out varies substantially. In some firms, the chair of the compensation committee or of the recruiting committee may devote more time than most, or all, other management positions, and therefore may be compensable. Alternatively, the thought may be that those positions will rotate more frequently, or that, for example, one year in the recruiting position does not involve the same level of contribution as managing shareholder. In the Altman Weil Pensa, Inc., *Survey of Law Firm Managing Partners and Chief Executive Officers*, the average number of years held by managing partners of responding firms was 5.6 years in the most recent survey (please see Table 2 below).

Survey of Law Firm Managing Partners and Chief Executive Officers (1996 data)
Table 2
How long have you held this position?

	Average Number of Years		
	1992	1994	1995
	Managing Partner		
Within your current firm	5.5	4.7	5.6

Again, depending on the surrounding circumstances, the "same as" test can be used, but with considerations of longevity of the role. If a managing partner is performing well in that role, the firm may not want to make frequent changes. This means that, over time, an individual's sacrifice of time and skill that could be devoted to other activities may be cumulative, and become greater, considered over length of service.

Consideration of the contributions and time required by a position, combined with the term and continuation of the position, constitute one approach to express the importance and value of the position. A second approach is through expression of an individual's opportunity cost--what does the individual give up to assume the role?

When a position is clearly going to require that an individual give up part of his/her practice, or time that would be devoted to bringing in additional business, the opportunity cost of the position would seem to warrant re-thinking of compensation. Of course, the magnitude of the opportunity cost seen through this evaluation could indicate that it may be better to have a different individual fill the position. The firm must be cautious not to carry the opportunity cost method too far, however. Giving an important management role to someone solely because they are the least busy, or give up the least opportunity, and therefore have the lowest opportunity cost, is usually not the best solution.

COMPENSATION METHODS AND RELATED CONSIDERATIONS

The following compensation applications are presented in the context of managing partner compensation. In some firms, other positions may be evaluated as compensable, and may employ similar compensation methods.

1. Flat amount

The firm (or Board/executive committee) may simply establish an amount which they feel is equitable for the position, to be awarded prospectively, as part of base compensation or as a prorated bonus (e.g., quarterly), during the upcoming year (or other period).

2. Proportionate Salary

One method to determine a compensation amount is to calculate the proportion of an individual's time that will be spent in the position, and pay him/her a salary commensurate with the compensation which that proportion of time would bring under the current compensation system. In this manner, an individual can be "made whole" even in a formula or production-based compensation system.

For example, if it is estimated that a managing partner will devote up to 500 hours annually to the position and, based on experience, those hours, if allocated to client work, would result in $50,000 in collections for purposes of the firm's formulaic compensation system, those hours could be credited as the equivalent of that sum in that partner's production "column."

3. Net Calculation Method

Another calculation approach could be called a "net calculation method," whereby, if all partners contribute an average of about 150 hours to firm management and the managing partner contributes 500 hours, the credit would accrue for up to 350 hours.

4. Multiplier/Deceleration Method

Another method is to award a lesser equivalent, for example, 80% of the calculated collection amount. Use of this method could be based on a formulaic application of the net calculation method described above, where, for example, a 70% multiplier would equal the net effect of the 150 hours / 500 hours ratio.

This method can also be used to reward management while encouraging efficiency, by making management less highly compensated than collections. This can be used as a

Continued on page 11

Compensating managing partners

Continued from page 10

"brake" or decelerator on time devoted to management. The decelerator method must be used cautiously, since the selected differential in value may not be accurate, and may act as a disincentive to devote time to management.

5. Valuing Contributions

The last point above raises the difficulty in valuing management contributions, beyond measuring the time involved. In reality, use of a flat amount to compensate management involves assigning a subjective value to management time. A multiplier method subjectively pegs management value to a value of billable hours, collections, or some other indicator. Relatively few systems look at overall firm profitability or performance against budget as a direct basis for compensation or bonusing of key management positions.

It is likely that we will see more of these profit- and performance-based systems: first, because more widespread use of alternatives to hourly billing will create more complexity and greater need for effective profitability management; and second, because compensation methods and systems for measuring performance are becoming more sophisticated and able to capture complexity.

6. A Word About Dilution

Care must be taken, especially in smaller firms, with the dilution that can occur from too much nonbillable time allocated as credits to compensation pools. While good management may make or save the firm considerable dollars, compensation credits are not actually "dollars in the door." To illustrate, if a 10 lawyer firm were to give full nonbillable credit for all partners' management time in a working attorney bonus pool based on collections, that bonus pool could be diluted by a substantial percentage. If that is not the intent and, more critically, is not budgeted appropriately, the firm's compensation "currency" could become devalued.

7. Subjective Systems

A proportionate method can also be used in subjective compensation systems. For example, the managing partner's time devoted to management can be considered, subjectively, as comparable to billable time or collection-equivalents when "pegging" that individual's compensation, so that the individual's compensation level would reflect the subjective review of billable time/collections, plus time devoted to the managing partner position.

There are many other ways in which management contributions can be considered in subjective compensation systems. A firm can build broad criteria, such as "contributions to management," into their system, or into system processes for establishing base and/or bonus components.

Subjective systems can readily encompass the conceptual value of management contributions, but the actual valuation remains difficult. Just as objective or formulaic systems actually rely on subjective assumptions, most subjective systems should attempt to quantify contributions, at least as a starting point, (most basically, in time spent).

Consideration of firm financial performance and profitability can also be built into subjective systems, using subjective evaluation of quantifiable benchmarks.

Beyond time measurement, a position description should be developed to identify the roles, responsibilities and functions of the position. A firm's goal setting process can be tailored to set goals for key management positions, enabling establishment, review and re-prioritization of management priorities on an annual basis. Compensation criteria should be generally compatible and consistent with the position description and goal setting, with flexibility for events and accomplishments which may arise.

In the AWP *Survey of Law Firm Managing Partners and CEO's*, only 42% of managing partners in respondent firms had written position descriptions. Based on experience, a similar minority of law firms have goal setting processes encompassing non-billable/collectible contributions.

8. Establishing Budgets

Whether the law firm's compensation system is objective or subjective, if the managing partner position is less than full time, it is helpful to establish a time budget for the position.

- The time budget may be used as merely a guideline, to shape expectations for the position.
- It can be used as a management tool to track and manage the time required for various functions.
- A time budget can also be part of the compensation method, for example, to estimate a flat amount, or as a "ceiling" when managing partner time is recorded and allocated as credits within a formula or considered in a subjective bonus pool.

9. Profitability Parameters

As mentioned previously, subjective systems can encompass profit performance and other performance data. Experientially, systems tying a bonus directly to a firm's profitability appear to be relatively rare, undoubtedly due to the complexity of performance going into a firm's profitability (see Table 3 at conclusion of article). It may be feasible to link bonus compensation to certain subsets of profit, such as maintaining expenses at a certain level, or improvement of net realization. However, the issues of complexity, multiple causes of performance improvement/decline and an individual's control over the preceding, still seem to argue against a pure formula. Objective benchmarks could be used, for example, achieving $1 million in net profit, or improving net realization from 90% to 95%, but processes should still take into account the variables and events which can change performance and over which even a very strong managing partner may not have control.

Table 3 shows compensation methods of managing partners, taken from the AWP *Survey of Law Firm Managing Partners and Chief Executive Officers*, listing the general methods of compensating managing partners.

Survey of Law Firm Managing Partners and Chief Executive Officers (1996 data)
Table 3
Please check method(s) of determining your compensation:

	% of those responding to this question
	MP 1996
Established by separate compensation committee	26%
Established by governing committee	32%
Established by partners	16%
Tied to compensation of other partners	0%
Established by formula	16%
"Salary" in addition to compensation as practicing lawyers	-
Formula based on firm profitability	10%
Stipend	5%
Other	0%

CONCLUSION

Notwithstanding the highly significant, essential contributions of professional Executive Directors and Legal Administrators, in most firms, successful management still begins at the lawyer level--even if much of this role is to provide firm leadership and support for full-time professional managers.

As a law firm grows, the lawyer management function often requires a substantial commitment of lawyer time. In the increasingly challenging legal market, increasing skill is also required.

Providing meaningful incentives and rewards for managing partners, and possibly others who devote significant time and skills to management, is consistent with the demands of the position and the opportunity cost for those being asked to serve the firm in important management roles.

A wide variety of methods exist which can be used to effectively integrate compensation for management into a firm's method of compensation. Whether a firm's method/system of compensation is objective, subjective, or a combination, in all likelihood, the compensation method will involve some subjectivity, at least in the form of assumptions, and some objectivity, in the form of objective data.

[1] Available for $195 from Altman Weil Pensa, Inc. Publications, Two Campus Boulevard, Newtown Square, PA 19073, (610) 359-9900.

Alan R. Olson is a principal of Altman Weil Pensa, Inc., serving clients from the firm's Midwest office in Racine, Wisconsin.

ALASKA BAR ASSOCIATION
1997 & 1998 CLE CALENDAR

(NV) denotes No Video

Program #. Date & CLE Credits	Program Title	Program Location	In Cooperation With	Section
December, 1997				
#44 Dec. 5 3 CLE Credits 9:00 a.m. - 12:30 p.m.	Immigration Update	Anchorage Hotel Captain Cook		Immigration Law
#07 Dec. 11 1 CLE Credit 7:30 - 8:30 a.m.	Off the Record (NV)	Anchorage Hotel Captain Cook		
#48 Dec 11 2 CLE Credits 8:45 - 10:45 a.m.	Fast Track Derailed!! How to Stay on the Train after the Demise of 16.1	Anchorage Hotel Captain Cook		
January, 1998				
#01 Jan. 14 CLEs tba Half Day	Explaining the New Probate Code (NV)	Juneau Centennial Hall		
#07 Jan. 14 CLEs tba Half Day	Tort Reform	Anchorage Hotel Captain Cook		

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Creditors and bankruptcy

Part I of two parts ☐ Thomas Yerbich

Only too frequently creditors deal ing with financially troubled debtors ignore even the most rudimentary pitfalls that can befall a creditor when a debtor files bankruptcy. The time for a creditor to begin thinking about the implications of bankruptcy is when the creditor receives the first inkling that the debtor is or may be in financial trouble, not, as is usually the case, when the creditor receives the notice from the bankruptcy court that a bankruptcy petition has been filed. Protection of the interests of a creditor must begin before the bankruptcy petition is filed. Any errors or omissions occurring before a petition is filed can be extremely hazardous to the well-being of a creditor.

