The Alaska BAR RAG

VOLUME 22, NO. 6 | *Dignitas, semper dignitas* | $3.00 | NOVEMBER - DECEMBER, 1998

Inside:

Some relatively good news

By Art Peterson

For entertainment value, a page of num-bers isn't all that successful. However, the numbers mentioned below indicate continued national and local support for provision of free legal services to poor people, and that's pretty exciting.

The "Partners in Justice" fundraising campaign for ALSC is underway in all four judicial districts. Attorneys are responding well, with some individuals donating $1,000, and the Anchorage Bar Association donating $30,000. The target is the value of two billable hours or $300 from each attorney, with a statewide goal this fiscal year of $200,000. The details of the legal services foundation are not yet complete. The purpose of it is to establish a dependable base as a future funding source.

Some additional good news, related to the PIJ campaign and judges, is that the Alaska Commission on Judicial Conduct has issued an advisory opinion (Number 98-4) stating that "Judges may contribute financially to The Alaska Legal Services Corporation without violating the Code of Judicial Conduct." They may be listed as contributors or they may make anonymous contributions. The basic point is that these contributions are for the benefit of the public generally and for the improvement of the system of justice by helping assure access to that justice; ALSC provides the structure for doing so.

Under the FY 99 omnibus appropriation bill passed by Congress in October, the Legal Services Corporation will receive $17 million more than in each of the last three fiscal years. This will result in $50-some thousand more for the *Alaska* Legal Services Corporation. This is not enough to re-open one of the offices closed a few years ago when ALSC sustained close to a million-dollar cut in one fiscal year, but it is a significant help.

As in the past two years, the U.S. Senate had passed a bill containing $300 million for the LSC, and the House passed one with $250 million. This time, the conference committee used the Senate figure. Unfortunately, the final bill also retains the restrictions on recipients of LSC money, such as the one prohibiting

Continued on page 4

GET A LIFE —

SEE STORY PAGE 10

1998 "Women In Alaska Law" archive closes Dec. 31

By Barbara Hood

Throughout 1998, the Alaska Joint State-Federal Courts Gender Equality Task Force has invited members of the Alaska Bar Association to submit photos, stories, resumes, and other memorabilia to the archive it has established on "Women in Alaska Law." As the December 31 deadline nears, Task Force Co-Chairs Justice Dana Fabe and Judge James Singleton urge members of the Bar to send in their contributions soon.

"This is an important opportunity to create a permanent record of the important role women have played in the Alaska legal profession and justice system," according to Justice Fabe. "We are interested in the stories of all women lawyers-regardless of how long they have practiced, or whether they are still practicing. All have inspiring stories to tell."

See Page 14

"We hope that the archive, once complete, will serve as a fitting commemoration of the progress that has been made to date towards gender equality," Chief Judge Singleton adds, "and a reminder of the need for continued vigilance against gender bias in our courts and legal communities."

Contributions maybe submitted through December 31, 1998 to: "1998 Women in Alaska Law Archive," c/o 2413 Lord Baranof Drive, Anchorage, Alaska 99517. For further information, or to obtain a copy of the optional contributions form circulated to Bar members last Spring, please call Barbara Hood in Anchorage at 248-7374

Alaska Supreme Court reviews MCLE Rule

The Alaska Supreme Court is currently reviewing the MCLE Rule approved by the Board of Governors and sent to the Court for consideration for adoption. Barbara Armstrong, CLE Director; Deborah O'Regan, Executive Director; and Steve Van Goor, Bar Counsel, made the presentation on the MCLE Rule to the Supreme Court on November 12 at the Court's administrative meeting. The Court received the history and background of the MCLE Rule, the MCLE Rules and Regulations, a summary of the comments made at the August Board meeting concerning MCLE, and copies of the written comments on the Rule submitted by Bar members. The Court asked for additional materials/articles related to the pros and cons of MCLE. This material will be sent to the Court by November 23 for their review.

The Court asked about the possibility of making the Alaska MCLE Rule more consistent with the MCLE Rules of Washington and Oregon, and also asked about accessibility and affordability. The Alaska MCLE Rule could be amended to be more consistent with Washington and Oregon. The MCLE Rule for Alaska as currently written addresses accessibility and affordability: it is possible to meet the requirement, for example, by attending in person (or telephonically at no charge to the member) section meetings.

Bar members will be notified of the Court's decision regarding MCLE as soon as it is available.

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President's Column

Bar budget: Dues and reserves

☐ Will Schendel

The Bar Association's budget was reviewed in detail at the October 30-31 BOG meeting in Anchorage. We gave particular attention to the Association's reserve funds, and the relation they bear to annual dues. The annual budget is $1.9 million, and we hold reserves of $1.2 million. Dues have been set at $450/year since 1993.

Bottom line: The Board approved a 3% increase in the 1999 budgeted expense over the projected expense at the end of 1998; approved the policy of maintaining reserves, but authorized a change in the investment strategy for the reserves; and decided not to reduce dues. The reasons follow.

The increase in the 1999 budget over the 1998 budget reflects a cost-of-living adjustment to personnel (which, in turn, represents 53% of our budget). We authorized no new programs, and made no significant changes in existing programs. As to our reserves, national accounting guidelines recommend that non-profits have a reserve equal to about six months operating budget. The Bar Association's reserves are a little more than that recommended amount; but the Board felt that the additional month's reserves were needed to adjust for the contingent costs of MCLE and, in any case, were too small for a significant refund. We did decide, however, to authorize a change in the investment guidelines for the reserves, to permit the purchase of 5-year time deposits, up from the current 3-year cap.

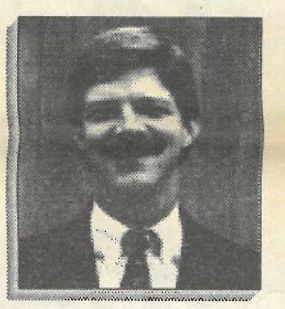
Bar dues have been $450 since 1993. Back then, the Board anticipated that revenues would prevent an increase in dues until 1997. To our delight, our actual revenues have exceeded our projections, and it now appears that dues will not need to be adjusted (i.e., raised) until early 2005 - that's right, another 6 years. That revised projection does not account for MCLE costs, but even that additional cost should not materially affect the projection. Bar dues will, thus, stay put far beyond the expectations of everybody.

The Association's budget is printed elsewhere in the Bar Rag. If you have questions about the budget, please contact me, any other member of the Board, or Bar staff.

Editor's Column

Bar Rag needs new motto: In English, this time

☐ Peter Maassen



It wasn't long after the November 3 election that a certain attorney who doubles as a Republican Party factotem (I forget which faction) called up the *Bar Rag* to mention (very nicely, I have to say) the need for compliance with Ballot Measure No. 6, "Requiring Government to Use English," which is now the law of the land. As most of you probably remember, the Bar Association is, by statute, "an instrumentality of the state," AS 08.08.010; and, though our more staid members may wince to recall it, the *Bar Rag* is the official publication of this instrumentality. Hence our need for compliance.

And what is the offense? *Dignitas, semper dignitas* – our publication's motto, chosen by Editor Emeritus Harry Branson many years ago and emblazoned across the masthead ever since. (Is "Emeritus" an English word? Make that "Esteemed Former Editor.") The *Bar Rag* staff attorneys have combed the exceptions to the English-Only law ("international trade, emergencies, teaching languages, court suits, criminal inquiries, for elected officials to talk to constituents or to comply with federal law") and have concluded that none apply. Therefore, unless we can come up with a federal mandate that the *Bar Rag's* motto be in a foreign (shudder!) tongue, *Dignitas, semper dignitas* has got to go. By the next issue. Or else.

Negotiations with Ted Stevens on the federal-mandate front have broken down. While he is willing to get us $58.2 million in the next appropriations bill with which to build Bar Association substations throughout the state ("Heck, it's just federal tax dollars. It's not like it's the Permanent Fund or something") he won't buck the will of the people on this sensitive social issue.

Thus the new *Bar Rag* reader contest: Help us pick a new motto. Submissions must, of course, be in English, unless it's an emergency or part of a criminal inquiry.

And there's still time to respond to a few reader letters:

Dear Editor:

I am pleased with the appointment of Judge Walter "Bud" Carpeneti to the Alaska Supreme Court and would like to call readers' attention to the ground-breaking aspect of it, *i.e.* that Alaska has never had a justice named "Bud" before. My question for you, Editor, is this: Is this a purely local phenomenon, or does it have any nationwide significance as well?

—Court Watcher

Dear C.W.:

An extensive WestLaw survey (and you wondered why the *Bar Rag* budget is so high) turned up no high court justices named Bud. In testing for sampling error, it turned up no Buzzes, Skips, or Bucks either. There are two justices named Budd (with two D's): Budd G. Goodman, currently on the New York Supreme Court for New York County, and Clinton Budd Palmer, who was on the Pennsylvania Superior Court back in 1962 (and who may still be laboring on unpublished). A cautious justice would add a D to Bud and leave the ground-breaking to someone else, but we rather suspect that Justice Carpeneti has no qualms about taking Alaska, and the country, in a bold new direction.

Dear Editor:

Speaking of ballot measures, I can't tell you how glad I am that Ballot Measure No. 2, limiting marriage to couples of opposite (or at least different) sexes, passed, since, as three former Mrs. Alaskas informed us in television ads, the alternative would have destroyed traditional marriage as we know it. My wife and I were not looking forward to having to return all our wedding presents and going back to live with our parents. Are there other laws that we could pass in the next round to make the institution of marriage even stronger?

—Still Married (Whew!)

Dear S.M. (W.):

A poll of the readership suggests a law requiring all future Mrs. Alaskas to undergo intensive marital counseling, as their relationships appear to be particularly fragile (it must be all the touring). Senator Stevens has promised another $13.2 million for the counseling, as well as the use of special counseling rooms in the Alaska Bar Association substations. Also, a law further defining marriage as the union of a man and a woman with a common language, *viz.* English, is likely to be on the ballot in November 1999. Watch the roadside signs for further developments (oops, that one failed, didn't it).

The Alaska BAR RAG

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Best wishes for a safe and festive holiday season!

Wanted: Old Law Suits

"We want everybody's old 'law suits'!"

This from Gregg Brelsford, who's announced his lawfirm's coordination of a new program to donate old business clothes to low-income people who need them to attend job interviews or wear to work.

"Pacific Law Offices seeks to gather up the fancy 'courtroom' and 'business meeting' clothes that lawyers have outgrown or no longer wear. Of course this includes both women and men," said Brelsford, the managing partner of the firm and former chairman of the International Law Section.

"I recently read that a lawyer organized a program of this nature in another jurisdiction and that it was a resounding success," Brelsford said. "After reading about it, I looked in my closet and found a number of suits that I've outgrown as my age and waistline have increased, as well as shirts, shoes and ties that I no longer use. I suspect there may be other members of the Alaska bar with 'outmoded' wardrobes. These clothes have served us well. Instead of leaving them to hang uselessly in our closets, we should pass them on to further serve others who need them."

Pacific Law Offices will coordinate the donation of old "law suits" through the United Way and other nonprofit agencies. A campaign for gathering the "law suits" is planned for mid to late January 1999.

"We need about 7 weeks to organize this effort and invite lawyers in Fairbanks, Juneau, Kenai, and Soldotna, as well as Anchorage and elsewhere, to call us to pitch in and help," said Brelsford. "We can be reached by telephone at 907-277-6175 or by email at international.law@ibm.net, he added.

Bar Letters

Overwhelming "party"

My husband would have been overwhelmed with your coverage of his death! As he had either spoken or emceed at so many retirement dinners, he had on occasion wondered what kind of a retirement event he would have. He never got a chance to retire, but in a way, your paper provided his "retirement party."

Thank you.

—Lucy Groh

Thanks

Thank you very much for the *Bar Rag's* extensive coverage of my father's life at the time of his passing ("Cliff Groh remembered: A distinguished path," September-October, 1998 edition).

The package of information I provided appears to have left a couple of misimpressions, however. First, Dad's nomination was solicited for an honorary degree from the University of Alaska, but he died before the nomination could be considered. (Those interested in making nominations should know that the period between the nomination and the award of the honorary degree is normally at least 18 months.) Second, my father chaired a commission which proposed a municipal charter that was not adopted by Anchorage voters; it was a later commission which produced the charter that passed into law.

I would like to add one other fact that my father would have liked fellow Bar members to know. He received high-quality medical care that added several good months to the end of his life. Essential to that care was Positron Emission Tomography imaging. This test—also called the "PET scan"—is now the world's most sensitive test for cancer and several other diseases. It is the next generation beyond the MRI and the CT scan. Although not cheap, the PET scan is the best way to determine if cancer has spread. Knowing whether metastasis has occurred is obviously critical information in deciding on treatment.

The PET scan technology has not yet reached Alaska, but is available at several major medical institutions in the Lower 48. My father had the test administered at a facility associated with the medical school at UCLA, where the PET scan was invented. The address and telephone number are:

UCLA Medical Center
Ahmanson Biological Imaging Clinic
Nuclear Medicine Services
10833 LeConte Ave.
Los Angeles, California 90095-6942
(310) 206-7493 (telephone)
(310) 267-0227 (FAX)
Attention: Beverly Moline, coordinator

—Cliff John Groh

RULES EFFECTIVE JANUARY 15

WRITTEN FEE AGREEMENTS TO BE REQUIRED

Requires written fee agreements in all matters exceeding $500 and the malpractice insurance coverage disclosure required by ARPC 1.4.

ARPC 1.5 effective 1-15-99

WRITTEN DISCLOSURE ON MALPRACTICE INSURANCE TO BE REQUIRED

Requires written disclosure to client if lawyer does not have malpractice insurance coverage of at least $100,000 per claimant and $300,000 total and if coverage drops below these amounts or is terminated. Does not apply to government or in-house counsel.

ARPC 1.4 effective 1-15-99

See page 13

SOLICITATION OF VOLUNTEER ATTORNEYS

The court system maintains lists of attorneys who volunteer to accept court appointments. The types of appointments are listed in Administrative Rule 12(e)(1)-(e)(2). Compensation for these services is made pursuant to the guidelines in Administrative Rule 12(e)(5).

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

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

Second District:
Tom Mize
604 Barnette St. Rm 228
Fairbanks, AK 99701-4576
(907) 451-9251

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

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

Classified Advertising

ALSC REPORT

Some relatively good news

☐ Arthur H. Peterson

Continued from page 1

collection of attorney fees in successful litigation. Application of Alaska's Civil Rule 82 has been a major source of supplemental funding for ALSC, and this restriction is having an enormous impact on the ALSC budget.

But, speaking of attorney fees, the 9th Circuit recently put ALSC in position to receive a substantial fee award in a case filed in 1986 and not resolved on the merits until 1995 — both events pre-dating the 1996 fee-collection prohibition. This is the Venetie adoption case, *Native Village of Venetie v. State* — not to be confused with the Venetie "Indian country" case that has been so much in the news this past year. It is summarized here by Juneau ALSC Attorney Mark Regan, co-counsel on the case:

ALSC's Venetie case established that the state should honor adoption orders issued by the tribal courts in Venetie and Fort Yukon, and, by implication, by the courts of federally recognized tribes throughout Alaska, whether or not the tribes occupied "Indian country." This case prompted the 9th Circuit to hold that the Indian Child Welfare Act had not extinguished tribal jurisdiction over adoptions, and prompted Judge Holland to hold that Venetie was a federally recognized tribe — positions that the federal government and the state have now accepted and applied to tribes throughout Alaska. Nine years' worth of complex motion practice, appellate argument, and district court trial have drawn the work of several ALSC attorneys and will, thanks to a September 17 decision of the 9th Circuit, generate fees for ALSC. More important, the case gave two Athabaskan women and their children, and Native adoptive parents and children across Alaska, the security of knowing that once customary adoptions are recognized within their own villages, they will be honored by outsiders.

On the state level, the governor's figure of $125,000 is the final one in the state appropriation bill. Municipalities have also contributed again this year: Municipality of Anchorage, $99,460; Fairbanks North Star Borough, $50,000; City and Borough of Juneau, $68,900; and Ketchikan Gateway Borough, $20,400. Apparently, this year's infamous SB 36 (ch. 83, SLA 1998), revising the public school funding formula, has had an adverse effect on the North Slope Borough, which funds our Barrow office; at this moment (early November) I'm not sure of the result.

In addition, the Bristol Bay Native Association has donated $100,000 plus office space if we would re-open the Dillingham office. We did; it opened September 21. This action coincides with the September 21 re-opening of the Nome office, using money donated by Kawerak, Inc.

Kari Robinson, of the Legal Advocacy Project of the Alaska Network On Domestic Violence and Sexual Assault, recently received notice that she was successful in obtaining a federal grant that will fund four attorneys in Alaska. ALSC will get two of them — one in Juneau and one who will have an office in Anchorage to serve Southcentral Alaska. The projected starting date for these attorneys is January 31, 1999.

The Alaska Supreme Court's Task Force on Access to Civil Justice (*Bar Rag*, March/April 1998, page 4), chaired by Justice Dana Fabe, is nearing the end of the initial phase of its work. The six subcommittees, plus the "intramural" subcommittee, of the Steering Committee have submitted their reports, the recommendations of which have been discussed and either accepted, modified, or rejected by the Steering Committee. The next step will be consolidating these reports. The next Steering Committee meeting is scheduled for late November, and a meeting of the full Task Force is tentatively planned for after the first of the year.

