The Alaska BAR RAG

VOLUME 27, NO. 6 | *Dignitas, semper dignitas* | $3.00 NOVEMBER - DECEMBER, 2003

Inside:

Committee seeks "unbundled" services

By Judge Mark Rindner

A significant number of Alaskans are not able to afford attorneys. The number of people appearing *pro se* in the Alaska Court System has increased dramatically over the last several years. While the willingness of attorneys to offer their services *pro bono* helps alleviate this problem, the need for legal representation far exceeds the resources provided by *pro bono* and non-profit legal assistance providers. Decreases in funding to non-profit legal assistance providers will only increase this problem in the future.

In order to help deal with this problem, many states have begun to allow lawyers to provide "a limited service representation" or "unbundled" services in the area of civil law, thereby stretching limited "free" services and making for cost services affordable to a larger segment of our society.

A subcommittee of the Civil Rules Committee met several times over the summer and proposed changes to

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CHANGE TO VCLE REPORTING!

VCLE Reporting
Period: January 1, 2003 – December 31, 2003

- **You are no longer required to submit a VCLE Reporting Form.**
- You will now sign a certification on the Bar Dues Notice (to be mailed late November 2003) certifying that you have completed 12 hours of approved CLE, including 1 hour of ethics.
- If you complete the minimum recommended 12 hours of approved CLE, you will be entitled to a **$20 discount for your Bar dues.**
- The VCLE Rule recommending 12 hours of approved CLE including 1 hour of ethics is still in effect.
- A list of Bar members who comply with the VCLE Rule will continue to be published in the "Bar Rag." (See pages 22-23)

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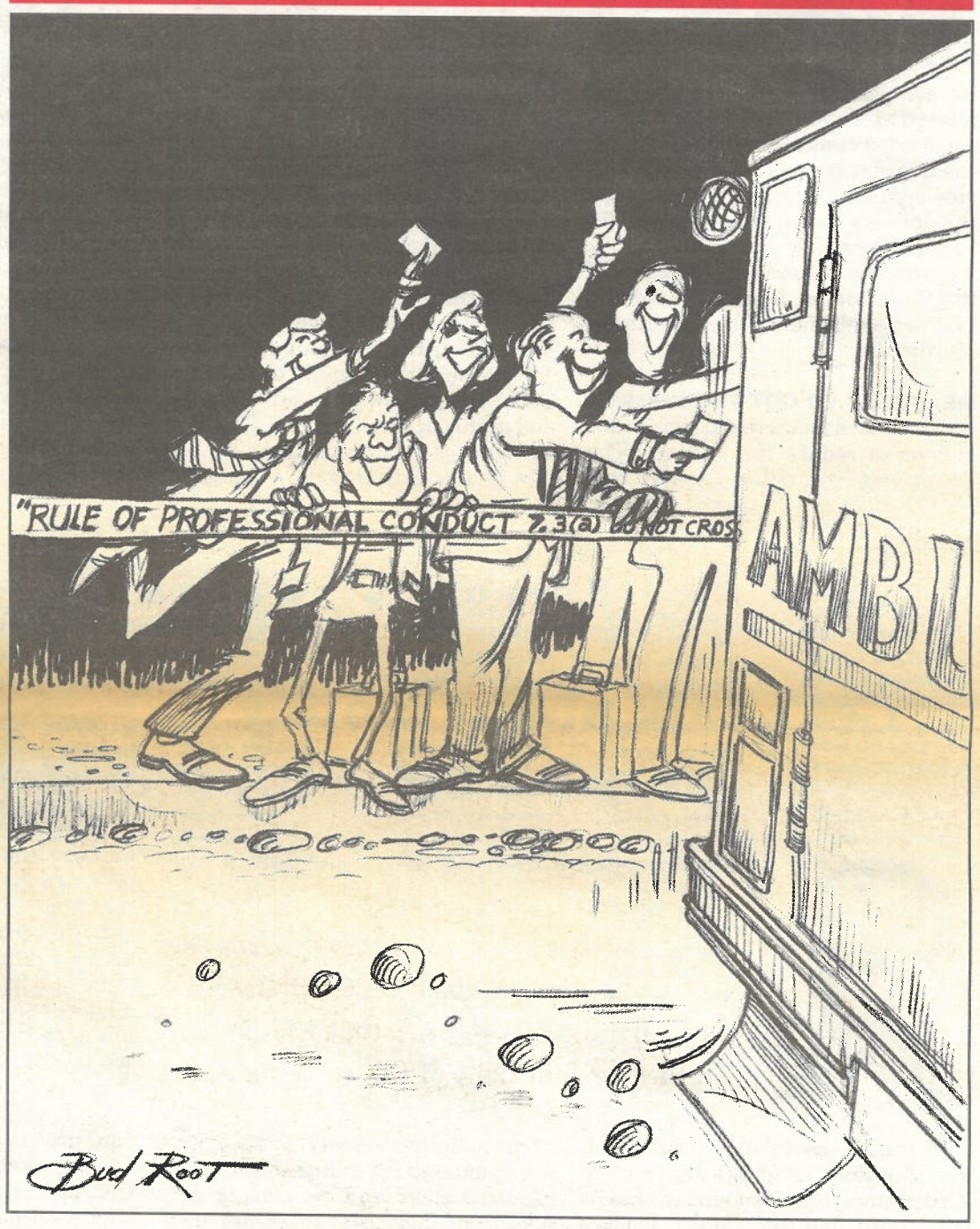
ALASKA BAR ASSOCIATION

Call the Bar office at 907-272-7469 or e-mail info@alaskabar.org with any questions

THOU SHALT NOT AMBULANCE-CHASE — See page 20



Court system faces revenue shortfall

The Alaska Court System has decided not to fill a current district judge vacancy in Valdez at this time, due to budget uncertainties.

The Supreme Court notified the Alaska Judicial Council to suspend its call for nominee applications for the seat in late October. The Valdez judgeship was vacated with the appointment of Joel Bolger to the Superior Court in Kodiak.

The Bar Rag has learned that the postponement of the Valdez appointment is among the strategies the court system is investigating to overcome an anticipated significant shortfall in revenue. Chris Christianson, deputy administrative director, said the court "will need an additional $3 million just to break even" next year. The shortfall is caused by a required increased contribution to the PERS and JRS retirement system of a minimum of 5%, to adjust for declines in trust revenue from performance in financial markets. Health insurance employer contributions also are projected to increase.

Plans to adjust for these cost increases will be contained in the court system budget request to the 2004 legislature next month. As one of the smallest state agencies with 700 employees, the court system currently represents 1.3% of the state (general fund) budget, with a total annual appropriation of

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PRESIDENT'S COLUMN

Bar services & dues update

☐ Lawrence Ostrovsky

The October meeting of the Board of Governors is often the most important meeting of the year because that is when the Board approves the Bar Association's annual budget. This year, the October meeting took on additional significance because we are getting near the end of the phased spending of the Bar's unappropriated capital fund and because the Board was urged by *pro bono* service organizations to help facilitate the delivery of *pro bono* services. To address these issues, the Board took measures to cut some components of the Bar's budget, increase revenues, and set aside funds for a *pro bono* coordinator.

MEASURES TO CUT THE BUDGET

The Board took several significant actions to reduce the budget. The Board voted to reduce the Bar Rag to a quarterly publication, from its current six issues. This is the minimum permitted under the Alaska Bar bylaws. Going completely electronic with the Bar Rag was discussed, thus saving printing and mailing costs, but not all members would have access to it and there are still attorneys – at least to the extent that their interests are reflected in Board members – who prefer their news on paper.

The Board also voted to fund the Duke Alaska Law Review only to the end of this academic year and is considering soliciting bids for an annual law review rather than a biannual one, or possibly funding no law review at all. During discussion at the September retreat, there was not much support among Board members for an academic review – no matter how scholarly – that has little practical application to many bar members.

Finally the Board reduced the number of its own meetings from five per year to four. This will reduce travel costs and also the time Bar staff spends preparing for the Board meetings.

INCREASING REVENUES

The Board took a number of significant steps to increase revenues, or at least stanch losses.

For example, the Board voted to increase Rule 81 fees (for attorneys appearing *pro hac vice*) to the same amount as active bar members' dues.

The Board also voted to increase "user fees" for CLEs, the annual convention, and section memberships. Obviously, there's a fine line to be drawn here. The Board wanted the fees to better reflect the costs of these services, but did not want the costs to be so prohibitive as to discourage members from attending CLEs and the convention and participating in sections. Hopefully the modest fee increases will not discourage participation in these worthwhile endeavors.

After considerable discussion, the Board reduced the dues discount under the voluntary CLE program. Although the Alaska Supreme Court requires the Bar to provide a dues discount to members who attend 12 hours of approved CLE annually, the Board has the discretion to set the amount of the discount. The Voluntary CLE program has been a significant expense for the Bar Association, costing almost $66,000 in 2003. Currently, members who take the requisite number of CLE hours are entitled to a dues discount of $45. The Board reduced this to $20, but also virtually eliminated the record keeping requirement, making it easier for members who attend CLEs to qualify for the discount.

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EDITOR'S COLUMN

Let's talk about money

☐ Thomas Van Flein

If you have read the Bar President's Column, you have inferred that your Bar dues will be raised in the near future. The Bar is running a deficit, about $138,000 this year. Although it has a reserve, that will not last much longer in light of the on-going deficit.

And, unlike the federal government, the Bar can't print its own money. (Old timers may remember that it tried once, but the Secret Service was not fooled by the mimeographed copies).

As a self-governing profession, the Bar has two primary functions: admissions and discipline. Admissions appear to break even if not generate a small profit. If only we could get the disciplinary side of the equation to do the same, we could have a reduction in bar dues. The Bar spends about $637,541 on discipline, roughly 33% of the budget. Unlike admissions, disciplinary matters rarely generate revenue. I think we can change this in part.

According to the Bar statistician (as you know, he works almost for free, requiring some donuts and coffee when he shows up, so his job is not on the chopping block), a minimum of 90% of the bar complaints filed against lawyers have no merit or have procedural flaws, and are dismissed without action. There are 250 to 300 bar grievances filed on average each year. Essentially one complaint every business day—except on Fridays, when the complaints dramatically spike, right after the appellate courts publish their decisions. The Bar informs me that part of the reason the overwhelming majority of complaints are dismissed is because a grievance requires clear and convincing evidence, and most grievances lack such evidence. In light of the serious nature of these types of ethics allegations, allegations that, if true, can result in the loss of a constitutionally protected property right, that standard appears appropriate.

In order to determine whether a complaint has merit, the Bar has to spend investigative and lawyer resources. The disciplinary lawyers and staff also provide other services to us. Everyone knows you can call Bar counsel to get informal ethics advice, for example (900 calls per year according to Steve Van Goor), and the disciplinary department oversees lawyer disability, trustee counsel, reinstatement, and Lawyers' Fund for Client Protection proceedings.

But it is disciplinary investigations that form the core for this department. It seems the time has come to initiate a filing fee for bar grievances. Nothing oppressive, something nominal, like $75. This would generate up to $22,500 and reduce the budget deficit by 16%. I don't think this will discourage anyone except a complainant who probably does not believe his or her grievance has any real merit and they don't want to pay $75 to find out. In light of the fact that 90% of these grievances are dismissed as meritless or lacking in evidence, unfettered filing appears to be encouraging frivolous or marginal complaints.

Litigants have to pay filing fees in every court. Few things are free anymore. I can remember when it was free to go for a hike in a state park (ok, that was only a few years ago). Today, you have to pay money. It used to be free to put a canoe or a boat in a lake or river. Now you have to pay to register even a canoe or kayak. We pay $4 for a cup of coffee (at least at the airport). It costs $25 for a hunting license, and $15 for the right to drop your hook in a river. It costs about $50 for one ticket to see a one hour concert from a band that hasn't released a hit single since Jimmy Carter was in office. Twice that if you want a current act and twice again if you are a Celine Dion fan (something hard to imagine, but somebody is buying her music). Going out to a movie for two, getting some popcorn, and a babysitter, will cost about $50. A visit to the State Fair for a family of three is a minimum of $50. A tank of gas for a Ford F-150 at $1.68 a gallon is about $35. One lawyer reports that he spends $100 just to fill the tank of his HumVee and another $65 for weekly "detailing." (I know, we all feel his pain).

In light of these everyday costs, it cannot be seriously contended that a $75 filing fee is too onerous for something as weighty as filing a bar complaint. The essence of a bar complaint is that a lawyer acted unethically, an allegation that most lawyers would take very seriously. In light of the fact that 90% are baseless or lacking sufficient evidence, it seems the current process encourages meritless claims and a waste of resources. If a filing fee made someone think twice before filing a baseless grievance, then a fee

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The Alaska BAR RAG

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Publication Dates 2004*	Editorial Deadlines
January-March	January 15
April - June	April 15
July - September	July 15
October - December	October 15

*New schedule

Board of Governors meeting dates
Jan. 15 & 16, 2004
April 26 & 27, 2004
April 28 - 30, 2004 Annual Convention (Anchorage)

President's column

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PRO BONO COORDINATION

Reductions in federal and state funding and investment returns that have greatly diminished the funding provided by the Alaska Bar Foundation have left the agencies providing *pro bono* services in Alaska greatly underfunded for a number of years. These agencies asked the Board to add a *pro bono* coordinator to the Bar staff to recruit and facilitate pro bono work by law firms and individual attorneys.

Although the Board generally agreed that facilitating *pro bono* participation is an appropriate activity for the Bar Association, members of the Board expressed concern regarding whether a new position in the Bar would be the best way to accomplish this function and also concern that there be quantifiable goals in order to measure whether a *pro bono* coordinator position really enhances *pro bono* participation. Accordingly, the Board approved funding of up to $103,000 for a *pro bono* coordinator and administrative support, but directed the staff to investigate the pros and cons of setting up a 501(c)(3) organization outside the Bar and to produce a more detailed budget and structure, as well as performance measures, for the *pro bono* coordinator. This issue will be on the Board's agenda for action in January 2004.

WHERE DOES THIS LEAVE US?

During the September retreat, the Board reviewed the various programs and services offered by the Bar, and their costs. The Board felt that some changes were warranted, as described above. But, in general, the Board supported the Bar's current programs, services and level of staffing.

As I mentioned in an earlier column, the membership and Board will have to face some significant decisions in the future. Under the current budget scenario — that is, with the budget described above for 2004 and inflation-only increases until 2006 — the Bar's unappropriated capital fund is predicted to last until late 2006. Absent fundamental changes to the Bar's functions, this means a dues increase will need to be in place before the 2006 fiscal year. It could take the form of relatively small annual increases to reflect the effects of inflation, or a larger once-a-decade budget increase of the type done in 1993, or something in between.

We all know there is nothing like a prospective dues increase to focus the mind. So as the Board ruminates on this topic proceed over the next year, I'll endeavor – through my column – to keep the membership apprised of what's happening and, as always, invite comment and participation in this process.

Let's talk about money

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would be worthwhile for that alone. I am told this is not a new idea, and that the Board has discussed this in the past. It was rejected because investigating and prosecuting attorney misconduct was considered a public responsibility of the Bar, not unlike the district attorney's responsibility to prosecute crime. I don't disagree with this reasoning, but to me that does not mean that lawyers have to be the sole funding for this public responsibility. All taxpayers fund this responsibility locally, for example, for police investigations and criminal prosecutions. In view of this, a broader public base for cost sharing is not unusual and should be the norm. And, even criminal prosecutions result in fines and penalties and forfeitures that help defray the cost of this public responsibility. The state, through the general fund, pays the cost of prosecuting miscreant doctors, dentists and other professionals.

The other side of the equation is having those apparently few lawyers who are disciplined pay all or a portion of the costs incurred by the Bar in investigating and prosecuting the lawyer. Something like a Rule 82 for disciplinary proceedings. In other words, if the Bar prevails against a lawyer, a schedule setting forth a payment schedule between 30% and 100% of the costs incurred by the Bar could be triggered. Currently Bar Rule 16(c)(3) provides that costs of the proceeding may be assessed, and sets forth factors to be considered. In looking at the 2003 revenue statement for the Bar, however, there does not appear to be any revenue from a disciplined lawyer. Perhaps by requiring every disciplined lawyer to personally pay a portion of the bar disciplinary costs, the burden currently shared by everyone can be lessened. This won't make the disciplinary department break even, but it will reduce the deficit substantially and probably obviate the need for a dues increase.

Or we could just raise our Bar dues.

OFFICIAL BAR RAG POLL*

Fax Your Response to 907-272-9586
Or e-mail to info@alaskabar.org

__ Yes, there should be a filing fee for Bar Grievances.
__ No, Bar Grievances should not have a filing fee. I would rather pay higher Bar Dues. I'm just that way.

•

__ Yes, disciplined lawyers should pay.
__ No, disciplined lawyers are probably broke, anyway, and the Bar would never get a dime.

* Margin of error of 50-80%.

ALASKA BAR ASSOCIATION

2004 BUDGET

REVENUE	
Admission Fees - All	212,650
Continuing Legal Education	92,270
Lawyer Referral Fees	48,000
The Alaska Bar Rag	13,393
Annual Convention	99,500
Substantive Law Sections	12,125
Pattern Jury Instructions	1,833
ManagementSvc LawLibrary	1,000
AccountingSvc Foundation	10,642
Membership Dues	1,315,250
Dues Installment Fees	13,600
Penalties on Late Dues	18,025
Discipline Fee & Cost Awards	0
Labels & Copying	5,245
Investment Interest	48,000
Miscellaneous Income	1,000
SUBTOTAL REVENUE	1,892,534
EXPENSE	
Admissions	179,429
Continuing Legal Education	336,130
Voluntary Continuing Legal Education	44,850
Lawyer Referral Service	46,050
The Alaska Bar Rag	34,993
Board of Governors	57,538
Discipline	608,269
Fee Arbitration	58,993
Administration	416,191
Pro Bono	103,218
Annual Convention	105,000
Substantive Law Sections	13,200
Pattern Jury Instructions	963
ManagementSvc LawLibrary	4,112
AccountingSvc Foundation	10,642
Public Interest Grants	0
Committees	12,000
Duke/Alaska Law Review	17,000
Internet / Web Page	12,920
Credit Card and Bank Fees	13,147
Computer Training / Other / Misc.	1,000
SUBTOTAL EXPENSE	2,075,646
NET GAIN/LOSS	***-183,112***

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

Tortoise v. Achilles, 4 Mind 278 (1895)

'Lies' or 'not lies' create paradox in modern law

BY PETER J. ASCHENBRENNER

Alert readers will recall that we left the U.K.'s Ministry of Defense in a pickle over pictures of good looking men.

In the quarters of some of us, that's okay; when others put 'em up, that's an offense against military morals and grounds for the old heave-ho. There's different sorts of stuff in the world; however, pushing stuff into this bag or that box is a bit trickier than first meets the eye.

We leave the warriors at MOD to their philosophy and turn to Achilles, the warrior of whom Homer had nothing good to say and Zeno didn't buff up his rep either. In our imagination Zeno has fleet Achilles, flailing away forever, halving the distance to the finish line, but never quite snagging the laurel that was his due.

Charles Dodgson, the eminent Oxford mathematician, also poked fun at Achilles; a link to his paradox is on line at www.lewiscarroll.org/logic.html. He published the article "What the Tortoise Said to Achilles" (1895) in Mind, which is not in your local library, so the web is your best bet.

Dodgson – and many turn-of-the-century brains – put their shoulders to sorting out exactly what apparatus had to be brought to bear when a problem of infinite steps or regression came into focus. At the same time men and women were looking for the most elegant but complete solutions to logical questions, in notation.

For every spare effort in system building, there was a system buster, insisting that there were more assumptions that had to be written down as beginnings; for every system buster, there was one more patch offered by the builders, to repair damage to their elegant notation. Dodgson asserted (in his fable cited above) that a well known rule of inference by the name of *Modus Ponens* (and rules of inference in general) must be made explicit; which was full employment for Achilles and a poke at system builders and their (increasingly voluminous) notations.

So how do lawyers and judges (the artisans of the law) rate, when their efforts at sorting out A from not-A are matched up against these trans-Atlantic thinkers? Don't we stumble, when we endlessly patch the apparatus, with no end in sight? Aren't our follies worth a fable or two?