If not taken recently, one of the first things all creditors, secured or unsecured, should do is undertake a comprehensive review of the file. The documentation on the loan or credit line should be carefully reviewed to ensure that any potential defenses to the underlying obligation are either negated or, at least, minimized. For example: (1) are all necessary signatures present; (2) has authorization of the signatory to a corporate or partnership debtor obligation been properly documented or authenticated; (3) have there been any waivers of rights that could be construed as an on-going waiver, e.g., systematic and continuous acceptance of late performance as waiver of a "time is of the essence" clause; or (4) have proper notices or demands be given to place the debtor in a default status. If any defect is discovered, immediate steps should be taken to rectify the defect(s): once the petition is filed it is probably too late.

Creditors holding security interests should fully review all security documents in the same manner as the basic loan documents for any defects in form or execution. In addition, make sure the security agreement and related documentation include a full, complete and accurate description of all collateral in which the creditor believes it has a security interest. Fundamental to the collateral review is ensuring that the security interest is properly perfected: if it is not properly perfected, the creditor will join the ranks of the general, unsecured claimants. If the security interest was not properly perfected initially, or has lapsed by operation of law, re-perfect immediately. Caveat: If the debtor files within the 90-day period after perfection or reperfection, the transfer may be avoidable as a preferential transfer

Collateral review is not complete without determining current adequacy of the collateral. Collateral may "shrink" over the passage of time as a result of a multiplicity of factors including normal depreciation and obsolescence. Collateral shrinkage is most prevalent where the collateral is inventory or receivables: both have a habit of disappearing in times of financial difficulty. If collateral value has been reduced to a point where the claimant is undersecured, serious consideration should be given to obtaining additional collateral. Caveat: Additional collateral obtained during the 90-day period immediately preceding the date the petition is filed is also subject to avoidance as a preferential transfer.

Obtain and carefully scrutinize current financial information beyond profit and loss statements and balance sheets. Three musts: (1) accounts payable aging; (2) accounts receivable aging; and (3) payroll tax deposits. The amounts and time span of overage payables and receivables, as well as delinquent tax payroll tax deposits, are good indicators of the both the extent and nature of financial difficulties. It will also provide some insight into the likelihood that another creditor, e.g., the IRS, may pull the plug and force filing.

Once the creditor has completed review of the situation, the creditor can make an informed decision about working further with the debtor. If it is decided not to work with the debtor, there is little more the creditor can do to protect itself from the effects of bankruptcy: the die is cast. On the other hand, if the creditor intends to attempt a workout with the debtor there are four immutable Rules: (1) do not take advantage of the debtor's precarious financial position; (2) do not give the debtor false hopes or a false impression of what you as the creditor are willing to do; (3) be precise and document each and every term and condition of every agreement or promise made, whether by the debtor or the creditor; and (4) although you may have to give it back later, accept any payment, whether full or partial, offered.

If, despite everyone's best efforts, the debtor files a bankruptcy petition, what then? One of the first, if not the first, things the holder of any claim, secured or unsecured, should do is file a proof of claim. A secured claimant may be paid because the lien survives the bankruptcy. However, except in a chapter ll case, the filing of a proof of claim is absolutely essential to preserving the right of the holder of the claim to participate in any dividend distribution from the bankruptcy estate: no claim, no payment. [FRBP 3002] In a Chapter ll case, if the debtor schedules the creditor's claim other than as unliquidated, contingent or disputed, the claim is deemed filed by the creditor in the amount of the scheduled claim: if scheduled as contingent, unliquidated, or disputed, a proof of claim must be filed by the claimant. [FRBP 3003(b)(l)] As a practical matter, to save a trip to the bankruptcy court to determine how and the amount of the scheduled claims, most oreditors are well advised to automatically file a proof of claim immediately upon receiving notice of the bankruptcy.

IF, DESPITE EVERYONE'S BEST EFFORTS, THE DEBTOR FILES A BANKRUPTCY PETITION, WHAT THEN?

In cases filed under Chapters 7, 12 and l3, the proof of claim must be filed within 90 days of the date of the first date set for the meeting of creditors under § 341(a) of the Code. [FRBP 3002(c)] In cases filed under chapters 9 and 11, the court sets the last date by which claims may be filed. [FRBP 3003(c)(3)] If the claim arises out of the rejectior of an executory contract or unexpired lease, it must be filed within 30 days after rejection.[FRBP 3002 (c) (4)]

A creditor filing a proof of claim should use the official form (OF 10) provided for that purpose. [FRBP 3001(a); 9009] The official forms are available at most stationary stores carrying legal forms or are available from the clerk of the court. [In Alaska a copy of the Proof of Claim form is included in the notice sent to creditors of the creditors meeting.] In preparing a Proof of Claim, care should be taken to ensure that the amount of the claim, as of the date the petition was filed, is accurate. In addition, any backup documents, e.g., billing, promissory note, security agreements, evidence of perfection, guarantee, contract, or judgment, that establish the claim and its status as secured should be attached. The Proof of Claim, including the backup documents, is to be filed in duplicate and a complete copy served on the trustee (if one is appointed) and the debtor or his/her/its attorney. [AK LBR 3002-1]

If the creditor files a Proof of Claim, it is prima facie evidence of the validity and amount of the claim and, unless an objection is made to the claim, it is deemed allowed as filed. [§ 502(a); FRBP 300l(f)] In a chapter 11 case, the filing of a proof of claim supersedes any scheduled claim. [FRBP 3003(c)(4)]

Any interested party may object to a proof of claim filed by any creditor. Normally, however, objections to claims are filed in chapter 7 cases by the trustee and in cases under other chapters by the debtor. An objection to a claim must be in writing and filed with the court. A copy of the objection, together with a notice of the hearing must be served at least 30 days before the scheduled hearing date. [FRBP 3007]

Perhaps the most common objection is insufficient information or documentation from which the validity of the claim can be determined. This usually results from a failure to attach to the proof of claim the documents evidencing the claim and/or the security interest claimed.

Another common objection is that the claim includes unmatured interest as of the date the petition was filed, i.e., the creditor is seeking to recover from the estate interest accruing post-petition. [Note: An "oversecured" creditor is entitled to recover postpetition interest, charges, and, if the contract so provides, reasonable attorney's fees to the extent that the value of the collateral permits. [§506(b)] However, under AK LBR 3003-1(c) and 6004-1(g) that claim is made either (1) upon sale of the collateral or (2) after a plan is confirmed.] It is also not unusual for a claim to be challenged because it is asserted against a corporate officer or director for a corporate, not a personal, obligation. In the absence of a personal guaranty, unless the creditor can establish the existence of the elements to "pierce the corporate veil" under state law, a claim of this nature is most likely destined to be disallowed.

Once a creditor has filed a proof of claim, what next? In every case any creditor, whether secured or unsecured, is well advised to (1) retain the file on the debtor and (2) apprize the court of any address change until notice is received chat the case is closed. Because distribution in an asset case may be several months (or years) after the case is commenced, prematurely disposing of the files/records may result in an inability to defend against an objection to the claim. Failing to keep the court apprized of address changes may result in not receiving the dividend check issued at the conclusion of the case.

The next article will highlight the major issues encountered during the administration of the case.

SOLID FOUNDATIONS

New Bylaws for Alaska Bar Foundation

Mary Hughes

With the release of the 1996 Annual Report and the completion of another successful year for the Alaska Bar Foundation, the Trustees are once again thankful to the members of the Alaska Bar Association for their continued support and generosity. The Alaska Bar Foundation is financially sound, and the Alaska IOLTA Program is continuing to fund legal services for disadvantaged Alaskans.

NEW BYLAWS FOR ALASKA BAR FOUNDATION

At its 1997 annual meeting, in addition to awarding IOLTA grants, the Trustees adopted new bylaws which provide for a Board of Trustees of seven members: Five lawyer members, one non-lawyer business community representative, and one non-lawyer public representative. Election of four members of the Board will take place at the 1998 annual meeting of the Alaska Bar Foundation which will he held during the Alaska Bar Association Convention in May of 1998. An Alaska Bar Association member from both the First Judicial District and the Third Judicial District will be elected to serve three-year terms (1998-2001). Additionally, both non-lawyer members will be elected for one-year terms (1998-99). If any member of the Alaska Bar Association is interested in serving as a Trustee, please send a letter of interest and a resume to the Alaska Bar Foundation. If any member wishes to nominate a non-lawyer, the nomination and acceptance thereof, name and resume should also be sent to the Alaska Bar Foundation.

IOLTA NEWS

Over the past two years the Texas IOLTA program has been a defendant in litigation before the District Court, Western District of Texas, and the Fifth Circuit Court of Appeals. Although no other court has ever ruled that clients have a property interest in IOLTA revenues, on September 12, 1996, the Fifth Circuit Court of Appeals ruled that clients have a property interest in the revenues that result from an attorney's placement of nominal or short-term client trust funds in an IOLTA account pursuant to the Texas IOLTA rule. On June 27, 1997, the U. S. Supreme Court granted the Texas IOLTA program's and the Texas Supreme Court's petition for a writ of certiorari in the Washington Legal Foundation's challenge to the Texas IOLTA program. The Alaska Bar Foundation has been following the case closely and reviewing the many briefs, including those of the American Bar Association and the National Association of IOLTA Programs. Since many state and local bar associations and IOLTA programs participated in the case and briefed the issues relevant to the Alaska IOLTA Program, the Alaska Bar Foundation chose not to file a brief. The U. S. Supreme Court will hear the case this term.

1998 IOLTA GRANT APPLICATIONS

Applications for 1998 IOLTA grants will be available in January of 1998 and will be due in April of 1998. Organizations which provide legal services to the disadvantaged or improve the administration of justice qualify for IOLTA monies. The trustees are particularly interested in funding programs which provide additional access to legal services. Organizations which would like to receive IOLTA Grant Applications may contract the Alaska Bar Foundation.

Bar People

Attorney **Robin L. Koutchak**, formerly with Edgar Paul Boyko and Associates, and more recently having served in a temporary position as assistant municipal prosecutor, has opened her own law practice. The Law Office of Robin L. Koutchakis located at 880 H Street, Suite 202 in Anchorage.