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The other Supreme Court, the U.S. one, will soon be considering the petition for certiorari in the *LASH* case (*Legal Aid Society of Hawaii v. Legal Services Corporation*, discussed in the *Bar Rag*, March/April 1997, page 4). The plaintiffs/petitioners' reply brief was due the first week in November, and a ruling on the petition is expected by the end of the month. This is the case, in which ALSC is a party plaintiff challenging restrictions in the LSC regulations as applied to activities funded with *non*-federal money.

In early October, LSC President John McKay came to Alaska for a whirlwind tour. He was not able to include Southeast Alaska this trip, but he was hosted at receptions in Anchorage and Fairbanks, and got all the way out to St. Lawrence Island. The general impression in the legal services community seems to be that he is doing an excellent job in his new post (beginning last Spring) — both with administrative matters and, being a Republican, with relations with Congress.

So, although there is some good news, ALSC has by no means recovered from the drastic funding cuts by the traditional sources. The surviving legal staff and support staff are working extremely hard to maintain a system providing poor people with access to justice. Please help them by your participation in the Partners in Justice campaign.

If the Partners in Justice campaign is successful, it and these other factors will help assure that more impoverished Alaskans will receive the legal services they need. We will have moved a bit closer to the goal of justice.

NOTICE OF PROPOSED STANDARDS AND PROCEDURES FOR DEBTOR PARTICIPATION IN MEETINGS OF CREDITORS BY OFFICE OF THE UNITED STATES TRUSTEE, DISTRICT OF ALASKA

The United States Trustee, District of Alaska, has proposed revising the standards and procedures for debtor participation in meetings of creditors held under title 11, section 343.

Written comments on the proposed standards and procedures are due no later than December 18, 1998.

Address all communications on the standards and procedures to:

Office of the United States Trustee

Department of Justice

605 West Fourth Avenue, Suite 258

Anchorage, Alaska 99501

ustrstee@ptialaska.net

The proposed standards and procedures may be reviewed at: State Court Libraries in Anchorage, Juneau, Fairbanks, and Ketchikan; U.S. District Court Clerk's Office in Anchorage, Fairbanks, Juneau, Ketchikan, and Nome; U.S. Bankruptcy Clerk's office in Anchorage; or on the web at the Alaska Legal Center page http://www.touchngo.com/lglcntr/usdc/usdcak.htm.

Study probes racial bias by juries

Are jurors influenced by the race of defendants? According to a University of Michigan study, the answer is yes. But the juror's race, as well as the defendant's, affects courtroom decisions, with different types of criminal trials affecting black and white jurors in different ways.

The study was presented earlier this year at the annual meeting of the Society for the Psychological Study of Social Issues.

For the study, one of several they've conducted, researchers Samuel R. Sommers, a graduate student in psychology, and Phoebe C. Ellsworth, U-M professor of law and of psychology, recruited 211 adults to serve as mock jurors in a case of barroom assault by a man against his girlfriend. About three-quarters of those recruited were white and about one-quarter were black. In all versions of the case, the race of the man and his girlfriend were different. White and black mock jurors were equally likely to receive versions featuring a white as a black defendant.

In addition, half the mock jurors of each race received versions that gave race an explicit role in the assault. Before the defendant slapped his girlfriend, one version said that he yelled, "You know better than to talk that way about a white (or a black) man in front of his friends."

The other version said that the defendant yelled, "You know better than to talk that way about a man in front of his friends."

The researchers asked the mock jurors to rate how guilty the defendant was and how severe they believed his punishment should be.

When the racial salience of the crime was emphasized, white mock jurors were not influenced by the race of the defendant, they found, while blacks were likely to demonstrate same-race leniency.

Sentencing recommendations showed a similar trend: white mock jurors were not influenced by the race of the defendant while black mock jurors recommended longer sentences for white defendants.

When race was not identified as salient to the crime, white mock jurors gave black defendants significantly higher guilt ratings, while black mock jurors continued to judge black defendants as less guilty than white defendants.

"When racial issues arise in a trial, white mock jurors are on guard against the possibility of prejudicial feelings and maintain the appearance of fairness," Sommers explains. "But when racial issues are not made explicit, white jurors are lenient toward the white defendant and more punitive toward the black defendant.

"Black mock jurors, on the other hand, do not demonstrate egalitarianism in any condition."

Most white Americans are taught to believe that racism is unacceptable, Sommers and Ellsworth suggest, and may be motivated to deny their prejudiced attitudes against blacks. Black Americans, raised to be skeptical of the egalitarian claims and promises of white America, may have no particular motivation to conceal their anti-white sentiments.

Or, perhaps blacks are more likely to view the legal system as inherently biased. Black jurors' conceptions of fairness might require that they demonstrate a degree of same-race leniency in order to level the playing field for black defendants.

Nevertheless, Sommers and Ellsworth emphasize that the findings do not mean that black jurors won't convict black defendants, as many prosecutors maintain.

"In spite of their tendency to correct against perceived injustice in the legal system, black jurors still give black defendants high guilt ratings," says Sommers. "It is also worth emphasizing that white jurors—and, by extension, white police officers and white judges, among others—are sometimes prejudiced in their treatment of black defendants, justifying the skepticism among black jurors about the fairness of the legal system."

(The issue of Alaska Natives in the legal system will be a CLE program at the 1999 Alaska Bar Convention — May 12-14. See convention notice page 21).

STAFF ATTORNEY
Municipal Attorney I

Part-time (20 hours per week — may increase)
Starting Salary $38,000-$72,000 DOE
Department: Anchorage Equal Rights Commission
Closing Date: Dec. 2, 1998 at 3:00 p.m.

MINIMUM QUALIFICATIONS

TO BE ELIGIBLE FOR CONSIDERATION, THE FOLLOWING EDUCATION AND EXPERIENCE MUST APPEAR ON YOUR APPLICATION:

Graduation from an accredited school of law; must be admitted to the State of Alaska Bar Association, and have experience in Civil Rights Law (specifically, Title V, Title VII, ADA, and Alaska Statute 18)

Prefer applicants with mediation experience; familiar with Westlaw and computer experience.

NATURE OF WORK

Approve investigative work product. Provide legal opinion/direction to staff. Represents the agency in meetings with the Commission, community groups, Municipal Assembly as well as in court and public hearings. Responsible for full preparation of cases for legal presentations including motions, pleadings and witness depositions. Keeps abreast of civil rights related laws. Reviews and approves investigative closures issued by the co-filing agency.

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INTERNET: WWW.CI.ANCHORAGE.AK.US
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PHONES: OFFICE 343-4453
JOB HOTLINE 343-4451
FAX 343-4511, TDD 343-4589
Mailing Address: Employment, PO Box 196650, Anchorage, AK 99519-6650

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NEWS NOTES

ABA STATEMENT TO SENATE OPPOSES FEDERALIZING STATE AUTOMOBILE REPARATIONS LAWS

In a Sept. 9 statement submitted to the U. S. Senate Committee on Commerce, Science and Transportation, the American Bar Association presented opposition to S.625, federal automobile insurance reform.

Richard P. Campbell, Council member of the ABA Tort and Insurance Practice Section and chair of the Section's Task Force on Auto Choice Legislation, submitted the statement on behalf of the ABA, stating concerns about federalism that are not adequately addressed by the "opt-out" provisions under S.625.

The ABA has long opposed enactment of federal legislation to preempt state automobile liability laws, and supports the continued right of the states and territories to regulate automobile liability laws. In addition, the ABA believes that any changes that may be made in the system should be made through state and not federal action. Campbell stressed that S.625 provides "illusory opt-out rules for states that wish to maintain existing tort and insurance laws. These rules are impractical to meet either at the state legislative or state regulatory level."

"The ABA opposes legislation such as S.625 because we believe a state legislature is in the best position to judge the auto insurance programs which exist within its borders and to determine the best means to correct them,: said Campbell. "Any problems in the present system vary from state to state and are corrected most effectively and fairly by action of the states."

The ABA House of Delegates in August adopted policy specifically addressing S.625, which reaffirmed the ABA's support for determining automobile tort insurance matters, including automobile choice legislation such as the contained in S.625, at the state and territorial level rather than the federal level.

ALI-ABA INVITES RAWLE AWARD NOMINATIONS

The American Law Institute-American Bar Association Committee on Continuing Professional Education (ALI-ABA) has set a deadline for Mar. 5 for the 1999 Francis Rawle Award for outstanding contributions to the field of post-admission legal education.

The Award, named in honor of a former American Bar Association president, was established in 1983 and consists of an inscribed medallion plaque and a framed engrossed certificate.

Nominations are now being accepted and should be forwarded as early as possible to the Rawle Award Committee, ALI-ABA, 4025 Chestnut Street, Philadelphia, PA 19104-3099.

Judge certifies permanent fund class action lawsuit

On Wednesday, October 14, 1998, Superior Court Judge Michael Wolverton certified a class action in the case of *Andrade v. State of Alaska, Dept. of Revenue*, 3AN-98-3398 Civil. Under the PFD eligibility statutes as presently written, two clasess of people are not eligible for PFDs.

1. Non-U.S. citizens legally living in Alaska, no matter how long they have lived here, unless and until they get their "green card", final asylee status or final refugee status.

It often takes as long as a year for someone to actually get his or her work visa ("green card.") In addition, many other kinds of non-U.S. citizens can legally live in Alaska indefinitely, without needing a green card. Even if you get a green card, the PFD office does not even start to count your residence toward the 1-year residency rule until you actually get your "green card."

Thus, for example, take a woman from Canada who moves to the United States in 1996 and immediately marries a long-time Alaskan. She immediately applies for her "green card," but does not get it until late in 1997 because of INS delays. She is not eligible for a 1998 PFD under current rules, even though she has lived in Alaska with her husband for over a year and had no plans to go anywhere.

The PFD eligibility statutes have not always worked this way. Prior to 1988, the PFD office looked at all non-citizens on a case-by-case basis to see if they could intend to remain permanently in Alaska, consistent with their immigration status. In 1988, the Alaska Legislature passed a version of the present eligibility rules against the advice of the Attorney General's office.

2. Both U.S. citizen and non-U.S. citizen children of these people are not eligible for a PFD.

Since these non-citizens can live in Alaska indefinitely, they often have children here. In other cases, the children move to Alaska with their parents. Children of non-U.S. citizens who are born in Alaska are U.S. citizens just like any other person born in Alaska. Even though these children have lived here their entire lives, they do not get PFDs because of their parents' (legal) immigration status.

This lawsuit does not include any illegal aliens. The Alaska Supreme Court held several years ago, in a case called *Cosio v. State*, that illegal aliens could be denied PFDs. The Alaska Supreme Court also warned the State in the Cosio decision that its PFD rules were suspect as applied to people in the shoes of the Andrade plaintiffs. Nonetheless, the State did not change its rules.

This lawsuit also does not include anyone who would not otherwise be eligible for a PFD for whatever reason, such as less than one year of residency, excessive absences from Alaska, or disqualifying felony convictions.

The case is now a class action lawsuit. At the October 14th court hearing to decide whether the suit would be made into a class action, the Attorney General's office announced that it was going to be changing the PFD rules in response to the lawsuit. Now, according to the Attorney General's office, anyone with a visa category that is not inconsistent with intending to live in Alaska will be eligible for a PFD as long as they meet the other qualifications. These other qualifications include the one-year residency requirement applicable to everyone. The State has not yet issued a written statement describing exactly how the new rules will work.

The Court also rejected the State's argument that people who either did not apply for a PFD, or who applied and then gave up, cannot participate in the class. Even if you did not apply, or applied and then gave up, you are a member of the class. The major remaining issue in the case is whether members of the class can get PFDs for back years, and if so, for how many years. This will be litigated in the upcoming weeks.

For more information on this case, please contact Jeffrey Scott Moeller or Margaret D. Stock, attorneys for the plaintiffs, by phone at 907-276-1600, by fax at 907-276-1776, by mail at the Law Offices of Margaret D. Stock, LLC, 645 G. St., Suite 201, Anchorage, AK 99501, or by email at jsm@akimmlaw.com.

Points to ponder in PFD debt collections

By Vincent Usera

Some points to ponder before going after those dividends.

The Permanent Fund Dividend is a powerful tool in collections. It can be used for any number of financial purposes. It can be used to enforce child support orders, collect judgments, pay restitution, fines, and court costs.

But to make it work for you, you need to think about how to use it. Simply sending edicts to the Department of Revenue may not cut it. Some facts you need to keep in mind:

• A PFD must be applied for. If the person you want to get a PFD from doesn't apply, you won't get it.

• The application period closes at midnight, March 31. Once the door shuts, it can't be opened again. Keep that in mind.

• A child's PFD is dependent on having an eligible sponsor.

• 100% of a PFD can be had to pay child support obligations, restitution, or fines.

• The IRS can get 100% of a PFD.

• 100% of a PFD is available to pay for the acts of minors as provided at AS 34.50.020.

• 80% is available to pay ordinary judgments, except those in favor of the State, which can get 100%.

• Competing levies are paid in the following order:

If there is an IRS lien against the payee:

1. From a bankruptcy trustee
2. Child Support Enforcement
3. Student loan
4. State agencies
5. IRS
6. Restitution
7. Fines
8. General judgments
9. Domestic violence debt
10. Other writs

If there is no IRS lien:

1. Bankruptcy trustee
2. Child Support Enforcement
3. Restitution
4. Student loans
5. Fines
6. General judgments
7. State agencies
8. Domestic violence debt
9. Other writs

The reason for the difference is that the IRS was willing to take a lower priority than it is entitled to. If there is no IRS lien, then the priorities are in the order contained in AS 43.23.065.

TIMING IS IMPORTANT.

• The department begins accepting Writs of Execution at 8:00 am April 1.

It's first come, first served.

• If the person being levied against has opted for direct deposit, and there is something left to deposit, the direct deposit instructions are going to be contained on magnetic tapes given to the depositories. These tapes leave the department weeks/days before the PFD payment date. Once listed, it is difficult to change the instructions to the depository.

When doing orders containing PFD payment, be sure to include not only to whom a PFD will be paid, but a requirement that the person *apply* for the PFD. It's probably a good idea to work such a provision into contracts and other documents containing liquidated damage provisions. If the person doesn't apply, you don't get any of the PFD.

• Where there are competing applications for a child's PFD—as will be encountered often in the domestic relations arena—the application that is accompanied by an Order directing which sponsor is to be paid the PFD. Note that the Order should NOT direct the PFD division to make payment to a certain person; it should order that the individual named is the proper person to make application for and receive the child's PFD.

• If you're in court and either the judge or opposing counsel suggests some action with regard to a PFD, and it strikes you as possibly not being the best way to accomplish the purpose, urge a call to the PFD Division to find out. They can be reached at (907) 465-2323, ask for the Chief of Operations or the Division Director. They'd rather take the time to help do it right than trying to fix something later.

Avoiding the Witch Doctor IME under Rule 35

By Michael J. Schneider

INTRODUCTION

It is becoming a common practice for defense firms to send medical/psychological releases executed by plaintiffs in personal injury litigation to virtually all the mental health care providers in the state. Whether or not plaintiff has ever received psychiatric or psychological care, the defense will then proceed to argue that plaintiff hurts because plaintiff is nuts. The contention is followed by a request under ARCP 35 for an "independent *mental* examination." Under Alaska law, under the majority rule, and according to recent Superior Court authority, these unwarranted intrusions into plaintiff's privacy should not be allowed.

ALASKA PRECEDENT PROVIDES NO SUPPORT FOR RULE 35 MENTAL EXAMINATIONS

Dingeman v. Dingeman, 865 P.2d 94 (Alaska 1993) is the lead case on this issue. The Rule 35 discussion begins on page 98 of the opinion. Mr. Dingeman, a medical doctor, and thus arguably able to evaluate the potential existence of a mental condition, argued that his former wife was nuts and thus unfit to become the custodial parent of their daughter. *Id.* at 98. The trial court refused to grant Mr. Dingeman's request for a Rule 35 mental examination of Mrs. Dingeman. Mr. Dingeman raised this issue on appeal arguing that he had "probable cause to believe that a personality defect exists" as to his former wife and that the examination should have been ordered. The court disagreed. *Id.* The court pointed out that two prerequisites must be met before an order may be issued under A.R.C.P. 35 for a mental examination:

1) The mental condition must be "in controversy", and

2) Good cause must exist for the examination. *Id.* 98 and 99.

Quoting *Schlagenhauf v. Holder*, 379 U.S. 104, 118 85 S. Ct. 234, 242-243 (1964) to the effect that mere conclusory allegations in the pleadings and mere relevance to issues in the case are not enough, but that the movant must affirmatively show that each condition as to which an examination is sought *is "really and genuinely in controversy and that good cause exists for ordering each particular examination"*, the court denied the request. *Id.* at 99. As our Supreme Court observed:

> It can be argued that the mental health of the parents is always an issue in child custody cases. However, the record provides no evidence other than Bob's conclusory allegations that supports the contention that Anne's mental health is in controversy. The conclusions of a spouse involved in the custody hearing are not sufficient to meet the burden that the mental health of a party is "in controversy" within the meaning of Rule 35.
>
> Nor did Bob present evidence showing "good cause" for ordering an examination. The requirement of good cause is not just a formality. Rule 35 specifically requires good cause in order to provide some protection for parties subject to the rule. As noted in *Gasparino*, "[d]iscovery of this type is of the most personal and private nature. The potentially negative effects of requiring petitioner to bear his inner self against his wishes are self-evident." *Gasparino*, 352 So.2d at 935.