Take Erv the narcotics informant; he lies when he's with drug dealers and he claims to be telling the truth (juryside) about what he said and did when he was in the market for drugs.

The prosecutor urges that there are two venues at work in Erv's telling: in one venue the witness is privileged to lie; indeed it would be very unwise for Erv to tell dealers he works for the cops. In the other venue, he is sworn to tell the truth and subjected to cross examination so that third parties – judge and jury – may discern the truth of what he said to the dealers (and they to him) and (in court and in the presence of judge and jurors) what Erv says on the stand. We may say that there are two of them: Erv the liar on the street and Erv the proponent of truth in court. And to make things easier (or sloppier), a neutral decisionmaker sorts out what Irv was lying about when he said he was telling the truth about Erv's lies. Which is what the trial venue is all about.

SO HOW DO LAWYERS AND JUDGES (THE ARTISANS OF THE LAW) RATE, WHEN THEIR EFFORTS AT SORTING OUT A FROM NOT-A ARE MATCHED UP AGAINST THESE TRANS-ATLANTIC THINKERS? DON'T WE STUMBLE, WHEN WE ENDLESSLY PATCH THE APPARATUS, WITH NO END IN SIGHT? AREN'T OUR FOLLIES WORTH A FABLE OR TWO?

Artisans do not call on the prosecutor to assume or ask for acceptance of his rule of inference. Effectively, this leaves the jury free to discount Irv's proferred testimony, on its view of Erv's admitted lies. All of this puts Irv at risk juryside, just as he was in the markplace.

Bertrand Russell, however, constructed rules of inference (a whole theory's worth) which required events at the "Erv" (street) level to be segregated from events at the "Erv" (trial) level: through Russell's apparatus it was legal (logically of course) to ask if Erv was lying when he said he was being truthful today about the lies told yesterday. Posing that one was not paradox.

Russell offered his own apparatus – called the theory of types – because he said that (without his theory) the following mess was logically inevitable: one can start with a function L (which assigns the property L to input like "stuff Erv said"). Now take as input "Erv is lying" and stick that input into a notation like L(E). This is a way of putting L(E) back into the L function. In notation, posing L[L(E's)] as a question reads: Is Erv lying when he says he's lying? He is if he is and he isn't if he is.

Pick your poison: the author of the Principia Mathematica says you need a robust apparatus to keep paradox out of reasoning and the author of Alice in Wonderland hints that, even with pages of rules of inference, we're at risk to reason forever without finality. And yet most juries do reach conclusions, which are tested in trial courts and on appeal. And then the Legislature and the Academy drive by and let loose their volleys.

Modern readers will recall our own Douglas Hofstadter's dense but charming Gödel, Escher, Bach (1978), which contains literally endless examples of regressive paradox. (I may be repeating myself.)

From the artisan's point of view, we commit in advance to limited formal outcomes (true/false, guilty/not guilty, liable/defense verdict); we constrain ourselves to notation for our results. Since input and method determine result, the work is in getting the procedures right. This should ring a familiar bell; as artisans, we're an experiment-happy bunch, taking a millennium and a half of our Corpus Juris at one bite.

Outside of these interlocking venues – operating in court systems, and (in Erv's case) in systems of drug distribution – solving the Liar's Paradox has not been nearly as much fun.

Paul the Apostle wrote this to Titus: "A prophet of their own says that Cretins are always liars." (1:12). This prophet was Epimenides and a lot of ink was spilled (at the turn of the last century) sorting out this one: if all statements that were untrue could be shoved into a box and that box contained only statements that were untrue, what about a statement that this statement was untrue? Was the last thing I said in the box?

Which is where the Tortoise and the artisans of the law may be in accord. Screening input requires some dry runs; and a finite number of dry runs of functions that tend to infinite regression – especially when experimenting with trial as venue — makes perfect sense. Why should what we do be so right? That's another question and a darn good thing to keep in Mind.

Bar Letters

In response to column: The true rule of law

I just couldn't resist writing in response to Thomas Van Flein's recent Column regarding the Ten Commandments and the Rule of Law. No, I'm not planning to write about the Ten Commandments or Judge Roy Moore. Although, for what its worth, personally I can't understand why anyone who holds to the Christian faith would get so bent out of shape about trying to place a 5300 lb. rock in the shape of anything in any particular place. After all, the biblical account reflects how Moses, in anger, threw the tablets containing the commandments on the ground and broke them because the people of Israel had built themselves a giant rock (a golden calf) to worship. And no, I'm not even planning to write about the Establishment Clause or likenesses of the Ten Commandments in various state courthouses. Although, again for what its worth, anyone who has ever watched or participated in an oral argument before the United States Supreme Court knows that the Frieze, which is stretched around the inside of the courtroom directly above the columns depicting historical law givers through the ages, contains on the South Wall the likeness of Moses holding the Ten Commandments.

What I do want to respond to is the Editor's suggestion that Attorney General Gregg Renkes somehow disrespected the "Rule of Law" by directing Alaska state troopers and prosecutors to investigate marijuana possession and seize marijuana as evidence for *federal prosecutors*, when the state troopers and prosecutors encounter it. I wholeheartedly agree with the Editor that our Attorney General should uphold the Rule of Law. However, in criticizing General Renkes and claiming that he is somehow violating the Rule of Law, the Editor ignores what the true Rule of Law is in Alaska. Regardless of how the Alaska Constitution is interpreted by our Supreme Court on the issue of marijuana possession, Federal law expressly prohibits and criminalizes marijuana possession. *See* 21 U.S.C. § 812(c)(Schedule I)(c)(10)(1999); *cited in Brown v. Ely*, 14 P.3d 257, 260 and n. 22 (Alaska 2000). "The Supremacy Clause of the United States Constitution provides that if federal law conflicts with state law, federal law prevails. . . ." *Garnett v. Renton Sch. Dist. No. 403*, 987 F.2d 641, 644 (9th Cir. 1993) (holding that the Establishment Clause of the Washington State Constitution is subservient to the federal Equal Access Act).

General Renkes is not disrespecting the Rule of Law in his actions. He has correctly directed state law enforcement and prosecutors to withhold arrest and state citation issuance regarding marijuana possession until the state constitutional issues are fully litigated in Alaska's courts. By directing state law enforcement and prosecutors to assist *federal law enforcement and federal prosecutors regarding federal criminal charges*, General Renkes is simply acknowledging the true supreme Rule of Law which applies in Alaska under our system of federalism. It is entirely unfair and inappropriate to compare General Renkes actions, which respect the supreme federal Rule of Law in Alaska, with the actions of Judge Moore which were taken in contravention of a direct federal court order.

—Kevin G. Clarkson

The Editor replies:

I think Mr. Clarkson raises an excellent point. Unfortunately, it is a point that the attorney general's office never made (at least publicly) when justifying its position. Additionally, even if the state attorney general's office believed itself duty bound to round up suspects and evidence for its federal task-masters,

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Bar Letters

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this would be the only situation I am aware of where the state does so.

As a life-long Alaskan, it strikes me as counter-intuitive to hear the state government, after more than 30 years of declaring its independence and sovereignty from the federal government on virtually every issue in which there was any conflict, suddenly change course and decide to do the bidding of "federal bureaucrats" (a phrase that constituted fighting words in pipeline-era Fairbanks). The policy of asserting independent state policy and rights was uniformly embraced in Juneau by Democrats, Republicans and Libertarians, and of course, the Alaska Independence Party. Thus, if the state is now in the business of genuflecting to the whims of the federal government, I would expect such a policy shift to be announced with considerable fanfare.

Though technically plausible, the state's current and historical actions belie a sudden soft spot for the supremacy clause. Are state fish and game officers actively searching for evidence and suspects for violations of federal law on federal property, working up the case for the federal prosecutor? Not that I am aware. Besides ANILCA, there are other federal laws that affect fish and wildlife management, including the Marine Mammal Protection Act, 16 U.S.C. Sec. 1361 et seq., the Endangered Species Act, 16 U.S.C. Sec. 1531 et seq., and the Migratory Bird Treaty Act, 16 U.S.C. Sec. 703-712. What are the *state troopers doing about violations* of these federal laws? (I really don't know, maybe they are rounding up evidence for the feds here too).

Are the troopers seeking evidence and suspects for income tax violations, in order to assist IRS prosecutions? If it turns out that the only category of cases in which the state troopers are voluntarily collecting evidence for federal prosecution is marijuana cases, then it cannot be gainsaid that the attorney general is simply expressing obedience to the supremacy clause. A more likely conclusion is that this is a simple reflection of the distaste the state administration has for any legal use of marijuana, and the supremacy clause is more of a pretext to do what is otherwise desired, but wrong under current state law.

As I mentioned in my editorial, there are remedies to change the law, remedies that honor the rule of law, not undercut it. I understand the political realities the attorney general faces. His boss doesn't think marijuana should be legal in any context, a policy decision with which I generally agree. But the state constitution, the law of the land in this state, says there are contexts in which it cannot be criminalized. My point was that the rule of law requires us to live with, and abide by, decisions we don't always agree with. Even (or especially) ones we strongly disagree with.

I think Mr. Clarkson also correctly pointed out that the deliberate defiance of a court order by Judge Moore is not a fair comparison for the attorney general's position here, and to the extent my juxtaposition of the two implies that, I accept the correction. There is certainly a degree of difference here between the two.

But I do appreciate the supremacy clause issue, and Mr. Clarkson's astute observations regarding it. I also appreciate the Tenth Amendment (reserving to the states the "powers not delegated to the United States by the Constitution, nor prohibited by it to the States"), an amendment that gets treated as if the previous nine are more important. That a federal regulation can trump a state constitutional provision may be true, but time will tell if it is correct. That discussion will have to wait for another day.

— Thomas Van Flein

The proper role for the lawyer

Since September 11, the war against terrorism has challenged traditional interpretations of international law on the use of military force and constitutional law governing executive branch attacks on fundamental civil liberties. Recently Thomas Franck (an editor for the American Journal of International Law) asked himself how lawyers should respond. His answer rings so true that we share it with our colleagues:

What, then is the proper role for the lawyer? Surely, it is to stand tall for the rule of law. What this entails is self-evident. When the policymakers believe it to society's immediate benefit to skirt the law, the lawyer must speak of the longer-term costs. When the politicians seek to bend the law, the lawyers must insist that they have broken it. When a faction tries to use power to subvert the rule of law, the lawyer must defend it even at some risk to personal advancement and safety. When the powerful are tempted to discard the law, the lawyer must ask whether someday, if our omnipotence wanes, we may not need the law. Lawyers who do that may even be called traitors. But those who do not are traitors to their calling.

In the 60's and 70's, civil rights and anti-war activists were routinely subject to unlawful law enforcement activities that were later condemned by Congress and the courts as violating constitutional safeguards.

Today, the assault is directed not only at individuals and groups, but also at the very foundations of individual liberties. For instance, The Patriot Act II (now pending) would strip away judicial review of executive branch operations labeled "anti-terrorist." This foundation of constitutional government is the only protection for citizens who are targeted by advocates armed with laws that would have been unthinkable before September 11.

Rarely in our history has it been more true that evil prevails when good lawyers do nothing.

—Brant McGee and Andrew Haas

Who says the client's crazy?

By Kenneth Kirk

Quick Quiz: It's a civil suit, with two parties. The Plaintiff has been acting increasingly erratic during depositions and pretrial hearings, to the point at which a question might be raised as to whether he is mentally competent. Who has the ethical responsibility to step forward and ask that a guardian be appointed?

You say it's the Plaintiff's attorney? Wrong again, malpractice breath.

The ethical rules address the dilemma of the Plaintiff's lawyer in this hypothetical. They identify the problem, sympathize with it, take careful aim at the problem, and then point the gun skyward and fire blindly into the air. The rule is ARPC 1.14, and in fairness it does give some vague guidance. It says that a lawyer may seek the appointment of a guardian or take other protective action with respect to a client only when the lawyer reasonably believes that the client cannot adequately act in the client's own interest. The Comment to the Rule talks about this dilemma at some length. It notes that even a client lacking legal competence often has the ability to understand, deliberate upon, and reach conclusions about matters affecting the client's well being. It notes that Civil Rule 17(c) calls for an incompetent person to be represented by a guardian, guardian *ad litem*, next friend, or other person. It goes on to note that the client's disability can adversely affect the client's interest. It then concludes with the unhelpful statement that "the lawyer's position in such cases *is an unavoidably difficult one.*" Well, perhaps that is taking it a bit too far; that statement could be helpful in one context: if I were defending a malpractice suit for having revealed the client's condition, I might want to point that language out to the jury.

What ARPC 1.14 really says, is that the lawyer has to make a decision, but is under no obligation to seek a representative. In addition to what can be found in our Rule and Commentary, the American College of Trust and Estate Counsel have issued commentaries on RPC 1.14 (which is part of the Model Rules of Professional Conduct) which repeatedly state that the standard for the lawyer to consider is the client's best interest. Could it ever not be in the client's best interest to seek appointment of a representative if the client is incompetent? Sure it could. For example, imagine a child custody case in which the incompetent client is seeking to be appointed as the primary custodian of the children. Or, imagine any case in which your client's testimony, and particularly your client's subjective view of events, is a critical issue. Let us not be naive: if the jurors figure out that the person sitting next to your client at the counsel table is some sort of legal representative, they may doubt your client's perception of events. Fair or unfair, if you are going to determine your client's best interest you have to consider prejudices like that. Also, consider that a guardian may insist on being paid, and that it may lead to delays in litigation when your client may have good reasons to want to move forward promptly. If seeking a representative would not be in the client's best interest, then the responsibility of the incompetent person's lawyer is to keep quiet and muddle through.

The incompetent party's attorney will probably successfully survive a malpractice suit if he or she reveals the client's condition. See *In the Matter of S.H.*[1] But that doesn't mean the Plaintiff's attorney in our hypothetical has a legal or ethical responsibility to reveal it. No credit for that answer.

Does the judge have responsibility? He or she certainly has the ability. Civil Rule 17(c) provides that an incompetent person may sue by a next friend or by a guardian *ad litem*, and that other representatives such as a general guardian or fiduciary may defend the incompetent person. There should be little doubt that this is the sort of situation in which the judge would be able to act *sua sponte*. But does the judge have to? The Code of Judicial Conduct does provide that a judge shall accord to every person the right to be heard according to law.[2] One could certainly argue that the right to be heard according to law, in the context of an incompetent person, would include the right to have a representative appointed. On the other hand, for the judge to take notice that the actions of a party suggest possible mental incompetence, might in many cases suggest that the judge is leaning toward a particular outcome in the case. Under another part of the same rules[3] the judge is not to make public or non-public comments that might impair the fairness of a proceeding or substantially interfere with a fair trial. So, the judge has to balance the possible need of one of the parties for a representative, against the possibility of appearing to prejudice the outcome of the trial. Tough situation. If you said it was the judge's responsibility to act, you get half credit.

This would leave, however, only the defense attorney, and one would assume it is not his or her responsibility to ask that the other side have a representative appointed. But one would be wrong.

In *Stinson v. Holder*[4] a real estate case, the losing party attempted to overturn the result by claiming that he was incompetent at the time of trial. The trial judge denied his motion, but the Supreme Court reversed and remanded for a hearing. If he had been incompetent at trial, the justices declared, then the entire result would have to be overturned and Mr. Stinson would be entitled to a new trial after a legal representative had been appointed. A similar result was reached in *Shields v. Cape Fox Corporation*[5] in which a minor had not had a representative during litigation. However in that case, the young lady had turned eighteen sufficiently before trial, that no prejudice was found in the fact that she was not represented by a guardian during the early stages of the litigation.

Imagine the result: the case goes forward, and no representative is ever appointed for the incompetent person. If the incompetent person prevails, there was no prejudice so the defense is stuck with the result. If the incompetent person loses, the result is overturned on a post-trial motion, and the defense has to go through it again. Lousy result for the opponent of the incompetent person.

The ethical rules require lawyers to act with competence, diligence, and zeal on behalf of their clients.[6] Unquestionably, if the opposing party may be incompetent and does not have a legal representative, the other party will be prejudiced if the trial goes forward without an examination of the competence issues. That party's attorney, therefore, has an ethical responsibility to raise the issue, in order that his or her client's interest will not be compromised. So if, in the hypothetical, you said that the defense attorney has the primary responsibility, give yourself full credit.

(Endnotes)

[1] 987 P. 2d 735 (Alaska 1999).

[2] Canon 3(7) to Alaska Code of Judicial Conduct.

[3] Canon 3(9) to Alaska Code of Judicial Conduct.

[4] 996 P. 2d 1238 (Alaska 2000).

[5] 42 P. 3d 1083 (Alaska 2002).

[6] ARPC 1.1(a), 1.3 and comment thereto.

Court system faces shortfall

Continued from page 1

$54 million.

Meanwhile, its case load grew by 4.4% in FY 2003, with an average of 150,000 new cases filed per year. The largest increases during the year were in criminal filings, up 10% in 2003, and in civil actions, which increased by 11.4%. Small claims matters rose by 8.2%, with domestic and child protection cases rising by 4.1%.

"We have to gear up for the worst," said Christianson of the decision to hold off on filling the Valdez judgeship. He said the court system anticipates that the additional 5% needed for employer contributions to health and retirement benefits will extend over three years. "The shortfall in the trust accounts is actually 15%," he said, with further adjustments to contributions likely to be required beyond 2004.

If the legislature does not approve funding for this purpose, the Valdez judgeship will be among potentially other cost cuts. A second, new judgeship likely will be filled in Palmer as scheduled this fiscal year, due to the jurisdiction carrying the third highest caseload statewide. Two Superior Court and one District Court judge are currently seated in Palmer courts.

Notice of Electronic Availability of Case File Information [Effective 12/01/03]

The content of pleadings filed with the Office of the Clerk of the Bankruptcy Court, whether filed electronically or conventionally, is available on the court's Internet website via WebPACER. Any subscriber to WebPACER will be able to read, download, store and print the full content of filed documents. The clerk's office will not make electronically available documents that have been sealed or otherwise restricted by court order.

You should not include certain types of sensitive information in any document filed with the court unless such inclusion is necessary and relevant to the case. You must remember that any other personal information not otherwise protected will be made available over the Internet via WebPACER. If sensitive information must be included, the following certain personal data and identifiers must be partially redacted from the pleading, whether it is filed conventionally or electronically: Social Security numbers, financial account numbers, dates of birth and the names of minor children. [*See* AK LBR 9004-1(e)]

In compliance with the E-Government Act of 2002, a party wishing to file a document containing the personal data identifiers specified above may file an unredacted document under seal. This document will be retained by the court as part of the record. The court may, however, still require the party to file a redacted copy for the public file. In addition, exercise caution when filing documents that contain the following:

1) Personal identifying number, such as driver's license number;
2) medical records, treatment and diagnosis;
3) employment history;
4) individual financial information; and
5) proprietary or trade secret information.

Counsel is strongly urged to share this notice with all clients so that an informed decision about the inclusion of certain materials may be made. If a redacted document is filed, it is the sole responsibility of counsel and the parties to be sure that all pleadings comply with the rules of this court requiring redaction of personal data identifiers. The clerk will not review each pleading for redaction.

January 1, 2004
is the deadline to transfer to inactive status for 2004.
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 550 W. 7th Avenue, Ste. 1900
272-7469 • Fax: 272-2932
e-mail: info@alaskabar.org

Committee seeks "unbundled" services

Continued from page 1

Civil Rule 81 and Alaska Rules of Professional Conduct 1.2, 4.2 and 4.3 to allow Alaska to join those states and allow for the provision of "unbundled" legal services. The Civil Rules Committee recently agreed to recommend the Rule 81 changes to the Bar and Alaska Supreme Court, and the Board of Governors has proposed the ARPC changes. **(Please see page 13.)**

Subcommittee members included myself, Bill Cummings, Christine Johnson, Ken Kirk, Marla Greenstein, Karla Huntington, Michael Silverman, Tom Van Flein, and Steve Van Goor. More information about providing limited service representation can be found at www.unbundledlaw.org, and at your local law library. The full text of the proposed changes to Civil Rule 81 and the ARPC are published in this issue of the *Bar Rag*. Your comments are welcome.