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Attorneys **C R. Baldwin** and **James N. Butler, III** are pleased to announce the formation of Baldwin & Butler, LLC. The new law firm will be based in Kenai, Alaska and continue to serve Alaska and the Northwest utilizing communications technology to provide specialized legal services in the areas of utility, corporate, commercial, real estate, environmental and incident management law.

Admitted to practice in Alaska and Texas, Rick Baldwin's practice focuses primarily on utility, corporate, commercial and real estate law. Jim Butler, admitted to practice in Alaska and Washington, provides 24-hour service to public and private clients requiring incident management legal services throughout the nation. He lectures and conducts training on emergency or disaster response legal issues for corporate and public sector incident management professionals. In addition, he provides legal services in the areas of corporate. commercial, and environmental law

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After 14 years. **Brian Durrell** has withdrawn from Bogle & Gates to open the law office of **Brian W. Durrell, P.C.,** where he will limit his practice to business law and estate planning.

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Teresa Sexton Ridle former law clerk with the Superior Court in Anchorage, is now with Koval & Featherly in Anchorage.

•

Michael C. Kramer, a lifelong resident of Fairbanks, has recently joined the law firm of Cook Schuhmann & Groseclose, Inc. as an associate attorney.

Mr. Kramer obtained his law degree in 1995 from the University of Idaho. His legal experience includes serving as a law clerk for Superior Court Judge Ralph Beistine, followed by one year as a litigator in private practice. His areas of practice will focus upon trial work in the areas of personal injury, products liability, and criminal defense.

Cook Schuhann & Groseclose, Inc. is a full service law firm. Its areas of practice include commercial, condemnation, construction, employment, environmental, estate planning, family, litigation, personal injury, and real estate law.

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Cathleen Nelson McLaughlin, formerly of the firm of Brena & McLaughlin, P.C., has joined the firm of **Hagans, Ahearn & Webb**, as a partner, effective November 1. The new firm name is **Hagans, Ahearn, McLaughlin & Webb.** The firm's offices are located at 310 K Street, Suite 400, Anchorage, AK 99501.

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Michael Jungreis has joined the law firm of Heller Ehrman White & McAuliffe as an associate attorney. He was formerly in private practice, and also has served as section chief in the Anchorage office of the FDIC Legal Division.

Jungreis is a member of the Alaska bar and holds a law degree from the University of Miami. He is the current president of the Anchorage Inn of Court, and has served as chairman of the Alaska Governor's Task Force on DNA Evidence. Jungreis also has served on the Bylaws, Discipline, and Fee Arbitration committees of the Alaska Bar Association. His practice focuses on commercial and real estate litigation and transactional work. Heller Ehrman White & McAuliffe is a law firm with over 350 attorneys. Established in San Francisco in 1890, the firm has offices in Anchorage, Seattle, Portland, Washington, D.C., San Francisco, Los Angeles, Palo Alto, Singapore, and Hong Kong.

Jungreis

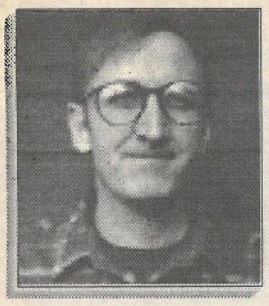
ARPA Distinguised Service Award presentation

The Alaska Recreation and Park Association (ARPA) has awarded its 1997 Distinguished Service Award to Anchorage attorney **Harold Snow, Jr.**, a commissioner of the Anchorage Parks and Recreation Advisory Commission. An association of 150 individuals from more than 30 communities, ARPA is active in promoting, broadening and improving park and recreation services. The Distinguished Service Award goes to the individual or group whose voluntary contribution of time and effort has most improved the quality and quantity of leisure opportunities through parks, recreation and conservation projects.

ARPA said Snow has championed parks and recreation issues through his dedication to the Anchorage commission. "His tireless support of the past three bond issues led to their passage, whereas, in the 10 years prior to Harold's involvement, no bonds were passed. He has initiated the structure for an ongoing private non-profit group called Anchorage Tomorrow, which supports parks and recreation bonds. Hal's outstanding leadership has enriched and enhanced the livability and leisure opportunities in Anchorage," said ARPA.

ECLECTIC BLUES

Court split ☐ Dan Branch



Something's wrong in Juneau. The calendar says it's fall time but something's missing. It's not fall color. Up on Chicken Ridge, leaves of vine maple and mountain ash drop in an orange-yellow drizzle onto old pavement. Things are as they should be on the downtown streets. The last cruise ship pulled out on October 1. The locals have the town until January.

What is wrong? The answer lies outside the courthouse building. There, the sun is actually shining down on honest lawyers making their way to afternoon arraignments. Where is the sideways rain? My daughter is worried. Born during a Ketchikan rain storm, she looks forward to the autumn typhoon season. The other night, while a meager rain darkened our driveway pavement, she asked hopefully whether the morning would bring flood. She was remembering the glory days of her youth, like last year, when a September downpour turned part of Calhoun Street into a mud bath for cars. I had to disappoint her.

There probably won't be a flood this year. Instead of rain, Juneau's had sun, lots of it. Sometimes it comes with warm weather. The good folks in Ketchikan are being blessed with an excess of wet abundance. The blame for this has to fall on El Nino, that foul trickster current that brings tuna to the Gulf of Alaska and drought to Papua New Guinea.

During a prolonged October drought, I made my way down a sun-washed Juneau street, to the Second Course Restaurant. It was Friday so the upstairs seating was filled with members of the Juneau Bar Association. Facing a deadline for submitting something to the *Bar Rag*, I was looking to members of the local bar for inspiration. The folks at the JBA came through.

I wasn't sure what to expect at the meeting. It was my first visit to a Juneau lawyer meeting and I haven't attended many bar association meetings in other towns. In the ten years I lived in Bethel, the local bar association only met once, when representatives of the Alaska Supreme Court came to town for the coronation of Christopher Cooke as Bethel's first superior court judge. After the installation ceremony, members of the river city bar association wandered over to the Kuskokwim to have hamburgers with the judiciary. The only business discussed was whether the association secretary still had the official Bethel Bar Association stationary. Mr. Secretary reported having the paperwork, somewhere in the shed where he kept his snowgo gas.

BAD WEATHER
IS WHAT DEFINES
AND UNITES
PEOPLE
UP HERE.

Since the Juneau Bar Association distributes printed copies of their minutes each week, I knew they were more active than the old Bethel Bar. My first meeting with the Juneau Bar Association started out with stir-fry scallops. The food and conversation showed promise. While working garlic-flavored shell fish into my mouth with stainless steel chop sticks, I learned that one of my table mates had a violent dislike for rhododendron plants. He looked forward to the day that encroaching alders finally choked the life out of two big rhodys in his front yard. I was puzzled and intrigued. Unfortunately, the old business portion of the meeting began before I could learn why he had developed such strong negative feelings about the flowering evergreens.

The meeting went well. Mie Chinzi did a good job, as the Juneau Bar Chair, moving old and new business along. A motion concerning the proposed split of the Ninth Circuit Court of Appeals was discussed. I listened to the arguments with interest. Before the meeting I was leaning in favor of the split. After all, how could the senior justices in San Francisco be expected to master the diverse issues that arise in their far-flung legal empire. I was also bothered by the low percentage of Ninth Circuit decisions upheld by the U.S. Supreme Court. The Pacific Northwest has Alaska, Boeing and Bill Gates, I reasoned. It should have its own federal court of appeals.

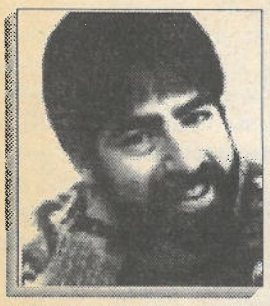
No one mentioned Bill Gates during the JBA debate. Many other points, perhaps more cogent, were raised during the discussion. My moderate tendencies started taking over as the conservatives and activists traded arguments. I could see both sides of the issue. Then someone mentioned that the new circuit court would not be based in the Pacific Northwest. Instead it would be headquartered in Arizona. What, I thought, would be gained from moving federal oversight of Alaska cases from San Francisco to sun-cursed Arizona. The Sun Devil State is even farther from Anchorage than San Francisco. How will the new justices understand us if they never have to walk to work in the rain? With this question on my mind, I paid for dinner and headed back up Seward Street to the office. The sun was still hammering down. If it had been 40 degrees warmer, we could have been in Phoenix.

Well, El Nino can't keep it up forever. Next October we'll be grumbling our way through sideways rain to work. That's how it should be in the Pacific Northwest. Bad weather is what defines and unites people up here. Usually, the farther north you go, the more bad you get.

I like to think that most Alaskans like to lean into a wind storm from time to time. Otherwise, they'd move south. $1300 in permanent fund money isn't enough to keep them in the Great Land. The weather changes Alaskans and makes them adapt, work together, and preserve. How can judicial officers in Phoenix understand that? How can they understand any of it?

FAMILY LAW

In the end, don't forget to ask and write ☐ Steve Pradell



You've just completed your divorce or custody trial and the judge has finished placing an oral ruling on the record. Turning to the attorneys, the judge asks, "Anything else, counsel?" At this point you've just heard the good or bad news for your client, and either you're elated or else you are contemplating how to assist your client in explaining and processing what was just said. Perhaps the last thing you desire to do is to ask the judge to address something else. However, making the most of this moment could ultimately save your client thousands of dollars in legal fees if issues are not clarified or addressed at this time.

Has the judge forgotten to address any issues which were brought up during the trial? Did the judge simply decide the major issues, such as who gets the house and custody, without going into the details as to who receives the child's permanent fund dividends, who claims the kids as tax deductions, and who does the pick-up and drop-offs of the children?

These may seem like minor issues; family law litigants often argue most after trial about details which seem trivial. Unless your goal is to keep your clients forever in your office, using this moment to sort out what was said and to ask the judge to make certain rulings from the bench may ultimately cut down on substantial after-the-fact litigation to fill in these cracks.