Id.

It should be noted that at footnote 9 on page 99 of the opinion the court cites cases where good cause has been shown. One of them involves a mother in a custody matter that has received a diagnosis of manic depression with paranoic schizophrenic possibilities. It also cites a case that stands for the notion that, where a plaintiff asserts *mental* or physical injury, that mental or physical injury is clearly "in controversy" and the defendant is therefore entitled to an examination. The interesting question is: What does it take to assert "mental" injury? As will be seen below, the majority rule is to the effect that a claim for pain, suffering, and emotional distress does not tender Plaintiff's mental condition "in controversy" nor provide, in and of itself, "good cause" for a Rule 35 examination.

DEFENDANTS ARE NOT ENTITLED TO A MENTAL EXAMINATION OF PLAINTIFF UNDER THE "MAJORITY RULE"

A case worth reading is *Turner v. Imperial Stores*, 161 F.R.D. 89 (S. D. Cal. 1995). In this recent wrongful termination case an employee alleged damages for "humiliation, mental anguish, and emotional distress." *Id.* at 90. The question before the court was whether or not F.R.C.P. 35 authorized a mental examination of plaintiff under these circumstances.[1] The Court reviewed a few unusual cases where claims for emotional distress alone had resulted in orders for Rule 35 mental examinations. Analyzing cases where courts have ordered plaintiffs to undergo mental examinations it was observed[2] that these cases involved, *in addition* to a claim of emotional distress, one or more of the following elements:

1) A cause of action for intentional or negligent infliction of emotional distress;

2) An allegation of a specific mental or psychiatric injury or disorder;

3) A claim of unusually severe emotional distress;

4) Plaintiff's offer of expert testimony to support a claim of emotional distress; and/or

5) Plaintiff's concession that his or her mental condition is "in controversy" within the meaning of Rule 35(a).

Our Supreme Court in *Dingeman* relied on the U.S. Supreme Court's analysis of this question in the *Schlagenhauf* case. *Dingeman* at 99. The court in *Turner* relied on *Schlagenhauf* as well and, following its analysis of the issue, concluded:

> that "emotional distress" is not synonymous with the term "mental injury" as used in the Supreme Court in *Schlagenhauf v. Holder* for purposes of ordering a mental examination of a party under Rule 35(a), and specifically disagrees with those few cases holding that a claim for damages for emotional distress, without more, is sufficient to put mental condition "in controversy" within the meaning of the rule. If this were the law, then mental examinations could be ordered whenever a plaintiff claimed emotional distress or mental anguish. Rule 35(a) was not meant to be applied in so broad a fashion.

Turner at 97.

For cases, in addition to those mentioned in *Turner*, that stand for the proposition that the defense cannot invade plaintiff's privacy through such a potentially invasive and hurtful fishing expedition, see *Tyler v. District Court in and for the County of Adams*, 561 P.2d 1260 (Colorado 1977), and *Coates v. Whittington*, 758 S.W.2d 749 (Texas 1988). For an Alaska Superior Court case following the Alaska and Majority Rule see *Hale v. Saranillio*, 3AN-96-1477 CI order of 7/7/97.

THE DEFENSE CAN OFTEN OBTAIN WHAT IT WISHES BY OTHER MEANS

Finally, our State Supreme Court quoted with approval the United State Supreme Court's observation that "the ability of the movant to obtain the desired information by other means is also relevant". *Dingeman* at 99. The Defense can ask plaintiff's doctors if plaintiff is nuts. The Defense can ask orthopods likely to perform surgery why they are cutting on plaintiff's back when plaintiff's problems lie between his ears, not between his lumbar vertebrae. The defense rarely *needs* the mental examinations that are sought. The "good cause" element is therefore lacking, and these requests should be denied.

CONCLUSION

Defendants, in seeking Rule 35 mental examinations, are attempting to create reality, not understand it. The Defense cannot usually show that plaintiff has tendered his mental condition into controversy or that "good cause" exists for the examination that is sought. These motions should therefore be routinely denied.

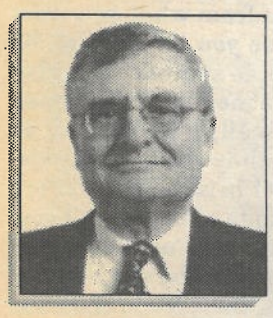
[1] The Alaska Supreme Court in *Dingeman* observed that F.R.C.P. 35 is "almost identical" to our state rule with the same number and further that, absent Alaska precedent on the narrow issue, it was appropriate to "look to federal law interpreting a similar rule." *See Dingeman* at 98 n. 6.

[2] *Id* at 95.

SOLID FOUNDATIONS

Staying the course

☐ Leroy Barker



I know there have been some questions raised about the IOLTA program since the United States Supreme Court's decision in *Phillips, et al. v. Washington Legal Foundation*. The court held that IOLTA funds were property. It remanded the case to determine if the funds had been taken by the state, as well as the amount, if any, of just compensation to the client. As a result, the Alaska Bar Foundation on July 16, 1998, wrote the President of the Alaska Bar stating:

It is our unanimous recommendation that we stay the course at this time and until the *Phillips* decision is finally resolved by the U.S. Supreme Court. The Supreme Court in its decision only determined that the interest on the IOLTA funds was in fact, property. The Court remanded to the lower court to determine the question of whether the funds had been taken by the state as well as the amount, if any, of just compensation. Until these latter two issues are resolved, we believe that it is prudent to continue on our present course rather than dismantle the IOLTA program.

It is the unanimous recommendation of the Bar Foundation that the Alaska Bar Association officially advise the Alaska Supreme Court, as well as all of the members of the Bar Association, that the IOLTA program will remain as it presently exists until all of the issues raised in the Phillips decision have been resolved.

Subsequently, on September 29, 1998, William B. Schendel wrote to Chief Justice Warren W. Matthews stating;

Leroy Barker, President of the Board of Trustees of the Alaska Foundation, has notified the Alaska Bar Association Board of Governors that it is the Trustees' 'unanimous recommendation that we (the Foundation) stay the course at this time and until the *Phillips* decision is finally resolved by the U.S. Supreme Court.'

Because the *Phillips* decision speaks to a mandatory IOLTA jurisdiction, there is some question as to how and whether it would affect Alaska. Issues are still being raised nationwide concerning this decision, and the Board of Governors agrees with the Trustees that until these issues are decided, the Alaska IOLTA program should continue as it presently exists.

We have discussed this issue with Bar Counsel, and believe that for the present, there is no need to take any action.

On August 6, 1998, responding to the *Phillips* decision, the Conference of Chief Justices from all the states unanimously adopted a resolution supporting the IOLTA program.

The same issues that were raised in the *Phillips* case are now before the Ninth Circuit Court of Appeals. The case was brought by the same group that filed the *Phillips* case — the Washington Legal Foundation. On January 30, 1998, the Federal District Court in Washington granted the Washington State IOLTA program on the ground that they had lost nothing as a result of IOLTA. The court held there was no property interest at stake. The plaintiff appealed. The San Francisco office of Heller, Ehrman White & McAuliffe prepared an amicus curiae brief on behalf of the Bar Foundations of every state in the Ninth Circuit We are grateful to the law firm who donated its time to IOLTA in preparing the brief.

There is an upcoming IOLTA Conference sponsored by the American Bar Association, in Chicago. The agenda is to address the future of the IOLTA program. I will report to you in my next column on the results of the Conference.

Fax every member of Congress for less than the cost of a stamp per page

For those or you who want to let our elected representatives know how you feel. Take a trip over to new Internet web site called The US Congressional Fax Service, http://www.uscongress-fax.com.

This new, unique and cost-effective way to communicate with members of the U.S. Congress allows you to write one letter and have it "fax mail merged" to every member of Congress. You can also choose to send your letter to just the U.S. House or Senate, or just the Republicans or just the Democrats, in either all of Congress or either party. There are nine separate choice categories in all.

Your letter is sent within 24 hours using Fax Mail Merge Technology (individually addressed and individually faxed). You can use graphics, letterheads or logos in your letter. Direct Contact will address and format your letter for transmittal. Your name is converted into a script signature font for you. The final fax looks just like a regular letter signed by you. There is a minimum charge of $25 per fax broadcast.

The Ghost of the Past, Present & Future

By Alan G. Greer

I am The Ghost of Law Practices Past, Present and Future and I come to "rattle my chains in your face."

Conjure up the image of Ebenezer Scrooge hunched over his counting desk on Christmas Eve, grumbling bitterly because Bob Cratchit wants to take Christmas Day off instead of doing what Scrooge would do — work, work, work!

We all reject that image, don't we? We would never engage in such mean-hearted and miserly conduct in our modern day practice of law— would we?

I beg to differ. Today, too many of us have become Scrooges, driving those around us like they were poor Bob Cratchits. We look on our practices as NHL hockey games, played in suits and ties or in high heel shoes, except our games are in perpetual overtime.

Lawyers used to be legislators, pillars of the community, scout masters, lay leaders in their churches and synagogues and paragons of family support. But no more. Now, by and large, we don't do those things. We are too busy making money. Doing good deeds costs us too much time taken away from our practices.

To make my point, I'd like to share with you the story of George (not his real name, by the way). George was married with two kids and the head of a very prosperous law practice to which he devoted every waking moment.

Then one day, his law partners told him they were departing and taking the firm's practice with them, leaving him with only the expensive lease on their space. Soon thereafter, his wife declared she wanted a divorce to marry her personal trainer. Following this, George's daughter called to say she had been admitted to the most expensive medical school in the country. Finally, he got a letter from his son's psychiatrist telling him it would cost about $150,000 in therapy to cure the boy's anxiety complex and lack of self-esteem. It seems that George always, *always* arrived at little league games during the final inning to see his son strike out because the lad was anxiously looking over his shoulder to see if dad had finally shown up.

As you can imagine, George was stunned. He had never contemplated being alone. So, he went to his church sanctuary the next morning to pray. "Lord, you know I have always followed your commandments," lamented George. "I have never killed anyone, never stolen and don't overbill a minute (I think his fingers were crossed on that one). I honor my father and mother, and I've never committed adultery. Quite frankly, I've never had the time. Lord, I need your help. I'm desperate for money and have to win the lottery. It's my only hope."

George waited a week and nothing happened, so he went back to church and pleaded again: "Please, Lord, I've got to win the lottery. I've always given generously, but now I truly need your charity and help."

Another week went by and still nothing. So finally George returned to the sanctuary, fell to his knees and begged: "Please, Dear Lord, I absolutely have to win the lottery, I'm desperate." Suddenly the church was filled with a booming voice that said, "George, meet me halfway. Buy a ticket."

The message for us as attorneys is clear: We have to meet life halfway, and too few of us are doing that. We've got to buy a ticket, so to speak. It does no good for us to grumble that we don't have time to do the things we enjoy, complain about our quality of life and bemoan our disenchantment with the practice of law.

Most of the lawyers I know are running as hard as they can go, piling up professional accomplishments, vacation homes, cars, boats and other "trappings of success". But they are too busy to enjoy them. Nonetheless, they are sure that if they can just add that next glittering award or expensive bauble to their lives, they will finally be happy.

But what these lawyers are really doing is building up walls that separate them from the only thing that truly matters — family and friends. I am constantly amazed when I watch our brothers and sisters at the bar demand unbelievable sacrifices from those closest to them— spouses, children, family, friends and fellow law partners — all in the name of their own personal success, but not their happiness.

Why are we so desperate to win the approval of strangers or clients who will forget us tomorrow when we are no longer of any use to them? Too many attorneys are living their lives backwards. It's time to change what we put first.

I was impressed by a definition of success I read in an interview of actor Ralph Fiennes of "Schindler's List" and "The English Patient" fame. He was asked, "Don't fame and success isolate you from what you were before and those you love?" "No", he said. "I call people successful not because they have money or their business is doing well, but because as human beings they have a fully-developed sense of being alive and engaged in a lifetime task of collaboration with other human beings — their mothers and fathers, their family, their friends, their loved ones, the friends who are dying, the friends who are being born.

"Success." He went on emphatically. "Don't you know, it is all about being able to extend love to people? Really, not in a big capital letter sense, but in the everyday, little by little, task by task, gesture by gesture, word by word way."

I don't think we as lawyers are doing that. Like Willie Loman in "Death of a Salesman" — a man whose whole life depended on his next sale and was lost without it — we have let our sense of success be dependent on our next client, our next win, when it should be based on our family, friends and what we do for others in our communities.

Our next client, while important in the economic sense, does not have to define us as a person, as so many lawyers seem to believe. Clients deserve our loyalty and best professional services, but not the sacrifice of the well-being of our family, partners and friends.

Most lawyers just naturally hate change. But each of us must begin to change and redefine what we view as success and what we are willing to sacrifice to achieve it. Here are some ideas. You will have to look into your own hearts to find others, but you may be surprised at how easy they are to locate if you'll just look.

First, every one of us should have an avocation to help balance our lives. We should be leaders outside the bar in our communities and especially in our families' daily lives. Nothing makes you feel better prepared for hard work than the periodic absence from it. It is from family, friends and community that you will acquire and keep your bearings, what I call your "moral IQ." As you read this, I know you must be thinking, "That's easy enough for him to say, but where do I get the time?" Make the time! It's there if you want it to be.

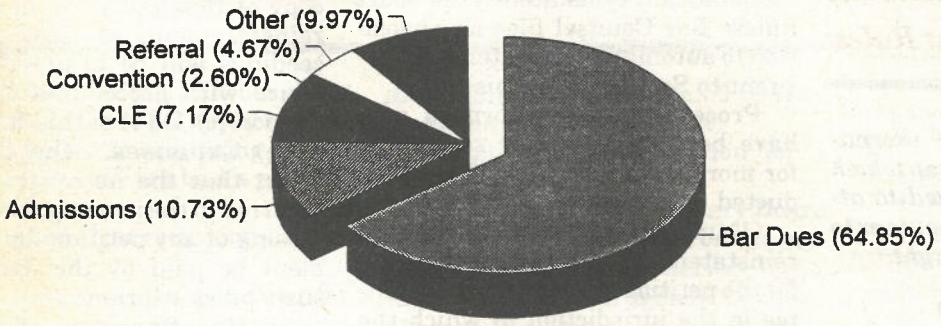
One other suggestion that may help many of you is to realize that perfection is a disease. Give it up. We spend a great amount of time getting something 98% perfect. I guarantee you it takes twice as much time to move from 98% to 100% perfection. The only difference is you. You'll be amazed at how much time you buy yourself if you are willing to say 98% perfect is good enough. And your clients will truly love the reductions in their hourly bills. Success that over-bills our clients, that sacrifices, consumes or harms those we love is an unacceptable definition.

Finally, don't lose sight of what is going on around you with those you love— with what is important. In a world where everything in morals and life seems to be shifting toward tones of gray — especially lawyer gray — let us all strive to be vibrant primary colors, first to our families, then to our friends and community, and finally to our clients.

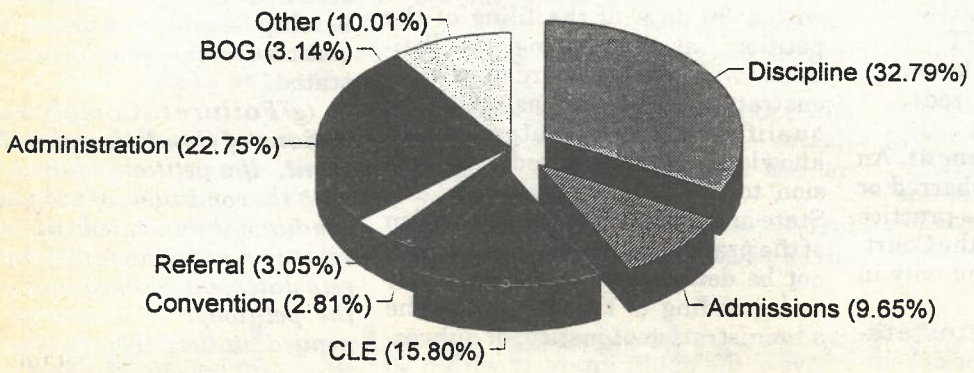
Alan G. Greer is in private practice in Florida.

Overall revenue and expense budget for the Alaska Bar Association for 1999.