REQUEST FOR COMMENTS ON PROPOSED RULE CHANGE – CIVIL RULE 81 – UNBUNDLED LEGAL SERVICES

The Alaska Supreme Court seeks comments on the following proposal to amend Civil Rule 81 to allow for the provision of "unbundled" legal services. Comments are due by Monday, December 22, 2003, and should be sent to Beth Adams, Court Rules Analyst, at the Alaska Court System, 820 W. 4th Ave., Anchorage, AK 99501, or by FAX at 264-8291, or by e-mail at badams@courts.state.ak.us. For more information, please contact Beth Adams at 264-8272.

Rule 81. Attorneys

****

(c) **Appearance by Party.** Except as otherwise ordered by the court, or except as provided in Rule 81(d) and 81(e)(1)(D), a party who has appeared by an attorney may not thereafter appear or act in the party's own behalf in any action or proceeding, unless order of substitution shall have been made by the court after notice to such attorney.

(d) **Limited Appearance By Counsel.** A party in a non-criminal case may appear through an attorney for limited purposes during the course of an action, including, but not limited to, depositions, hearings, discovery, and motion practice, if the following conditions are satisfied:

(1) The attorney files an entry of appearance with the court that expressly states that the appearance is limited and all parties of record are served with the limited entry of appearance;

(2) The entry of appearance identifies the limitation by date, e.g., "representation is provided through December 31", or by subject matter, e.g., "representation is provided only for the purpose of drafting an opposition to summary judgment and appearing at oral argument on summary judgment";

~~(d)~~ (e) **Withdrawal of Attorney.**

(1) An attorney who has appeared for a party in an action or proceeding may be permitted to withdraw as counsel for such party only as follows:

(A) For good cause shown, upon motion and notice of hearing served upon the party in accordance with Rule 77 and after the withdrawing attorney provides to the court the last known address and telephone number of the attorney's client; or

(B) Where the party has other counsel ready to be substituted for the attorney who wishes to withdraw; or

(C) Where the party expressly consents in open court or in writing to the withdrawal of the party's attorney and the party has provided in writing or on the record a current service address and telephone number; or

(D) In accordance with the limitations set forth in any limited entry of appearance filed pursuant to Civil Rule 81(d). Withdrawal under this section shall be accomplished by filing a notice with the court, served on all parties of record, stating that the attorney's limited representation has concluded; and certifying that the attorney has taken all actions necessitated by the limited representation; and providing a current service address and telephone number. Upon the filing of such notice, the withdrawal shall be effective, without court action or approval.

(2) An attorney shall be considered to have properly withdrawn as counsel for a party in an action or proceeding in which a period of one year has elapsed since the filing of any paper or the issuance of any process in the action or proceeding, and

(A) The final judgment or decree has been entered and the time for filing an appeal has expired, or

(B) If an appeal has been taken, the final judgment or decree upon remand has been entered or the mandate has issued affirming the judgment or decree.

This subparagraph (2) shall not apply to an attorney who files and serves a notice of continued representation.

****

Ethics at the 11th Hour: A Year-End Update

Fulfill Your VCLE Recommended Ethics Minimum and More!

Tuesday, December 11, 2003
8:30 -- 10:30 a.m.
Hotel Captain Cook, Anchorage
CLE 2003-024 • 2.0 Ethics Credits

FACULTY:

Louise Driscoll, Assistant Bar Counsel
John Murtagh, Sole Practitioner -- Anchorage, Rules of Professional Conduct Committee Member, Former Board of Governors Member
Mark Woelber, Assistant Bar Counsel
Dan Winfree, Winfree Law Office - Fairbanks, Former Board of Governors Discipline Liaison, Former Board of Governors President

PROGRAM:

8:30 - 8:35 a.m. Introduction

8:35 - 9:00 a.m. Recent Ethics Opinions - Alaska Bar Association and American Bar Association
Louise Driscoll & Mark Woelber

9:00 - 10:30 a.m. The Misconduct Continuum:
- What went wrong?
- What does Bar Counsel look for?
- How does the Board deliberate?

John Murtagh, Dan Winfree, Louise Driscoll & Mark Woelber

GROUP VIDEO REPLAY DATES:

Fairbanks, 12/18, 9:00 .am. Cook Schuhmann
Juneau, 12/18, 9:00 a.m. Dillon & Findley
Anchorage, 12/ 17, 12/18, and 12/30 - 2 showings each day: 9 - 11 am or 2 -4 pm

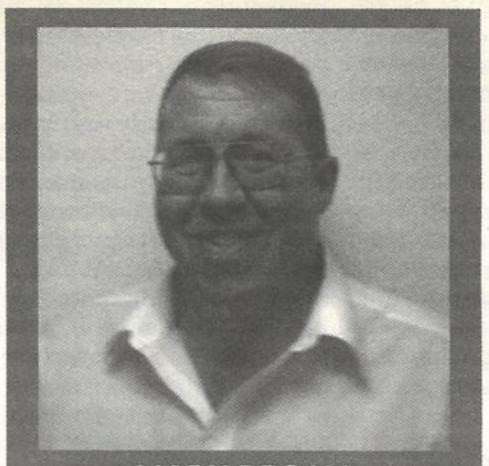
REGISTRATION FEE:

At the door: $50 Group video replays: $45.00

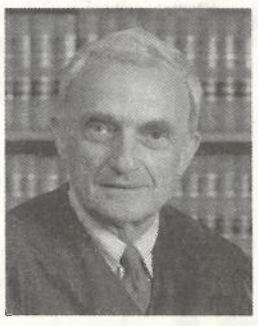
ETHICS RESOURCES:

- Call Bar Counsel at 907-272-7469 for informal ethics opinion – get some guidance the minute you suspect a problem!
- Go to www.alaskabar.org for all the Alaska Bar Formal Ethics Opinions free!
- Call ALPS for an on-site risk management visit. Contact ALPS at 1-800-FOR-ALPS (1-800367-2577) or visit www.alpsnet.com.

Call for nominations for the 2004 Jay Rabinowitz Service Award



MARK REGAN
2003 Recipient



Jay Rabinowitz

The Board of Trustees of the Alaska Bar Foundation is accepting nominations for the 2004 Award. A nominee should be an individual whose life work has demonstrated a commitment to public service in the State of Alaska. The Award is funded through generous gifts from family, friends and the public in honor of the late Alaska Supreme Court Justice Jay Rabinowitz.

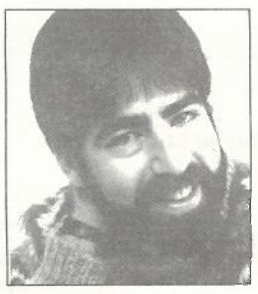
Nominations for the award are presently being solicited. Nominations forms are available from the Alaska Bar Association, 550 West Seventh Avenue, Ste. 1900. P. O. Box 100279, Anchorage, AK 99510 or at www.alaskabar.org. Completed nominations must be returned to the office of the Alaska Bar Association by March 1, 2004. The award will be presented at the Annual Convention of the Alaska Bar Association in April 2004.

Since 1896
Alaska Bar Association

Alaska Bar Foundation

Enforcing settlement agreements in family law cases

☐ Steve Pradell



Alternative Dispute Resolution (ADR) has, fortunately, been more widespread as fracturing families are taking control of their lives and working together to hash out their differences. Through mediation agreements, dissolutions and court driven settlement conferences, parties are moving quickly through the system, reducing litigation fees and easing heavily burdened superior court calendars.

But parties in emotional cases can easily wake up with buyers' remorse and spend considerable time and litigation costs attempting to undo the very settlements that they worked so hard to create. This article reviews Alaska law in this area and addresses the issue of how to insure that your negotiated settlements remain that way.

In *Kerslake v. Kerslake*, 609 P.2d 559 (Alaska 1980), the Court upheld an agreement where both parties, represented by counsel, had agreed to the terms and conditions of a property settlement. The Court held that a superior court judge may accept as "just" a divorce property settlement entered into by parties represented by counsel. The court did not impose an affirmative duty on a trial court to examine every property settlement reached by the parties to determine if it is just.

In *Notkin v. Notkin*, 921 P. 2d 1109 (Alaska 1996), the Court affirmed a superior court's order setting aside a property settlement agreement. Quoting H. Clark, *Law of Domestic Relations,* §16.10, at 551 (1968), the Court found that insofar as an agreement relates to the division of property, the separation agreement should be controlling in the absence of fraud, duress, concealment of assets or other facts showing that the agreement was not made voluntarily and with full understanding. In *Notkin*, the Court set aside a settlement when the evidence suggested that a party lacked a full understanding of the true nature and consequences of her actions at the time she entered into the agreement. She was originally from Thailand and the transcript of her testimony made it clear to the Court that she was not fully conversant in English. The Court also noted her unfamiliarity with financial and property matters.

Most recently, in *Ford v. Ford*, Case No. 5683 (April 25, 2003), the Court upheld the superior court's enforcement of a property settlement agreement challenged on numerous grounds. In *Ford*, the parties engaged in mediation while represented by counsel. Mediation produced a settlement, and the parties went into an empty courtroom to place their agreement on record absent court personnel. The mediator recited the settlement on record, and allowed counsel to clarify it. Subsequently, the parties filed numerous motions including a Motion to Enforce the settlement filed by Ms. Ford, and a Cross Motion to set the case for trial filed by Mr. Ford. The superior court found at a hearing that the mediation had produced a binding settlement agreement between the parties, and the judge issued an order enforcing the settlement and entering a Divorce Decree and Findings of Fact and Conclusions of Law.

The Court analyzed the settlement agreement under traditional contract principles. The Court reviewed the proceedings below to determine whether the parties intent to enter a final, binding agreement on the day of mediation. The court noted that Mr. Ford had actively participated in the process, particularly when he claimed that he was exhausted and unable to understand. The court rejected an argument that the oral recital placed on the record was not a binding agreement. The Court noted that despite his age of 73 and his medical problems, the Mr. Ford was represented by counsel.

The Court also examined the issue of the mediator's failure to ask the parties whether the agreement was entered into voluntarily and whether they understood the agreement did not violate public policy. Citing *Crane v. Crane*, 986 P.2d 881 (Alaska 1999), the Court held that a party need not expressly state on the record that it entered into a settlement agreement voluntarily for the agreement to be considered valid. This finding was based upon the fact that Crane was represented by counsel and by looking to the record. The Court also found that the presence of a superior court judge is not required for the parties to enter into a binding agreement.

The court noted that it would have been easier if the mediator had directly addressed the parties during the recorded session and confirmed that each understood the settlement and agreed with it. The Court encouraged judges and mediators who reach settlement agreements to confirm on the record directly with the parties their understanding of the settlement and their intention to enter into it, but the Court did not go so far was to make this a requirement to have a binding settlement agreement. The Court noted that the superior court judge correctly determined that the settlement was valid before applying the presumption of enforcement of settlements once reached.

So what should a careful practitioner do once settlement is reached? It may be wise to jot down a list of questions for each party to answer on the record once settlement has occurred. Having a judge present would be most beneficial. These questions are for you to prepare in your own words, but they should at least address whether or not:

- the party understood the agreement,
- the agreement was voluntarily entered,
- the party believes that the agreement, although perhaps not ideal, is fair,
- the party has obtained legal advice and is satisfied by that advice,
- the party is under the influence of drugs, alcohol or anything that would impair their judgment and/or their ability to understand what they are doing,
- the party was coerced or otherwise forced into the agreement
- the agreement placed on the record is the entire agreement between the parties
- the party understands that, absent extraordinary circumstances, the party is bound by the agreement

There are no guarantees that either side will not attempt to undo all of your hard work. But with enough of the above questions in the record, you may make the other side think twice before spending even more money trying to undo the product of your efforts.

 Steve's book, The Alaska Family Law Handbook, (1998) is available for family law attorneys to assist their clients in understanding domestic

Pro bono program celebrates 20 years of service

The Volunteer Attorney Support (VAS) pro bono program at Alaska Legal Services Corporation (ALSC) is celebrating 20 years of service this fall. Since 1983, thousands of low-income Alaskans have received free civil legal services through the generosity of members of the Alaska Bar Association and other professionals.

The program's mission has been and remains to offer high quality legal services to those that otherwise would not have access to the legal system. VAS is currently housed in the Anchorage ALSC office and offers services to qualifying persons throughout Alaska. Since its inception, the pro bono program has steadily grown, and currently over 900 attorneys and other professionals have become members of the pro bono panel. Just in the last six years, these lawyers, working in offices ranging from solo practices to large firms, have donated more than 40,000 hours to assist indigent clients.

In celebration of 20 years of service, Erick Cordero, the program's coordinator, has been contacting long-term volunteers to express appreciation for their commitment to equal access to justice and to encourage continued support for this important work.

"The much-maligned legal profession doesn't get enough credit for the tremendous amount of time volunteered by private and public attorneys to represent Alaska's poor. These aren't headline-grabbing cases, they're just individual legal problems, routine and everyday to the attorneys handling them, but they mean the world to the clients who find themselves actually having our system's promise of equal access to justice fulfilled, thanks to the selfless voluntarism of these pro bono attorneys" said ALSC's Executive Director, Andrew R. Harrington.

Alaska Legal Services Corporation is a non-profit organization established in 1966 and the largest statewide provider of free legal services in Alaska. For additional information, please visit their website at www.alsc-law.org, or contact Erick Cordero at the above number.

New case management system implemented for children's cases

The Alaska Court System is in the process of implementing a new statewide computerized case management system for the trial courts. This new system is called CourtView. The Anchorage Court went live with CourtView on October 20,2003 for the court systems and the system will be accessible by the public in the near future.

Because CourtView has many more capabilities for tracking information than the current computer system, the court has developed new procedures for Child in Need of Aid CINA and delinquency cases. Some of these changes include;

NEW CASE NUMBERING:

Each CINA and Delinquency petition will be assigned a separate case number. Additionally, CINA and Delinquency cases will have separate case number sequences and separate case type suffixes.

• The suffix for CINA cases will be "CM". For example, the first CINA case filed in Anchorage after conversion to the new system will be 3AN-02-1CN.

• The suffix for Delinquency cases will be "DL". For example, the first delinquency case filed in Anchorage after conversion to CourtView will be 3AN-02-1 DL.

IMPORTANT NOTES:

a. This new case numbering system will go in effect at the time each court goes live with CourtView. So until CourtView is installed in a particular court, that court will continue with the current "CP" case numbering sequence.

b. Existing pending "CP" cases will keep the original case number even after CourtView is installed. However, any new petition filed on a child who already has a case in the old system will be assigned a new "CN" or "DL" case number.

c. Petitions to Revoke Probation in delinquency cases and Petitions to Terminate Parental Rights in CINA cases will be filed in the underlying case. These petitions will not be assigned a new case number.

d. CINA cases will remain "open" as long as the child is in state custody, i.e., until the child is either released from custody, adopted, or emancipated. Therefore, it is absolutely critical that the court be notified in writing when the child leaves state custody.

DELINQUENCY CASES.

CourtView will allow the court to capture the statutory reasons (charges) why a delinquency petition is filed. All criminal offenses in the CourtView table have been taken from the Uniform Offense Citation table provided by the Dept. of Public Safety.

a. Therefore, all offenses listed in delinquency cases must be listed in the format and description as provided in the Uniform Offense Citation Table.

b. Second, to assist court staff in entering this data quickly and correctly, the court is are requesting that all offenses be listed at the top of each petition.

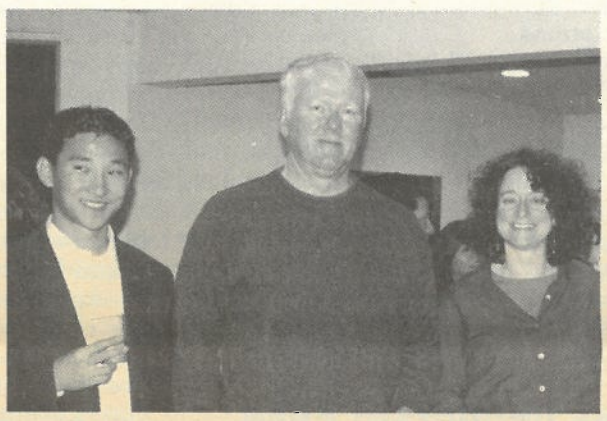
3. Family ID Numbers. CourtView will allow the court to create Family ID Numbers to identify all cases in which family members are involved.

4. Linking Cases. CourtView also allows the court to "link" cases that are related. For example, the court may link multiple delinquency cases if the minors were involved in the same alleged delinquent act.

L-R: Karen Ferguson, Psychologist, IRSP Refugee Project Coordinator; Mara Kimmel, IRSP Supervising Attorney; Robin Bronen, IRSP Program Director; Leni Marin, Family Violence Prevention Fund, San Francisco; Gail Pendleton, Associate Director, National Immigration Project, Boston; Judge Susan Breall, Superior Court Judge, San Francisco County; Sujata Warrier, Director, New York State Office for the Prevention of Domestic Violence; and Monica Arenas, Family Violence Prevention Fund, San Francisco.

Immigration & Refugee Services reception honors visiting faculty

The Immigration and Refugee Services program (IRSP) of Catholic Social Services hosted a reception on October 9, 2003, at the Anchorage home of IRSP Supervising Attorney Mara Kimmel and her husband Rep. Ethan Berkowitz. The reception honored the faculty for two educational programs for professionals who work with immigrants and refugees. The first workshop, "Understanding Cultural Competency for Human Services Providers Working with Immigrants & Refugees," was held on Thursday, October 9, at the BP Energy Center, and was co-sponsored by the IRSP program and the national Family Violence Prevention Fund. The second, a CLE program entitled "Working with Immigrant Victims of Crime," was held on Friday, October 10, at the Marriott Hotel and was sponsored by the Immigration Law Section of the Alaska Bar Association.



L-R: James Yi, Trial Attorney, U.S. Immigration & Customs Enforcement Agency (USICEA), Department of Homeland Security, Seattle; Ed Dunlay, Deputy Chief Counsel, USICEA, Department of Homeland Security, Anchorage; Mara Kimmel, IRSP Supervising Attorney.

Heller Ehrman makes the A-list

Heller Ehrman White & McAuliffe LLP has been recognized by *The American Lawyer*, a leading publication for the legal industry, as one of the top 20 law firms in the United States. "The A-List," published in the September 2003 issue of *The American Lawyer*, was based upon scores for Revenue Per Lawyer, Pro Bono Contributions, Associate Satisfaction, and Diversity.

Heller Ehrman ranked Number 12 on "The A-List" and was one of only two West Coast-based firms to make the list. To verify the accuracy of the rankings (this is the first year that *The American Lawyer* has ranked firms in this manner), the publication ran the same numbers for the last two years (2001 and 2002) and Heller Ehrman was one of only 13 firms to make the list all three years. (For additional information about "The A-List" and the methodology for rankings, please visit www.americanlawyer.com.)

Almost simultaneously with *The American Lawyer*'s publication of "The A-List," Heller Ehrman announced a merger with Venture Law Group (VLG), a leading technology and early-stage company law firm based in Silicon Valley. The combined firm will have more than 720 attorneys and professionals in 12 offices in the U.S. and abroad.

New associate attorney announced

The law firm of Wohlforth, Vassar, Johnson & Brecht has announced that Shelley D. Ebenal joined the firm as an associate effective November 1, 2003.

Ms. Ebenal's practice will emphasize public finance, municipal and estate planning law. Raised in Fairbanks, she received her undergraduate degree from University of Alaska Fairbanks and law degree from California Western School of Law. Ms. Ebenal developed an estate planning law practice over a period of seven years prior to working as an assistant municipal attorney for the Municipality of Anchorage for the past three years, where her primary focus was public finance and general municipal law. She is admitted to the Alaska and California Bar Associations.

The firm was founded in 1967, and its offices are located in Anchorage, Alaska. The firm continues its diverse and comprehensive practice in the areas of public finance, business, securities, banking, commercial, environmental, real estate, labor, employment, municipal and state agency law, estate planning and civil litigation.

The firm is nationally recognized for its public finance practice and has a deep grounding in Alaska. Its members have served as Commissioner of Revenue, Director of Banking and Securities, Chair of the Alaska Permanent Fund Corporation and in other Alaska government positions.