Some lawyers don't take any notes while the judge is speaking, perhaps expecting that if they ever need to know what was said they can rely on the other lawyer's recollection, the court clerk's notes, or the transcript of the proceeding. But this could also lead to problems. Reviewing your notes once the judge has concluded can reveal either what has not been said or any ambiguities. Also, your notes can go far in helping you to prepare the written findings of fact and conclusions of law or in determining whether the other attorney's draft really reflects what was said without having to order the tape and listen to every word. Perhaps you too have read proposed findings which appear to reflect a decision issued by another judge in another proceeding, and place your client in the light most favorable to your adversary Often these proposed findings go to the judge without first coming to your office for your approval, disapproval or acknowledgment of service as required by Civil Rule 78(a). If this happens to you, there is little time before the judge's pen signs off on the decision to order the tape, listen to it, rewrite corrected findings or set forth your objections. Good notes can immediately direct you to sections which are incorrect in the proposed findings and alert the judge to the problem *before* the findings become law and the case is forgotten by the court. The notes will also help you in answering your client's questions about what happened at the trial. Your memory may fade a week after the fact when the client calls to ask about a certain point which was decided. So keep your mind active as the judge is giving you the ruling by taking notes and thinking about what has and what has not been said. Your clients and the court will appreciate that you continued to work on the case and expressed interest in the proceedings up to the end, and you may avoid future legal battles.

PERHAPS THE LAST THING YOU DESIRE TO DO IS TO ASK THE JUDGE TO ADDRESS SOMETHING ELSE.

Excerpts from the JBA Minutes

BEAR STORIES

A bear raided Sheri Hazeltine's garbage last night downtown. She heard him outside her bedroom window at about 2 am, slowly pulling the trash out piece by piece. He was on the radio news the next morning. It appears that he walked all over downtown and went through the Silverbow's garbage also. After Sheri related this incident, this inspired everyone at her end of the table to tell their bear story. Steve Weaver's was perhaps the most interesting. He said that he was walking to his car from a late night poker game with Craig Black and a whole host of other assistant attorney generals, when he ran into a bear. It was between him and his car, so he had to go back to Craig's house to get a ride to his car.

Sheri L. Hazeltine
Oct. 24, 1997

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JBA BYLAWS

Mie brought copies of our JBA Bylaws to the meeting also. No one present at the meeting was old enough to remember these bylaws, or why we have what we have. Mie suggested that we form a committee to revise them. For example, one of our bylaws states that a quorum for our meetings is 1/4 of our active membership Also, there are three standing committees that are supposed to be reporting to the membership on a bimonthly basis. Also, Mie suggested that we could add a Technology Committee to deal with things like our Web page and links to other Web sites, and to bring in speakers to talk about new office technology, etc. Mie said that we have a Web page, but aren't doing much with it. We could be publishing the minutes on it, the daily court calendar, and a list of our JBA membership. She also suggested that we form a new speaker committee, a group responsible for bringing in speakers to talk to our Friday meetings. Mary Zemp suggested that we send out a survey to our membership asking them what they would like the JBA to do.

Sheri L. Hazeltine
Oct. 10, 1997

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X-RAYS & MANDATORY DISCOVERY

When last we left our heroes, they had convened in the Batcave to plan their ongoing crusade for truth, justice, and the Southeast Alaskan way. After counseling mild-mannered Gerry Davis against inappropriate uses of X-ray vision, the assembled members turned to more pressing matters.

Joe Sonneman inquired whether the court system had any directives or guidance relating to using microform or CD-ROMs as a means of compressing files for retention. Despite the usefulness of mounds of paper as a shield against the deadly effects of Kryptonite, these files apparently take up considerable space. A general discussion on the question of records retention identified Steve Van Goor (at the Alaska Bar Association) and ALPS counsel as possible information sources regarding what records to retain and far how long.

Acting on behalf of Bruce Weyrauch (who was out battling injustice like any good superhero should), Steve Weaver discussed a proposed resolution by the Alaska Bar Association concerning the push in Congress to split the Ninth Circuit. The Alaska Bar Association has not taken a position on the matter-either "for," "against," or "neutral" —but discussed the matter at the statewide convention. The sense of the Alaska Bar Association is that sending a resolution to the Congressional delegation would carry a fair amount of weight with the delegation, particularly with Senator Stevens. After discarding the notion of using superhuman strength to fly the Ninth Circuit federal courthouse from San Francisco to Juneau, more sober discussion occurred. Joe Sonneman remarked that Judge Boocheever opposed splitting the Ninth Circuit. Discussion focused primarily upon case backlogs, which were attributed in part to the 28 judicial vacancies presently within the Circuit, and in part to California criminal cases that are crowding the Circuit's docket.

On behalf of the Civil Rules Committee, Ann Gifford solicited commentary and suggestions as to the effectiveness court rules directing initial disclosure and mandatory discovery. As we superheroes know, the mandatory discovery rules were adopted so that attorneys would not need X-ray vision to ascertain whether their adversaries had information pertinent to the disposition of their lawsuit. However, Ann noted that mandatory discovery can result in additional costs for clients, especially if the factual basis of claims or defenses may be readily ascertained without excessive discovery. There was discussion over the questionable belief among some attorneys that counsel may stipulate out of mandatory discovery. Dawn Collinsworth reported that at least one First District judge, Judge Zervos, has not allowed such stipulations. If any bar members have concerns or suggestions about the rules, they are invited to write Christine Johnson, the court rules attorney.

Steve Weaver
Sept. 12, 1997

SOLICITATION OF VOLUNTEER ATTORNEYS

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

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

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

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

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

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

TALES FROM THE INTERIOR

Legal Orientation

☐ William Satterburg

In November of 1995. I found myself in a case involving interpretation. Allegations of assault were involved between members of the Korean community, most of whom either could not, or preferred not, to speak English. I could not speak Korean.

It was going to be an interesting case. Both sides were resolute in claiming that each had assaulted the other. Various cultural issues such as saving face, honor, and financial gain also were at stake. More confusion was created when I learned that over forty percent of the people from Korea have the surname, "Kim," according to the court interpreter.

VARIOUS CULTURAL ISSUES SUCH AS SAVING FACE, HONOR, AND FINANCIAL GAIN ALSO WERE AT STAKE.

My client had been accused of making gross and indecent threats to two women, and a brother of one of the women. He was also accused of physical assault, although he claimed it was self defense.

During discovery, I recognized that the likelihood of a jury trial being completed before the end of 1995 was bleak. Virtually every party would require an interpreter to explain the process of the courtroom. Furthermore, recognizing that there would be vast cultural differences between the largely "English as a first language" community, and the "Korean as a first language" community, not to mention the issue of the jury of one's peers, the decision was made for a judge trial before the Most Honorable Charles Pengilly. An additional basis for this wise decision was that judge trials often tend to be more like a free for all, evidentiary issues being less critical to the case. And a free for all, it was.

Despite my best efforts at my famous "broken wing routine," the trial began. Once again, the tough, steely eyed, intrepid prosecutor launched into his scathing opening oral argument. Citing cases, cultural issues, and relying heavily upon what considered to be inadmissible hearsay. The impassioned District Attorney pled his case with zeal to the impassive judge Pengilly. Despite the District Attorney's All-American, Howdy Doody looks, he nevertheless presents a most formidable opponent in traffic related offenses. A shiver of fear coursed up my spine.

The state's case found its motive in allegations of threats and intimidation. In fact, threats to kill each other had abounded in the case like rabid shoppers at a Nordstroms dollar day. At one point, even the accused and the victim were alleged to have traded invective. The taunts, moreover, were quite chilling. Terrifying statements were common, such as the old tried and true, "I'll kill you now. You will never walk again on your own two legs alone." And there were new ones. Perhaps the most shriveling threat of all was confessed to by a lady, who reluctantly agreed that she had told my client. "I will cut off your private parts and feed them to the dogs," but only after he had made the same threats to her. (Loosely translated.) That portion of testimony elicited a collective groan from at least half of the spectators. At another point in the trial, a different witness disclosed a threat made to her by yet another male, who was not my client, but apparently was planning to become one. When I asked her the nature of the threat, she matter of factly stated that she had been told that he would "cut out her tongue."

Realizing that there might be some social significance to the question, I asked her whether or not the individual had said if he would feed the tongue to anything. Since the follow-up had not been made, the likelihood of the threat being real was less.

Throughout these graphic exchanges, my admiration for Judge Pengilly grew remarkably as he sat through the trial, acting intrigued, and as if he actually enjoyed the matter. From time to time, events became quite amusing.

For example, at one point, a particularly demonstrative State's witness was swooning, dropping literally below the edge of the witness box in demonstrating how her friend had been choked almost to death. I graciously asked if she would demonstrate the attack upon me. In retrospect, this was a proposition to which she too quickly agreed. Without any further coaching or interpretation, she charged from the witness box and grabbed the front of my nicely tailored shirt. Yelling various Korean epithets at me, which I assumed were compliments at the time, she viciously bounced me around like a rag doll back and forth, and up and down in front of the judge, thoroughly demonstrating the severity of the assault. Apparently for effect, she also had grabbed a healthy handful of the hair which adorns my Yul Brenner chest. In seconds, I learned that razors and Nair are not the only ways of removing unwanted body hair. In the end, it became evident that she was quite satisfied with the graphic success of her demonstration, even if the court claimed to have trouble following it and twice wanted the performance repeated. Many law professors have warned against courtroom demonstrations. I also am now a firm believer in avoiding them, if at all possible, since one can never be sure if the glove will fit or not.

In another instance, a victim, who was a pleasant looking businessman in his early thirties, claimed that throughout the entire attack by my client he stood politely with his hands folded in front of him to show respect to an older person. In contrast, my client had allegedly sucker-punched the victim with a well-timed Karate blow to the mouth, loosening an incisor.

The witness testified that it was not his intention to pursue a monetary claim. He only wanted justice. About that time. I noticed that he had brought a briefcase onto the stand with him. Recognizing the old rule that one should never bring anything to the courtroom that they would not want an obnoxious defense attorney to plow through, I decided that he must have wanted me to look at his papers. Without objection, I reviewed his files, which showed that a significant financial claim was apparently being considered in this case, depending upon outcome. One interesting tidbit was a portion of the yellow pages directory which had been torn out listing various Fairbanks attorneys with large circles and x's either around or through their names. I was most dismayed to see that I was not included in this selection process. Apparently, I did not rate either.