1999 REVENUE BUDGET
$1,921,000



1999 EXPENSE BUDGET
$1,781,000



1999 BUDGET
REVENUE/EXPENSE

Account Name	1999 Budget
REVENUE	
Admission Fees - All	206,150
ContinuingLegalEducation	137,800
Lawyer Referral Fees	89,800
The Alaska Bar Rag	29,391
Annual Convention	50,000
100th Anniversary Projects	0
Substantive Law Sections	8,890
Ethics Opinions	2,768
Pattern Jury Instructions	6,218
ManagementSvc LawLibrary	5,024
AccountingSvc Foundation	10,160
Special Projects	0
Membership Dues	1,245,920
Dues Installment Fees	17,500
Penalties on Late Dues	18,420
Disc Fee & Cost Awards	0
Labels & Copying	9,185
Investment Interest	82,000
State of Alaska	0
Miscellaneous Income	2,000
SUBTOTAL REVENUE	1,921,226

EXPENSE	
Admissions	171,924
ContinuingLegalEducation	281,367
Lawyer Referral Service	54,336
The Alaska Bar Rag	44,197
Annual Convention	50,000
100th Anniversary Projects	0
Substantive Law Sections	12,840
Ethics Opinions	434
Pattern Jury Instructions	1,478
ManagementSvc LawLibrary	3,764
AccountingSvc Foundation	10,160
Special Projects	0
Board of Governors	55,860
Discipline	584,092
Fee Arbitration	46,907
Administration	405,233
Committees	12,579
Duke/Alaska Law Review	34,000
Miscellaneous Litigation	0
Remodeling/Moving Expense	0
Loan Interest/Loan Fees	0
Computer System Training	500
Lobbyist	0
Credit Card Fees	11,500
Other/Miscellaneous	0
SUBTOTAL EXPENSE	1,781,171
NET GAIN/LOSS	140,055

For more information or a copy of the budget detail, contact Deborah O'Regan at the Bar office at 272-7469.

Attorney Discipline

LAWYER REPRIMANDED FOR NEGLECT

The Disciplinary Board imposed a private reprimand on Attorney X for failing to respond to a discipline investigation and for client neglect. The client alleged that Attorney X failed to obtain a court order in a child support matter which seriously delayed the client's ability to secure past-due child support. The client also alleged that Attorney X failed to return phone calls.

Bar Counsel opened an investigation based on the client's allegations, but Attorney X failed to provide a full written disclosure of all the facts pertaining to the alleged misconduct. Due to Attorney X's failure to respond, the allegations were deemed admitted. Attorney X then acknowledged that the file had been mishandled, but attributed the client neglect and the failure to respond to the discipline grievance to recently-diagnosed clinical depression.

Bar Counsel concluded that Attorney X violated ARPC 1.3 by failing to obtain the necessary court order in a timely fashion. Attorney X's procrastination harmed the client financially and caused unnecessary stress and aggravation. Attorney X violated ARPC 1.4 by failing to communicate with the client. Attorney X violated Alaska Bar Rule 15(a)(4) by failing to provide a written disclosure of all facts and circumstances pertaining to the alleged misconduct.

Attorney X presented medical evidence showing that Attorney X had undergone treatment and was responding successfully to medication for clinical depression.

The ABA Standards for Imposing Lawyer Discipline recommend that a reprimand is generally appropriate when a lawyer is negligent and fails to act with reasonable diligence. Under Alaska case law a public censure can be imposed when a lawyer fails to provide a mandatory response to Bar Counsel under Bar Rule 22(a). *In re Minor*, 658 P.2d 781 (Alaska 1983). Bar Counsel considered the absence of a prior discipline history and the clinical depression to be significant mitigators. Bar Counsel and Attorney X stipulated to a discipline of a private reprimand which the Disciplinary Board approved.

•

LAWYER ADMONISHED FOR VIOLATING COURT ORDER

Attorney X received a written private admonition for violating a court order and advising his client to do likewise. The attorney represented the father in a child custody case. The father lived out of state and had interim custody of the children. The court ordered him to bring the children to Alaska for trial. Attorney X moved to postpone the trial. When the court denied the request, the attorney moved for reconsideration. The motion was pending when Father and the children were scheduled to travel to Alaska for trial. Attorney X advised his client to stay home because he believed the court would postpone the trial. A few hours later the court denied reconsideration. At the time set for trial both the attorney and his client were absent. The court sanctioned Attorney X $450 and referred the matter to the Bar Association.

Bar Counsel concluded that Attorney X violated ARPC 3.4(c), which prohibits lawyers from violating court orders or advising clients to do so. The attorney was not within any exception to the rule because he knew the court's order was valid at the time he instructed his client not to follow it. The misconduct caused some actual injury in the form of trial delay, although the court ameliorated harm to the mother by giving her two weeks of immediate visitation with the children. The court's $450 sanction offset aggravating factors and substantially addressed the misconduct. Bar Counsel requested, an Area Discipline Division Member approved, and Attorney X accepted a written private admonition.

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

NEWS FROM THE BAR

Board of Governors invites rules comments

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

The amendment to **ARPC 2.1** was proposed by the Alaska Judicial Council and would encourage lawyers to advise clients in matters involving or potentially involving litigation of alternative forms of dispute resolution which might reasonably be pursued to resolve a legal dispute or obtain a legal objective. The amendment would be aspirational only.

The amendment to **Bar Rule 29** would permit an area hearing committee and the Disciplinary Board (Board of Governors) to recommend a respondent attorney's conditional reinstatement to practice and provide for the Supreme Court's authority to impose conditional reinstatement. The amendment also adds a procedure for revoking conditional reinstatement if the conditions are not met.

Finally, the proposed **Bar Rule 33.3** is the latest effort of the Board to arrive at a definition of the practice of law for the injunctive purposes of AS 08.08.210. This draft addresses concerns raised by the Supreme Court in an administrative conference on the proposed rule held this fall.

Please send comments to: Executive Director, Alaska Bar Association, PO Box 100279, Anchorage, AK 99510 or e-mail to alaskabar@alaskabar.org by December 31, 1998.

ARPC 2.1
PROPOSED ADDITION TO ARPC 2.1: ADVISOR RELATING TO PROVIDING ADVICE ON ALTERNATIVE DISPUTE RESOLUTION

(Additions italicized; deletions bracketed and capitalized)

Rule 2.1 Advisor

In representing a client, a lawyer shall exercise independent professional judgment and render candid advice. In rendering advice, a lawyer may refer not only to law but to other considerations such as more, economic, social and political factors, that may be relevant to the client's situation. *In a matter involving or expected to involve litigation, a lawyer may advise the client of alternative forms of dispute resolution which might reasonably be pursued to attempt to resolve the legal dispute or to reach the legal objective sought.*

BAR RULE 29
PROPOSED AMENDMENT ALLOWING RECOMMENDATION AND IMPOSITION OF CONDITIONAL REINSTATEMENT

(Additions italicized; deletions bracketed and capitalized)

Rule 29. Reinstatement

(a) **Order of Reinstatement.** An attorney who has been disbarred or suspended may not resume practice until reinstated by order of the Court. Interim suspension will end only in accordance with Rule 26.

(b) **Petitions for Reinstatement.** An attorney who seeks reinstatement will, 60 days prior to the ending date of the suspension, or 60 days prior to the date on which (s)he seeks reinstatement, whichever comes later, file a verified petition for reinstatement with the Court, with a copy served upon the Director. In the petition, the attorney will

(1) state that (s)he has met the terms and conditions of the order imposing suspension or disbarment;

(2) state the names and addresses of all his or her employers during the period of suspension or disbarment;

(3) describe the scope and content of the work performed by the attorney for each such employer;

(4) provide the names and addresses of at least three character witnesses who had knowledge concerning the activities of the suspended or disbarred attorney during the period of his or her suspension or disbarment; and

(5) state the date upon which the suspended or disbarred attorney seeks reinstatement. An attorney who has been disbarred by order of the Court may not be reinstated until the expiration of at least five years from the effective date of the disbarment.

(c) **Reinstatement Proceedings.** Petitioners who have been suspended for one year or less will be automatically reinstated by the Court unless Bar Counsel files an opposition to automatic reinstatement pursuant to Section (d) of this Rule.

Proceedings for attorneys who have been disbarred or suspended for more than one year will be conducted as follows:

(1) upon receipt of the petition for reinstatement, the Director will refer the petition to a Hearing Committee in the jurisdiction in which the Petitioner maintained an office at the time of his or her misconduct; the Hearing Committee will promptly schedule a hearing to take place within 30 days of the filing of the petition; at the hearing, the Petitioner will have the burden of demonstrating that (s)he has the moral qualifications, competency, and knowledge of law required for admission to the practice of law in this State and that his or her resumption of the practice of law in the State will not be detrimental to the integrity and standing of the Bar, or to the administration of justice, or subversive of the public interest; within 30 days of the conclusion of the hearing, the Hearing Committee will issue a report setting forth its findings of fact, conclusions of law, and recommendation; *the Committee may recommend conditional reinstatement under specified conditions;* the Committee will serve a copy of the report upon Petitioner and Bar Counsel, and transmit it, together with the record of the hearing, to the Board; any appellate action will be subject to the appellate procedures set forth in Rule 25;

(2) within 45 days of its receipt of the Hearing Committee's report, the Board will review the report and the record; the Board will file its findings of fact, conclusions of law, and recommendation with the Court, together with the record and the Hearing Committee report; *the Board may recommend conditional reinstatement under specified conditions;* the petition will be placed upon the calendar of the Court for acceptance or rejection of the Board's recommendation within 60 days after receipt by the Court of the Board's recommendation; *the Court may order conditional reinstatement under specified conditions;*

(3) in all proceedings concerning a petition for reinstatement *or motion to revoke conditional reinstatement*, Bar Counsel may cross-examine the Petitioner's witnesses and submit evidence in opposition to the petition *or in support of the motion to revoke*; and

(4) the retaking and passing of Alaska's general applicant bar examination will be conclusive evidence that the Petitioner possesses the knowledge of law necessary for reinstatement to the practice of law in Alaska, as required under Section (b)(1) of this Rule.

(d) **Oppositions to Automatic Reinstatement.** Within 10 days after the Respondent files a petition for reinstatement, Bar Counsel may file an opposition to automatic reinstatement with the Court and serve a copy upon the Board and the Petitioner. The opposition to automatic reinstatement will state the basis for the original suspension, the ending date of the suspension, and the facts which Bar Counsel believes demonstrate that the petitioner should not be reinstated.

Upon receipt by the Director of a copy of the opposition to automatic reinstatement, reinstatement proceedings will be initiated in accordance with procedures outlined in Section (c)(1)-(4) of this Rule.

(e) **Expenses.** The Court may direct that the necessary expenses incurred in the investigation and processing of any petition for reinstatement be paid by the disbarred or suspended attorney.

(f) **Bar Payment of Membership Fees.** Prior to reinstatement, the disbarred or suspended attorney must pay to the Bar, in cash or by certified check, the full active membership fees due and owing the Association for the year in which reinstated.

*(g) **Failure to Comply with Conditions of Conditional Reinstatement.** If a petitioner fails to comply with the conditions of the petitioner's conditional reinstatement, bar counsel may move to have the conditional reinstatement revoked and to return the petitioner to disbarred or suspended status. The motion will be filed with the Director and served on the petitioner. The Director will assign the motion to the Hearing Committee which sat in the reinstatement matter under Section (c)(1).*

The Hearing Committee will promptly schedule a hearing to take place within 30 days of the filing of the petition; at the hearing, Bar Counsel will have the burden of proving by clear and convincing evidence that the petitioner has not met the conditions of the petitioner's conditional reinstatement; within 30 days of the conclusion of the hearing, the Hearing Committee will issue a report setting forth its findings of fact, conclusions of law, and recommendation; the Committee will serve a copy of the report upon Bar Counsel and the petitioner, and transmit it, together with the record of the hearing, to the Board; any appellate action will be subject to the appellate procedures set forth in Rule 25.

Within 45 days of its receipt of the Hearing Committee's report, the Board will review the report and the record; the Board will file its findings of fact, conclusions of law, and recommendation with the Court, together with the record and the Hearing Committee report; the matter will be placed upon the calendar of the Court for acceptance or rejection of the Board's recommendation within 60 days after receipt by the Court of the Board's recommendation.

BAR RULE 33.3
DEFINING THE PRACTICE OF LAW IN ALASKA FOR THE INJUNCTIVE PURPOSES OF AS 08.08.210

Section 1.
UNAUTHORIZED PRACTICE OF LAW PROHIBITED.

No person may practice law in the State of Alaska, unless that person is an active member in good standing of the Alaska Bar Association.

Section 2.
"PRACTICE OF LAW" DEFINED.

For the purposes of AS 08.08.210, the practice of law includes any act, other than that excluded by Section 3 of this Rule, whether performed in court, an office or elsewhere, including; but not limited to:

Continued on page 13

NOTICE OF AMENDED LOCAL RULES U.S. BANKRUPTCY COURT, DISTRICT OF ALASKA

The U.S. Bankruptcy Court, District of Alaska, has adopted amendments to the Local Bankruptcy Rules [1004-1; 1005-1; 2016-1; 2016-2; 2016-3 (new); 3016-1; 4008-1; 7056-1 (new); 9001-1; 9010-1; and 9013-2] and Local Bankruptcy Forms [2, 3, 6, 10, 11, 13, 18, 19, 20, 21, 25, 27, 28, 31 and 33 (new)] effective November 1,1998.

The amended rules may be reviewed at: State Court Libraries in Anchorage, Juneau, Fairbanks and Ketchikan; U.S. Courts Library in Anchorage; U.S. District Court Clerk's Office in Anchorage, Fairbanks, Juneau, Ketchikan, and Nome; U.S. Bankruptcy Court Clerk's office, Anchorage; or on the web at http://www.touchngo.com/lgicntr/usdc/newbank/98Amend.htm. Copies of the amended rules are available from the U.S. Bankruptcy Court Clerk (Anchorage) for $4.50/copy

NEWS FROM THE BAR

Board of Governors acts on 20+ items

At the Board of Governors meeting on October 30 & 31, 1998, the Board took the following action:

• Certified the July 1998 bar exam results; there were 68 applicants of which 45 passed for a passing rate of 66%; first time takers had a passing rate of 75%.

• Certified eight reciprocity applicants.

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

• Adopted changes in the investment policy of the Board's Standing Policies to allow for a maximum permitted maturity of investments to 5 years; and to provide for an annual review of these policies at the October meeting.

• Discussed whether to support Lexis' proposal to the Legislature to publish the Bar's ethics opinions; although the Board believes the opinions should have the widest possible dissemination, they decided to take no action on Lexis' request.

• Approved a stipulation for a private reprimand.

• Tabled until the January Board meeting an ethics opinion on the propriety of a municipal attorney advising a quasi-judicial agency when another municipal attorney represents the municipal government appearing before the agency.

• Approved the new format for the bar dues notices.

• Voted to accept credit cards for Bar Association transactions, including bar dues.

• Asked that a notice be put in the *Bar Rag* asking lawyers to submit superior court opinions for the online database.

• Voted to set up a lawyer referral page for landlord-tenant cases on the Bar Association's website. Lawyers currently on the Lawyer Referral Service panel will be asked if they want to be listed on the internet for an additional flat annual fee.

• Voted to publish ARPC 2.1 (re attorneys advising clients about ADR.)

• Adopted the 1999 Budget.

• Approved the request by the Civil Justice Task Force for up to $7500 for airfare and copying for a winter meeting of the Task Force at-large.

• Referred ARPC 3.6 on trial publicity back to the ARPC committee.

• Voted to send ARPC 7.4 on fields of practice to the supreme court.

• Voted to publish Bar Rule 29 on conditional reinstatement.

• Voted to send the technical changes to Bar Rule 40 to the Supreme Court.

• Amended the Bylaws to change "special" to "emergency" meetings, updated the references to communication methods and provided for a uniform three day notice prior to the meeting.

• Amended the Standing Policies to limit listing contributions on dues notices to ALSC and the Bar Foundation.

• Considered a draft of a sexual harassment policy and tabled further review until the January meeting.

• Decided to redraft a proposed Client's Bill of Rights and bring back before the Board at the January meeting.

• Voted to publish Bar Rule 33.3 on the unauthorized practice of law.

• Suggested that staff publish a reminder in the *Bar Rag* of the significant amendments to the Bar Rules becoming effective January 15, 1999.

• Voted to form an Ad hoc Internet Committee to set policies and parameters for the Bar's website.

• Approved payment of a Lawyers' Fund for Client Protection claim in the amount of $3,386.35.

Proposed rules: Practice of law

Continued from page 12

(a) holding oneself out as an attorney or lawyer admitted to practice in Alaska;

(b) providing advice, for compensation, as to the legal rights and duties applicable to the specific circumstances of any person;

(c) appearance in or conduct of litigation or performance of any act in connection with proceedings, pending or prospective, for compensation, before any court;

(d) preparation of pleadings and other documents, for compensation, to be used in legal proceedings;

(e) preparation of documents and contracts, for compensation, by which legal rights are affected; or,

(f) engaging in any act or practice determined by the Supreme Court of this state to constitute the practice of law.

Section 3.
EXCEPTIONS TO DEFINITION OF PRACTICE OF LAW.