Essay discusses immigrant case

Gregory S. Fisher's essay, "The Greatest Dissent? A Brief Essay on Language, Law, Rule, and Reason," is being published in four different legal journals: The Federal Bar Association's The Federal Lawyer; The American Bar Association's The Judge's Journal; BNA's Immigration Bulletin; and the Maricopa County Bar Association's Maricopa Lawyer.

The essay addresses a recent dissent authored by Judge Alex Kozinski, United States Court of Appeals Ninth Circuit. Following Judge Kozinski's powerful and compelling dissent, the United States dropped charges against a defendant convicted of smuggling illegal immigrants across the border, dismissed his case, and sent him home to Mexico even though the defendant's conviction had been affirmed on appeal.

You are cordially invited
by the
Supreme Court of the State of Alaska
to the installations of
Charles T. Huguelet
on the nineteenth day of December
two thousand three
at three o'clock p.m.
Kenai Courthouse
125 Trading Bay Drive
Kenai, Alaska
and
Joel H. Bolger
on the ninth day of January
two thousand four
at three-thirty o'clock p.m.
Kodiak Courthouse
204 Mission Road
Kodiak, Alaska
as Judges of the
Superior Court of Alaska

Bar People

We haven't done a comprehensive "Bar People" for awhile, so forgive us if some of the People info is a bit dated. If it's news to us, it's probably news to some one else, too.

At their weekly Bar lunch, the Juneau Bar welcomed **Chris Poag**, assistant public defender newly arrived from Ketchikan. Also attending were new members **Amy Maio** and **David Newman** who recently opened practice in Juneau as Maio & Newman, LLC.

Michael Moberly proudly announces the formation of the Law Offices of Michael A. Moberly, P.C.. The new offices are located at 425 G Street, Suite 600, Anchorage, AK 99501, (907) 339-7200, (907) 277-0281 fax, moberlylaw@alaska.com. Law Offices of Michael A. Moberly, P.C. is offering services in areas of criminal defense, including fish and wildlife cases, and general civil litigation. Mr. Moberly's past experience includes positions as a felony trial attorney and Misdemeanor Unit supervisor at the Alaska Public Defender Agency's Anchorage office, where he handled over 1250 criminal defense cases. Mr. Moberly has defended cases, including A and Unclassified Felonies, in Anchorage, Unalaska/ Dutch Harbor and Saint Paul, Alaska. He served as law clerk to the Honorable A. Harry Branson at the United States District Court for the District of Alaska in Anchorage. Mr. Moberly's prior experience also includes positions with Sen. Ted Stevens' Washington, D.C. office, the Pacific States Marine Fisheries Commission, National Marine Fisheries Service and Alaska Department of Fish & Game. Mr. Moberly is admitted to practice in state courts in both Alaska and Washington and the U.S. District Court for Alaska.

Laura L. Farley and Cheryl L. Graves, formerly shareholders with the law firm of LeGros, Buchanan & Paul, are proud to announce the opening of their firm Farley & Graves, P. C., located at 3003 Minnesota Drive, Suite 300, Anchorage, Alaska 99503; telephone (907) 274-5100; facsimile (907) 274-5111.

Jennifer Alexander, formerly with Birch, Horton, et.al., is now a Hearing Officer with the Dept. of Labor, Division of Worker's Compensation ..... **Connie Aschenbrenner** has transferred from the PD Agency in Barrow to their Anchorage office.....**Jason Bergevin**, formerly with Gilman & Associates, is now with Royce & Brain.

John Corso retired from the City & Borough of Juneau after 24 years of service, the last 11 years as CBJ Attorney. He joined the Juneau firm of Robertson, Monagle & Eastaugh in June of 2003.....**Krissell Crandall**, formerly with BP Exploration, is now with the Bureau of Land Management, U.S. Department of the Interior.....**Dawn Carman**, formerly with the AG's office in Anchorage, is now the Director of Regulatory Compliance for the Alaska Native Medical Center.

John Hartle is now the City Attorney for the City and Borough of Juneau. He formerly was the Assistant City-Borough Attorney.....**Thomas Dillon**, formerly with the AG's office in Anchorage, has relocated to Tavernier, FL.

Roberta Erwin, formerly with Erwin & Erwin, is now with the Law Offices of Joseph P. Palmier.....**Mark Ertischek** is now an Assistant Municipal Attorney in Anchorage.....**William Greene**, former Anchorage Municipal Attorney, is now with the AG's office in Anchorage.

Jessica Carey Graham, formerly with Perkins Coie, is now with Alutiiq Corp.....Former District Court **Judge Natalie Finn** is now the Magistrate Education Coordinator for the Alaska Court System.....**Jeff Holloway**, formerly with Burr Pease & Kurtz, is now with Holmes, Weddle & Barcott.....**Blaine Hollis**, formerly with the AG's office in Juneau has opened a solo law office in Juneau.

Daniel Kent, formerly with Azar Law Office, is now with Birch, Horton, et.al.....**Carl Johnson** is now with Burr, Pease & Kurtz.....**Jonathan Lack** is now with Tindall, Bennett & Shoup in Anchorage.....**Julia Moudy**, formerly with the PD's Agency, is now with Richmond & Quinn.

Sheryl Musgrove is now with the Kenai Peninsula Borough Attorney's Office.....**Kara Nyquist**, formerly with Birch, Horton, is now the Director of Advocacy at Covenant House in Anchorage.....**Joseph Nelson**, formerly with Simpson, Tillinghast, et.al., is now an Assistant City & Borough Attorney in Juneau.

Dan O'Phelan is now with the Law Offices of Dan Allan.....**Peter Partnow**, formerly with Foster Pepper, et.al., is now with Lane Powell, et.al.....**Philip Pallenberg**, formerly with Batchelor, Pallenberg & Assoc., is now with Faulkner Banfield in Juneau.

Bonnie Robson has relocated from Anchorage to Fairbanks.....**Bruce Bookman** and Richard Helm have formed the firm of Bookman & Helm.....**Aaron Schutt**, formerly with Heller Ehrman, is now with Sonosky Chambers, et.al. in Anchorage.

Kim Stone is now with McConahy, Zimmerman & Wallace in Fairbanks.....**Stacy Steinberg**, formerly with Robertson, Monagle et.al., is now with LeGros, Buchanan & Paul.....**Gail Schubert**, formerly with Foster Pepper et.al., is now with the Southcentral Foundation in Anchorage.

Kathleen Schaechterle, formerly with Birch, Horton, et.al., has relocated to Sheridan, Wyoming.....**Terry Thurbon**, formerly with Robertson, Monagle et.al. has opened the firm of Thurbon Regulatory-Legal Services in Juneau.....**Amy Vaudreuil**, formerly with Hedland, Brennan, et.al., has relocated to Chippewa Falls, WI.

Marshall White, formerly with Wohlforth, Vassar, et.al., is now a partner in Cacheaux, Cavazos & Newton, LLP in San Antonio, TX.....**Min Young** is now with the Law Office of Ralph Ertz in Anchorage.....**Lach & Mary Zemp** has relocated from Juneau to Asheville, NC.

Holmes Weddle & Barcott P.C. welcomes new shareholders to firm

The law firm of Holmes Weddle & Barcott, P.C. has recently announced that David M. Freeman and Grant E. Watts, of the law firm Freeman & Watts, P.C. have joined the firm as shareholders. Mr. Freeman has been in private practice in Anchorage since 1978, after receiving his law degree from the University of Puget Sound and serving as a law clerk for the Superior Court in Fairbanks. His practice concentrates in the area of labor and employment relations law from a management perspective, as well as construction claims, construction litigation, and related business law.

Mr. Watts has been in private practice in Anchorage since 1987 after receiving his law degree from the University of Idaho College of Law. His practice focuses n representation of architects, engineers, general contractors, subcontractors, and material suppliers in litigation regarding payment and performance bonds, liens, bid protests, debt collection and other aspects of construction law. He has been involved in major construction litigation (including public and private projects) in the Alaska State and Federal courts.

Before joining Holmes Weddle & Barcott, Mr. Freeman and Mr. Watts were shareholders in Freeman & Watts. That firm was formerly known as Wade & DeYoung.

Holmes Weddle & Barcott, P.C. is a full-service law firm operating out of its Anchorage, Alaska and Seattle, Washington offices.


Eugenia (Jeannie) Sleeper


Matthew K. Teaford


Christina (Tina) Otto Terenzi


Robert E. Henderson


Blair Marlowe Christensen

Jermain, Dunnagan & Owens, P.C. announces attorney changes

Eugenia (Jeannie) Sleeper, who has been with the firm since 1994, became a shareholder on January 1, 2003. Ms. Sleeper's practice focuses on commercial law and bankruptcy.

Matthew K. Teaford, Christina (Tina) Otto Terenzi, Robert E. Henderson, and Blair Marlowe Christensen have also joined the firm. Mr. Teaford previously clerked for Judge Michael Wolverton, and practices in the areas of education and civil litigation. Ms. Terenzi, who clerked for Judge Dan Hensley, focuses on commercial law. Mr. Henderson joined the firm after clerking for Chief Judge Robert Coats, and practices primarily in commercial transactions and bankruptcy. Ms. Christensen, formerly of a San Diego law firm, and who previously clerked for Justice Walter L. Carpeneti, practices in the areas of labor/employment and education.

Yerbich's efforts recognized

The Bankruptcy Section of the Alaska Bar Association acknowledged the extraordinary educational efforts of Thomas J. Yerbich over the years at the regular monthly meeting of the Section, Tuesday, September 30, 2003. The Bankruptcy Section passed a Resolution which was read at the meeting, expressing the Section's gratitude for the "extraordinary time, energy and effort, far beyond any effort the Bankruptcy Section has reason to expect from a single attorney" that Tom has expended assisting Bankruptcy practitioners to remain informed about Bankruptcy topics. The Resolution, signed by co-chairs of the Section, Michelle L. Boutin and Gary A. Spraker, was presented to Tom as a plaque. Two identical plaques were prepared and presented, one for Tom 's personal use, the other for public display, hopefully in the Section 341 examination room of the Historic Bankruptcy Courthouse.

RUSSIA STUDIES U.S. JURIES

The Khabarovsk-Alaska Rule of Law [KAROL] Project sponsored a September conference in Anchorage in the fall.

The Open World Program at the Library of Congress sponsored a visit to Anchorage and Palmer by a 7-member delegation from Khabarovsk, Russian Far East, from September 13-20. The week-long conference focused on jury trials and jury selection.

Marla Greenstein of the Commission on Judicial Conduct and Judge Patricia Collins of the Alaska Superior Court in Juneau are the Alaska Co-Chairs for the KAROL Project. Planners for the September conference included Anchorage attorneys Rich Curtner (committee chair), Sue Ellen Tatter, Peter Gruenstein and Lisa Rieger. In addition, presentations on the jury process were made by Judge Elaine Andrews (Ret.) of the Superior Court in Anchorage, Judge Eric Smith of the Superior Court in Palmer, James Gilmore, Rex Butler, and Anchorage Clerk of Court Alyce Roberts.


Khabarovsk delegates wave goodbye as they depart from the closing reception to head home.


Members of the Khabarovsk delegation join several of their Alaskan hosts during the closing reception at the home of Justice Dana Fabe.


Marla Greenstein and Judge Patricia Collins (front row, left) welcome the Khabarovsk delegation to Anchorage during the opening reception for their September visit.

LOOKING FOR A PARALEGAL?

ALASKA ASSOCIATION OF PARALEGALS

646-8018

Most law firms, when filling paralegal positions, use newspaper advertisements as their first resource. The good news is there is another great resource at your fingertips, available free of charge! The Alaska Association of Paralegals (AAP) maintains a job bank for its members. If you are interested in posting a paralegal position through the AAP job bank, you can contact us several different ways. You can access AAP's web site at http://www.alaskaparalegals.org/main.htm. There is a link to a form employers can fill out and e-mail back to AAP. Or, you can call the AALA job bank coordinator, Deb Jones, at 564-5906 or e-mail jonesd6@bp.com. We ask that you provide the same information as you would in an ad - who to contact, nature of the position, deadline, etc. Give us a try!

NEWS FROM THE BAR

Board of Governors invites member comments

The Board of Governors invites member comments concerning proposed amendments to Alaska Bar Rule 40(r), Alaska Bar Rule 29, and Alaska Bar Rule 25.

Alaska Bar Rule 40(r): The Fee Arbitration Executive Committee voted to recommend an amendment to Bar Rule 40(r) regarding the nature of the court that can order a waiver of confidentiality in fee arbitration matters.

Fee arbitration matters (records, documents, files, proceedings and hearings) are confidential and, at present, may only be ordered open by a superior court on good cause shown. There are many situations where a fee case originates in state district court, but is stayed pending the outcome of a fee arbitration proceeding.

If either the client or the attorney wishes to open the matter, that party would have to apply to the superior court for an order under Bar Rule 40(r). This amendment would enable the party to request either a superior or a district court to issue the order. (Additions are underlined; deletions have strikethroughs)

Rule 40(r)

(r) Confidentiality. All records, documents, files, proceedings and hearings pertaining to the arbitration of any dispute under these rules will be confidential and will be closed to the public, unless ordered open by a ~~superior~~ court upon good cause shown, except that a summary of the facts, without reference to either party by name, may be publicized in all cases once the proceeding has been formally closed. Bar Counsel may utilize arbitration records and decisions for statistical and enforcement purposes and for disciplinary purposes following acceptance of a grievance under Rule 22(a) or referral by the arbitrator or arbitration panel under Rule 40(q)(4).

Alaska Bar Rule 29 and 25: In May 2003, the Board made its recommendations in a disciplinary reinstatement matter to the Supreme Court. Although counsel for the petitioner filed an appeal of the Board's decision, the clerk of the appellate courts declined to accept the appeal because Bar Rule 29 (reinstatement) did not provide for appeal. Instead, she permitted counsel to file for leave to respond to the Board's recommendation and a response was filed by his counsel. Bar counsel advised the Court that they believed the Board's findings, conclusions, and recommendation fully addressed the position of the Alaska Bar Association. The clerk of the appellate courts suggested that the procedure for review of reinstatement recommendations by the Court be clarified.

The amendment to Bar Rule 29 would permit both bar counsel and the petitioner to appeal from the findings, conclusions and recommendation of the Board by filing a notice of appeal within 10 days of service of the Board's action. It would permit briefing to be done in memorandum format and would permit the parties to request oral argument.

The proposed amendments to Bar Rule 25 (Appeals; Review of Bar Counsel Determinations) would add parallel language for reinstatement proceeding appeals. In addition, the amendments would conform the rule to procedures that have been followed by bar counsel and the Court in past disciplinary cases.

Currently, the rule allows bar counsel to file a petition for hearing from a recommendation or order from the Board. Under the appellate rules, the Court has the discretion whether to grant a petition for hearing. Thus, bar counsel technically has no appeal of right to the Court.

However, bar counsel has filed "appeals" of Board findings, conclusions, and recommendations in the past and the Court has accepted and processed them as regular appeals. These amendments would essentially "level the playing field" and allow both the respondent attorney and bar counsel to file appeals in disciplinary matters.

(Additions are underlined; deletions have strikethroughs)

Rule 29. Reinstatement.

...

(c) Reinstatement Proceedings. Petitioners who have been suspended for two years 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 two years 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; at the hearing, the Petitioner will have the burden of demonstrating by clear and convincing evidence 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 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) at its next scheduled meeting at least 30 days after 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 petition will be placed upon the calendar of the Court for acceptance or rejection of the Board's recommendation~~. Bar Counsel or Petitioner may appeal from the findings, conclusions, and recommendation of the Board by filing a notice of appeal with the Court within 10 days of service of the Board's findings, conclusions, and recommendation. Briefing will be done in memorandum format and oral argument may be requested. Whether an appeal is filed or not, the Court will decide to accept or reject the Board's findings, conclusions, and recommendation;

(3) in all proceedings concerning a petition for reinstatement, Bar Counsel may cross-examine the Petitioner's witnesses and submit evidence in opposition to the petition; 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.

Rule 25. Appeals; Review of Bar Counsel Determinations.

...

(g) **Respondent Appeal From Board Recommendation or Order.** Respondent may appeal from a recommendation or order of the Board made under Rule 22(n) by filing a notice of appeal with the Court within 10 days of service of the Board's recommendation or order. Part II of the Rules of Appellate Procedure will govern an appeals filed under this Rule.

The petitioner in a reinstatement proceeding may appeal from the findings, conclusions, and recommendation of the Board made under Rule 29(c)(2) by filing a notice of appeal with the Court within 10 days of service of the Board's findings, conclusions, and recommendation. Briefing will be done in memorandum format and oral argument may be requested.

(h) **Bar Counsel ~~Petition for Hearing~~ Appeal of a Board Recommendation or Order.** Bar Counsel may ~~petition~~ appeal from a recommendation or order of the Board made under Rule 22(n) by filing a ~~petition for hearing~~ notice of appeal with the Court within 10 days of service of the Board's recommendation or order. Part III of the Rules of Appellate Procedure will govern petitions filed under this Rule.

Bar Counsel may appeal from the findings, conclusions, and recommendation of the Board made under Rule 29(c)(2) by filing a notice of appeal with the Court within 10 days of service of the Board's findings, conclusions, and recommendation. Briefing will be done in memorandum format and oral argument may be requested.

Please send comments to: Executive Director, Alaska Bar Association, PO Box 100279, Anchorage, AK 99510 or e-mail to info@alaskabar.org by January 5, 2004.

NOTICE OF PRELIMINARY DRAFT OF PROPOSED AMENDMENTS TO LOCAL RULES U.S. DISTRICT COURT, DISTRICT OF ALASKA.

Comments are sought on proposed amendments to Local Rules

Local (Civil) Rules 3.3 and 83.1

All Comments received become part of the permanent files on the rules.

Written comments on the preliminary draft rules are due not later than January 9, 2004

Address all communications on rules to:

United States District Court, District of Alaska
Attention: Court Rules Attorney
222 West Seventh Avenue, Stop 4
Anchorage, Alaska 99513-7564
or
e-mail to AKD-Rules@akd.uscourts.gov

The preliminary draft of proposed amendments to the rules may be reviewed at: State Court Libraries in Anchorage, Juneau, Fairbanks and Ketchikan; U.S. Courts Library in Anchorage; U.S. District Court Clerk's Office in Anchorage, Fairbanks, Juneau, Ketchikan, and Nome; or on the web at the U.S. District Court Home Page http://www.akd.uscourts.gov

Board of Governors invites member comments

The Board of Governors invites member comments concerning proposed amendments to **Alaska Rules of Professional Conduct 1.2, 4.2 and 4.3** regarding unbundled legal services.

A subcommittee of the Alaska Civil Rules Committee chaired by Judge Mark Rindner submitted proposed amendments to the Alaska Rules of Professional Conduct (ARPC) to the Board to facilitate the provision of unbundled legal services in Alaska.

The proposed amendments would explicitly permit a lawyer to provide such services under ARPC 1.2 (Scope of Representation) and would specify when a client would be considered represented by the lawyer for the purpose of ARPC 4.2 (Communication with Person Represented by Counsel) or unrepresented for the purpose of ARPC 4.3 (Dealing with Unrepresented Person). These proposals are based on similar rules adopted by the Washington State Supreme Court. These changes complement the proposed changes to Civil Rule 81.

Normally, amendments to the Alaska Rules of Professional Conduct would start with the current text of the Alaska Rules. However, the Supreme Court has advised the Bar that it should consider the American Bar Association's Ethics 2000 amendments to the Model Rules of Professional Conduct as the new drafting benchmark for professional conduct rules in Alaska. The Court advised the Bar to show any suggested language changes as amendments to the Ethics 2000 rules. Thus, the principal text of attached Rules 1.2, 4.2, and 4.3 is the version adopted by the American Bar Association in the Model Rules of Professional Conduct.

Please send comments to: Executive Director, Alaska Bar Association, PO Box 100279, Anchorage, AK 99510 or e-mail to alaskabar@alaskabar.org by January 5, 2004.
(Additions are underlined; deletions have strikethroughs)

Rule 1.2. Scope of Representation.

(c) A lawyer may limit the scope of the representation if the limitation is reasonable under the circumstances and the client ~~gives informed consent~~ consents after consultation. An agreement limiting the scope of a representation shall consider the applicability of Rule 4.2 to the representation.

Rule 4.2. Communication with Person Represented by Counsel.