Because my theory of the case was that the victim was using the criminal process to gain economic advantage, I asked on numerous occasions whether or not he had sought the assistance of civil legal counsel for the purposes of civil litigation, and whether or not his testimony in this particular case was motivated by financial gain. Each time, he assured the court that he had no economic incentive. All he wanted was "justice." Apparently, his concept of justice was much different from that of most litigants, who unabashedly equate justice with money. His answers remained defiantly consistent. Since he was the conclusion of the State's case in chief, there was little that I could do at the time to challenge his answers. I had no hard evidence to the contrary.

During a break, my investigator informed me that the individual had, in fact, telephoned my office less than two weeks previously. Due to a conflict, I did not speak to him. The victim was apparently quite dissatisfied with the services being provided by the district attorney's office, as evidence later revealed. That did not particularly surprise me, however, since most of my clients, as well, were displeased with the services of the district attorney's office. In any event, I now had ammunition.

The defense case opened. I recalled the witness to the stand. I reminded him that he was still under oath. 1 had only one question which I wanted to ask, to be answered in either the yes or no format. I then asked him whether or not it was true that, on October 20, at approximately 8:10 a.m., he had contacted my office to seek legal advice with respect to litigation. He answered, quite simply, "Yes."

The district attorney's elbows shot out and his head hit the table. His star witness suddenly was no longer a star, but a flash in the pan. It was now or never. The district attorney had to win the case with a grueling cross-examination of his own star witness. He launched into techniques of effective cross-examination taught only by the late great Irving Younger of NITA fame.

"Sir," he inquired, "isn't it true that you came to my office several times before this case went to trial, and asked to meet with me, and I wouldn't meet with you?"

The witness responded, attempting to be most helpful with a polite "No." (Obviously. I had him prepped for one word answers.)

Frustrated, with this unexpected reply, the district attorney asked the question again, more forcefully, implying that he had neglected to meet with the victim.

In a spark of recognition, the witness appeared to get the idea of the question. Apparently, the district attorney wanted to bolster the image of the district attorney's office. The witness respectfully responded that he was not dissatisfied with the work of the district attorney's office.

Becoming more frustrated, the district attorney tried a different approach, yet once again trying to malign the qualifications of his fine office, thereby justifying the witnesses' decision to seek a second opinion.

"*Sir*, isn't true that you wanted to seek the advice of other attorneys to see whether or not the district attorney's office actually was doing a good job in this case," the intimidating question urged. Stifling the impulse to raise the reliable "Asked and answered" objection which never seems to work for me, even though everyone else wins it, I marveled at the net effect of the inquiry in effectively confessing malpractice before the court.

Despite the suggested answer, the response still wasn't what was wanted. Instead, the witness responded that he simply had set out to seek legal advice, and nothing more.

Undaunted, the district attorney tried one last time. "*Sir*," the inquiry came again. "Did you go to the yellow pages to locate attorneys, yes or no?"

The witness's answer was immediate. "Yes."

A winning smile crossed the prosecutor's face. He was finally getting somewhere. He pressed home the advantage.

"And *Sir*, and did you not find Mr. Satterberg's advertisement in the yellow pages in which he holds himself out in addition to practicing virtually any known form of law, as a criminal trial attorney?"

Once again, the answer pleased the district attorney. "Yes, I needed advice."

The district attorney was ecstatic. Exclaiming the classic "Ah Ha" that we are all taught in our only semester of trial practice in law school, he quickly passed the witness to me, hoping that I would not ask any questions. But not a chance. Like most attorneys, I can never resist the urge to talk. It is a professional co-dependency thing.

It was my turn to shine. I have never gotten along very well with the yellow pages. Although certain counsel in Fairbanks are even so bold as to have their photograph annually adorn the back page of the local directory, thus giving rise to a rapidly growing market in telephone book covers, I have not been so selected. Instead, I am relegated to a 4 X 4 insert which I bought in haste one day from a salesperson who assured me that my advertisement would reach all corners of bush Alaska. I understand that it did exactly that, and forms useful material hanging from a chain in more than one privy, along with the rest of the lawyer advertisements so dearly purchased. But the advertisement was defective, and totally neglected to mention that I practiced in the field of general criminal defense. Not that it would have necessarily mattered, but only

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TALES FROM THE INTERIOR

Continued from page 18

that I never felt that I received true value for my dollar. By a stroke of fate, whatever damages I had previously suffered through this negligent failure to include my areas of "emphasis" in the advertisement, I was now able to wipe out.

I requested a copy of a telephone book from the in-court clerk, confidently approached the witness, and opened the book to the dozen or so full color solicitations which festoon the attorney's section. The witness initially took some interest in the picture of the femme fatale who traditionally adorns the back cover of the directory, and who appears in alternating years as either a blond or a brunette. I only let him glance at the picture. I then directed him to the yellow pages, and asked him to identify my advertisement which had caught his attention. He pointed to the one indicating that my firm does litigation work. He then looked me square in the eye, tapped his finger to the page and stated, "Light here, you rithigation firm." I panicked. I began to look for a thesaurus. What could he mean by rithigation? I then remembered that there was a certain something lost in the translation. While his English was a second language, my Korean was a tenth language and limited only to some profanities I had learned earlier in the case. Certainly, I was in no position to criticize his pronunciation.

I asked the witness to point out where it said that I did criminal work. He pointed out that I worked in personal injury. I readily agreed, and instinctively reached for a business card, as did two other lawyers in the courtroom who had come to watch the case. Nowhere, however, was he able to locate the portion of the advertisement which bragged about my unique abilities as a criminal attorney. The witness recovered quickly, however, by tapping the book and loudly again proclaiming that I was a "rithigation firm." I made a mental note to hire him when the case was over.

Walking away, I decided to fix him for good with the $64,000 question. After all, he was under oath. I could sense no better time than the present.

Spinning dramatically to confront the witness in the best Perry Mason style, I opened my eyes to find myself facing the jury room. Recovering, I fixed him with my own steely-eyed glare. I launched my SCUD. "Sir, isn't it *really* true that you called me because I'm the *best* attorney in Fairbanks?" To my total surprise, the witness was stunned by the question. I thought the answer was obvious. Without any hesitation, he should have answered immediately in the affirmative. Yet before I could rephrase the question, the district attorney objected on the grounds of foundation. Adding insult to injury, Judge Pengilly not only sustained the objection, but quietly took judicial notice that the inquiry could have been based on nothing else but the yellow pages.

Profoundly hurt and insulted. I ceased questioning the witness and returned to my table to pout. Court happily adjourned for the day.

That evening, the screening district attorney and I agreed, in concept, that this particular piece of litigation was going nowhere very fast. Not only was open warfare due to break out between the only two Korean restaurants in Fairbanks, but it was also clear that the local canine populace would became very well fed in the next several months if matters continued. We explored resolving the case with such things as public apologies, private apologies, the exchange of remuneration, the lack of exchange of remuneration, charging everybody with crimes and a concept known as sepuku.

The next morning, I met with the district attorney assigned to try the case. He assured me that he was attempting to reach a resolution with his victim, but also was having difficulty. Meanwhile, the hallway was becoming more crowded with supporters for either side. "What a place for an espresso cart!" I mused.

Suddenly, the judge's clerk, Sandy, poked her head out of the courtroom and commanded that the "The court wants to see both counsel alone." Explaining to my client that this was an ancient common law tradition, neglecting to mention that it was normally reserved for only the most royal screw-ups on behalf of attorneys, I excused myself.

"YOU ARE BOTH GUILTY OF ASSAULT, YET NEITHER OF YOU ARE GUILTY, BECAUSE YOU HAVE BOTH BEHAVED WITH HONOR IN BEATING EACH OTHER UP."

In chambers, the court wisely inquired if settlement was possible pointing out that the Alaskan judicial system simply was not equipped to deal with this most perplexing problem. After all, we had been locked in a trial for four days, and the defense had yet to start. All of us knew that the case would not be resolved with any verdict; and that the Little Korea section of Fairbanks would be far from quiet, regardless of outcome.

The district attorney and I explained our positions. We were both quite willing to resolve this case. One problem was that the complaining witness no longer had the full compliement of teeth in his head, allegedly due to the martial arts proficiency of my client. Medical bills had been incurred, and honor was at stake. It definitely was nothing to smile about.

The court indicated that there were cultural ramifications to the case. It appeared to be a mixture of assault and self-defense, coupled with the defense of the honor of various combative females. Judge Pengilly also gave an unsolicited assessment of how the case was going. I also expect that the judge intended to make the district attorney feel better when he stated that I might be losing the case. After all, I knew that I was winning, no matter how much people told me otherwise. I was used to such criticism.

Following one hour of negotiations, a unique agreement was reached, which can only be classified as springing from the archaic wisdom of Solomon. Court reconvened. Following an eloquent, complex discourse on the intricacies of the legal system, Judge Pengilly apologized to the victim for the injuries he had suffered. He then asked the victim if he would drop the case and release any claims which he might have against my client in exchange for the payment from the court of $1,000 in restitution. Judge Pengilly then asked my client whether or not he would be willing to compensate the court for the court's troubles, indicating that a meager payment of $1000 would be quite appropriate. Both parties agreed. The issue settled, the court then expounded upon the concepts of honor. Waxing philosophically, the court opinioned "You are both guilty of assault, yet neither of you are guilty, because you have both behaved with honor." It was indeed a unique theory of jurisprudence.

The liturgy did little to clarify the situation. Still, it was one of the best exercises in diplomacy that I had seen since the legendary days of Henry Kissinger. Most importantly, it seemed to satisfy the parties. After the court left, humble apologies were exchanged. Over the next several days, the message was conveyed to the Korean community that neither party had either won nor lost the litigation. Even more surprisingly, my client became motivated to seek gainful employment, in order to pay my bill. As for myself. I was quite pleased to see that the judicial system had functioned in the true interests of justice in resolving a dispute, as opposed to simply providing pro forma traffic control, which often seems to be the case.

Although I do not always agree with Judge Pengilly's rulings, I must confess that I was impressed with the outcome. After all, I had won the case, hadn't I. But then again, so had the district attorney. It all depended upon whom was asked the question. In the end, although both of us could have thought of ourselves as the respective losers, most likely confirming the general opinion held by others, it was more satisfying to declare ourselves winners, under a tacit understanding that neither one of us would ever discuss the case in public when in each other's presence. But since the district attorney responsible for the case has now left Fairbanks for a different locale, I have elected to follow the precedent set by another famous Fairbanks lawyer, Steve Cowper, i.e.- all bets are off! I won!