The following acts shall not constitute the practice of law for the purposes of Section 2 of this Rule:

(a) acts performed for and on behalf of oneself as an individual or a family member;

(b) acts performed by a paralegal or other non-lawyer assistant under the supervision and control of an attorney, and who is both legally and ethically responsible for the acts of the paralegal or nonlawyer assistant and who is (i) admitted to practice in this state or (ii) excepted from the operation of this rule by 3(j) of this rule;

(c) acts performed pursuant to the authority and in accord with the provisions of Alaska Civil Rule 81(a)(2) and Alaska Bar Rules 43, 43.1, 44, and 44.1;

(d) acts described in 2(d) of this rule when performed in the regular course of a business or non-profit organization having a primary purpose other than the performance of those acts, provided the acts are limited to the completion of forms adopted by the court system for use by nonattorneys or standardized forms prepared or reviewed by counsel;

(e) acts described in 2 (b) and (e) of this rule when performed in the regular course of a business, association, labor organization or non-profit organization having a primary purpose other than the performance of those acts;

(f) acts described in 2 (b) and (d) before administrative agencies when they are specifically authorized by Supreme Court rule, statute, administrative regulation, or ordinance;

(g) acts performed by a court-appointed guardian, conservator, guardian ad litem, cultural navigator, participants in a Youth Court program or a governmental employee provided that such acts are part of the duties of such person and such employee is designated to perform such acts by the Commissioner or Executive Director of the agency to which such employee is assigned;

(h) acts performed by a public official as part of the duties of that official;

(i) acts described in 2(b) and (d) when performed without compensation by an incarcerated person for another incarcerated person.

(j) acts described in 2(a) - (f) when performed by an attorney authorized to practice law in another jurisdiction provided that such attorney (i) does not represent himself or herself to be a member of the Alaska Bar Association and (ii) does not have his or her principal place of business in Alaska. Attorneys not licensed in Alaska must comply with Civil Rule 81 when applicable.

(k) acts described in 2(b) and (e) when performed by a mediator in the course of a mediation.

Section 4.
REMEDIES FOR UNAUTHORIZED PRACTICE OF LAW.

The Attorney General, the Alaska Bar Association or any affected person may maintain an action for injunctive relief in the superior court against any person who performs any act consisting or which may constitute the unauthorized practice of law within the provisions of this Rule. The superior courts may issue temporary, preliminary or permanent orders and injunctions to prevent and restrain violations of this Rule, without bond.

Section 5. DEFINITION.

The term "person" as used in this Rule includes a corporation, company, partnership, firm, association, organization, labor union, business trust, banks, governmental entity, society, or any other type of organization, as well as a natural person.

The Board of Governors wants to remind members that amendments or additions to the following rules will take effect on January 15, 1999. Copies of these changes have been mailed to practitioners by the Court Rules Attorney, but are also available from the Bar office.

Rule #	Description	Status & Date
Alaska Bar Rule 30(g)	New procedure for reinstatement from disability inactive status	Effective 1-15-99
Alaska Rule of Professional Conduct 1.7(a)	Restores original conflict of interest language found in the American Bar Association Model Rules of Professional Conduct	Effective 1-15-99
Alaska Rule of Professional Conduct 1.6 & related rules	Revises the definition of confidential "information relating to a representation" to the concepts of "confidences" and "secrets" patterned after the former Code of Professional Responsibility	Effective 1-15-99
Alaska Bar Rule 43.1	Permits military lawyers to handle pro bono cases assigned by the Pro Bono Program	Effective 1-15-99
Alaska Rule of Professional Conduct 1.4	Requires written disclosure to client if lawyer does not have malpractice insurance coverage of at least $100,000 per claimant and $300,000 total and if coverage drops below these amounts or is terminated. Does not apply to government or in-house counsel	Effective 1-15-99
Alaska Rule of Professional Conduct 1.5	Requires written fee agreements in all matters exceeding $500 and the malpractice insurance coverage disclosure required by ARPC 1.4	Effective 1-15-99
Alaska Bar Rule 35	Revisions to parallel the language in ARPC 1.5	Effective 1-15-99

1998 "Women In Alaska Law" archive closes Dec. 31

The display "Pioneering Paths," which has traveled to courthouses around the state since June, was developed from contributions to the 1998 "Women in Alaska Law" Archive. The archive will be used for similar educational efforts in the future. Contributions to the archive may still be made through December 31, 1998.

The Alaska Joint State-Federal Courts Gender Equality Task Force celebrated its Fifth Anniversary recently with a potluck at the home of Alaska Supreme Court Justice Dana Fabe, Task Force Co-Chair. Past and present members joined in honoring Teresa White Carns, Senior Staff Associate of the Alaska Judicial Council, for her extensive efforts on the Task Force's behalf since its inception in 1993. Here, Justice Fabe, L, and fellow Co-Chair Chief Judge James Singleton of the U.S. District Court, R, present Carns with her award. Joining them are Carns' daughters Regina, L, and Anthea, R.

The Gender Equality Task Force recently recognized Anchorage attorney Leroy Barker for his service as Chair of the Program Committee. Here, Barker and his wife Suzanne admire the most recent product of the Committee's efforts: the new *Women's Legal Rights Handbook* The Handbook was a cooperative effort of the Gender Equality Task Force and the Legal Advocacy Project of the Alaska Network on Domestic Violence & Sexual Assault. Coordinators of the project were Task Force members Judge Patricia Collins and Teresa White Carns; and Legal Advocacy Project Attorney Kari Robinson. Copies of the handbook are available through the Legal Advocacy Project at 130 Seward Street #209, Juneau, Alaska 99801.

WOMEN IN THE BAR

Pioneer magistrate dies in Washington

Sister Joan (Betty Ann) Helm, age 88, was born July 24, 1910 in Tulare, CA to Ralph D. Helm and Alma Nettie Zumwalt, both born in California of early Gold Rush days pioneer settlers. She graduated from UC Berkeley in 1932 with a BA degree in psychology.

In 1935 she became Personnel Director with the War Department, Port of Embarkation, CEO of the eleven western states, and in 1939 she was sent to San Francisco with representatives from other nations to begin the establishment of the United Nations. In 1946 she was appointed a United States Magistrate, Third Judicial District Federal Courthouse in Cordova, Alaska.

During her time in Alaska she felt God's call to become a Roman Catholic and was baptized in 1950. Eleven years later she answered another call. She entered monastic life at St. Placid Priory in 1961 and professed her vows as a Benedictine on January 5, 1963. She taught at St. Placid High School in Lacey, Visitation School and St. Ann's School in Tacoma, and All Saints School in Puyallup where she also served as Principal. After her teaching and school administration career, she ministered at the State Women's Prison in Purdy. For the past seven years she served the people of St. Nicholas Parish in Gig Harbor. After a brief hospitalization in March, 1998, she was cared for at Providence Mother Joseph Care Center in Olympia, where she died on August 12, 1998.

> *In 1939 she was sent to San Francisco to begin the establishment of the United Nations*

Sister Joan will be remembered for her spirit of adventure, the stories of her varied life experiences and her energetic, bold manner. In spring and summer she grew beautiful wildflower gardens wherever she lived, and in fall and winter created artful cards with her pressings.

Preceding her in death are her parents, her sister, Virginia Helm Hoffman and her brother, William Ormiston Helm.

—Submitted by James Bendell

Excerpts from the JBA Minutes

October 2

Guests: Colby Smith, who believes his accent is less pronounced than Lach Zemp's.

Announcements: There were several announcements of people shuffling places and jobs. Jack Chenowith is back with Legislative Legal Services and Steve Weaver is now working with Debbie Behr. Mike Barnhill is presently working out of the Anchorage AG's office but is expected back.

October 9

President Zemp called the meeting to order. A suspiciously large passel of judges was in attendance (Weeks, Carpeneti, Rabinowitz), but none of them treated the assembled throng to any judicial announcements. It was reported that a former candidate for Justice Rabinowitz's seat had expressed his "best wishes" towards Judge Carpeneti, who interviews with the Governor on October 19. There were no guests.

Tom Wagner, no longer a "visitor," announced the opening of his private law office. There was neither old business nor new business, but there were many more announcements. Bruce Weyhrauch reported that longtime Juneau lawyer and former Juneau mayor Joe McLean, 81 and 'fit as a fiddle,' had asked Bruce among other things to distribute Mr. McLean's internet address, so, among other things, he could get the Bar minutes. The address is j.emcl@worldnet.att.net

Art Peterson told a joke. After considerable discussion it was decided to adopt Justice Rabinowitz's suggestion that the minutes show that the joke was "well received."

Art Peterson reported on last month's Alaska Legal Services board meeting. Contributions have come in from the Anchorage, Juneau, Ketchikan, and Fairbanks Bars (Anchorage's contribution: $30,000). Thanks to grants from two regional Native nonprofits, ALSC has reopened its Nome and Dillingham offices. John McKay, president of the national Legal Services Corporation and, at one time, a young lawyer in Anchorage, has been in Alaska and went out to Gambell (went out to the village, that is). [The note-taker is not responsible for this pun.] Money was discussed. The "Partners In Justice" organization will soon be asking you for individual contributions.

Helen Fisher, wife of former Juneau lawyer Jamie Fisher, has been battling cancer and is now in the hospital. You can write to her (and Jamie) at 171 Farnsworth, Soldotna 99669; President Zemp will express the Bar's best wishes.

Bruce Weyhrauch, Board of Governors member, reported that because the Alaska Bar continues to run a surplus, partly because the fees we charge visiting lawyers have gone up, our Bar dues are not likely to go up. At least not this year. Bruce also explained how the Alaska Bar staff runs not just Bar business but the Alaska Lawyer Referral program. Juneau's newest private practitioner said he would sign up.

October 23

President Zemp moved that the Vice-President be responsible for a JBA Archives on a continuing basis. Tony Sholty seconded the motion, and it passed without objection, not counting the slightly disgruntled look on Vice-President Hazeltine's face. When not working on the new JBA Archives, Vice-President Hazeltine will be working with Stacie Kraly to reserve the Parkshore Clubhouse for our annual Holiday Party.

October 30, 1998

Guests: Pat Wilson, our friendly local law librarian. Cynthia Fellows, the state law librarian from Anchorage. She's friendly too.

Announcements: Mark your calendars for the Holiday Party on December 18. It will once again be held at the Parkshore Condominium Clubhouse. Please contact Sheri Hazeltine if you'd like to volunteer to help.

Position Opening: The Juneau Public Defenders Agency has an opening for a full time attorney beginning November 1, 1998. Please direct all inquiries to Phil Pallenburg.

— Dawn Collingsworth

HI-TECH IN THE LAW OFFICE

Enabling technologies for efficiency's sake

By Joseph L. Kashi

Every attorney in our increasingly competitive environment needs to keep a close eye upon creeping overhead. We're a natural market for what I call "enabling technologies", infrastructure that helps you more efficiently perform other tasks such as word processing, docketing or time and billing.

Some of the more mature enabling technologies that you should consider evaluating and deploying are:

1. Local area networking.
2. Voice recognition and dictation.
3. On-line electronic filing systems available across a local area network.
4. Optical character recognition.
5. Electronic mail.
6. Electronic faxing from your desktop.
7. Internet access available across the local area network.
8. Legal research available across the local area network.
9. Groupware such as Lotus Notes.

I'll discuss each of these technologies in turn.

LOCAL AREA NETWORKS

A local area network is the glue that holds your entire office together and supports other enabling technologies by leveraging each persons efforts through the sharing of pooled information. Sharing information avoids reinventing the wheel at each desktop.

Nothing facilitates efficiency quite so well as very good communications. In military parlance, efficient communications are force multipliers allowing you to achieve a powerful result using relatively small, highly efficient means. To draw out the analogy, a few smart, highly accurate weapons coupled with excellent reconnaissance will achieve far more effective results, at a far lower cost, than the massive but inaccurate bombings of World War II and Vietnam. The secret is excellent communication.

In prior issues of the Alaska Bar Rag, we discussed various technical aspects of networking. At this point, I believe that a law office without a local area network is relatively rare. In the late 1990's, networking is quite easy: rudimentary networking capabilities adequate for the small law office are built into Windows 95/98. For larger installations, Novell and Windows NT network operating systems are relatively straightforward. High speed 100 megabit Fast Ethernet hardware is amazingly inexpensive. Under the circumstances, there is no economic justification for avoiding local area networking. If you do, then you'll also forego the basic underpinning of any effective legal automation strategy.

VOICE RECOGNITION

Voice recognition is finally coming of age, although slowly. The newest products, particularly Dragon's Naturally Speaking (which is included with Word Perfect Legal Suite 8) and IBM ViaVoice (which embeds itself in both WordPerfect 8 and the latest versions of Microsoft Word) provide relatively high order voice recognition/dictation capabilities, particularly when used on extremely fast hardware and when the user has taken a few hours to accurately train the system to recognize his or her voice. Although there are other voice recognition products on the market, those made by IBM and Dragon are the most proven. Each has their proponents and each works well under various circumstances. Voice recognition is an exception to my rule of thumb that enabling technologies require some form of networking and information sharing. Voice technologies fundamentally work on the user's desktop although some Internet based for-fee products receive good word of mouth.

If you plan to use voice recognition technology, then you'll need the fastest computer and the most SDRAM memory that you can realistically afford because these are very processor intensive products. In the next edition of the Bar Rag, I'll recommend appropriate computer hardware. You'll need patience to train your system effectively. I have noticed, by the way, that IBM's product seems a bit more difficult to train but that Dragon's product is very touchy about individual sound cards, working well with one sound card, but working poorly with a different example of the same make and model. If you're experiencing problems setting up Dragon's Naturally Speaking, consider changing your sound card for a more modern PCI Sound Blaster.

One of the nicest aspects of voice recognition and dictation is the ability to use voice macros. For example, with some products you can simply do a macro such as "insert saving clause" and have your complete boiler plate savings clause inserted in the appropriate place. This obviously saves a lot of time when assembling a custom contract, for example. Or, if you intend to dictate a short letter, you might have a voice macro such as "start letter to Joe Kashi" and have your letter template, styles, addressee and address pop up.

ON-LINE ELECTRONIC FILING SYSTEMS

These may be the Holy Grail of enabling technologies but will take time to set up. For an effective on-line filing system, you'll need to make a commitment to scan in every document that comes in or out of the office including internal notes and to include internal word processing files or other documents that might contain useful information. One of the nicer ways to integrate a filing system of this sort is through the use of an image-enabled case management system like Time Matters.

Setting up a system of this sort will require real dedication but should provide a significant return on investment. It makes little sense to go back and try to scan in all the documents for cases near completion and no sense at all to scan in old cases. To my way of thinking, the most efficient approach is to start fresh with new matters as they first come into the office and with cases likely to proceed to actual litigation. Once you have imaged your documents in a standard format such as TIFF, then they should also be available for use with various litigation support programs.

An on-line filing system requires some fairly sophisticated software but, surprisingly, hardware requirements are not as stringent. We'll discuss practicable hardware and imaging software in greater detail in our next Bar Rag column and how you might actually implement an on-line filing system.

OPTICAL CHARACTER RECOGNITION

Lawyers have frequently used OCR for years to avoid retyping documents. You can also use OCR to build a text-searchable document database for low-level litigation support purposes. Caere and Xerox are the leaders in this market area.

ELECTRONIC MAIL

Everyone needs electronic mail: it's the greatest productivity aid that I've seen. The best Email programs, such as Eudora, Novell Groupwise, Lotus Notes, and Microsoft Outlook, integrate both internal LAN Email and Internet Email. Internet Email is a particularly good way to communicate with remote clients on routine matters, now that the Alaska Bar Association has opined that this does not breach attorney-client confidentiality.

ELECTRONIC FAXING FROM YOUR DESKTOP

This is a really useful way to send and receive routine data is you have a direct connection to telephone system dial tone. WinFax Pro is the market leader. I've always found this to be a very useful productivity aid.

Continued on page 16

PUBLICATIONS

LITIGATOR RESOURCE

LEXIS-NEXIS and Mealey Publications, Inc., will market a new online publication targeted to litigators and in-house counsel

This new publication will provide news impacting litigation practice, insights from legal experts, and articles addressing pointers and practice tips on trial preparation and practice.

Slated for availability in early 1999 exclusively on the LEXIS-NEXIS services, the publication will feature only original material, including articles authored by judges and prominent trial attorneys in addition to interviews with legal experts.

The publication will also provide continuing coverage of breaking stories on trials and important decisions as they happen and will be available in the Litigation and Legal News libraries on the LEXIS-NEXIS services. (www.reedelsevier.com).

Enabling technologies

Continued from page 15

CONTININTERNET ACCESS AVAILABLE ACROSS THE LOCAL AREA NETWORK.

Although Internet legal research does not have the sophistication to supplant more traditional vendors like West and Lexis, it's a useful means of researching factual questions and of getting the very latest opinions and to check case status Web databases such as those published by the Alaska Appeals Courts. If you have more than two or three users in your office, installing telephone dial tone to each desktop can be cumbersome and expensive. (Many rotary and key phone systems interfere with modem calls). InterJet's WhistleJet, available from many Internet Service Providers, is a simple, relatively inexpensive means of sharing one or two Internet accounts among several simultaneous local area network users. There are other useful devices and their cost continues to plummet. Most of these devices require Windows 95/98.

LEGAL RESEARCH AVAILABLE ACROSS THE LOCAL AREA NETWORK

I've always been a proponent of legal research CD-ROMs. In order to be most effective, these should be networked with every user in the office enjoying access.

GROUPWARE SUCH AS LOTUS NOTES OR NOVELL GROUPWISE

Groupware products might seem to be glorified Email programs but are somewhat hard to define. Lotus Notes, for example, provides a series of database and communication tools that bring together most of the information flow throughout the office into a single program, integrates that information, and essentially turns Email into useful database entries. Third party add-on products to Notes include document management, document imaging, and litigation support modules. Products like Notes blur the divide between enabling technological infrastructure and high-end applications. Our own office is slowly implementing Notes and limits to its usefulness are not apparent. This is not a product for the faint of heart, however.