(a) In representing a client, a lawyer shall not communicate about the subject of the representation with a person the lawyer knows to be represented by another lawyer in the matter, unless the lawyer has the consent of the other lawyer or is authorized to do so by law or a court order.

(b) An otherwise unrepresented person to whom limited representation is being provided or has been provided in accordance with Rule 1.2 is considered to be unrepresented for purposes of this rule unless the opposing lawyer knows of or has been provided with:

(1) a written notice of appearance under which he or she is to communicate only with the limited representation lawyer as to the subject matter within the limited representation; or,

(2) a written notice of the time period during which he or she is to communicate only with the limited representation lawyer as to the subject matter within the limited representation.

Rule 4.3. Dealing with Unrepresented Person.

(a) In dealing on behalf of a client with a person who is not represented by counsel, a lawyer shall not state or imply that the lawyer is disinterested. When the lawyer knows or reasonably should know that the unrepresented person misunderstands the lawyer's role in the matter, the lawyer shall make reasonable efforts to correct the misunderstanding. The lawyer shall not give legal advice to an unrepresented person, other than advice to secure counsel, if the lawyer knows or reasonably should know that the interests of such a person are or have a reasonable possibility of being in conflict with the interests of the client.

(b) An otherwise unrepresented person to whom limited representation is being provided or has been provided in accordance with Rule 1.2 is considered to be unrepresented for purposes of this rule unless the opposing lawyer knows of or has been provided with:

(1) a written notice of appearance under which he or she is to communicate only with the limited representation lawyer as to the subject matter within the limited representation; or,

(2) a written notice of the time period during which he or she is to communicate only with the limited representation lawyer as to the subject matter within the limited representation.

The Board of Governors invites member comments concerning the Board's vote at its October 30-31 meeting to increase the fee for joining additional sections from $10.00 to $15.00.

Please send comments to: Executive Director, Alaska Bar Association, PO Box 100279, Anchorage, AK 99510 or e-mail to info@alaskabar.org by January 5, 2004.

Article VII, Section 3(a)(1)

AMENDMENT INCREASING FEE FOR ADDITIONAL SECTIONS
(Additions are underscored; deletions have strikethroughs)

ARTICLE VII. COMMITTEES AND SECTIONS

Section 3. Substantive Law Sections.

(1) Attorney Member and Fees.

Attorney membership in each section is open to all active members of the Alaska Bar Association in good standing. $5.00 of a member's annual membership fee will be allocated to the budget of the first section joined by that member. A member may join additional sections at an annual registration fee to the member of ~~$10.00~~ $15.00 per additional section joined per year.

RESOLUTION OF THE BANKRUPTCY SECTION OF THE ALASKA BAR ASSOCIATION

WHEREAS, the Bankruptcy Section of the Alaska Bar Association recognizes the obligation of each attorney to strive for a high level of knowledge in the fields in which the attorney practices and seeks to assist Members of the Section to achieve this goal and fulfill this obligation by holding educational seminars and meetings;

WHEREAS, the Bankruptcy Section also seeks to promote and enhance the expeditious and efficient processing of Bankruptcy Cases by the Bankruptcy Court by participating in the on-going process of revising the Local Bankruptcy Rules;

WHEREAS, one attorney, Member of the Bankruptcy Section, has devoted significant time, energy and effort to maintaining a high level of knowledge of Bankruptcy law and to sharing his high level of knowledge of Bankruptcy law with other Members of the Bankruptcy Section by writing extensively in local publications, by chairing and teaching educational seminars and meetings, and by circulating topical, time sensitive information about Bankruptcy law broadly among Section Members;

WHEREAS, that attorney has also devoted countless hundreds of uncompensated hours assisting in the process of revising the Local Bankruptcy Rules to effect the expeditious and efficient handling of Bankruptcy Cases by the Bankruptcy Court;

WHEREAS, the amount of time and energy devoted to these laudable efforts by that attorney goes far beyond the bounds of reasonable expectation for one person to shoulder; and

WHEREAS, the Bankruptcy Section feels a great debt to that attorney and desires to recognize that attorney's efforts and express the gratitude of the Bankruptcy Section;

NOW THEREFORE,

BE IT RESOLVED that the Bankruptcy Section of the Alaska Bar Association hereby recognizes and expresses its deep gratitude to Thomas J. Yerbich for the extraordinary time, energy and effort, far beyond any effort the Bankruptcy Section has reason to expect from a single attorney, that he has devoted, over a significant period of time, to maintaining a high level of knowledge of Bankruptcy law and sharing that knowledge by writing and teaching, and to promoting and enhancing the efficient and expeditious processing of Bankruptcy Cases by his active participation in the ongoing process of revising the Local Bankruptcy Rules.

BANKRUPTCY SECTION of the Alaska Bar Association,
By and Through its Executive Committee

The Board of Governors invites member comments concerning the Board's vote at its October 30-31 meeting to increase the Civil Rule 81 fee for out-of-state attorneys to the same amount as the active membership fee.

Please send comments to: Executive Director, Alaska Bar Association, PO Box 100279, Anchorage, AK 99510 or e-mail to info@alaskabar.org by January 5, 2004.

Article III, Section 4

AMENDMENT INCREASING RULE 81 FEE TO SAME AMOUNT AS ACTIVE MEMBERSHIP FEE
(Additions are underscored; deletions have strikethroughs)

ARTICLE III. MEMBERSHIP FEES AND PENALTIES

Section 4. Required Fee for Other Attorneys.

The required fee for other attorneys under Civil Rule 81(a)(2) is ~~$250 annually, with $10.00 of that fee contributed to the Lawyers' Fund for Client Protection,~~ the amount required for active members under Section 1 of the Bylaw per case per year until the attorney notifies the Alaska Bar Association that the case in which the attorney is participating is closed or the attorney has withdrawn from the case. ~~Attorneys appearing under Civil Rule 81 in cases prior to the effective date of this rule will begin paying the $250 annual fee on January 1, 1995.~~

Did You File Your Civil Case Reporting Form? Avoid A Possible Ethics Violation

A reminder that civil case resolution forms must be filed with the Alaska Judicial Council as required by the Alaska Statutes and the Alaska Court Rules. The failure of an attorney to follow a court rule raises an ethics issue under Alaska Rule of Professional Conduct 3.4(c) which essentially provides that a lawyer shall not knowingly violate or disobey the rules of a tribunal. Members are highly encouraged to file the required reports since compliance avoids the possibility of a disciplinary complaint.

ESTATE PLANNING CORNER

The cost of a simple will in 2004

☐ Steven T. O'Hara

Effective January 1, 2004, the U.S. government has increased the cost of a simple will. Here "cost" means a lost opportunity to save taxes and "simple will" means a will giving property outright to an individual who then has exposure to taxes.

The amount that may pass free of federal estate tax is known generally as the unified credit amount or, more recently, the applicable exclusion amount. For 2002 and 2003, this amount was $1,000,000. This $1,000,000 amount generally created the opportunity for two taxpayers, each with at least $1,000,000 in assets, to save anywhere from $435,000 to $500,000 in estate taxes.

Effective January 1, 2004, the applicable exclusion amount has been increased to $1,500,000 *for estate-tax purposes only*. This $1,500,000 amount generally creates the opportunity for two taxpayers, each with at least $1,500,000 in assets, to save roughly $700,000 in estate taxes.

Significantly, the applicable exclusion amount remains at $1,000,000 for *gift-tax* purposes. See the September-October 2001 issue of this column entitled "The Gift Tax Is Here To Stay."

For estate-tax purposes only, the applicable exclusion amount is scheduled to increase to $2,000,000 in 2006 and $3,500,000 in 2009. Each increase will result in a greater opportunity to save estate taxes, *provided taxpayers structure their asset ownership, wills and trusts properly*.

Consider a husband and wife domiciled in Alaska. Both are U.S. citizens. They have no assets outside Alaska and no material debt. Neither has ever made a taxable gift. In their estate planning, they believed they did not need to consider anything beyond simple wills because they had heard they each may pass, at death, as much as $1,500,000 in 2004 to their descendants without estate taxes. They figured with combined assets of no more than $3,000,000, or $1,500,000 each, their estates would never be subject to estate taxes. So they signed simple wills, giving all assets to the surviving spouse outright and to their descendants outright when there is no surviving spouse.

Husband has recently died. His surviving spouse now realizes that with assets of $3,000,000 (i.e., her assets plus the assets to which she is entitled under her husband's will), her estate would owe $705,000 in estate taxes if she died in 2004 (IRC Sec. 2001(c) and AS 43.31.011).

Thus the cost of husband's simple will could be $705,000 in estate taxes.

To avoid this tax exposure, the couple could have equalized their estates by separating assets so each owns $1,500,000 separately without any right of survivorship. Asset equalization could have been accomplished through an Alaska community property agreement, as long as "survivorship community property" is avoided (AS 34.77.030(c) and 34.77.110(e)). Then husband could have signed a will or living trust giving the applicable exclusion amount to a trust that would be available to his surviving spouse, but would not be included in her gross estate on her subsequent death.

In general, husband could have named his surviving spouse trustee of the trust without adverse tax consequences. *See* Adams and Abendroth, *The Unexpected Consequences of Powers of Withdrawal*, 129 *Trusts & Estates* 41 (August 1990), which provides an excellent discussion of distribution powers held by a trustee who is also a beneficiary or related to one.

The opportunity to eliminate or reduce taxes by giving property in trust, rather than outright, is not limited to the married couple. In other words, a simple will signed by a single individual can also be costly.

Consider a 90-year-old client with net assets of $1,500,000. He is not married and has never made a taxable gift. He has a 65-year-old daughter with her own net assets of $1,500,000. Both the client and his daughter are domiciled in Alaska, and their respective assets are all in Alaska. The client has a simple will, giving all to his daughter outright.

Suppose the client dies in 2004. His daughter would then learn that with assets of $3,000,000 (i.e., her assets plus the assets to which she is entitled under her father's will), her estate would owe $705,000 in estate taxes if she then died (IRC Sec. 2001(c) and AS 43.31.011).

Clients requesting simple wills need to consider that the simple will could ultimately cost their families hundreds of thousands of dollars.

ANCHORAGE YOUTH COURT

Fall classes for 109 students who aspire to be attorneys in Anchorage Youth Court are well underway. Taught by 9 local attorneys, the classes cover such subjects as the roles of attorneys and judges, constitutional rights, aggravating and mitigating circumstances, ethics and diversity. Teachers this fall are: Captains Adrian Ingram and Aimee Cannon from Elmendorf AFB, Jim Juliussen, Eric Jenkins, Carl Johnson, Jonathon Lack, Julie Wrigley, Doug Kossler and Jennifer Alexander.

The teachers of Anchorage Youth Court's classes are people who like kids, teaching and the law, so it's rewarding for them to be able to put all three together. One teacher who has been an attorney for 8 years commented that he appreciates the kids' excitement about what he does on a daily basis. On the other hand, one of the students said that her teacher makes it fun and easy to understand complicated subjects.

Other students like the classes because they meet new students from other schools, they begin to understand how our government works, and they enjoy learning to give presentations in small groups.

The majority of the students are in 7th and 8th grade, but there are some in every year from 7th to 12th grade.

At the end of the 8th week of classes, students will take an AYC Bar exam on Nov. 15, followed by clerk-bailiff and a demonstration sentencing. The swearing-in ceremony will be in December.

The next set of classes will begin in March.

Police present $10K to charity

The Anchorage Police Department Employees' Association, Inc. (APDEA) presented major contributions to Standing Together Against Rape (STAR) and The Anchorage Youth Court in October.

The $10,000 contributions were presented in recognition of the continued excellent service and collaboration between the agencies and APDEA.

"In times of crisis, we count on the Anchorage Police Department to be there for our loved ones, businesses and community. But, our Officers are also very active behind the scenes. Both off and on duty the Anchorage Police Department is working to ensure that victims are heard and perpetrators are held accountable," said STAR and AYC..

"APDEA excels in supporting the mission of STAR and The Anchorage Youth Court with their active participation in trainings, team efforts and lending financial support. They know that intervention is affective in lowering crime rates in our community and helps in the healing when families are affected by violence.

"Their continued dedication and support honor STAR and Anchorage Youth Court." The organizations invited others to attend a ceremony outside of the Nesbitt Courthouse Oct. 27 to recognize the police association.

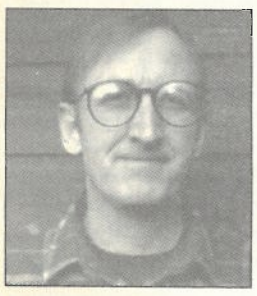
If you need any further information please call Colleen Morris 276-7279 at STAR or Paula Burgan 274-5986 at Anchorage Youth Court.

(L to R) Youth court board members: Alysyn Patotzka, Ki Jung Lee, Donald Ayers, Stephanie McCollum, and Erika Thorsness, happily display the APDEA's $10,000 check.

Everett Robbins, APDEA president, speaks at the ceremony.

Stealing time

☐ Dan Branch



The morning was clear and cold when we climbed into the Toad. Skim ice ran from Mayflower Island to the Douglas Harbor log boom. The ice yielded easily to the Toad's aluminum hull as we moved past the log boom and into Gastineau Channel.

We were stealing time from the middle of a November workweek to hunt deer.

The channel was calm. At its southern mouth the day's first light reached Marmion and Admiralty Islands. Our skiff created its own wind chill,so I faced backwards toward the town of Juneau and watched sunlight flooding over the shoulder of Mt. Roberts. It lit up the S.O.B.[1] and the Dimond Courthouse. Otherwise, the channel was a settled gray.

WE WERE STEALING TIME FROM THE MIDDLE OF A NOVEMBER WORKWEEK TO HUNT DEER.

The skiff motor's whine discouraged conversation. I thought of the day to come. There was reason to be anxious. We were in a 13-foot open boat on a freezing morning. In 20 minutes we would cross Stephens Passage, a three-mile piece of water that can turn ugly in minutes. After that, we'd hunt on Admiralty Island, brown bear's home. Then, with or without deer, we would retrace our water route, racing a sun that would be too low to be of use after 4 p.m.

Instead of anxiety I felt the calm that always comes while deer hunting. It always comes as a surprise. How can someone be at peace while on a mission to kill in the old growth? It's a small mystery and that morning I preferred to watch the green walls of Douglas Island than puzzle it through.

We encountered gentle swells in Stephens Passage---nothing to slow the passage to Admiralty. A runabout was moored in the cove where we intended to land. Its inflatable tender sat on the beach. We tried to approach the hunters from the runabout as they walked down the beach to ask if we would be interfering with their hunt. They melted into the woods rather than respond. We beached our skiff on the opposite side of the cove near the base of a 900-foot hill.

The previous night's high tide had flattened all the grass growing within 20 feet of the high tide line. Frost feathers decorated everything on the beach. Chunks of creek ice floated in the cove. The weak November sun couldn't melt any of it. We hung our food in a spruce and my partner started into the woods. I followed 30 minutes later.

The sun was reaching into the old growth when I slipped some shells into my old Remington and moved along a shallow drainage toward high ground. There were deer tracks and scat here. The tracks were sharp lines in the mud just made by a doe that must have bedded down nearby.

THE SLOW PASSAGE REQUIRED BY THE HUNT GAVE ME TIME TO SEE THE WOODS.

Moving quietly and stopping often, I worked my way toward higher ground. The forest was full of windfalls and hemlocks with snapped off tops. All the leaves were off the devil's club and berry brush, easing travel. Strips of spider webs streamed from their bare branches. The webs sparkled as they moved in a slight breeze.

The slow passage required by the hunt gave me time to see the woods. Colors, textures and the shapes of things became more important. I noticed subtle smells----the decay of mud or devil's club's edgy incense. Without the distraction of conversation, small noises floated large. A startled grouse filled the forest with the sound of beating wings. I followed a mink's progress through thick growth by the rustle of the grass it disturbed by its passage.

After crossing over the mink trail I came to a place were the forest opened into classic old growth and rose in a steep grade. Deer trails ran across the grade, each showing fresh tracks. While facing away from the hill I saw Stephens Passage over the tops of hemlock and spruce trees. Someone fired a rifle. Another shot sounded seconds later. On the chance that my partner had gotten his deer, I worked toward the sound. He would need help packing it out.

Finding a more open trail to the beach I moved downhill, looking for my friend or a deer. I didn't find either. The Toad was in danger of being beached by the ebbing tide. I pushed it into the water and then built a fire. A dozen gulls screamed at me and each other as the tide exposed their afternoon meal. The whole beach was in shadow except for one glacial erratic that mimicked the work of Henry Moore. The sun shone on this rock long enough to light up its hoar frost coat. Then it passed on, not to touch the beach with its rays until the next day.

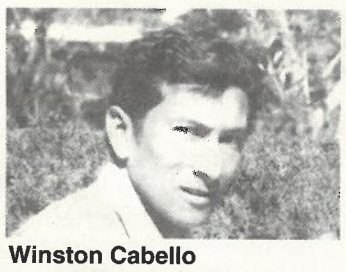
My friend returned carrying a baseball he had found. We brought this trophy home in the Toad. The sun dropped behind Douglas Island as we reentered Gastineau Channel. In 20 minutes we returned to the boat harbor where I watched office lights in the courthouse being turned off by folks who couldn't steal away this fine slice of a November week.

1. Ed. Footnote: Juneau lingo for State Office Building.

'Crime against humanity' verdict awarded

On October 15, a federal jury in Florida issued the first trial verdict for a crime against humanity, awarding $4 million to the victim's family. The verdict in *Cabello v. Fernandez-Larios* was brought under the Alien Tort Claims Act (ATCA).

The jury in *Cabello* found the defendant guilty on all 4 alleged claims. Armando Fernandez-Larios had been a Chilean military officer who had been a member of the so-called "Caravan of Death." The death squad used a helicopter to fly 7 Chilean officers to 5 cities in the immediate aftermath of the 1973 coup.



Winston Cabello

Winston Cabello had been appointed by Chilean President Salvatore Allende to act as the Director of the Regional Planning Office in northern Chile. Cabello's economic policy was a primary target of the conservatives, including General Pinochet, who overthrew the elected government in a bloody military coup supported by the United States. Cabello was among 13 political prisoners in Copiapo, Chile who were executed at Pinochet's orders.

On October 17, 1973, the defendant Fernandez-Larios and others drove the prisoners 10 minutes outside of Copiapo at 1:00 a.m. where they shot and knifed the 13 prisoners to death. The government concealed their mass grave until 1990. The Chilean military government granted amnesty for criminal acts committed by the government between September 11, 1973 and March 10, 1978. In 1990, the Chilean Supreme Court extended that decree of amnesty to human rights violations committed by the military during that time.

Fernandez-Larios came to the U.S. in February 1987 through an agreement with the U.S. Government. He provided information regarding his involvement in the 1976 car bombing in Washington D.C that killed the Allende-appointed Chilean ambassador to the U.S. and his American assistant. In exchange, Fernandez-Larios served five months in jail and entered into the witness protection program. Upon his release from the witness protection program, Cabello's family located him and sued him under ATCA.

This ATCA case was the only possible remedy for the Cabello family. American laws do not permit criminal prosecution for murders committed abroad--nor for torture committed abroad before 1994.

The ATCA was passed in 1789 to compensate American ship owners for the British seizure of ships. It provides original jurisdiction in federal courts for a violation of international law (established through either treaty or customary international law) by an alien that occurs outside of the United States. The parties do not have to be Americans.

Because the ATCA is not a waiver of sovereign immunity, it does not allow for suits against the U.S. Also, since it does not eliminate the deferral of political questions to the executive branch, any ATCA claim against a current foreign government official can be dismissed on political grounds.

Since the landmark 1979 *Filartiga* case, international human rights violations have been actionable under the ATCA. In that case, Dr. Filartiga's son was kidnapped, tortured and killed at the direction of Pena, the Head of Police in Paraguay. After Pena moved to the U.S. and settled in Brooklyn, he was sued under ATCA. The Court of Appeals for the 2nd Circuit found that torture by a state official violated "the norms of international law and hence the law of nations," providing subject matter jurisdiction under ATCA.

Recently, Federal Courts have applied ATCA claims to include suits against non-State actors, such as private militias and transnational corporations. Personal jurisdiction can present a major barrier for plaintiffs. The defendant must be present in the U.S. For defendant corporations, that means that under *International Shoe* they must have sufficient minimum contacts in the U.S.