Breaking the sound barrier without breaking the bank

By Joe Kashi Part II

HARD DISKS

CPU processors are not the only component where today's average performance leaps ahead of last year's premium products. Hard disks seem to become larger, faster and cheaper by the day. I'll give you my recommendations below. First, though, here's a short primer on current hard disks and how to optimize data transfer.

Current Enhanced IDE (EIDE) hard disks have a maximum transfer speed of 16.6 megabytes per second using PIO mode 4 transfer. PIO is an acronym for programmed input-output, a method that uses the system's CPU to move the data. That's a drag on system performance and heavy PIO hard disk usage will soak up essentially all of a computer's processing power during transfers. SCSI hard disks are usually better in this particular regard because the SCSI controller has its own specialized CPU and places a much lighter load on the computer's processor.

Your EIDE hard disk's performance depends not only upon the hard disk's inherent capabilities but equally upon the PCI hard disk controller built into all new computer system boards. PIO mode 4 remains the current standard for most newer EIDE hard disks; to use PIO mode 4, your system board must have a built-in PCI hard disk controller that supports this fast data transfer. Older hard disks and system boards may only support slower PIO modes. Earlier hard disk controllers on add-in expansion cards rather than upon the system board are much slower in comparison and are a real drag upon hard disk performance. Remember, though, that the quoted maximum transfer rates pertain only to short bursts of data. Your hard disk's sustained data transfer rate is far more important but these inherently less impressive numbers are rarely quoted in ads.

More modern EIDE hard disk controllers make good use of read ahead capabilities that usually predict the next data you'll need from your hard disk and pre-fetch it ahead of time. You can set these parameters in your computer's system board BIOS. Using pre-fetch capabilities along with "large block" mode and the fastest possible PIO mode gets the most out of your current hard disk. In fact, modern system boards using Intel's HX or TX chipsets will automatically determine your hard disk's identity and capabilities and, when used in automatic setup mode, will often set your hard disk for optimum speed transfers, although you may wish to experiment with various settings. Write down the initial settings that work, though, in case your experiments go awry.

There's much more to hard disk performance than the access time and maximum transfer rate numbers that I'm usually quoted. In fact, the most important factors are mechanical: how fast the disk spins and how tightly the data is packed upon the rotating disk platters. Mechanical limitations are always the bottleneck. Modern electronics can transfer data to the computer far faster than the spinning hard disk serves it up to be read. All other things being equal, hard disks that have a higher storage capacity (i.e., 2.5 gigabytes and up) and that have a faster rotational speed (5,400 RPMs and up) will have a better sustained data transfer rate. Quite simply, more data is moved under the read-write heads in a given period of time.

MECHANICAL LIMITATIONS ARE ALWAYS THE BOTTLENECK.

Generally, you'll trade off a higher RPM rate against higher cost and possibly lower long term reliability caused by greater mechanical stress. I prefer hard disks with a 5,200 to 5,400 rpm speed. These are a good compromise between performance, cost and reliability. Some higher end hard disks use rotational speeds in the 7,200 to 10,000 rpm range. However, it's noteworthy that IBM and Western Digital, the hard disk brands that I consider to be most reliable for average desktop computer usage, both spin at 5,200 to 5,400 RPMs.

Recently, I've started to see hard disks shipping with greater capacities and faster electronic interfaces. Now, 2.5 gigabytes seems to be the entry level and often cost less than $225 retail; hard disks with 3.1, 4.3 and 5.1 gigabytes are increasingly common and can usually be purchased for $300 to $400. The larger capacity EIDE drives may include a much faster electronic interface, Ultra DMA, which bypasses your computer's CPU and sends hard disk data directly to DRAM memory. That's obviously more efficient and the Ultra DMA interface has a maximum burst transfer rate of 33.6 megabytes per second, double the older PIO mode 4 rate. Ultra DMA is usually used only in the newest and largest EIDE hard disks. Western Digital's Ultra DMA desktop hard disk products START with the new 4.3 gigabyte model.

In order to use the Ultra DMA capabilities of a new hard disk, you'll need a computer system board that incorporates Intel's 430TX or 440LX chipsets. Older chipsets don't have Ultra DMA capabilities and will use the disk's concurrent PIO mode 4 capabilities.

Much of what I've said about EIDE hard disks pertains to SCSI drives as well, but there are a few distinctions. Using SCSI hard drives is typically more expensive because you'll need a separate PCI hard disk controller card, which can also run other SCSI peripherals like scanners and tape drives. Because SCSI hard disks cost more, manufacturers generally

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Breaking the sound barrier without breaking the bank

Continued from page 20

use their most reliable hard disk mechanical assemblages to build them; overall reliability tends to be accordingly higher. Because of this, and because the SCSI interface can perform several tasks at once, SCSI hard disks are preferred in Netware, OS/2 and Windows NT file servers and desktop computers.

SCSI hard disks now come in two flavors: Ultra SCSI with a maximum burst transfer rate of 20 megabytes per second and Ultra Wide SCSI with a maximum burst transfer rate of 40 megabytes per second. At the moment, Ultra Wide SCSI is the desktop speed champ. Remember to carefully match hard disk controllers and cables to your SCSI hard disk. The hard disk controller must support the maximum speed of the drive; I like the Adaptec 2940UW Ultra Wide controller and the equivalent UW Advansys controller. Ultra SCSI requires a traditional 50 pin connecting cable while Ultra Wide SCSI needs a 68 pin cable.

Recommendation: If you are getting a new computer that uses a 430TX or 440LX chipset, then get an Ultra DMA EIDE hard disk for the average desktop computer. Higher end applications like network servers or top end desktop computers should consider Ultra Wide SCSI using a matched Adaptec or Advansys SCSI PCI controller. Regardless of the interface that you choose, get a drive that spins at 5,200 RPMs or faster. For reliability, I prefer the IBM, Western Digital and Quantum brands in both EIDE and SCSI hard disks.

...KNOW WHAT'S INTRINSICALLY IMPORTANT AND WHAT'S MERE VENDOR PUFFING.

VIDEO CARDS

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

Having said that, we all should have a video card that's at least reasonably fast. Fast, high quality video cards are amazingly inexpensive and there are many excellent models on the market. Get a video card from a major manufacturer with a commitment to constantly improving the quality of the "driver" software that interfaces the video card with your specific Windows or OS/2 operating system. The quality of the video card's driver software is, in fact, one of the most important factors affecting video performance. In fact, without good quality software to take advantage of your card's special features, you'll probably be limited to plain vanilla VGA resolution and performance.

Your video card should be a PCI expansion card; I have major reservations about system boards that include video capabilities. You'll be very limited in the future. The video card should contain at least two megabytes of high speed video memory and have at least a 64 bit data path. A 128 bit data path is better and 256 bit is probably overkill.

EDO video RAM is adequate but SGRAM, VRAM and MDRAM memory is faster. MDRAM memory (multibank video DRAM) is the least expensive of these faster alternatives. Look for a maximum non-interlaced resolution of at least 1024 x 768 pixels with a refresh rate of at least 72 Hertz. Video cards meeting these standards can be purchased for as little as $60 retail. Joe has recently been using STB Lightspeed 128 video cards in OS/2 and found that these $47 MDRAM cards ran twice as fast as ATI Mach 64 purchased for twice as much only a few months ago.

Recommendation: STB 128 bit MDRAM video cards. You may need to download some software drivers from the STB web page, but they're available and work very well.

CD-ROM DRIVES

In most business applications, the speed of a CD-ROM drive means little. The faster and faster CD-ROM drives that you see advertised usually don't deliver linearly increasing performance and may be most useful to computer gamers. The standard 12X or 16X CD-ROM drive is more than adequate. IDE CD-ROM drives usually cost under $100 and will be run very reliably from the secondary IDE controller on your PCI system board. Mitsumi IDE CD-ROM drives are inexpensive and have proven very reliable. Honestly, good CD-ROM drives are almost in the price range of generic floppy disk drives.

NETWORKS

Every law is, or should be, networked, right? Assuming that you've bought a new, fast computer, then the next stage in your need for speed is the law office network. That's been the subject of my prior hardware columns and an issue that requires long term planning and expensive reworking of most law office systems. I believe that the minimum standard for new law offices is 100Base-T Ethernet using Category 5 UTP cabling and a fast file server. I like 3Com and Intel cards.

Cost-Effective Desktop Speed Demon: Mid-tower case with lots of CPU and internal cooling fans; AMD K6 200-233 Mhz CPU; system board with 430TX chipset from a reliable manufacturer like Intel or Gigabyte; 64 MB EDO DRAM; Western Digital 4.3 GB Ultra DMA hard disk or IBM Ultra Wide SCSI 4.3 GB drive; 12X Mitsumi IDE CD-ROM drive; 3.5" floppy disk drive; STB Lightspeed 128 or comparable video card; Windows 95 operating system; Intel 100Base-T Model B network card; US Robotics 33.6 modem.

Approximate wholesale cost without monitor before shipping and tax: $1,375.

Add about $350 for a good 15" monitor from a reputable vendor like Viewsonic. Add about $425 if you use an Ultra Wide SCSI hard disk instead of Ultra DMA.

You really can afford a new, loaded, really fast desktop computer as long as you know what's intrinsically important and what's mere vendor puffing.

Well, that's certainly enough GeekSpeak for this month. George Orwell didn't quite get it right in his novel 1984. The real danger to an alert civilization isn't NewSpeak, it's GeekSpeak. Let that be a warning to you about having nothing better to do at 1:00am Saturday morning than write computer columns and listen to Bach's Mass in B Minor.

Upcoming legislative issues

☐ Scott Brandt-Erichsen

Based upon recent events, and the level of attention during the legislative interim, the three most significant statewide issues on the legislature's plate for the coming session appear to be:

- resolution of the conflict with the federal government over subsistence uses of land and resources;
- the "deferred maintenance" needs of public facilities throughout the state; and
- the procedure and formula for funding of public education. There are a number of other "hot" regional issues, but these seem to be the leading statewide priorities.

I am certain that I am not the only one who fails to see a simple, workable, equitable solution to the subsistence issue. The nature of the issue does not lend itself to a single "correct" equitable solution, but requires balancing of the competing interests and a value judgment as to where to draw the line between subsistence users and other citizens. In effect, the threat of federal takeover of fisheries management presents a legislative "Sophie's Choice." The legislature will want to avoid a federal takeover, but also avoid enraging a significant constituency.