In our next issue of the Bar Rag, we'll examine some of these technologies in more detail and suggest specific hardware and software along with implementation strategies.

DOCUMENT MANAGEMENT

IBM and West Group are developing an integrated document management system that facilitates quick, secure and efficient electronic filing of court documents with the WestFile™ Service and a court's case management system. Combining WestFile and IBM Digital Library will provide a direct link from an attorney's desktop to the court's desktop.

The document management solution, based on the IBM Digital Library information management system, will work with the WestFile Service to provide courts with secure, scaleable document storage and management necessary in an electronic filing environment.

In addition to electronic filing, the fully customizable WestFile Service can notify attorneys when new documents are filed in a case, will allow attorneys to view all documents and exhibits in a case, search for a given judge's latest rulings, or track the recent work of opposing counsel. In the near future, WestFile Service users will be able to tie into West Group databases and content, call up a wide array of court forms and access local rules and state statutes. (www.westgroup.com)

"The WestFile Service is unique because it can be customized according to the needs of each court and each attorney," said Steve Daitch, West Group vice president, Technology Business Development. "Attorneys and other WestFile Service customers will benefit from the reliability, security and accessibility of this system. West Group, IBM, VeriSign and SCT Government Systems have the customer intimacy, resources and dedication to the justice system the courts need to adopt electronic court filing."

ENVIRONMENT

A West Group Environmental *E-Site™* Featuring *ELR®* - *The Environmental Law Reporter®* is now available.

This new Web-based subscription service provides direct access to hard-to-find information for the legal and corporate environmental compliance marketplace.

The *Environmental Law Reporter* offers a collection of environmental resources - full-text cases, statutes, regulations, agency documents, and update analysis from leading experts in the field - in one convenient source. In addition to providing comprehensive federal coverage, *ELR* contains full-text environmental statutes and regulations for all 50 states, plus Washington, D.C.

The West Group Environmental E-Site infobases include:

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- Cases
- Federal Statutes
- Federal Register and Federal Register Archive
- Code of Federal Regulations
- State Regulations and Statutes
- International Treaties

For more information. www.e-site.westgroup.com.

EMPLOYMENT LAW

Providing quick, reliable access to the latest changes in employment discrimination law is the aim of *Employment Discrimination Digest*, the latest offering from James Publishing.

Employment Discrimination Digest by Thomas J. Garland Jr. summarizes more than 500 Supreme and major appellate court decisions discussing key issues such as Title VII, Age Discrimination in Employment Act, Americans with Disabilities Act, 1981, 1983, Rehabilitation Act, Equal Pay Act and the Family and Medical Leave Act.

Attorneys use *Employment Discrimination Digest* to help exhaust administrative remedies, plead all viable causes of action, avoid pleading errors, handle pre-trial motions, conduct better discovery, assert or overcome defenses, determine damages and select jury instructions. Its concise case summaries organized by logical key numbers cover over 900 substantive categories.

DISABILITY HANDBOOK

James also has released a new disability handbook.

Helping claimant's representatives, both attorneys and non-attorneys, understand and use the Social Security Administration's rulings to effectively represent disability clients is the aim of author and national authority on the Rulings, Ralph Wilborn. Wilborn's *Social Security Disability Advocate's Handbook* shows claimant's representatives how to turn the seemingly unfavorable rulings into powerful tools for their clients.

The Handbook delivers analysis of the rulings, with practice tips and examples detailing how to avoid claim denials; the full-text of more than 60 of the most significant Social Security rulings and Acquiescence rulings; a comprehensive practitioner-friendly index of the Rulings; medical source statements; model interrogatories; sample letters; The Grids; selected regulations; sample forms and many other practice aids.

The two books are published by James Publishing's (800) 440-4780.

ALASKA BAR ASSOCIATION WINTER 1998-1999 CLE CALENDAR

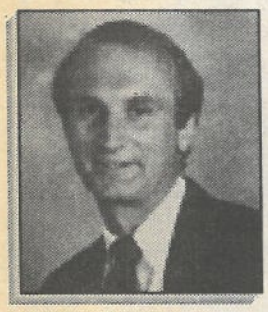
(NV) denotes No Video

Program #, Date & CLE Credits	Program Title	Program Location	In Cooperation With	Section
#53 December 2 2.75 CLE Credits Half Day (a.m.)	Alaska Community Property Act (NV)	Juneau Centennial Hall		Estate Planning & Probate
#30 December 11 2.75 Half Day	The Most Important -- and Misunderstood -- Evidence Rules for a Trial Lawyer in Alaska	Anchorage Hotel Captain Cook	Alaska Court System	
#66 December 14 1.0 CLE Credits	Inn of Court Seminar/Topic TBA (NV)	Anchorage Boney Courthouse Third Floor	Anchorage Inn of Court	
#13 January 13 CLE Credits TBA	Off the Record -- Anchorage	Hotel Captain Cook Anchorage	Anchorage Bar Association	
#06 January 29 2.0 CLE Credits	An Open House in the Courtroom of the Future	Federal Courthouse Anchorage	US District Court & Alaska Court System	
#07 February 3 CLE Credits TBA	Probate Issues	Hotel Captain Cook Anchorage		Estate Planning & Probate
#05 February 11 3.5 CLE Credits	Representing Aliens Affected by the Nicaraguan Adjustment & Central American Relief Act (NACARA)	Hotel Captain Cook Anchorage		Immigration Law
#09 March 12 5.5 CLE Credits	The Do's & Don'ts of Complex Deposition Practice	Juneau Centennial Hall		
#08 March 25-26 CLE Credits TBA	The Impact of Domestic Violence on Your Practice	Anchorage Sheraton Hotel	ANDVSA Legal Advocacy Project	
#03 March 26 CLE Credits TBA	Commercial Real Estate Leasing and Leases	Anchorage Hotel Captain Cook		Real Estate Law

BANKRUPTCY BRIEFS

Section 547 (c) (4): The preference defendant's only pleasant surprise

☐ Cabot Christianson



Preference law is unabashedly stacked against the defendant - the defendant whose only offense, probably, was being paid on a valid debt. Preference defenses are generally limited in number and stingy in scope. It is therefore worth becoming familiar with Section 11 U. S. C. 547(c)(4), the subsequent new value preference defense. In the entire body of preference law, Section 547(c)(4) may be the preference defendant's only pleasant surprise: pleasant because it can apply in a large variety of cases, and a surprise because the statute is unintelligible even after a dozen readings.

Section 547(c)(4) can potentially apply whenever there is a continuing course of dealings between the debtor and the creditor where the creditor continues to provide goods or services or credit after having received a preferential payment. A typical example is a trade creditor that delivers goods on open account after having received a payment on an old bill.

The basic idea behind Section 547(c)(4) is that when a creditor receives a preference, and then gives new value to the debtor, that subsequent new value is akin to the creditor making a first installment on the his repayment obligation to the bankruptcy trustee. A creditor who receives a $10 preference and then provides $2 of goods only has to pay the trustee $8 to satisfy a preference claim. Section 547(c)(4)'s universal rationale means that it can apply in all kinds of cases, sometimes unexpectedly.

Section 547(c)(4) states, "The trustee may not avoid under this section a transfer ... to the extent that, after such transfer, such creditor gave new value to or for the benefit of the debtor (A) not secured by an otherwise unavoidable security interest; and (B) on account of which new value the debtor did not make an otherwise unavoidable transfer to or for the benefit of such creditor."

What does this gobbledygook mean? Imagine going into an automotive parts store and asking the clerk if he has a particular spark plug in stock. The clerk says he has to check his computer, which he does. He then looks up from his computer screen and says, "I've checked all our stores, including this one, and I can tell you that the spark plug is not otherwise unavailable."

Most customers would do a double take on hearing this. For the same reason, it's not obvious what Section 547(c)(4) is talking about when it requires a "not ... otherwise unavoidable security interest" and a "not ... otherwise unavoidable transfer."

In order to comprehend Section 547(c)(4), one must understand the structure of 11 U.S.C. Section 547, the preference statute, and in particular must focus on the concept of "avoidability" and "unavoidability."

Section 547(b) is frequently described as the section of the Bankruptcy Code that defines a preference, and Section 547(c) is frequently described as outlining the preference exceptions. But interestingly, Section 547 does not contain the word preference anywhere except in the title of the section.

Thus, for example, Section 547(b) does not start, "To prove a preference you have to show the following five things ..."

Instead, Section 547(b) begins with the language, "Except as provided in subsection (c) of this section, the trustee may avoid any transfer of an interest of the debtor in property ..." (emphasis added). Section 547(b) then goes on to identify five requirements, all of which must be met: (1) a transfer to or for the benefit of a creditor, (2) on account of an antecedent debt, (3) made while the debtor was insolvent, (4) made within 90 days of the petition date, or one year for insiders, (5) that gave that creditor more than he would have received had the transfer not been made and the creditor had waited around to the end of a Chapter 7.

And Section 547(c) does not start, "Here are the seven exceptions to a preference ... " Instead, Section 547(c) begins with the language, "The trustee may not avoid under this section a transfer ..." and then goes on to list seven protected types of transfers.

There really and truly are only seven ways that a transfer can be unavoidable under Section 547(c). There aren't any equitable defenses, judge-made defenses, or any other defenses to avoidability apart from these seven, so these seven defenses comprise the universe of unavoidability defenses once the trustee or debtor can prove the five elements under Section 547(b).

If the transfer in question was a contemporaneous exchange of value, then subsection 547(c)(2) may apply. If the transfer was made in the ordinary course of business, then subsection (2) may apply. Those subsections pretty much mean what they say. Subsections (3), (5), (6) and (7) deal with the relatively limited number of cases dealing with purchase money security interests, inventory loans, statutory liens, and support and alimony payments. The only other section is 547(c)(4), subsequent new value, the subject of this article.

"New value" is defined at Section 547(a)(2) and means pretty much what you would expect: money or money's worth in goods, services, occupancy, use, etc. New value does not, however, include a rewrite of an existing debt. So, even if a creditor forbears from collecting a debt or agrees to modify payment terms on an outstanding obligation, this largess does not constitute new value even though it was a new event at the time and even though both parties subjectively regarded the concession as having some value or benefit.

Section 547(c)(4) says that the trustee may not avoid a transfer "to the extent that, after such transfer," the creditor gave new value, provided that subsections (A) and (B), discussed below, are satisfied. "To the extent that" means that if a creditor receives a $15 preference and gives $5 of subsequent new value, he gets a $5 reduction to the preference claim against him.

"After" means after. If on Monday the debtor pays his supplier $15 on an old bill and on Tuesday the supplier provides $5 of goods on open account, the supplier is in luck. But if on Wednesday the Ponzi scheme investor invests $5 and on Thursday he receives $15 from the debtor on a different contract, he is out of luck. For purpose of determining whether a payment is a preference under Section 547(b), the payment is considered made when it clears the debtor's bank. *Barnhill v Johnson*, 112 S.Ct. 1386 (1992). However, for purposes of determining defenses under Section 547(c), including (c)(4), the payment is considered to be made when the creditor receives the check. *Brown v. Shell Canada USA*, (8th cir., 1977) 112 F.2d 234.

Attorneys representing preference defendants should view Section 547(c)(4) the same way I regard knee surgery: it's not very attractive until you consider the alternatives. And, with some luck, things will turn out almost as well as they were before.

Now we get to the two ridiculously awkward requirements of 547(c)(4)(A) and (B). Both (A) and (B) use the triple negative phrase "not ... otherwise unavoidable." The phrase "otherwise unavoidable" makes sense only when you consider that it is contained right smack in the middle of a laundry list of unavoidable transfers. "Otherwise unavoidable" means "unavoidable for some reason other than this particular subsection, Section 547(c)(4)."

(547(c)(4)(A) requires that the subsequent new value be "not secured by an otherwise unavoidable security interest." This basically means that the subsequent new value be unsecured, or if it is secured, the security interest itself is preferential. The rationale of (A) is to avoid creditors from getting a double whammy out of secured new value: once to defeat a preference claim, and second to get paid out of the collateral.

The term "security interest" in 547(c)(4)(A) excludes judgments and liens. In common usage, recorded judgments, mechanics liens, execution levies, and the like, are regarded as giving the creditor a security interest in the thing in question. But in bankruptcyspeak, and at Section 101(51), security interests refer only to liens created by an agreement, such as a deed of trust or a UCC-1 type security agreement. Judicial liens, defined at Section 101(36), and statutory liens, defined at Section 101(53), are considered different kinds of liens and so do not come into play in construing Section 547(c)(4).

Section 547(c)(4)(B) requires that "on account of which new value the debtor did not make an otherwise unavoidable transfer to or for the benefit of such creditor." The purpose of this turgid language is best illustrated with a numerical example. If the order of events is (i) first, debtor makes a preferential payment of $10; (ii) next, creditor gives new value of $4; and (iii) next, debtor makes another preferential payment of $1, then the result is that the $1 reduces the $4 of new value defense to $3, and the defendant is ultimately liable for $7. *However*, if the $1 transfer is itself avoidable (i.e., a preference) then the trustee cannot recover both the $1 on the preference theory and use the $1 to reduce the $4 new value defense. Basically, (B) is a safeguard against double counting the $1. *In re IRFM, Inc.*, 52 F.3d 228 (9th Cir., 1995).

If you find yourself in a situation where there is a UCC-1 or deed of trust securing new value, then you need to learn about (A). If you find yourself in a situation where there is a preference, followed by new value, followed by another payment from the debtor, then you need to learn about (B). In either event, what you really need to do is brew yourself a pot of strong coffee and locate Bowmar, *The New Value Exception to the Trustee's Preference Avoidance Power; Getting the Computations Straight*, 69 Amer. Bankr. L. J. 65 (1995).

Attorneys representing preference defendants should view Section 547(c)(4) the same way I regard knee surgery: it's not very attractive until you consider the alternatives. And, with some luck, things will turn out almost as well as they were before.

Foster Pepper Rubini & Reeves expands

Foster Pepper Rubini & Reeves, an Anchorage law firm, has opened an office in Spokane, WA staffed with two experienced municipal and public finance attorneys. **Jeffrey Nave** and **James McNeill III**, who both have a statewide municipal practice, head up the firm's new office located in the US Bank Building, Suite 1310, West 422 Riverside Avenue.

"Our expanded practice in Spokane reflects the firm's commitment to our growing client base throughout the Northwest," said **Deborah Winter**, chair of the firm's Municipal and Public Finance Practice Group. "We're here to fully service the expanding needs of our clients."

Nave, who joins the firm as of counsel, concentrates his practice on municipal finance and municipal tax law. He represents a wide range of municipalities throughout Washington on finance transactions as well as representing underwriters and conduit borrowers. He is an active member of the National Association of Bond Lawyers, serving on the Association's Securities Law and Tax Committees. Nave, who was a parmer with Perkins Coie LLP before joining Foster Pepper, is admitted to practice in Washington, California, Idaho and Montana. He received his J.D. in 1990 from the University of California, Hastings College of the Law and his B.A. in 1987 from the University of California at Berkeley.

McNeill focuses his practice on municipal law and finance. He serves as bond counsel to a variety of municipalities throughout Washington, with a special emphasis on representing Washington School Districts. He also maintains an appellate practice defending municipalities against challenges to the exercise of municipal authority. Prior to joining Foster Pepper as of counsel, he was with Perkins Coie LLP. McNeill is a member of the National Association of Bond Lawyers. He received his J.D. in 1985 from Gonzaga University and his B.A. in 1982 from Washington State University.

In addition to their Anchorage office, Foster Pepper Rubini & Reeves has offices in Seattle, Spokane, Bellevue, and Portland, Oregon.

David J. Walsh named senior vice president and general counsel

David Walsh

David J. Walsh has joined Swiss Re America Holding as Senior Vice President and General Counsel and will serve on its Management Committee.

Before joining Swiss Re, Mr. Walsh was General Counsel for the Domestic Brokerage Group at American International Group. He was Director of Insurance for the State of Alaska from 1990 to 1995. While with the Insurance Department, Mr. Walsh served on the National Association of Insurance Commissioners (NAIC) as National Secretary, Vice President, and President. Prior to joining the Insurance Department, Mr. Walsh was in private practice in Anchorage, Alaska.

"David Walsh is a key addition to our management team," said Heidi Hutter, Chairman, President, and Chief Executive Officer of Swiss Re America. "He brings substantial experience in both the private and public sectors to Swiss Re as we move forward in a challenging marketplace."

Mr. Walsh has been active in public affairs, serving for five years on the US delegation to the Organization for Economic Cooperation and Development Insurance Committee and was Vice Chairman in 1994 and 1995. He was a founder and first Chairman of the International Association of Insurance Supervisors.

A graduate of Loras College, Mr. Walsh received his law degree from the University of Wisconsin at Madison. He also has a MBA from Alaska Pacific University. He resides in Morristown, New Jersey.

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Call the number above to access the Alaska Bar Association Information Line.
You can call anytime. 24 hours a day.