The ATCA has proven to be an effective tool to end impunity for those individuals and other entities that resort to torture and murder to achieve their political and economic ends. The United States should not be a refuge for those who have committed the gravest of human rights abuses and thereby violated international law.

But now the Department of Justice under Attorney General John Ashcroft is trying to remove businesses and human rights violations from ATCA jurisdiction. For example, on May 8th the Department of Justice filed an amicus brief on behalf of Unocal, a major oil company being sued for human rights abuses in Nigeria under ATCA. The DOJ brief argued that transnational corporations are immune and that human rights violations do not violate international law.

The adoption of Ashcroft's position would destroy the ability of those directly harmed by human rights abusers to get justice in U.S. courts. "If ever there was a case to show the value of the ATCA, this is it," said Jose Miguel Vivanco, executive director of the Americas Division of Human Rights Watch.

Submitted by the International Law Section of the Alaska Bar Association

NOTICES

Effective November 1, 2003 the following Fee Changes became effective in the U.S. District Court for the District of Alaska:

Description	New Fee
Tape Duplication	$26
Search of Records	$26
Certification	$9
Exemplifications	$18
Return of Check [NSF]	$45
Filing or Indexing of Miscellaneous Papers	$39
Record Retrieval	$45

My 23 minutes of fame

☐ Drew Peterson

I have been getting some interesting comments recently, concerning my 23 minutes of fame as the mediator in the new film about mediation created for the Alaska Court System by the UAA Justice Center: *Two Homes*. The film has been making the bar association rounds, and I heard about it especially after a recent showing at the monthly lunch of the Family Law Section. Since I seem unable to generate any new controversies lately, some general thoughts on that subject might do the trick.

ON FILMAKING

The process of making the film was a fascinating one to me. There was a substantial amount of film craft that went into the making of the short section with which I was involved (actually way less than 23 minutes of the film). I listened to lengthy and impassioned conversations between the Director (UAA's Antonia Moras), the Cameraman and assistants about the appropriate camera angle, and especially about the lighting and camera angles and the relationship between the two. Retakes were made frequently, not because the actors blew their lines, but because shadows fell where they did not belong, and that simply would not do.

I was also particularly struck by the craft of the two actors playing the divorcing husband and wife. I gathered that they barely knew each other in real life, but they kept their conflict alive between takes in a hilarious set of extemporaneous marital spats, all the while recognizing in their roles that there had been and still was true affection between these two people who not only had children together but had once been in love themselves. Both actors had a diva-like attitude, not in being obnoxious, but in being very much aware of their talent for make believe, and the magic they could create thereby. They were in awe of it themselves, and expected others to feel the same.

ON THE SUSPENSION OF DISBELIEF

In discussing the film with some of my family law colleagues, after the showing at the Section luncheon, I was expecting a critical discussion of the family law issues involved, and the message delivered by the film. What I received mostly instead was a discussion of the characters, their motivation, and anomalies in the plot. Things that the parents did around and involving their children were especially commented upon. I got the sense that the commentators believed they were watching a real family rather than actors. That seemed to me to be a real compliment to the actors as well to the Producers and Directors of the film.

The family lawyers were particularly sensitive to the points of view of the children, which I also found very interesting though not surprising. That has been my own experience with good family lawyers, whom the public unfortunately views primarily as sharks trying to rip off families and profit from their conflicts and pain.

ON DISCUSSIONS OF DOMESTIC VIOLENCE

One substantial omission from the plot, which I myself noted from my participation in the project, was its omission of warnings about the use of mediation in cases involving domestic violence. While noted briefly, concerns about domestic violence were certainly not a major theme of the film.

In discussing the matter with colleagues, I was expecting more criticism on that subject than I actually received. The omission was noted, but the family attorneys I talked to seemed to understand the point which the Director made with me. Her view was that domestic violence was not the theme of the film, and would get in the way of the message that the film was trying to deliver, namely that mediation was an alternative method of dispute resolution for parties to consider.

I remain struck that the relationship between mediation and domestic violence is such a schizophrenic topic. Three columns ago I got all sorts of grief for advocating mediation in serious domestic violence cases when I did not. What I did was to write a little article describing the results from a study on family mediation in another state that showed that mediation provided substantial advantages for women and children, with no reference to domestic violence. Then in my last column I tried to keep the controversy alive with my own personal views on the subject, and no one seemed to care. (At least there has been no response so far.)

To me, domestic violence is a topic separate onto itself, which anyone involved with families must be constantly aware of, and sensitive to. I only wish that the bar itself (to say nothing of the bench) was as conscious of and well trained in the subject as are most of the mediators I know. The danger is not just in mediators being uneducated in the cycles of abuse and typical patterns of abusive relationships; dangers abound for any professionals dealing with families who have not been adequately trained in this area.

ON THE APPROPRIATENESS OF MEDIATION AS AN ALTERNATIVE

A young family attorney I know was at a recent ADR Section meeting where experienced family mediators were discussing the techniques of mediating cases involving high conflict couples. While the young attorney was supportive of litigation alternatives, she could finally restrain herself no longer during the discussion. She interrupted to ask if it wouldn't be better to simply let these people let their attorneys do the negotiating, to avoid all the pain, conflict and stress which we were describing them as going through in the mediation process.

I have heard similar concerns and reactions from lawyer colleagues to the showing of the Two Homes film. Their experience has been, they tell me, that parties in the sorts of conflict shown in the film would rather let their attorneys do the negotiating. Why go through all that pain and agony themselves, without an advocate, and especially where they might lose out in the process?

It is a fair question, and unfortunately one that is difficult to answer without actually experiencing the difference between the two processes. I can only say that my own experience and the experience of thousands of other mediators, family attorneys, and family law clients is that parties feel more ownership of agreements made, more satisfied with those agreements in the long term, and more positive about the entire process when they are themselves involved intimately in the negotiating process. And this has been demonstrated not only by testimony of those involved, but substantial and repeated empirical evidence.

I don't know whether my 23 minutes of fame in the Two Homes film will further promote and encourage use of the family mediation process, but I hope that it does in the actual proposals he was making in the short session. At the time, I had just read an article in one of the mediation publications about the dangers of such cases to the abused spouse, as well as to the mediator, and the "correct" way to terminate such a session. I followed the directions exactly, asking to caucus with the parties, and meeting first with the wife. I told her of my diagnosis, and advised her that I would give her at least a ten minute head start to get to a safe place away from her abuser. I then met with the abuser, and told him as well that I was terminating the mediation process.

I felt pretty proud of myself, for following the correct protocol, dealing with an area in which mediation has been controversial, recognizing the problem, and getting the victim of the abuse to safety. Upon subsequently speaking with my receptionist, however, I discovered that the wife whom I thought I was "protecting", had gone to the local bar next door, where she and her husband had continued the negotiations without me. I have always wondered whether I did that abused woman more harm than good, and have felt in my heart that although my motives were pure, that I actually may have placed her into a more dangerous position than she was in already.

Having been criticized in the last issue of the Bar Rag for allegedly advocating the use of mediation in serious domestic violence cases, which I did not, I thought I would see what further controversy I could stir up by actually setting forth my thoughts on the subject.

Domestic violence, and how to, or whether to ever deal with it in mediation is a topic that will not and should not go away. However, as a feminist friend put it to me recently, the bus has already left the station: mediation is being used more and more in family law cases, the majority of which cases do involve domestic violence to one extent or another.

There are two important admonitions which seem particularly pertinent to the subject, and which frame my own consideration of the issues involved. The first is a reminder to all of the helping professions to "First, do no harm!" The second admonition is more particular to mediation and the collaborative negotiation process, and asks us to always remind ourselves to consider just "What are the alternatives?"

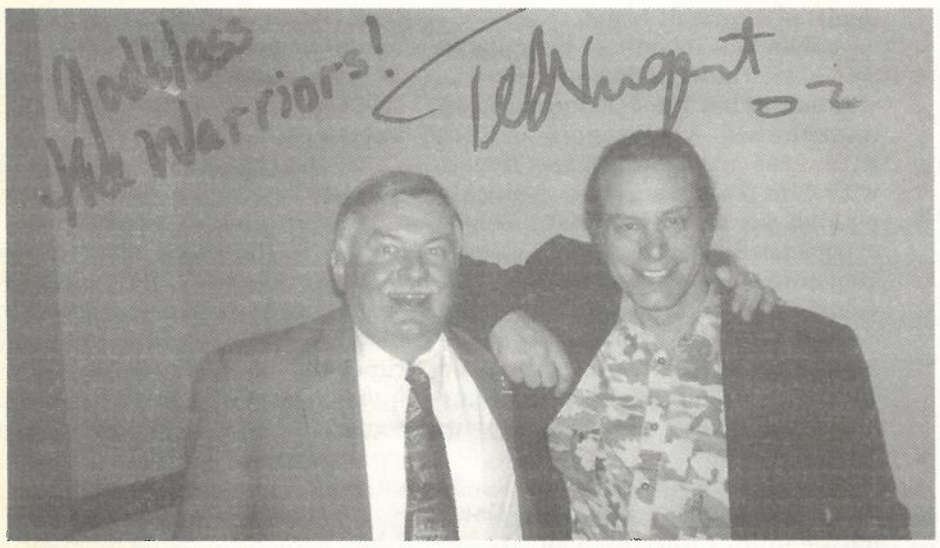
FIRST, DO NO HARM

This simple admonition, while easy to understand and agree with, is much harder to apply in daily practice. The reason I feel so uncomfortable with the memory of the mediation I terminated, as set forth above, is that I feel that I may well have placed the abused spouse into an even more dangerous situation than she was already in by terminating the mediation process. I have discussed this scenario with domestic violence counselors I have met who have counseled against any use of mediation in domestic violence cases, and their answer is that I did the right thing, and that it is not my responsibility for what happens after I have terminated the mediation process in the appropriate way. I do not agree. Once inviting that women into my office to attempt to help her with her conflict, I think I had more duty to her than to simply set her out on the street when I discovered that she did not meet someone's criteria for an appropriate case. For all I know, my recognition of the abusive nature of the relationship may have increased the danger level at what the experts agree is the most dangerous time in any violent relationship: the time of physical separation.

Part of the problem with first doing no harm, of course, is that it is so hard to tell. Some of the absolute worst domestic violence cases are the ones that are the least expected, involving apparently sophisticated and worldly clients who are well educated and often wealthy. The more total the control of the abuser, the better

Continued on page 17

Anchorage Inn of Court Update



Wayne A. Ross and Ted Nugent. Wayne moderated ("moderate" is not often used in reference to WAR) the family law forum for the Inn of Court. Ted Nugent failed to show, apparently stuck at home due to a fever caused by a cat scratch.

The Anchorage Inn of Court met on October 13, 2003 at the Hilton Hotel. The Inn presentation addressed family law issues, and the Inn members and guests were addressed by a panel of speakers on various topics. Wayne Anthony Ross moderated the event and shared his insight, and Maryann Folely addressed "client control" issues in family law cases. Kenneth Kirk addressed asset valuation issues, and Joe Palmier addressed practice ethics, professionalism and the evolution of family law practice in Alaska. Kneeland Taylor addressed tribal court issues involving child custody, and Steve Van Goor discussed ethics issues in family law practice.

After dinner, Judge Sharon Gleason addressed the Inn and discussed court administrative issues involving domestic relations cases and judicial views of common problems facing family law practitioners.

The next meeting of the Anchorage Inn of Court is set for Dec. 8, at the Hilton Hotel, focusing on legislature perceptions from Anchorage attorney lawmakers.

— Thomas V. Van Flein

My 23 minutes of fame

Continued from page 16

the secret is kept hidden, often with the complete and utter cooperation of the victim. The most sophisticated of evaluation tools will often not catch such cases. This is admitted and even described and emphasized by the domestic violence counselors who deal with such cases on a daily basis.

That is why I believe that proper training of the mediator in the dynamics of domestic violence is the essential first part of the solution to the problem. I agree that there is a huge potential for harm to individuals involved in mediation in domestic violence cases where the mediator is not trained in recognizing the signs. Indeed, I believe that the genesis of the controversy surrounding mediation and domestic violence came from some of the early mediation programs, especially in California, where parties were mandated to participate in mediation with no domestic violence screening and in front of mediators with no training in domestic violence.

Once domestic violence issues have been recognized, however, the question then becomes how proceed with the case, if at all. As family mediation practice has become more widespread and established, over the past thirty years or so, a number of different protocols have been established. Many of them have been established in cooperative efforts between mediation and domestic violence agencies and organizations. The first and essential premise of such protocols is that violence itself is never a negotiable issue. Violence is a crime and needs to be recognized and treated as such. But domestic violence mediation protocols further recognize that parties to abusive relationships often have legitimate issues to negotiate about. The protocols are all about allowing them to do so in a safe environment. In extreme cases, that may mean a form of shuttle negotiation where the parties never see each other, or perhaps are never even in the same location at the same time.

SECONDLY, WHAT IS THE ALTERNATIVE?

The second troublesome admonition for mediators considering domestic violence cases is to consider the alternatives for the parties, especially for the abused party. To some extent it would be easy, if simplistic, to simply refuse to handle any cases involving domestic violence issues, at least if they are serious and recent issues. Indeed, that is what many critics of mediation advocate. But is that really helping the victims, or placing them in an even more vulnerable position?

In Alaska, the primary alternative to mediation is for the parties to prepare their own dissolution papers without the benefit of a third party. In such cases the gun may literally be at the kitchen table while the "agreements" are being reached. Are we really doing victims of domestic violence a favor by refusing to handle their cases, even when the violence issues are recognized and addressed? I personally do not think so.

Studies done by some domestic violence programs have demonstrated that domestic violence victims receive the best outcomes when they are represented by aggressive attorneys. I can understand why that would be true, and even believe it to be very appropriate in some cases, when possible. But how many victims of domestic violence can afford aggressive attorneys? Part of the dynamics of domestic violence is that the abusers often control all aspects of their victims' lives, including finances. Even after beginning to break the cycles of violence, many victims find themselves very hard pressed financially. That is one of the very reasons for the shelter system. Other studies have demonstrated the average cost of aggressive attorneys in divorce cases to exceed $15,000 per case. Perhaps as a result, many of the so-called aggressive attorneys are now referring their clients to family mediation.

The other alternative to mediation to consider, of course, is the court system itself. At the risk of offending some, I would assert that the average family mediator is better trained in the dynamics of domestic violence than is the average judge. Certainly the court systems of this country have not done a stellar job over the years in resolving the problems associated with domestic violence.

But really, that is an unfair comparison for the court system. The big difference is the difference in the role of a judge as opposed to the role of a mediator. What really bugs me about some of the mediation critics in the domestic violence arena and their preference for the court system for resolving such issues is that it is inconsistent with the message they are preaching to the domestic violence victims. Domestic violence advocacy is all about self determination, and about helping victims of domestic abuse to retake responsibility for their own lives. To help them break the cycles of dependency and violence which link them to their abusers. But rather than having such victims empower themselves by taking responsibility for resolving their own legal disputes, which is what mediation is all about, these mediation critics encourage them instead to have such disputes resolved by strangers: by judges in a traditionally very patriarchal system.

THE BOTTOM LINE IS THAT IT IS CRITICAL THAT FAMILY MEDIATORS BE VERY WELL TRAINED IN ALL ASPECTS OF DOMESTIC VIOLENCE . . .

I understand that such victims have been downtrodden and controlled for years, and that they may not yet be able to negotiate fully and fairly. In some cases negotiation may not be safely possible, and the court system is the only alternative remaining. But I am offended when I hear it said that such victims should not even be given the option, and that mediation is inherently biased against them. That has not been my experience with mediation. My experience with mediation is that it can be successful in many such cases, as long as the domestic violence aspects of the case are acknowledged and recognized as such, and protocols utilized to protect the integrity of the process and the safety of the participants.

A FINAL DIRTY LITTLE SECRET ABOUT DOMESTIC VIOLENCE

One little secret about domestic violence remains to be revealed, which in my experience has been glossed over or ignored by almost everyone in the debate on domestic violence and mediation. Domestic violence is defined by the experts as virtually any serious assertion of power by one family member against another along any of three continuums of abuse: sexual abuse, physical abuse, or psychological abuse. As such, domestic violence exists in almost every family law case. Actually the studies show the statistics to be about 95% of such cases as involving domestic violence. Thus to say that mediation should never occur in domestic cases is to say that family mediation should never occur at all. I am sure that some mediation critics would agree.

Most people would not agree, however, including many in the domestic violence advocacy community who have discovered that mediation works well in many of their cases. This is why I talk about the inappropriate use of mediation in some of the most serious domestic violence cases rather than in all domestic violence cases, as some do. There is obviously a huge difference between a case where the parties shoved each other once, a few years ago, and a case where someone has held a loaded gun to the other's forehead, or worse. To treat all such cases in the same manner would be absurd, in my opinion, although that is advocated by some.

The bottom line is that it is critical that family mediators be very well trained in all aspects of domestic violence and the cycles of abuse, in order for them to recognize the dynamics of such cases, even where very carefully hidden. Once such issues are recognized, the mediators and the parties together, if safely possible, should craft a process that allows them to continue a collaborative negotiation in an atmosphere of safety and mutual respect. If not possible, or ambiguous, the mediator should terminate the process, or proceed using special safety protocols, keeping always in mind the two admonitions to: 1) first do no harm, and 2) consider the alternative to the parties, especially the victim of abuse.

Rites of passage

☐ William Satterberg

A friend of mine recently was advised by their physician to have a colonoscopy, as part of the ritual of turning 50 years old. So much for rituals. More like a ritualistic practice. Prior to discussing the procedure with my friend, I could not even pronounce the word, let alone differentiate between a colonoscopy and a sigmoidoscopy. To me, both words seem to mean the same in the end.

As suggested, my friend wisely submitted to the procedure. They soon learned that a large, cancerous tumor had developed in their colon. Fortunately, the tumor was removed prior to extending into the main bowel and causing further, very serious complications. According to the surgeon, my friend was quite "fortuitous" in having caught the tumor in time. It was a slow-growing tumor, which apparently had been developing for approximately one and one-half years, but was ready to invade the main section of the large bowel area, where it would have spread rapidly. Colon cancer, known as the "silent killer," had almost claimed another victim.

Other friends have not been so lucky. Several years ago, another very good friend of mine and accomplished Fairbanks trial attorney, Charlie Silvey, succumbed to colon cancer at a young age. I still remember Charlie tearfully telling those who had shown up at an anniversary party for him and his wife that he truly appreciated their friendship. It was a depressing event. We all subjectively knew that Charlie was saying his good-byes as he bravely wished us all the best. We lost a good friend shortly afterwards. A few years later, another friend and a client was claimed by the same disease at a young age.

Despite these tragic losses, I still did not fully appreciate the incipient - (developing) threat of colon cancer until my close friend had their own unpredicted bout with the large, cancerous polyp. After my friend's surgery was successful, they soon insisted that I, too, submit to the gross indignity of a rectal examination. After all, I was told, "you, too, likely have polyps." Until then, I thought that polyps were only something that were formed in people's noses, and caused obnoxious roommates to snore.

It was not the first time that the concept of a rectal examination had been probed. My personal physician had been suggesting for over two years that I have the rueful rectal reconnoiter. I did my best to ignore his entreaties about my entrails. I figured that his regular attempts to confirm or deny prostrate cancer were enough of such indignity, and I consciously resisted any efforts of taking our relationship to any greater depths. Everyone seemed to be lining up behind me. Even my wife insisted that I have the humiliating examination.

"After all, Bill," she stated. "What have you got to lose?" she asked.

Eventually, reason and common sense unfortunately won out. I reluctantly scheduled myself for an examination. Although some alleged friends had suggested to me that I have the "flexible sig", which is a probe approximately one and one-half feet long which simply takes a look at the discharge end of the alimentary canal, my kindly physician told me that it would be just as wise to "go all the way with a full bore colonoscopy."

I COULD NOT EVEN PRONOUNCE THE WORD, LET ALONE DIFFERENTIATE BETWEEN A COLONOSCOPY AND A SIGMOIDOSCOPY. TO ME, BOTH WORDS SEEM TO MEAN THE SAME IN THE END.