The other two issues, "deferred maintenance" and "school funding," are more suitable for quantitative analysis and objective decision making. To a certain extent, both come down to the twin questions of: "How much money should the state provide?" and "What should be the system for dividing up the money which is made available?" The first question is a policy call by the legislature. The second is more ministerial and must be answered with an objectively equitable program in order to avoid challenges.

While the legislative tradition of "bringing home the bacon" for one's district may play a significant role in addressing deferred maintenance needs, the majority of projects may be objectively scored and ranked according to criteria identified by the legislature.

Unlike capital projects, the funding of education has not been, and likely will not be, subjected to funding on a discretionary spending basis. The allocation of state funds for educational operations is required to be equitable. Further, the equity of funding is measurable, and a significant imbalance can be expected to foster litigation. Setting the more discretionary issues of subsistence and deferred maintenance aside for now, this article focuses on the school funding issue.

The funding formula itself, when reduced to its basic terms, multiplies an amount identified as the instructional unit value (currently $61,000) by the product of the area cost differential for a given district and the number of instructional units in a given district. For example, a district with 10 instructional units and an area cost differential of 1.25 would have a "basic need" for funding formula purposes of $61,000 x 10 x 1.25 or $762,500. The key points to be addressed by the legislature are the area cost differentials (the cost of doing business in a particular district) and the impact of inflation.

Because of the multiplying effect, a 10% discrepancy between the actual costs of doing business in a particular district and the area cost differential assigned to that district can result in a statutory restriction limiting a district to receipt of 90% of the funding to which it would otherwise be entitled. In the example above, a 10% understatement of the cost differential would mean district whose costs were $762,500 to provide a given level of service would have only $680,250 to do the job. It is not hard to see how this impacts the opportunities available to students in such districts.

The inflation part of the issue focuses on whether the instructional unit value (currently $61,000) is raised each year at the going rate of inflation. It is not. It has increased $1,000 or 1.5% between 1987 and 1996 while the inflation (CPI) increase over that period has been in the range of 31.9% (Anchorage) to 38.1% (all U.S. cities). The result is a drop of approximately 30% in purchasing power over the 10 year period.

Some of the inequities across the state experienced by school districts may be readily demonstrated by looking at communities in Southeast Alaska. The Southeast Alaska communities of Petersburg, Ketchikan, Sitka and Juneau all have area cost differentials statutorily assigned as 1.00, the same as Anchorage, Kenai and the Mat-Su Borough school districts. However, in a 1996 Alaska Department of Labor publication, the costs of living in these communities ranged from 8-15% higher than in Anchorage. The result is that the funding ceiling, and thus the educational opportunity available to students in these low end districts, is reduced. When coupled with the effect of inflation, some districts are statutorily limited to around 60% of the buying power they had 10 years ago.

Things are looking up. Both local communities and the legislature are closing in on solutions. In the fall of 1997, the Alaska Municipal League conducted a school funding survey of local municipalities and school districts. A significant majority identified two specific issues that they felt must be addressed in relation to school funding. Some 92% of 25 responding municipalities and school districts (85% of all 53 respondents) felt that a new area cost differential study was needed. The last adjustment to the area cost differential

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(cost of living) factor in a school funding formula occurred in 1985. Second, 93% of 53 respondents felt that the educational funding formula needs to be adjusted for inflation.

The legislature is also moving ahead in addressing the issue. In addition to several bills which were under consideration in the first session, the legislative budget and audit committee has included an area cost differential study in a state employees salary and benefits study to be completed by February 15, 1998, in time for the legislature to implement the study's findings.

Thus, regardless of the resolution of the philosophical question of how much of a role the state should play in funding public education, the question of how the money available should be divided is receiving close scrutiny, and the legislature should have sufficient facts in its possession to make a fact-based decision this session.

It is important that an equitable balance on school funding be reached.

The longer adjustments are delayed, the greater the risk of a meritorious challenge to the current school funding formula. The Alaska Supreme Court decision in Matanuska-Susitna Borough School District, et al. v State Department of Education, 931 P.2d 391 (Alaska 1997), makes a successful legal challenge to the current funding formula unlikely. However, the Mat-Su decision implies that a valid challenge could be made if bought by an appropriate party and supported by evidence that the funding formula operates in a manner which translates into disparities in the educational opportunities available to students.

It is unclear whether such a case may be made by any communities currently. But the longer the funding issue is not addressed, the greater the impact of area cost differentials which understate the cost of doing business in various communities around the state, and the greater the likelihood that a successful challenge could be brought.

Let us encourage the legislature to reach a consensus on school funding before such a challenge is brought and resources which could go to other projects are expended on litigation.

O'CONNER VISITS ALASKA

(SEE STORY PAGE 1)

Court Rules Attorney Christine Johnson (center) introduces her mother Beryl Johnson (r) to Justice O'Connor.

Anchorage Assistant Attorneys General Elizabeth Hickerson (center) and Lisa Nelson (r) greet Justice O'Connor.

ALASKA BAR ASSOCIATION ANNUAL CONVENTION

ALYESKA 1998!!!

Learning.....Hiking.....Swimming.....Relaxing

Circle these dates for 1998: May 7, 8 and 9!

The Alaska Bar Association Annual Convention will be held Thursday - Saturday, May 7-9, 1998, in conjunction with the Alaska Judicial Conference at the Westin Alyeska Prince Resort in Girdwood.

Join us for a very special program including:

- Annual Alaska Appellate Update with Theresa Newman of Duke University School of Law
- Advanced Legal Writing with nationally acclaimed attorney and trainer Bryan Garner of LawProse, Inc.
- U.S. Supreme Court Opinions with Professors Arenella and Chemerinsky
- Alaska Native Law Update
- State of the Judiciaries Address by Chief Judge Singleton and Chief Justice Matthews
- 44 Things to Do Before Trial with nationally known trial attorney Morgan Chu from Los Angeles, and Mauri Long and Ray Brown of Dillon & Findley

✔ Join us at the Glacier Express for the President's Reception. And be sure to reserve a seat for the Awards Banquet with keynote speaker Don Mitchell, lawyer and author of *Sold American*.

✔ The Alaska Bar Association Annual Meeting will be on Thursday, May 7.

Providers of services to the legal community including publishers, printers, and insurance groups will be on hand to share information with Bar members. Watch for more information in upcoming editions of the *Bar Rag* and look for the special convention brochure in early 1998.

See you in Alyeska!

Alaska Bar Association Video Replay Schedule

December, 1997 - March, 1998

Replay Locations:

Barrow	**Barrow Courthouse** CLE Replay Coordinator: Karen Hegyi
Dillingham	**Jury Room, Courthouse** CLE Replay Coordinator: Joe Faith
Fairbanks	**Cook Schuhmann & Groseclose Conference Room** CLE Replay Coordinator: JoAnna Claxton/Barbara Schuhmann
Juneau	**Dillon & Findley Conference Room** CLE Replay Coordinator: Darcy Suss/Peter Putzier
Kenai	**Courthouse Jury Assembly Room** CLE Replay Coordinator: Allan Beiswenger/Barbara Winkler
Ketchikan	**State Office Building Law Library (2nd Floor)** CLE Replay Coordinator: Trevor Stephens
Kodiak	**Law Office of Jamin, Ebell, Schmitt & Mason** CLE Replay Coordinator: Matt Jamin/Linda Brown
Kotzebue	**Kotzebue Courthouse** CLE Replay Coordinator: Judge Richard H. Erlich
Nome	**Larson, Timbers & VanWinkle, Inc.** CLE Replay Coordinator: Conner Thomas
Sitka	**Pearson & Hanson** CLE Replay Coordinator: Brian Hanson

Mediation in Business Disputes: How It Works & How to Prepare (#97-25)
(Anchorage: 9/12/97, 5 hours)
Barrow: 12/13/97, 12 noon
Kodiak: 12/6/97, 9:30 a.m.

Morgantown Civic Center Collapse (ALPS) (#97-10)
(Anchorage: 9/24/97; Juneau: 9/22/97; Fairbanks: 9/29/97, 3 hours)
Barrow: 12/6/97, 12 noon
Nome: 12/6/97, 9:00 a.m.

Bankruptcy Law Issues (#97-34)
(Anchorage: 9/26/97, 3 hours)
Juneau: 12/5/97, 9:00 a.m.
Ketchikan: 12/6/97, 9:30 a.m.
Kodiak: 1/10/98, 9:30 a.m.

Sexual Harassment: Where Do You Draw the Line in the Workplace? Yes, It Really is A BIG DEAL (#97-24)
(Anchorage: 10/3/97, 3 hours)
Barrow: 1/10/98, 12 noon
Juneau: 12/12/97, 9:00 a.m.
Ketchikan: 12/13/97, 9:30 a.m.
Kodiak: 12/20/97, 9:30 a.m.

Limited Liability Vehicles (#97-38)
(Anchorage: 10/9/97, 3 hours)
Juneau: 1/9/98, 9:00 a.m.
Ketchikan: 1/10/98, 9:30 a.m.
Kodiak: 1/17/98, 9:30 a.m.

Alaska Native Law Conference: Day One - Native Law Issues (#97-11)
(Anchorage: 10/21/97, 8 hours)
Barrow: 1/31/98, 12 noon
Fairbanks: 12/12/97, 9:00 a.m.
Ketchikan: 12/20/97, 9:30 a.m.
Kodiak: 1/24/98, 9:30 a.m.
Kotzebue: 1/8/98, 7:00 p.m. & 1/10/98, 1:00 p.m.

Alaska Native Law Conference: Day Two - Environmental Law Issues (#97-11)
(Anchorage: 10/22/97, 8 hours)
Barrow: 2/7/98, 12 noon
Dillingham: 12/5/97, 10:00 a.m.
Fairbanks: 12/19/97, 9:00 a.m.
Juneau: 12/19/97, 9:00 a.m.
Ketchikan: 1/3/98, 9:30 a.m.
Kodiak: 1/31/98, 9:30 a.m.