Bar People

Ron Drathman, of Homer, was elected president of the Kenai Peninsula Borough Assemby in November....**Sheri Hazeltine** in now a Hearing Examiner with the Alaska Dept. of Revenue in Juneau.....**Shelly K. Owens** of Juneau has closed her law office and taken a position with the Alaska Council on Domestic Violence and Sexual Assault.....**Rick Johannsen** has relocated to the U.S. Embassy in Paris, France for a two year assignment as a political officer with the U.S. Department of State after completing a three month assignment in New York City with the U.S. Mission to the United Nations followed by seven months of French language training at the National Foreign Affairs Training Center in Arlington, Virginia.

Tina Kobayashi & Dick Monkman are the proud parents of a baby boy, Forest Drake Kobayashi, born August 31, 1998.....**Lane Powell Spears Lubersky** closed their Fairbanks office. **Bea Hagen**, formerly with that firm, is now working half time for Peter Aschenbrenner and half time for the Borough.....**Gregg Brelsford**, formerly with Burke, Bauermeister & Brelsford, is now practicing as a sole proprietor under the trade name, Pacific Law Offices.....**Valerie Brown**, formerly with Perkins Coie, is now with Trustees for Alaska.....**Paul Crowley**, formerly with Davis Wright Tremaine, and **Linda Hiemer**, have opened the law firm of Crowley & Hiemer.

Theodore Christopher is now located in Manila, Philippines.....**Peter Crosby**, formerly with Crosby & Sisson, had opened his own law office in Anchorage.....**Rod Sisson**, formerly with Crosby & Sisson, has opened the Law Office of Rod R. Sisson.....**Mark Choate**, formerly of Juneau, is now with Choate, Guinn & Springmeyer in San Diego.....**Robyn Carlisle**, formerly with the D.A.'s office, is now with the law department of the City & Borough of Juneau.....**Mark Ertischek** is now in Renton, WA and anticipates being in the state of Washington for a year.

Robert Ely and **John Havelock** have dissolved the partnership of Ely & Havelock and each have their own private practices in Anchorage.....**John Eber-hart,** formerly of Fairbanks, has relocated to Brisbane, Australia.....**Dennis Efta**, formerly of Kenai, is now with Owens & Turner in Anchorage.....**Blaine Gilman**, formerly of Gilman & Oberg, and William Evans, formerly with the Kenai Peninsula Borough, have formed the firm of Gilman & Evans.....**David Edgren** and **Darin Goff**, formerly with the firm of Robertson, Edgren & Christensen, are now with the firm of Brion, Edgren & Goff.

Valli Fisher, formerly with Lane Powell, et.al., is now with Tindall, Bennett & Shoup.....**Ray Gillespie**, formerly of Juneau, has relocated to Seward.....**Elise Hsieh** is now with the Attorney General's office.....**John Holmes**, most recently in China, is now located in Duluth, MN.....**Karen Hawkins**, formerly an Asst. Municipal Prosecutor in Anchorage, is now with the Attorney General's office.....**Steven Hempel**, formerly with Choate & Hempel, has opened his own law office in Juneau.....**Chad Holt**, formerly with Hopper & Holt, has opened the Law Offices of Chad W. Holt.

Averil Lerman has closed her law practice to join the Office of Public Advocacy.....**Michael Sean McLaughlin** has relocated to Maryland.....**Michael Moberly**, former clerk to Judge Singleton, is now with Pacific Law Offices.....**Mark Melchert** has relocated to Burkina Faso, West Africa, with the Peace Corps .....**Susan Carney**, formerly with the P.D. Agency, is now with the Office of Public Advocacy in Fairbanks.....**Yale Metzger**, formerly with Metzger & Millen, has opened the Law Office of Yale H. Metzger.

Mark Millen has relocated to Los Gatos, CA.....**Mary Pieper**, formerly with the D.A.'s office in Bethel, has transferred to their Kenai office.....**Mary Pinkel**, former Hearing Examiner with the State Human Rights Commission, is now with Eide & Miller.....**Martina Kang Ravicz**, has relocated from Fairbanks to Kodiak.....**Ann Resch**, formerly with the Anchorage Municipal Attorney's Office, is now with Brown, Waller & Gibbs .....**Richard Rosston**, formerly with Guess & Rudd, is now with Bogle & Gates.

Janine Reep, formerly with the A.G.'s office, is now with the Office of Public Advocacy in Juneau.....**Rob Stone** has opened the Law Office of Robert Stone in Anchorage.....**Philip Shanahan** has closed down his private practice to join the staff of the Office of Public Advocacy in the criminal division.....**Todd Sherwood**, formerly of Kenai, is now with the North Slope Borough.....**Marie Sansone** is relocating from Juneau to New York.

Andrew Steiner, formerly with Bankston & McCollum, is now with Helm & Associates.....**Nelson Traverso**, formerly with the Office of Public Advocacy, has opened the Law Office of Nelson Traverso in Fairbanks.....**Stephen Wallace**, formerly with the A.G.'s office is now with Jamin, Ebell, Schmitt & Mason.....The professional corporation of Call, Barrett & Burbank has changed to **McConahy, Zimmerman & Wallace**.....**Michael Woodell**, formerly with Keesal, Young & Logan in Anchorage, has started his own firm in Ketchikan.

Herman Walker is now with Koval & Featherly.....Charles Winegarden & William Whitaker have formed the firm of **Winegardern & Whitaker** in Kenai.

Donahue, Gallagher adds partner

Julie E. Hofer has become a partner in the 38-attorney business law firm of Donahue Gallagher Woods & Wood, LLP, which has offices in Oakland, Walnut Creek and Mill Valley.

Hofer has practiced in the firm's Oakland office since 1991, specializing in intellectual property law and general business litigation. She represents software publishers in disputes relating to copyrights, trademarks, licensing agreements and unfair competition. She also represents major retailers and other businesses in trademark litigation and proceedings before the U.S. Patent and Trademark Office. Prior to joining Donahue, Gallagher, she practiced in Anchorage, Alaska for eight years, where her clients included financial institutions and Alaska Native Corporations. She is also a member of the Alaska Bar Association.

Julie Hofer

Heller Ehrman White & McAuliffe selects Torgerson to lead Anchorage office

Heller Ehrman White & McAuliffe announces the addition of James E. Torgerson to its Anchorage office.

Torgerson, who had been serving as the Chief of the Civil Division of the U.S. Attorney's Office in Alaska, joined the firm on November 1.

Heller Ehrman's Anchorage office has been an integral part of the firm since it first opened in 1989, servicing many of the firm's energy and environmental clients including the Alyeska Pipeline Service Company and Chugach Electric. The firm also represents the State of Alaska's Permanent Fund. In addition, several of the attorneys resident in the Anchorage office provide service to other Heller Ehrman clients including Price WaterhouseCoopers and Bank of America.

"The addition of Jim Torgerson to Heller Ehrman's Anchorage office underscores the firm's commitment to its Northwest practice," said Robert A. Rosenfeld, chairman. "As a longtime Alaska resident and a respected member of the state's legal community, Jim will enable us to expand our momentum in this critical market as the firm continues to pursue its strategic initiatives."

Torgerson's prior legal experience includes serving as Chief, Criminal Division, of the U.S. Attorney's Office and as Assistant United States Attorney. Previously, he served in Washington, D.C. as Special Assistant Attorney General in the Office of the Governor of Alaska.

He also has served as Assistant District Attorney, District Attorney's Office, and as an associate with the law firm of Bogle and Gates, both in Anchorage. Torgerson was also a law clerk for Judge Victor Carlson of the Alaska Superior Court.

"The relationship between Alaska and the Northwest part of the 'Lower 48' has always been one of strong business, financial and personal ties," said Bruce M. Pym, managing partner of the firm's Seattle office. "The addition of Jim enables us to continue to build on our relationships in both markets."

Torgerson is expected to focus upon the development of new initiatives in products liability, environmental, health care and employment law.

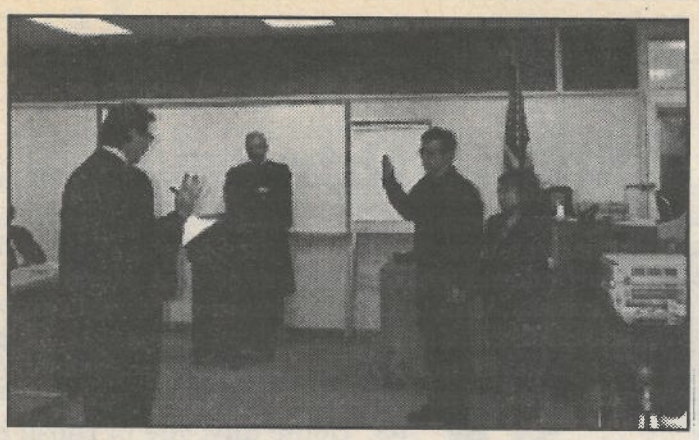
"I was attracted by the opportunity to return to the private sector and work with a firm of extremely fine lawyers doing excellent work," said Torgerson. "I look forward to building on Heller Ehrman' 5 existing markets in the Pacific Northwest practice and to developing new initiatives for the Alaska office."

Torgerson received a Bachelor of Arts degree from Bethel College, St. Paul, MN, and was awarded his J.D. from the University of Washington School of Law., Seattle, WA.

Jerry Melcher, one of the founding partners of the Anchorage office, who recently announced his retirement because of medical reasons, stated, "Jim is a welcomed addition. His talents will help the office achieve its strategic goals and broaden its client and practice base."

Founded in 1890, Heller Ehrman is an international law firm with more than 400 attorneys in San Francisco, Seattle, Portland, Anchorage, Silicon Valley, Los Angeles, San Diego, Washington, D.C., Hong Kong and Singapore. The firm is comprised of sophisticated litigation and business practices and provides services in antitrust, insurance coverage, intellectual property litigation, securities, environmental, energy, financial, labor and employment, life sciences, real estate, international business, tax, mergers and acquisitions, venture capital and emerging company law.

James E. Torgerson



Timothy A. Schuerch sworn into the Alaska Bar at Kotzebue on Friday, the 13th

Timothy A. Schuerch, who apparently is not superstitious, was sworn into the Alaska Bar Association at the Kotzebue Superior Court on Friday, the 13th of November. Schuerch attended Kotzebue High School in his youth. Above, Schuerch's wife Anh looks on as Superior Court Judge Ben Esch oversees the proceeding and Judge Richard Erlich administers the Oath of Attorney.

Ruddy to practice in Alaska and the Russian Far East

The law firm of Ruddy, Bradley & Kolkhorst of Juneau, Alaska announces that senior partner William G. Ruddy will divide his practice between Alaska and the Russian Far East. He will be working as senior attorney to the law firm of Russin & Vecchi in Vladivostok, Russian Far East half time for the next several months.

Ruddy, who has practiced law in Alaska for over 30 years, worked with the Federal Maritime Commission before coming to Alaska. Ruddy has been affiliated with Russin & Vecchi's Vladivostok office for the past two years.

Russin & Vecchi, an international law firm with 12 offices in 8 different countries, provides international services in commercial and litigation matters. Its Russia-related practice is carried out through offices in Vladivostok, Moscow and Washington, D.C. The Vladivostok office of Russin & Vecchi is the only multinational office in the Russian Far East with both U.S. and Russian trained lawyers. The firm provides counseling in both U.S. and Russian law, bilingual services, a secure telephone and fax, Internet connection, and a centrally located office in downtown Vladivostok.

Persons interested in evaluating the potential and risks of doing business in the Russian Far East may contact Ruddy in Juneau at rbklaw@alaska.net; Ruddy, Bradley & Kolkhorst at P. 0. Box 34338, Juneau, AK 99803; phone (907) 789-0047; fax (907) 789-0783 or in Vladivostok at russinv@online.vladivostok.ru; Russin & Vecchi at Sukhanova Street 3A, Vladivostok 690091, Russia; phone 011-7-4232-265-333; fax 011-7-4232-226-505.

Sparks admitted to membership in the Commercial Law League of America

Robert A. Sparks, of Robert A. Sparks Law Office, Fairbanks, has been admitted to membership in the Commercial Law League of America. The Commercial Law League, founded in 1895, is North America's premier organization of bankruptcy and commercial law professionals.

The CLLA and its members are regularly invited to provide expert testimony before Congressional committees and other administrative agencies on behalf of the fair and equitable administration of bankruptcy and other commercial laws. It is also the publisher of the award winning Commercial Law Journal, a quarterly law review as well as the popular bi-monthly news magazine, the Commercial Law Bulletin.

Bar association electronic & web updates

Launching Soon:

Alaska Bar Pilot Project
Trial Court Opinions Searchable Database

The prototype of this database will be launched shortly. You will link to the database from the Alaska Bar Web Site. We will be downloading trial court opinions from the Court System Home Page, but we need submissions to make the database useful.

If you know of a trial court opinion you believe would be useful to put onto the database, please contact the judge's chambers and ask that the judge consider sending the opinion to Jessica Van Buren, Public Services Librarian, at the Law Library in Anchorage. If the judge sends the opinion to the Law Library, the opinion will be posted to the Court Home Page and downloaded to the Alaska Bar Database.

Opinions need to be sent in Word Perfect 7 or lower format.

If the judge's chambers declines to send an opinion, a Bar member may still submit a copy of the opinion to the Alaska Bar Searchable Database by e-mail to alaskabar@alaskabar.org or by sending a disk to the Bar office, 510 L St., Ste. 602, Anchorage, AK 99501.

If you have any questions about the Trial Court Opinions Searchable Database, please call the Bar office at 907-272- 7469 or e-mail alaskabar@alaskabar.org.

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ALASKA BAR ASSOCIATION

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Give us your feedback on the bar association website. What other information would you like to see posted?

TALES FROM THE INTERIOR

No big thing

☐ William Satterberg

Let's face it, we are all growing older. As we grow older, those little aches and pains of life begin to catch up with us. Some day, one of those little aches and pains may not be so little. That is probably a fear we all face. Better to succumb quickly to a heavily-insured passenger bus driven by a well-known drunk with a history of repeat offenses than to an insidious disease.

At 18, we are all bulletproof, which is why we send kids to war. At 47, we can get mortally wounded by a ricocheting bar of soap, which is why we now prefer to use liquid suds.

"It's no big thing, really," my doctor told me after finishing his examination. Realizing that I had just drawn back a fist to sucker punch him, he quickly clarified, "I mean the lump you found — not the location itself."

That last minute clarification probably had saved him from a rapid breakdown of the already fragile physician/patient relationship. After all, he had only been my doctor for ten or so years.

The "lump" my kindly physician was referring to was not in my throat, but at a point farther south. In retrospect, probably out of a fear of the "Big C," I had been religiously checking that location since about age 12. Well, perhaps not religiously, but at least regularly. Now, however, there was a cause for concern. This lump was not a lump which would come and go, but appeared to be much more permanent.

"No big thing, really."

The words had a hollow ring. A shiver ran up my spine. In microseconds, I had run the full spectrum from a single, off-the-cuff inquiry, to diagnosis, radical surgery, chemotherapy, hair loss of whatever remained, hospice, and trying to gain admission into heaven despite my status as a lawyer.

"How long do I have, doctor?" I asked. Instinctively, he began to cover up. I had to hand it to him. At least he was a quick learner.

"I mean, in terms of time!" I hastened to add, clarifying any misconceptions to the question.

"About 10 minutes before my next appointment," he responded.

I was getting nowhere fast.

"I'd like to get a second opinion," he offered.

Resisting the urge to give him the old "You're ugly, too," response, I agreed with him. Best to have an answer rather than sticking your head into the sand, I reasoned.

I was sent to a urologist. Surprisingly, the very next position I was asked to assume was remarkably quite similar to the head in the sand position. I decided immediately that I wasn't going to like this guy. He was simply too personal. After all, people talk.

After explaining to him where the ends meet, my urologist got down to the business in hand. Once again, I was told it "was nothing," and once again I almost cold-cocked the doctor.

"I think you should get an ultrasound, just to be sure," he volunteered.

"Ultrasound? Those are for women? Do you now think I'm pregnant, too?" I demanded.

Looking at my belly, he hesitated for a second before answering. "Probably not, but ultrasounds can tell us lots of things." My only experience to date with ultrasounds had been with pregnancies, to separate the baby boys from the baby girls. "Is this guy doubting my manhood," I silently thought. Still, he seemed honest enough. Maybe he had a reason, after all.

"Okay," I answered, my depression growing. "Set it up."

"Next week," came the reply.

For the next several days, I contemplated my fate. Like many people, I had taken my fair share of lumps in life, but this one was different. Like all dedicated hypochondriacs, I decided to do some research. I went to the law library.

The problem could be either benign, or not. The location, being clearly personal, was not in an area that people are prone to talking about. Surprisingly, whereas the female of our species is generally much more open to discussion about medical issues, males tend to be much more reserved, especially if it relates to issues like the one which had arisen before me.

Eventually, however, I found a friend who had a similar affliction. I scheduled a lunch to discuss his experience. I hadn't spoken to him since his operation and, as such, had a number of questions to ask.

As soon as we sat down, I did a quick visual inspection of what I could see. So far, so good. He was still growing facial hair, and the scalp hairline, as well, seemed to be in a normal location.

"How have you been, Bill?" he cheerfully asked. I was instantly relieved. He still spoke in a hearty, manly baritone.

"Fine," I squeaked.