The terms "all the way" and "full bore" struck immediate terror into my soul. Nevertheless, my doctor indicated that it was much wiser to have the full examination. Besides, I would be given a "memory drug" at the time. I was assured that I would have little, if any, recollection of the event. If so, I asked, "why do they call it a 'memory drug'?" In reply I was told that, the "flexible sig" ordinarily was given without anesthesia and actually was considered to be more painful by those who had to endure the process. Although the colonoscopy actually went much deeper, the memory drug removed any memories of the procedure. The "memory drug" was obviously another oxymoron - some sick doctor's idea of humor. Finally, although price was a factor, I checked out the competitive values to both, consulted with my insurance company, and ironically elected to take the more expensive colonoscopy. This decision added a whole new meaning to the concept of being hosed. I made a mental note of that. Lawyers no longer had a lock on the concept.

I scheduled the appointment. This short phone call took me approximately three months to place. After all, some phone calls are difficult to make at times, especially when one has an aversion to the instruments. To my surprise, the local internist was more than delighted to arrange an early appointment for me. I suspected my wife's input may have had something to do with the prompt response.

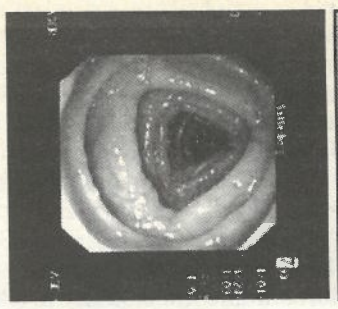
The day that I went to my internist's office for the intake visit, I thoughtfully showered, shaved, and arrived as late as possible, hoping that my appointment would be canceled. I was unlucky. The internist was also running late, apparently alerted in advance about my nefarious scheme. Apparently, everyone had the same thought in mind about late arrivals.

Following the preliminary obligatory questions regarding insurance and charge cards, I was taken to a room where I watched an X-rated movie telling me just how painless and enjoyable a colonoscopy actually was. I tried to remember that the move featured trained professional actors, and that I should not try the depicted stunts at home.

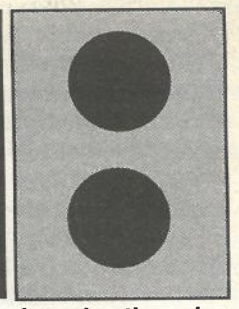
I then was examined by a physician's assistant. His first question was whether or not I had experienced an unexplained weight gain or loss within the last month. I was honest with him. To his surprise, I quickly pointed out that I had just recently experienced a weight gain of well over 10 pounds in less than two days. Obviously alarmed, he asked how the event occurred. I explained that the scale at his office was reading a good 10 pounds higher than the scale at my house, and that I could not explain the difference.

The doctor's scale was obviously defective, just like the state's Datamaster units. We argued about it a bit. In the end, I attributed the difference to my inability to have something to hang from, such as a convenient shower curtain rod. Curtain rods have always proven handy at home when I weigh myself. In addition, the physician's assistant would not let me step on the scale gently, as I am also used to doing at home. I also had to be weighed wearing clothing. Even that could have helped. Had I been allowed to be clad in T-shirt and shorts, I reasoned that I could have easily shed over 10 pounds of body weight. However, I remembered that this doctor's office was the last place that anyone wanted to parade around in while wearing shorts. Carhartt coveralls were a far better choice--weight gain or not.

The physician's assistant next commented that my blood pressure was somewhat high. I pointed out that, given the circumstances, it seemed only natural that a person's blood pressure reading would spike when talking about such personal details as a six-foot-long telescoping, articulated camera being inserted into areas which had never seen the light of day. He compassionately assured me that he had also endured the same examination. In response, I asked him if he would be willing to substitute as a double for me. I promised I would not tell anyone, and would even maybe pay him. Again, my tearful pleading was unpersuasive. The test would go on as scheduled, once I notified the doctor of a convenient time.



A heathy colon scan.



An unheathy colon.

My first appointment completed, I left the office. Within just three weeks, the office called my wife, Brenda, to remind her that I failed to schedule my actual examination. I pointed out to Brenda that it was simply a minor oversight on my part. It certainly was not intentional. The fact that I failed to schedule the appointment on at least four other occasions, I admit, gave rise to a certain air of suspicion. Eventually, based upon continuous gentle and not so gentle prodding from Brenda and others at my office, I scheduled my appointment. As a precaution, I scheduled it far enough off into the future to hope that a major calamity such as a world war, earthquake or hurricane might strike Fairbanks and thereby necessitate an unfortunate cancellation. Again, I was not to be so lucky.

For the next several weeks, I conducted an informal survey of individuals who had endured the examination. Results ran the gamut from "not so bad" to "totally terrible", and "you have to drink real icky stuff." Almost everyone was unanimous in their one piece of sage advice: "Take the drugs, Bill!"

I deliberately made special inquiry of court system personnel. I learned that more than one judge had submitted to the examination process. Moreover, some judges even were repeat customers. In retrospect, this fact helped to explain their sometimes drab outlook on life. Others I questioned stated that they chose to undergo the process only once. Yet, even others avoided the topic in its entirety.

As the dreaded day approached, I had second thoughts for the tenth time. There was the nagging fear that the doctor would find something which would necessitate an even greater, more personal examination. I have long been a believer in the concept of "what I don't know won't hurt me." I had always reasoned that physical check-ups are simply inviting disaster. It is, in that regard, a neurosis which I prefer to live without, being a dedicated hypochondriac.

I have another phobia. I am a control freak. Most attorneys are. One thing that has always bothered me has been the concept of inadvertently losing consciousness. Obviously, I have chosen to lose consciousness many times on a voluntary basis. In fact, I do so on a daily basis when it is time to go to bed. I have also done so at parties, and once in a fight. Yet, even in the fight, I voluntarily let the other guy hit me several times. At least, that is how I rationalized the event as I watched the stars go by.

Being injected with drugs, on the other hand, is an entirely different matter. It is not that I have a phobia for needles. In fact, I used to be an IV technician in an ambulance. However, it is when the needle is stuck into myself that I begin to have second thoughts--just before my head hits the floor. This "loss of consciousness" thing clearly was going to be an issue.

One of my biggest concerns was that I would not get to eat for a full 24-hour period. The manual of instructions given to me to prepare for examination clearly ordered that I was to go on a 24-hour fast, consuming only clear liquids and Jell-O. To add insult to impending injury, the evening before the test, I was ordered to drink a full half gallon of a diabolic concoction known as "Go Litely". "Go Litely" was some pharmacist's sick idea of humor. Another medical joke. "Go Litely," as it turned out, was a supercharged form of grandma's unflavored Metamucil laxative on steroids. I had been told about the brew from numerous sources, including even my own kindly physician. All well-wishers warned me that the "Go Litely" phase of the examination process was, by far, the most difficult and demanding.

The day before my scheduled examination, I awoke. This was clearly

Continued on page 19

Rites

Continued from page 18

an involuntary act on my part. I next had a last breakfast of eggs, bacon, and toast. I timed the breakfast to be exactly 24 and one-half hours before the scheduled examination, thereby meeting the actual "24-hour" rule. I viewed the meager meal as a last supper of sorts. Following breakfast, it was to be clear liquids and Jell-O for the balance of the day. I was even deprived of my ability to drink my beloved coffee.

Because the colonoscopy would evaluate numerous attributes of my lower working unit, I was also precluded from drinking anything which was either red or orange in color. I therefore stuck to a rather gruesome color of florescent green in almost everything I consumed that day. I had green Jell-O for lunch, green Jell-O for a snack, and green Jell-O for dinner.

Fortunately, my compassionate doctor friend did me a small favor. Breaking sacred medical science, he disclosed one of the sneaky tricks of making "Go Litely" more tolerable. The solution was to mix a bag of Crystal Light Lemonade into the ghastly goo. As such, when it came time to quaff the half gallon of "Go Litely" that evening, I spiced up the potion as instructed. I was also somewhat inclined to add a cup or two of vodka to the mix, as well, in order to make the entire process even more palatable. My wife quickly vetoed the idea.

To my surprise, I actually found the "Go Litely" to be rather enjoyable when spiced up by Crystal Light. It was sort of like drinking a thick, lemony gruel which, if properly chilled, turned out to be not only tolerable, but actually rather tasty. To this very day, nobody believes my assessment, but I will stick by my words. Just try a gallon and see!

I had also been warned about the intended effects of "Go Litely". I should not regard its potency lightly. The remainder of the evening should be spent in very close proximity to the family restroom. In hindsight, this was one time that I should have listened more closely to my doctor's advice.

For 30 minutes, nothing happened. I was just becoming proud of myself and my longstanding ability to consume anything, when the "Go Litely" decided to make its purpose acutely known. Although I tolerated the input of "Go Litely" well, the "Go Litely", in turn, did not tolerate me. Eventually, we rapidly parted company over the next several hours. A reputed devotee of colonic therapy, Princess Diana would have been proud of me.

I was finally able to retire that evening at approximately midnight, relatively confident that the "Go Litely" phase of my forthcoming experiment was hopefully gone. I awoke the next morning at 6:45 a.m. My wife insisted that it was now time to go to the outpatient clinic for the finale or, as some people prefer to call it, the End Game. Because anesthesia would be administered, I was told that I would not be able to drive to or from the facility. I had to have a designated driver, or the examination would be rescheduled. I took the threat of cancellation most seriously. Although I repeatedly offered to drive myself, Brenda was firm. The appointment would go on as scheduled. To reward Brenda's willingness, I thought about slipping her a quart or two of leftover "Go Litely," just for fun, but wisely decided otherwise. After all, Brenda is the family cook with untold opportunities for future retaliation.

As we left for the clinic, I contacted my office to determine the status of any potential hearings scheduled for that day. The office had already obtained coverage for one arraignment scheduled for the afternoon. As a precaution, I had also asked my office at the last minute to cancel an evidentiary hearing scheduled before Judge Funk later in the day. I figured Judge Funk would have no problem with the change. Instead, when I called to check in, I was shocked to learn that the court would not allow a unilateral cancellation of a month-long scheduled evidentiary hearing with numerous subpoenaed witnesses. I was told quite clearly that Judge Funk had ordered that I was to be in court that afternoon, either telephonically or in person. To my surprise, last minute cancellations were not the norm. It was then that I decided that I would forego the anesthesia and take the colonoscopy "like a man." My options were quite limited.

IN SHORT ORDER, I WAS ABLE TO DRESS AND LEAVE THE DOCTOR'S OFFICE...WE HAD CERTAINLY ENTERED A NEW AND MUCH DEEPER RELATIONSHIP. AFTER ALL, HE HAD GONE PLACES WHERE NO ONE HAD EVER VENTURED BEFORE.

When I arrived at the clinic, I courageously announced that I would not be taking any anesthesia. Gasps were heard throughout the premises. Numerous well wishers advised me that this was definitely not a wise course of action. Not only was the procedure most uncomfortable, but I would likely be begging for anesthesia before it was concluded.

Despite the warnings, I had no fear. My reputation in town is that I am rather large in that particular area of anatomy. As such, I saw no reason why I should not be able to tolerate the examination, if not actually welcome it. Eventually, I was able to convince the doctor not to give me anesthesia. Still, we compromised on just a "minor dose" of anesthesia to "cut the edge." We furthermore agreed that, if I found the procedure agonizing, I could scream at any time for additional drugs to be administered. The crisis over, I left for the examination room.

While awaiting the doctor's entry into the examination room, I toyed a bit with the colonoscopy unit. It was an extremely long, black flexible hose. It had a camera on one end and a television monitor on the other. For several minutes, I had great fun taking pictures of my wife in the room and swirling the camera around to get a different viewpoint of life. It was then that I realized that this unique camera had a different journey in mind. From that perspective, the tube no longer appeared to be a thin, flexible tube, but a device cleverly designed to inflict the most hideous forms of torture upon the hapless recipient. Moreover, I was not its first victim. This thought, alone, held certain distasteful implications. Finally, the fact that my examination was to be televised also caused anxiety. I wondered what would show up on the local news that evening.

My playing with the camera was soon interrupted by two nurses who entered the examination room. Giggling happily about various things that they had done the previous day, they expertly coached me on what positions to take, having no consideration whatsoever for my male modesty. Their introductions completed, as if on cue, my internist arrived. It was time to begin the examination. I felt like Gary Gilmore. "Let's do it." My wife said she would wait outside. The drama unfolded, as did my green gown.

Ironically, I did remember the examination. As promised, the nurse gave me only a very small mixture of drugs consisting of a Valium-like substance and a pain reliever. It was simply enough to lightly dull my senses. I remember joking with my doctor with respect to the quick journey that he took clear up into my small intestine, pointing out various landmarks along the way. In less than eight minutes, the entire experiment was over. To my relief, I was given a clean bill of health. I was considered normal, if one overlooked the psychological trauma. I had nothing to worry about. I was told to come back in no less than five years and no more than 10 years. (Then, again, maybe he said no less than 10 years. Or was it 20? Or 30? By then, I won't need a memory drug.)

In short order, I was able to dress and leave the doctor's office. I knowingly winked and remarked to him on my way out that we had certainly entered a new and much deeper relationship. After all, he had gone places where no one had ever ventured before. In response, he complimented me that it had been one of his easiest and fastest examinations, stating that he had lots of extra room for maneuvering. Only later did I appreciate the subtle implications of his professional opinion. As a memento of the historic visit, my doctor gave me an 8x10 glossy photograph of the incredible journey, complete with diagrams, and a dated, time-stamped legend. Little did I realize how important that photograph would be later that day, when I had to establish a viable alibi.

IN THE END, MY WORST FEARS OF COLON CANCER WERE NOT REALIZED . . . COLONOSCOPIES ARE ONE OF THOSE RITES OF PASSAGE WHICH WE MUST ENDURE, EVEN IF MOST OF US WOULD RATHER PUT THEM WELL BEHIND US.

Brenda drove me home. I stayed relatively inactive for about one hour. I then decided that, despite the instructions that I should not drive, I was good to go. I drove to work. Much to everyone's surprise, after being reminded several times, I was even able to button my shirt and zip up my fly, both of which have proven to be somewhat problematic in prior court hearings.

My first hearing was with Judge Savell. It consisted of simply a felony admit/deny hearing, which went relatively well. I was able to enter a one-sentence denial for my client without mistakes.

My second hearing before Judge Funk, however, was far more complex. Initially scheduled as an evidentiary hearing, my client and I had discussed the very real probabilities of an adverse decision. At the last minute, he elected to enter into a Rule 11 agreement with the State to resolve the case with a stipulated sentence. It was a good decision.

Prior to accepting my client's plea, Judge Funk lectured me that my office should not be unilaterally canceling court-ordered hearings in the future. Although, admittedly, I saw a certain merit in the judge's position regarding court system time management procedures being usurped by me, I also figured that my age and wisdom should be given at least some credit, especially recognizing that I had now entered my senior years, as evidenced by my newfound internist/doctor/friend.

Following my session with Judge Funk, my client's plea was entered. At one point, Judge Funk asked the obligatory question regarding whether or not my client was under alcohol or drugs, adding to my client that the inquiry is being made directly of him, and not of his attorney. I wisely chose to sit and continue to giggle. My client's plea accepted, my client next left the courtroom. I finally could talk "off the record."

When I explained to Judge Funk that the reason that I wanted to cancel the hearing was because of the colonoscopy which I had suffered earlier in the day, and that I had taken the examination without anesthesia in order to be relatively competent in his courtroom, Judge Funk immediately became most understanding. He graciously pointed out that, if he had known that a *full colonoscopy* had been involved, he would have been most willing to cancel the hearing. Something told me that the good jurist may have once endured his own experiences of a similar nature. Maybe it was the subtle, involuntary grimace that gave him away.

It was then that I proudly displayed my newest 8x10 colored glossy photograph, complete with a date stamp. My alibi was airtight. In response, Judge Funk's court clerk, Karen, was clearly less than amused. The following day, I was reminded that I should not be bringing my family photographs to the courtroom anymore. I accepted the warning in the spirit in which it was offered. "No sense having any more pictures showing up on Trooper's walls," I figured. Besides, I didn't want to get arrested twice in the same courtroom.

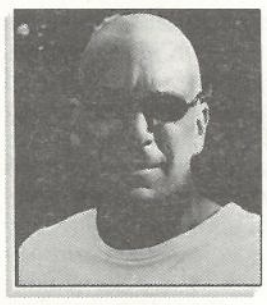
In the end, my worst fears of colon cancer were not realized. Setting aside the fact that I had to engage in conduct reminiscent from one of the more memorable scenes from the award winning movie "Dumb and Dumber", and that various strangers now have certain private insights into my life, the examination, itself, was well tolerated. Undoubtedly, there are other medical procedures which are likely more enjoyable, such as a first childbirth or battlefield limb amputations.

Still, colonoscopies are one of those rites of passage which we must endure, even if most of us would rather put them well behind us. On the side, a colonoscopy is one of those experiences that those of us who have reached the golden age of 50 can share in common, along with our complimentary AARP subscription, estrogen pills, and Viagra. Regardless of what our aversion may be to such examinations, we must also keep in mind that the alternatives are simply unacceptable, especially when colon cancer is so avoidable.

As such, the next time you see somebody who looks like they are over 50 years old, smile warmly at them and ask innocently, "Have you had *your* colonoscopy lately?"

Ambulances, bed bugs and punitive damages

☐ Rick Friedman



"Good counselors lack no clients."

—Shakespeare, William, Measure for Measure, Act I, Sc. 2.

"You will not get clients if you stay home six nights a week."

—Seligson, Harold P., Building a Practice (Practicing Law Institute, April 1960), p. 5

"The secret formula for getting clients is to remember that every client is a human being. Every friend, every acquaintance is a potential client. The more number of people you know the greater your chances of having a big clientele. You will not get clients merely by putting up your board and announcing proudly that you are a law graduate. Litigation is not hatched out in lawyers' offices but in the markets of the world. So go out to the factories, go out to the railway stations, go out to the hospitals parks, playgrounds, stadiums and all places ere men gather and forgather. The more people you know, the greater is the chance of one of them coming to you for legal help."

—Soonavala, R. K., Advocacy, Its Principles and Practice, (1953) p.4, as quoted in Harvey, The Advocate's Devil (London: Stevens & Sons, Ltd, 1958), p. 154

"Every successful P.I. lawyer chases ambulances."

—Unsuccessful Kenai P.I. lawyer Pete Ehrhardt

●

A surprising number of people contacted me about the questions I raised in the last column about ambulance chasing. Of particular interest is that a significant number of respondents were unaware of Rule of Professional Conduct 7.3 (a). So, as a public service, I will reprint it here:

> A lawyer shall not solicit by in-person or live telephone contact professional employment from a prospective client with whom the lawyer has no family or prior professional relationship when a significant motive for the lawyer's doing so is the lawyer's pecuniary gain.

While seemingly clear and straightforward, this rule can get a little blurry for those willing to ignore its spirit.

Would calling an acquaintance to express sympathy over the death of her husband violate this rule? She knows you're a lawyer. You're hoping she'll ask you to represent her. What if you tell her to let you know if you can "help in any way?" What about a flower arrangement with a note saying, "If there is anything I can do for you in this time of sadness, let me know"?

I will leave these types of fine points to someone more versed in the philosophy of legal ethics. What **is** clear is that you cannot show up at a hospital, accident scene, or home, and offer to represent someone with whom you have no prior professional relationship. You can't call them either. (Of course, you can call or show up if you are asking to represent them for free.)

Knowing where the minds of the uninitiated or unscrupulous are likely to run, the Bar has an additional rule, Rule 8.4 (a), which makes it misconduct to violate the rules through an act of another. In other words, you can't have your investigator visit the hospital, accident scene or home of someone with whom you have no prior relationship. The investigator can't call them either. Nor can your brother-in-law, or your wife's best friend. (For those unfamiliar with personal injury slang, these surrogates are called "cappers" or "runners.")

Those of you who have read this far may now file with the Bar for 5 CLE credits. In return, at the end of the year, you will receive a certificate from the Bar, together with a traveling coffee mug inscribed with a holographic likeness of one of our Supreme Court Justices.