Documents & Trends in Residential Transactions (#97-40)
(Anchorage: 11/6/97, 3 hours)
Barrow: 2/28/98, 12 noon
Dillingham: 12/12/97, 10:00 a.m.
Fairbanks: 1/9/98, 9:00 a.m.
Juneau: 1/23/98, 9:00 a.m.
Kenai: 12/12/97, 1:00 p.m.
Ketchikan: 2/7/98, 9:30 a.m.
Kodiak: 2/7/98, 9:30 a.m.
Nome: 3/6/98, 9:00 a.m.
Sitka: 2/13/97, 9:00 a.m.

Child Sexual Abuse Issues (#97-19)
(Anchorage: 11/14/97, 3.75 hours)
Barrow: 12/20/97, 12 noon
Dillingham: 12/19/97, 10:00 a.m.
Fairbanks: 1/16/98, 9:00 a.m.
Juneau: 2/6/98, 9:00 a.m.
Kenai: 1/9/98, 1:00 p.m.
Ketchikan: 2/21/98, 9:30 a.m.
Kodiak: 2/21/98, 9:30 a.m.
Kotzebue: 3/19/98, 7:00 p.m.

Immigration Law Issues (#97-44)
(Anchorage: 12/5/97, 3 hours)
Dillingham: 1/23/98, 10:00 a.m.
Fairbanks: 1/23/98, 9:00 a.m.
Juneau: 1/16/98, 9:00 a.m.
Ketchikan: 2/28/98, 9:30 a.m.
Kodiak: 2/28/98, 9:30 a.m.

(Please call the Bar office at 907-272-7469 to register for a replay.)

IOLTA Overview

Attorneys routinely receive client funds to be held in trust for future use. If the amount is large or the funds are to be held for a long time, the attorney places the funds in an interest bearing account for the benefit of the client. However, in the case of amounts that are small or are to be held for a short time, it is financially impractical to establish separate interest-bearing accounts for individual clients.

Under the Alaska IOLTA program, attorney's non-interest-bearing trust accounts holding short-term or nominal funds are converted into interest-bearing trust accounts. The aggregate interest produced by these accounts is transferred to the Alaska Bar Foundation. Funds generated from this program have been designated solely for the following purposes:

1. The Provisioning Of Legal Services To The Needy

The Alaska Bar Foundation is committed to improving access to legal services. Particular consideration is given to projects and organizations that provide legal services to the poor.

2. Improving The Administration Of Justice

The Alaska Bar Foundation supports projects and organizations that seek to improve the legal system and the administration of justice. Special emphasis is given to projects that contribute to the substantive understanding of the legal system and to organizations that advocate improvement.

IOLTA Grant Procedures

The Trustees defer to the following guidelines and procedures for reviewing applications and awarding IOLTA grants:

1. An applicant shall submit its request for an IOLTA grant by supplying the information and documents requested in the IOLTA application supplied by the Alaska Bar Foundation.
2. All applications for IOLTA grants shall be submitted to the Alaska Bar Foundation by April 15 of each year.
3. The Trustees of the Alaska Bar Foundation shall review each IOLTA grant application to determine the application's appropriateness for IOLTA funding.
4. If the application can be funded, the Trustees of the Alaska Bar Foundation shall meet as a committee of the whole for consideration and approval of IOLTA grant applications. The Trustees' meeting shall be prior to June 30.
5. Funding shall be available to successful IOLTA applicants on a fiscal year basis (July 1 through June 30).
6. The President of the Alaska Bar Foundation shall communicate to each applicant the action taken by the Trustees.
7. An approved IOLTA applicant shall submit such evaluation reports as requested by the Alaska Bar Foundation.
8. Grant applications are the property of the Alaska Bar Foundation.
9. Applications for emergency IOLTA funds shall be made to the Alaska Bar Foundation through its President. The request will be forwarded to the Trustees who may call a special meeting to consider the same.

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Alaska Legal Services Corporation
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Paul W. Waggoner
Walker Oldham
Law Offices of David T. Walker
H.G. Walker
William K. Walker
Walker, Walker, Wendlandt & Osowski, L.L.C.
Karl L. Walter, Jr.
Walther & Flanigan
Law Office of Heidi L. Wanner
Daniel C. Wayne
Julie Webb
W. David Weed
Law Office of Brock M. Weidner
Daniel Westerburg
Dennis A. Wheeler
Vanessa H. White
Wickersham & Associates
Thomas Wickwire
Wickwire, Greene, Crosby, Brewer & Seward
Larry Wiggins
Law Offices of Donna C. Willard
D. Kevin Williams
Richard J. Willoughby
Wilkerson & Associates
Law Offices of Charles A. Winegarden
Tonja Woelber
Wohlforth, Argersinger, Johnson & Brecht, P.C.
Brett M. Wood
Law Offices of Thomas J. Yerbich
Law Offices of Steve K. Yoshida, P.C.
Young, Sanders & Feidman
Law Office of Clarke L. Young
Mary-Ellen Zalewski
Michael J. Zelensky
Martin Zeller
Elizabeth A. Ziegler
Ziegler, Cloudy, Peterson, Woodell & Seaver

Alaska Bar Foundation

1996 Annual Report

President's Report

In 1996, the Trustees of the Alaska Bar Foundation awarded $193,000 in IOLTA grants. Thanks to the many firms and lawyers who participated in the IOLTA program, the Foundation's IOLTA awards were $29,000 greater than they were in 1995. Four organizations received grants:

Alaska Pro Bono Program

In granting $180,000 to this organization, the Foundation sought to further its primary mission to provide legal services to the poor. The Trustees found it particularly important to fund the Pro Bono Program in 1996, given the cutbacks in state and federal legal services funding. Additionally, more than 50% of Alaska Bar Association members participate in the Alaska Pro Bono Program.

CASAs for Children

This organization received $3,000 to continue its mission to train over 120 CASAs (Court Appointed Special Advocates). CASAs are volunteers who work to insure children have their best interests represented in court.

Catholic Social Services

Catholic Social Services was provided $6,000 for its Immigration/Refugee Program. CSS provides legalization assistance to Alaskan immigrants.

Alaska Women's Resource Center

This organization received $4,000 to help further its goal of providing legal information and referrals to needy women in the Anchorage community.

In addition to these four IOLTA grants, the Trustees also issued a grant to the Alaska Department of Law History Project using monies from the Foundation's general fund. The History Project is producing a written history of the Department of Law and the Office of the Attorney General. The Foundation matched private contributions solicited up to $2,500.

The Trustees are thankful for the increased participation in the IOLTA program by Alaska attorneys and law firms who make these grants possible.

Mary K. Hughes

Alaska Bar Foundation Trustees

Leroy J. Barker
Winston S. Burbank
Mary K. Hughes
William B. Rozell
Eric T. Sanders

Participating Banks

The IOLTA program is made possible by the cooperation of these banks serving Alaska's law firms throughout the state:

Alaska Federal Savings Bank
Bank of America
Denali State Bank
First Bank
First Interstate Bank
First National Bank of Anchorage
Key Bank of Alaska
National Bank of Alaska
Northrim Bank

Alaska Bar Foundation Financial Statements

Financial Position as of December 31, 1996

ASSETS:

CURRENT ASSETS:			
First National Bank	17,489		
Merrill Lynch Ready Assets	66,250		
AK Bar Assn. Receivable	4,408		
TOTAL CURRENT ASSETS:		88,147	
FIXED ASSETS:			
Donated Property (Art)	4,500		
TOTAL FIXED ASSETS:		4,500	
TOTAL ASSETS:			**92,646**

LIABILITIES & FUND BALANCE:

LIABILITIES:			
Accounts Payable	160		
TOTAL LIABILITIES:		160	
FUND BALANCE:			
George F. Boney Endowment	5,000		
Justice Dimond Endowment	3,600		
Wendell P. Kay Endowment	490		
Scholarship Fund	(6,000)		
Gender Equality Fund	5,064		
Undesignated Capital	78,160		
Gain/Loss	6,173		
TOTAL FUND BALANCE:		92,486	
TOTAL LIABILITIES & FUND BALANCE:			**92,646**

INCOME SUMMARY:

For the Twelve-Month Period Ending December 31, 1996

INCOME:			
General Donations	8,656		
Gender Equality Fund	4,191		
DOL History Project Donations	5,305		
Investment Interest	3,373		
TOTAL INCOME:		21,525	
EXPENSES:			
General Projects/Grants	2,500		
Gender Equality	5,690		
DOL History Project Expense	2,500		
Alaska Legal Net	544		
Accounting Services	1,872		
Federal 990 Return	350		
Miscellaneous Expense	1,896		
TOTAL EXPENSES:		15,352	
NET GAIN:			**6,173**

IOLTA Program Financial Statements

Financial Position as of December 31, 1996

ASSETS:

Cash and Investments		277,774	
FIXED ASSETS:			
Fixed Assets	1,960		
Accumulated Depreciation	(163)		
TOTAL FIXED ASSETS:		1,797	
TOTAL ASSETS:			**$279,570**

LIABILITIES & CAPITAL:

CURRENT LIABILITIES:			
Accounts Payable	639		
TOTAL LIABILITIES:		639	
CAPITAL:			
Funded Capital	300		
Fund Balance	255,190		
Gain	23,441		
TOTAL CAPITAL:		278,931	
TOTAL LIABILITIES & CAPITAL:			**$279,570**

INCOME SUMMARY:

For the Twelve-Month Period Ending December 31, 1996

INCOME:			
Interest on IOLTA Accounts	230,817		
Interest on Investments	10,289		
TOTAL INCOME:			**241,106**
EXPENSES:			
IOLTA GRANTS:			
Alaska Pro Bono Program	165,000		
Anchorage Youth Court	2,500		
Catholic Social Services	6,000		
CASAs for Children	3,000		
Alaska Women's Resource Center	2,000		
Kenai High Mock Trial Team	8,000		
TOTAL GRANTS:		186,500	
ADMINISTRATION/STAFF EXPENSES:			
Salaries	6,792		
Payroll Taxes	764		
Workers Compensation	222		
TOTAL ADMIN. STAFF EXPENSE:		7,778	
OTHER EXPENSES:			
Bank Fees	12,011		
Accounting Services	7,487		
Annual Report	2,321		
Depreciation Expense	163		
Miscellaneous	1,405		
TOTAL OTHER EXPENSE:		23,387	
TOTAL EXPENSES:			**217,665**
NET GAIN:			**23,441**