After a few minutes of pleasantries, I explained to him my concern.

"No big deal," was his immediate reply.

Following some more discussion, my friend pointed out that there are numerous false alarms for afflictions in that location. Not every lump was a lump to get concerned about. I relaxed. I had certainly had my share of false alarms for issues involving that location over the years, but this one was still different. Trying to set my mind at ease, my friend emphatically explained the process which would occur.

"But what if it's the real thing?" I anxiously asked, already certain that I was doomed.

"Amputation" came the one-word reply. I immediately shriveled in my seat, and sunk into my chair.

"My God! Amputation! I'll never be the same!"

"Don't worry," he cheerfully replied. "Look at me! I just got my five year bill of health."

I told him that, although we were friends, I still would prefer not to look at him that closely. After all, people talk.

"No," he said. "I mean figuratively speaking."

"Bill — don't worry!," he laughed. "We actually get along quite fine with just one of those. In fact, Hitler only had one." His attempt at reassurance was failing quickly. Hitler was not on my list of up and coming heroes.

As we parted company, he offered some other advice. Wait and see what the test shows. He also said quite generously, that he would pray for me. In response, I told him that I would accept his offer for prayers as long as it didn't include any laying on of hands.

"No way," he responded. "People talk."

My next meeting was with the ultrasound technician. My worst fears were quickly realized. The technician was an attractive, single woman. I was married. People talk.

"Fine," I thought. "As if I don't have enough problems. I'll probably get evicted from the hospital and arrested to boot." I began to envision the headlines now. *"Local Attorney Charged, etc."*

Harry would have a heyday with this one. People would stand in line just to sit on my panel.

Sensing my distress, the technician decided to set my mind at ease by kindly explaining in a clinical tone what would take place. As if I cared. While I sat on a table with a very unflattering gown (I never could tie knots behind my back), the technician was blissfully telling me how her machine worked. Still, I pretended to feign interest.

"So it uses sound?," I asked.

"Sound vibrations, actually," she responded. That was clearly the wrong answer. "It's really no big thing," she laughed.

Trying to relax, I confessed to her, "You know, when I first was told of this, I thought you folks were going to whack me with a tuning fork!"

She assured me that such a procedure went out with square needles. I again was told that the procedure would only take a few minutes, and would be harmless.

"You won't feel a thing," she concluded.

"Oh, yeah? And how long will that last?" I challenged, trying to set a limit to this "painless experience." After all, if you've ever had your leg go to sleep, you can imagine my concern.

"Not long. Maybe 20 minutes," came the reply. For me, used to concluding many related matters in less than a minute, it seemed like an eternity.

The ultrasound began. In seconds, I forgot my concern. My "personal issues" appeared upon a 13-inch TV.

The test over, the technician left the room while I once again prepared to face the real world.

In minutes, she was back. "You'll be happy to know," she stated, "that our radiologist says it's no big thing, really."

"What you have," she said, "is simply an enlargement. Nothing to worry about. But just to be sure, ask your doctor tomorrow."

The next day, I returned to my urologist. He confirmed the diagnosis, and told me that it still never hurts to be certain. Well, not exactly, actually. In fact, just before I was set to leave his office, he said it still never hurts to be certain of another exam men hate.

As the ending exam progressed, I recalled that I had already submitted to it once before. After all, if you don't watch out, things can sneak up behind you at the worst possible moment.

Still, all's well that ends well. And, to the gentlemen, despite the humor, please pay attention to yourselves. It never really hurts to do so in the end. Honest.

Author's note:

Despite the levity of the subject, I actually went back and forth a number of times before I decided to write this article. In fact, it deals with a subject near and dear to all of us, male and female alike. But take heed. Without being gender biased, please allow me to state that most women are taught from girlhood to take care of their undercarriage.

Continued on page 21

ESTATE PLANNING CORNER

Creditors and Alaska community property

☐ Steven T. O'Hara

Community property may be advantageous from a tax standpoint. If a married couple owns community property, then on the death of the first spouse to die it may be possible for the surviving spouse to sell the community property free of any income tax (IRC Sec. 1014(a) and (b)(1) and (6)). But community property may be disadvantageous from a creditor standpoint.

In order to create community property under Alaska law, a couple must enter into a written community property agreement or trust (AS 34.75.030, .090, and .100). The beginning of each community property agreement or trust must contain, in capital letters, a warning that includes the following language: "THE CONSEQUENCES OF THIS AGREEMENT [OR TRUST] MAY BE VERY EXTENSIVE, INCLUDING, BUT NOT LIMITED TO, YOUR RIGHTS WITH RESPECT TO CREDITORS..." (AS 34.75.090(b) and 34.75.100(b)).

As a general rule, a married individual's separate property is not subject to the creditor claims of his or her spouse (AS 25.15.010, .050 and .060). Alaska community property is a new exception to this rule (*Id.*).

Consider a husband and wife who reside in Alaska. The wife is a professional with exposure to malpractice claims. The husband recently inherited 10 acres of valuable land located in Alaska. The land had belonged to his mother, but now the land is owned solely by the husband.

Suppose after inheriting the land the husband kept the land as his separate property and did not enter into a community property agreement or trust with respect to the land. Suppose a malpractice claim is filed against the wife. The claim, if true, could exceed the limits of the wife's malpractice insurance.

Under these facts, the land would not be reachable by the wife's creditor (*Id.*). The land would be off the wife's financial statement from a state-law and creditor standpoint.

By contrast, suppose after inheriting the land the husband entered into a community property agreement or trust with his wife, classifying the land as community property. Then suppose the malpractice claim is filed, and suppose the claim relates to an act or omission that allegedly occurred, if at all, after the effective date of the community property agreement or trust (*See* AS 34.75.900(7)).

Here it appears the wife's creditor may be able to reach the land, to satisfy the claim, if the obligation is determined to have been incurred by the wife "in the interest of the marriage or the family" (AS 34.75.070(c)). The Alaska Community Property Act appears to give the creditor at least the initial advantage on this "family interest" issue. The act provides that where an obligation is incurred by a spouse during marriage, the obligation is presumed to be incurred in the interest of the marriage or the family (AS 34.75.070(a)). An obligation includes "an obligation attributable to an act or omission during marriage" (*Id.*).

Alaska community property further illustrates the rule that in estate planning, the form of ownership of the client's assets ought to be analyzed from both a tax and a local-law standpoint. The issue is what opportunity or problem is inherent in the form of ownership.

TALES FROM THE INTERIOR

No big thing . . .

Continued from page 20

Men, on the other hand, often neglect the process. Although we now are hearing more about prostate cancer, please don't neglect the other side of the equation, either. Ironically, testicular cancer is usually discovered by the male's companion, and not by the male, himself, upon self-examination. Fortunately, it is highly curable if detected early. And often, as in my case, the lump is nothing to grow upset over. But it is still good to do an exam occasionally, no matter what they may tell you about social consequences.

It doesn't take long, and it's really no big thing for us lawyers.

CIRCLE MAY 12, 13 & 14, 1999 ON YOUR CALENDAR

Mark Your Calendars Now!

The 1999 Annual Bar Convention is May 12, 13 & 14 in Fairbanks!

Don't miss the events below during the Alaska Bar Association Annual Convention in Fairbanks on May 12, 13 and 14, 1999! We will meet jointly with the Federal and State Bench!

CLE Seminar Topics To Date:

Trial Advocacy Skills, Part III: Working Effectively with Alaska Natives in the Justice System
Presented in cooperation with the Alaska Trial Lawyers Association and the Public Defender's Office. This program is part of a continuing series that started with "Voir Dire" with Robert Hirschhorn at the Juneau Convention in 1997 and "44 Winning Tactics to Use Before Trial" with Morgan Chu at the Girdwood Convention in 1998.

Scientific Evidence: Daubert & the Admissibility of Expert & Non-Expert Testimony
This program from Harvard Law School will feature panelists on all sides of this issue.

US Supreme Court Opinions Update
with Professors Arenella & Chemerinsky -- An Encore Presentation!

Domestic Relations Appellate Update
with Professor Milton Regan from Georgetown University Law Center

Legal Research -- in cooperation with West Group
An interactive, hands-on legal research program that will start with the "nuts and bolts" and walk you through to more advanced searches.

More Legal Writing with Bryan Garner -- Back By Popular Demand!

State of the Judiciaries Address
with Chief Justice Matthews and Chief Judge Singleton

Alaska Bar Association Luncheon & Annual Meeting

Social Events:

Awards Banquet, Thursday, May 13th
The Ever-Popular Poetry Reading, Thursday, May 13th
President's Reception, Friday, May 14th
5K Fun Run
A Tanana Valley Bar Association Special Event is in the works!

Keep an eye out for your convention brochure. It will be mailed in March.

Ambulance-chasing on the Internet

It had to happen: The worldwide web as a cyber-hangout for the long-lost art of ambulance-chasing (sort of). This one brings the client to you.

Who hasn't had the unpleasant experience while on vacation or on a business trip getting a speeding ticket in some small out of state "burg"? Most people don't have the time, energy or resources to fight it and usually pay the ticket. Others who couldn't afford the points on their driver's licenses take time off from work and go to the expense of going back to the county of the infraction for their court appearance.

From the speedingticket.net home page

Enter www.speedingticket.net. The purpose of the website is to easily and conveniently link traffic defendants from all over the USA with attorneys in the county where they received their traffic ticket.

With www.speedingticket.net, motorists simply visit the site on the Internet, input the locale on the ticket and they will find attorney firms listed with addresses, telephone numbers and e-mail addresses. Defendants can then contact the attorney of their choice, negotiate a fee and the attorney will appear in court on their behalf. The goal is to have three to five firms per county for every county in the United States on-line by the end of the year. (No Alaska attorneys have discovered the site to date.)

"A trucker friend of mine told me that he'd pay any traffic fine as long as be didn't receive points on his license. His license is his livelihood and he can't afford to lose it" said John White, creator and president of SPEEDINGTICKET.NET, Inc. "I can't tell you how many vacationers I know who have gotten a ticket while away from home. Now they have a place to go and get legal help."

Attorney firms can also visit the site and register their firm on line using a credit card. The cost is as low as just $99 for 12 months worldwide. Firms have the option to link their listing to their existing website, have a website created and/or create a banner ad to stand out from the crowd.

In addition to attorney searches, the site also offers merchandise, auto club services, free travel information and searches for car insurance and bail bondsmen. There is also a place to list your car for sale for free nationwide.

MORE PUBLICATIONS

LIVENOTE ADD-ON

Litigation teams who use LiveNote™ transcript analysis software can now use the application to review, search and annotate deposition videos with synchronized transcript text.

LiveNote™ is a leading application for analysis of both realtime text as well as completed transcripts. To play video files, users of existing versions of LiveNote™ must install the VideoNote plug-in utility. The software also can receive realtime transcripts over the Internet in version 6.1.

Video with synchronized text enables litigators to re-create depositions for review by colleagues and also to provide powerful demonstrative evidence at trial.

As part of the LiveNote™ service, video depositions are converted to digital video (MPEG) files, synchronized to LiveNote transcript text, and stored on CD-ROMs along with a complimentary copy of the VideoNote plug-in. Litigators can choose to convert clips or an entire deposition. In court they can use the LiveNote software to present the synchronized text-to-video file on courtroom monitors. (http://www.livenote.com).

Trial game adds Windows versions

TransMedia, makers of the Objection! series of CLE certified computerized trial games, has released Windows95/98/NT versions of their four trial games. TransMedia first developed Objection! (the murder trial) in 1991 in a DOS format. Since then, Civil Objection! AutoNeg, Civil Objection! Slip-Fall and Expert Witness! have been added to help attorneys and aspiring attorneys sharpen their trial skills at home or in the office. All four games are now available on CD-ROM in DOS, Windows95, Windows98s, and Windows NT formats.

The new Windows versions include the trial manual Comprehensive Evidence which previously was sold separately. This trial manual is fully accessible on-line as well as being hyperlinked into the Xplain feature for succinct answers to the questions at hand.

Other Windows- related features include a point and click interface, freeing the player to concentrate on making correct objections quickly. These games also include current 1998/99 citations and rules.

GETTING TOGETHER

Transformative justice

☐ Drew Peterson

Howard Zehr is a writer and consultant on criminal justice issues. He is also a devout Mennonite. Since 1979, he has served as director of the Mennonite Central Committee U.S. Office on Criminal Justice. As such he was instrumental in developing the first Victim-Offender Reconciliation Program (VORP) in the United States, and has helped many other communities to start similar programs. His book *Changing Lenses: A New Focus for Crime and Justice* (Herald Press, 1990) is the best introduction I have seen to the restorative justice movement is gaining attention throughout the country.

Zehr's book begins by quoting the Bible, Psalm 103, which says:

Yahweh is tender and compassionate, stow to anger, most loving; his indignation does not last for ever, his resentment exists a short time only; he never treats us, never punishes us. as our guilt and our sins deserve.

- Jerusalem Bible, vv. 8-10

In contrast to Yahweh, however, our modern system of justice is harsh, neglecting the needs of both the offenders and the victims of criminal acts, according to Zehr. He calls for a shift in our thinking to what he calls "Covenant Justice: The Biblical Alternative." His concepts are referred to by most other commentators in the field as a shift to a restorative justice model, having as its goal the restoration of the victim, the community and even the offender to a state of healing.

UNDERSTANDINGS OF CRIME

Zehr contrasts the lens that society uses to view and analyze criminal behavior under the two kinds of justice. The retributive understanding of crime is that it is defined by broken rules. Harm is described abstractly, and crime is seen as categorically different from other harms. The state and the offender are seen as the primary parties, and the state itself is the victim. Victims needs and rights are ignored, and the interpersonal dimensions of the criminal act are deemed irrelevant. Offenses are defined in technical, legal terms, the conflictual nature of crime is obscured, and wounds of the offender are peripheral.

He calls for a shift in our thinking to what he calls "Covenant Justice: The Biblical Alternative." His concepts are referred to by most other commentators in the field as a shift to a restorative justice model, having as its goal the restoration of the victim, the community and even the offender to a state of healing.

In contrast, the restorative view of crime is that it is primarily defined by harm to people and relationships. Crime is recognized as related to other harms and conflicts, and harms are defined concretely. The victim and the offender are seen as the primary parties, and the needs and rights of the victims are central. Thus the conflictual nature of crime is recognized, and interpersonal dimensions are central. The offenders' own wounds are important, and an attempt is made to understand the offense in its full context: moral, social, economic, and political.

UNDERSTANDINGS OF ACCOUNTABILITY

Retributive and Restorative views of justice also differ greatly in their understandings of accountability. Under the retributive lens, wrongs create guilt. Guilt is indelible, absolute, and viewed in either/or terms. Debt is owed to society in the abstract, and is paid by punishing the offender. Offenders are assumed to choose their behavior freely, and accountability is established by the offenders "taking their medicine." If you commit the crime, you must do the time!

Under a restorative view of justice, in contrast, wrongs create various liabilities and obligations, and there are varying degrees of responsibility. Guilt is considered to be removable through repentance and reparation. Debts from criminal behavior are concrete, they are owed first to the victim, and they are paid by making things right to the extent that is possible. Restorative justice recognizes the difference between potential and actual realization of human freedom and the role of social context as choices. Yet it does so without denying personal responsibility, and has indeed established accountability by the taking of such responsibility.

UNDERSTANDINGS OF JUSTICE

According to the retributive justice model, crime violates the state and its laws. Justice focuses on establishing guilt so that doses of pain can be measured out. Justice is sought through a conflict between adversaries in which the offender is pitted against the state. Rules and intentions outweigh outcomes; one side wins and the other loses. Blame fixing is central, and the focus is on past behavior. The offenders and the state are the key elements of the system, and victims and their sufferings are ignored. Offenders are punished, but have no responsibility for restoration of victims or society. Their ties to the community are weakened and they are alienated from their former peers.

In contrast, according to the restorative justice model, crime violates people and relationships. Justice aims to identify needs and obligations so that things can be made right. Justice encourages dialogue and mutual agreement and gives victims and offenders central roles. Justice is judged by the extent to which responsibilities are assumed, needs are met, and healing is encouraged. Restorative justice focuses on the future, searches for commonalities, and emphasizes the repair of social injuries. The victim's needs are central to the process; suffering is acknowledged, and they are given a change to "tell their truth." Offenders are given a central role as well, and are encouraged to future responsible behavior. Justice is tested by its "fruits" and aims at improved relationships, reconciliation and transformation.

THE FUTURE OF RESTORATIVE JUSTICE

Not surprisingly, Zehr advocates the transformation of the criminal justice system to a restorative justice model. He also discusses the possibility of developing parallel systems, along the lines of the programs of the Community Boards of San Francisco, or the two-tier justice system in Japan.

In the meanwhile, Zehr advocates that we become "justice farmers," planting experimental and demonstration transformative justice plots. He particularly advocates the use of Victim Offenders Reconciliation Programs, like the excellent program in Anchorage run by the Community Dispute Resolution Center (CDRC). Such programs spread the restorative justice model, without being perceived as a threat to the predominant system.

I predict that we will be hearing more about restorative justice in the near future. It is an idea whose time is rapidly coming, as the failure of the current retributive justice model is increasingly being recognized. Howard Zehr's book is a wonderful introduction to this exciting new concept.