We all know it is happening. By "we" I mean plaintiff lawyers—though I can't imagine that others in the profession are unaware of it. The consensus seems to be that some of the habitual violators of the rules have gotten bolder over the years. Here are some of the suggestions I received for curbing the practice:

1. Use something like the roadside sign trailers you see at Tesoro stations identifying for passers-by someone who has passed a bad check. This sign would be downtown—maybe in front of the courthouse. It would say: "Attorney _____ was discovered improperly soliciting cases in the PennAir crash in Bethel on 5/25." Or, the attorney's name and likeness, together with a warning, could be posted in hospital waiting areas and on the ceilings of ambulances. (Of course, some lawyers might welcome this form of free advertising in ambulances and hospitals.)

2. The Bar conducts audits of trust accounts. Why not random audits of court personal injury files? Clients could be called and asked how they came to retain their attorney. Why not *non*-random audits? We all know who the major violators are. Why not target them?

3. Former Judge Eric Sanders (do we still have to call him "Judge?") suggests Plaintiff lawyers should do a better job policing their own. Perhaps we (meaning AATL members) all sign on to the opposite of a "code of silence." We all commit to reporting to the Bar any incidents of improper soliciting we learn about, even if it means reporting a friend or associate.

4. Everyone agrees the penalties should be harsh. Several people suggested the minimum penalty should be disgorgement of all fees from improperly solicited cases, and suspension from practice for some period of time.

Personally, I like all four of the suggestions outlined above. But number 3 would be the quickest and easiest to implement. It is in the interest of all who follow the rules to sign on to such a pledge. I wonder what arguments would be advanced against it.

BEDBUGS, AND THE LYING LIARS WHO FOSTER THEM

As the child of a school librarian, I am quick to push reading material onto others. So far, I have resisted doing that in this column, but I can't restrain myself any longer.

Tired of being a limp-wristed, humorless, ineffectual liberal? Wonder why you always lose the arguments with your right-wing brother-in-law? In "*Lies, And the Lying Liars Who Tell Them*," Al Franken tells you why: The Right makes stuff up. Franken examines such claims as: Al Gore said he invented the internet; liberals are unpatriotic; Clinton gutted the military; or the mainstream media has a liberal bias—and many, many more. He traces these claims back to their sources and systematically proves them false. Often, he proves that the disseminators of these claims *know* they are false.

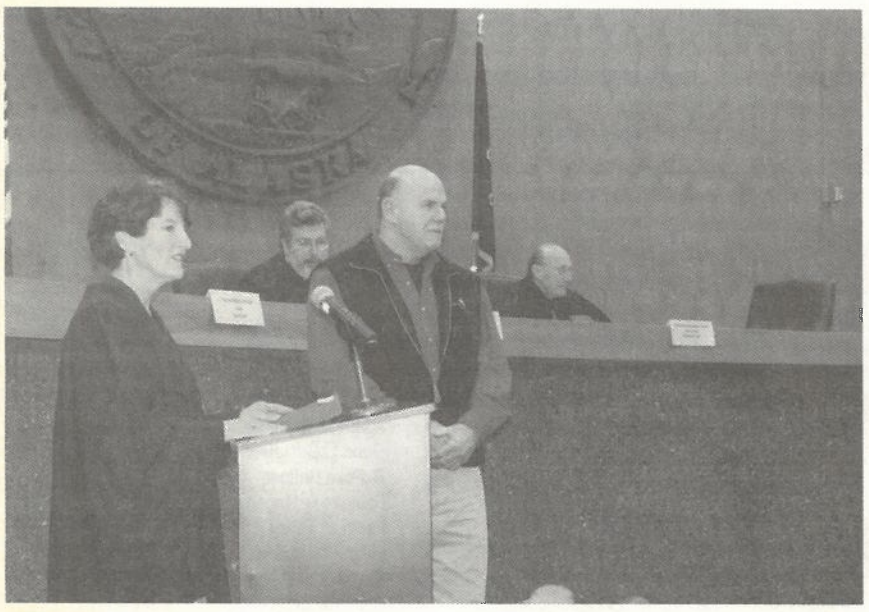
He does this all in a breezy, funny writing style. The book is truly entertaining and educational at the same time. As Franken (my new hero) says: "We have to fight back. But we can't fight like they do. The Right's entertainment value comes from their willingness to lie and distort. Ours will have to come from being funny and attractive."

To find out *why* the Right is so willing to lie and distort, read Lloyd DeMause, *The Emotional Life of Nations*. Actually, DeMause does not purport to address this question. He does note, however, that punitive child-rearing techniques give rise to punitive political beliefs and actions. A "psycho historian" (crazy historian?) who believes our cultural evolution is the result of our emotional evolution—rather than the other way around—DeMause predicted both the assassination attempt on Ronald Reagan, and the outbreak of the first Gulf War. He reveals the unconscious motivations that individually and collectively cause us to act in punitive, inhumane ways.

And what could be more inhumane than being subjected to a night in a bedbug-infested hotel? Such an ordeal is deserving of punitive damages of at least $186,000, don't you think? Don't take my word for it, just ask Judge Posner of the 7th Circuit.

As many of you know, Judge Posner is a major architect and intellectual engine of the conservative Law and Economics movement emanating from the University of Chicago Law School. A darling of the Right, he has a mind like an ice pick, and a heart to match. In an elegantly written and entertaining opinion, Posner explains why $5,000 in compensatory damages and $186,000 in punitive damages was justified for *each* plaintiff for enduring a night in a bedbug-infested hotel. *Mathias v. Accor Economy Lodging, Inc.*, --- F.3d ----, 2003 WL 22389863 (No. 03-1010, 03-1078, October 21, 2003, 7th Cir.) If only some of his economic sophistication could drift a little north and west . . .

Family Court celebrates first anniversary



Judge Elaine Andrews, the original judge for Family CARE Court when it was founded in 2002, presents a special award to Ed Pease of the UAA Auto & Diesel Technology Department during the graduation ceremony. The Department provides free auto mechanic services to participants in the Family CARE Court, enabling parents to keep their cars running and make the many appointments for themselves and their children that are necessary for successful completion of the program.

Graduates of the Family CARE Court join judicial officers, state officials, and members of the Family CARE Court team after the program's first graduation ceremony held September 23 in Anchorage. L-R: Colleen Ray; attorney; Marion Hallum, guardian ad litem; Sara Acharya, parents' attorney; David Bauer, assistant attorney general; Muriel Kronowitz, court coordinator; Master William Hitchcock; Judge Elaine Andrews; Daniel Desautel, graduate, with son Justin; Nerissa Spiros, graduate; Lt. Governor Loren Leman; Selma Bautista, graduate; Chief Justice Alexander Bryner; LaShonda Smith, graduate; Ronnie Stork, Family CARE Court support group; Judge Mark Rindner, Family CARE Court judge; and Lori Kennell, social worker.

Family C.A.R.E. Court launched

On September 14, 2002 the words, "We're on record" officially launched the Family C.A.R.E. court after more than two years of planning. On September 23, 2003 another milestone was marked with five "pioneers" graduating.

The graduation ceremony took place in the Supreme Court Courtroom and was attended by more than 100 people.

The Family CARE Court is part of a national sea change as systems involved with Child In Need of Aid cases (CINA) look for new directions and solutions.

The commitment to meet this challenge is underscored by its mission:

> *to combine intensive judicial supervision and monitoring with immediate and culturally appropriate treatment and the coordinated delivery of assessments and services that promote opportunities to prevent the break up of families.*

This court is about families and how innovation, dedication and determination of the women (primarily), the Court team and the larger community become stakeholders so our children have a real opportunity to have stable, meaningful lives.

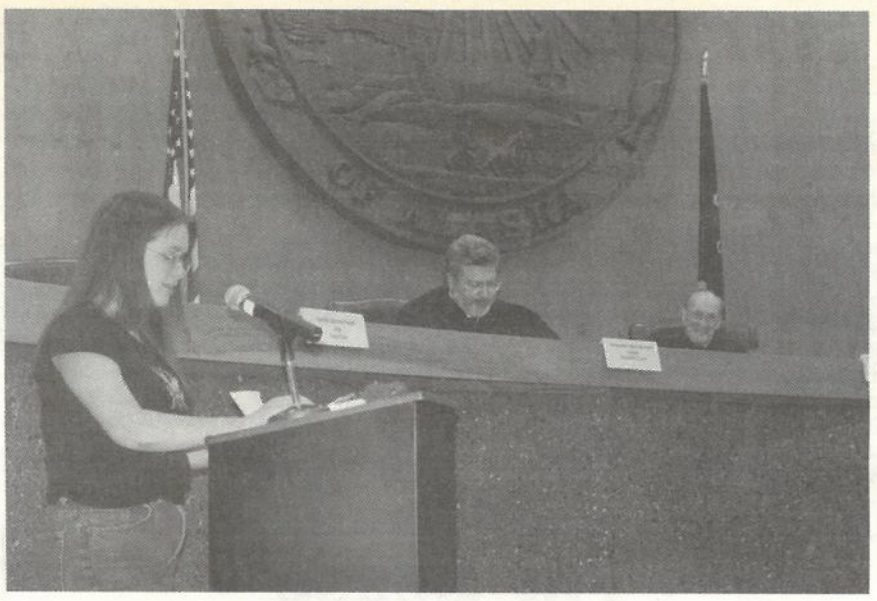
--Muriel Kronowitz

(See related notice, page 9)

Family CARE Court
Community Assisted Recovery Effort

Spirituality is our strength.
Reunification of our families is our goal.
Together we will succeed in society.
We believe there is always hope.
To do together what we cannot do alone.

-Written by participants in Family CARE Court



Graduate Nerissa Spiros speaks at the Family CARE Court graduation ceremony while Family CARE Court Judge Mark Rindner and Chief Justice Alexander Bryner listen from the bench. Spiros described her personal struggles with addiction and thanked Judge Rindner and the Family CARE Court team for helping her achieve sobriety and regain custody of her infant son.

Juneau Bar Minute

The Juneau Bar Association (JBA) met for a Friday luncheon at noon in the Gold Room at the Baranof Hotel on the 7th of November 2003. Several imminent community events were announced, there were no items of old or new business, and both chicken and pork chops were served.

Respectfully submitted,
Benjamin Brown, JBA Secretary

Voluntary Continuing Legal Education (VCLE) Rule

Third Reporting Period January 1, 2002 - December 31, 2002

Corrected List

Following is a corrected list of active Alaska Bar members who voluntarily complied with the Alaska Supreme Court recommended guidelines of 12 hours (including 1 of ethics) of approved continuing legal education in 2002.

We regret any omissions or errors. If your name has been omitted from this list, please contact the Bar office at 907-272-7469 or e-mail us at cle@alaskabar.org. We will publish a revised list as needed.

Eric A. Aarseth
Dennis R. Acker
Lauri J. Adams
Samuel D. Adams
Richard A. Agnew
Dorothea G. Aguero
Meredith Appel Ahearn
Rita T. Allee
David K. Allen
Lynn Allingham
Katherine R. Alteneder
Brad Ambarian
Signe P. Andersen
David B. Anderson
Erik B. Anderson
Glen C. Anderson
Leonard R. Anderson
Robert T. Anderson
Elaine M. Andrews
Mark Andrews
Beth M. Andrus
Jennifer B. App
Constance A. Aschenbrenner
John L. Aschenbrenner
Peter J. Aschenbrenner
Peter G. Ashman
E. John Athens, Jr.
Kathy L. Atkinson
Cathryn L. Aukongak
Laurie M. Ault-Sayan
Lanae R. Austin
Robert Auth
Adrienne P. Bachman
Allen M. Bailey
Dennis C. Bailey
Landa B. Baily
Ronald L. Baird
John T. Baker
Charles R. Baldwin
James L. Baldwin
Candice Marie Bales
Jane M. Banaszak
John Bandle
Theresa L. Bannister
Carole J. Barice
James N. Barkeley
Leroy J. Barker
Nora G Barlow
Mark J. Barnes
Michael A Barnhill
Sharon Barr
Elizabeth J. Barry
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VOLUNTARY CONTINUING LEGAL EDUCATION (VCLE) RULE

Third Reporting Period January 1, 2002 - December 31, 2002

Corrected List

Following is a corrected list of active Alaska Bar members who voluntarily complied with the Alaska Supreme Court recommended guidelines of 12 hours (including 1 of ethics) of approved continuing legal education in 2002.

We regret any omissions or errors. If your name has been omitted from this list, please contact the Bar office at 907-272-7469 or e-mail us at cle@alaskabar.org. We will publish a revised list as needed.

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G. Nanette Thompson
Michael A. Thompson
John B. Thorsness
Terry L. Thurbon
Richard S. Thwaites, Jr.
Craig J. Tillery
Cassandra J. Tilly
Heather J. Timmerman
James E. Torgerson
Mark R. Torgerson
Andrew W. Torrance
Frederick Torrisi
Breck C. Tostevin
Joan Travostino
Mary P. Treiber
Sara Trent
Irene S. Tresser
Howard S. Trickey
Frederick W. Triem
Jenny L. Trieu
Ruth D. Tronnes
Judd E. Tuberg
Julia S. Tucker
Charles E. Tulin
William F. Tull
Wm. Randolph Turnbow
Kurt C. Twitty
Richard N. Ullstrom
Alma M. Upicksoun
Susan L. Urig
James J. Ustasiewski
George E. Utermohle, III
John R. Vacek
Fred H. Valdez
Diane F. Vallentine
Thomas Van Flein
Stephen J. Van Goor
Robert W. Van Hook
Peter H. Van Tuyn
Charles H. VanGorder
Jeffrey H. Vance
Leon T Vance
Marjorie L. Vandor
Alexander K.M. Vasauskas
Jose Dino Vasquez
Robert L. Vasquez
Kenneth E. Vassar
Elizabeth Vazquez
Louis R. Veerman
Terry A. Venneberg
Maarten Vermaat
Jeremy T. Vermilyea
Venable Vermont, Jr.
Timothy C. Verrett
Herbert A. Viergutz
Virgil D. Vochoska
Gail T. Voigtlander
Richard E. Vollertsen
Frank J. Vondersaar
Corinne M. Vorenkamp
James P. Wagner
Jennifer Wagner
Robert H. Wagstaff
Brian J. Waid
Paula J. Walashek
Robert J. Walerius
Stacy L. Walker
William M. Walker
Herman G. Walker, Jr.
David R. Wallace
Stephen B. Wallace
Dayle L. Wallien
Jayne L. Wallingford
Diane Busch Walsh
Caroline P. Wanamaker
James N. Wanamaker
Heidi C. Wanner
Thomas M. Wardell
Vincent E. Watson
Daniel C. Wayne
Steven C. Weaver
Julie L. Webb
Linda A. Webb
Megan R. Webb
Daniel J. Weber
David R. Weber
James A. Webster
Jess G. Webster
Kathleen A. Weeks
Larry R. Weeks
Karen V. Weimer
R. Leonard Weiner
Ted Wellman
Jennifer K. Wells
Steven M. Wells
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John C. Wendlandt
James Wendt
Stephen R. West
Susan M. West
Randall W. Westbrook
Bruce B Weyhrauch
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Danna M. White
Erin E. White
Marshall T. White
Michael N. White
Stephen M. White
Susan G Wibker
Sandra J. Wicks
Paul S. Wilcox
Patricia C. Wilder
Marc G. Wilhelm
Daniel Wilkerson
Donna C. Willard
Andrew Williams
D. Kevin Williams
Roy V. Williams
Teresa E. Williams
J. Douglas Williams II
Julie Willoughby
Linda K. Wilson
Lisa M. F. Wilson
Charles A. Winegarden
Daniel E. Winfree
Linda M. Wingenbach
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Taylor Elizabeth Winston
Mark H. Wittow
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Tonja J. Woelber
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John W. Wolfe
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Thomas Burke Wonnell
Mark I. Wood
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Jonathan A. Woodman
Jennifer E. Woodruff
Fronda C. Woods
Glen E. Woodworth
Larry R. Woolford
Mark P. Worcester
Janel L. Wright
Glen E.M. Yaguchi
Georges H.G. Yates
Thomas J. Yerbich, LL.M.
David Young
Gregory L. Youngmun
A. Michael Zahare
Michael N. Zechman
Mary H Zemp
F. Lachicotte Zemp, Jr.
Larry C. Zervos
Gary A. Zipkin
Patricia Zobel
Ronald M. Zobel
Edie Zukauskas
David L. Zwink

BAR HISTORIANS HOST CELEBRATION OF ALASKA COURT SYSTEM

A panel of distinguished jurists and lawyers gathered to review the formation of Alaska's State Court System at a luncheon held in the Hilton Hotel on October 7. The event, sponsored by the Alaska Bar Association's Historians Committee, is the second such program dedicated to the preservation of historical accounts leading to creation of the Alaska Court System. Moderated by Robert Ely, the panel consisted of two of the original State Superior Court Judges, Judge James A. von der Heydt and Judge James M. Fitzgerald. Other panelists were L.S. "Jerry" Kurtz, Jr. and Senior Federal District Court Judge H. Russel Holland. Jerry Kurtz and Judge Holland served as the first and second law clerks for the first Chief Justice, Buell Nesbett, respectively.

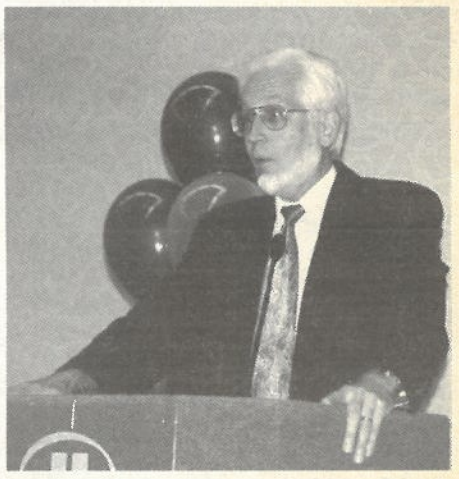
Robert Ely provided an overview of the creation of the Alaska Court System, which began in 1959. He shared his insights on the workings of the Territorial Federal Court.

Judge von der Heydt recounted some early judicial experiences of the original eight Superior Court Judges, noting in particular, their journey from Alaska to New Jersey for a several-day training course to ". . . learn how to be judges." The training was put on by the New Jersey and New York judiciary. Judge von der Heydt commented that during the course, the eight judges told them that they should be tough on the lawyers who appeared before them and thus gain the respect of the Bar. Drawing on the distinction between the attitude of the eastern judiciary and the newly formed Alaska Court System, Judge von der Heydt concluded that he felt the role of a judge was to work with the Bar in providing a just result to litigants.

In his presentation, Judge Fitzgerald chose to discuss the important issue of the use of fish traps. This was a major political and legal issue at that time. Fish traps were ultimately made illegal. Additionally, he explained what fish traps were and how they operated.

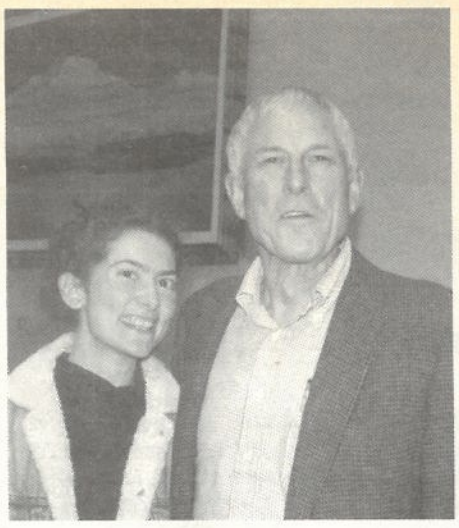
Jerry Kurtz contacted Chief Justice Buell Nesbett inquiring if the new State Court system needed a law clerk. Justice Nesbett initially was uncertain as to what role a law clerk would play for the court system. However, he subsequently hired Jerry Kurtz. When Jerry arrived in Anchorage, he found the court office was a single room with some furniture and boxes piled in it. No organized system had been established for the new Supreme Court.

Following Jerry Kurtz, Judge Holland assumed the law clerk position. When Judge Holland was leaving his clerkship, Judge Nesbett counseled him that if he worked hard, he would be surprised where he would be in 20 years. Ironically, twenty years later, Judge Holland was appointed to the Federal District Court. Judge Holland concluded his remarks by stating that he considered it a privilege to serve on the federal bench with two of the original State Superior Court Judges.

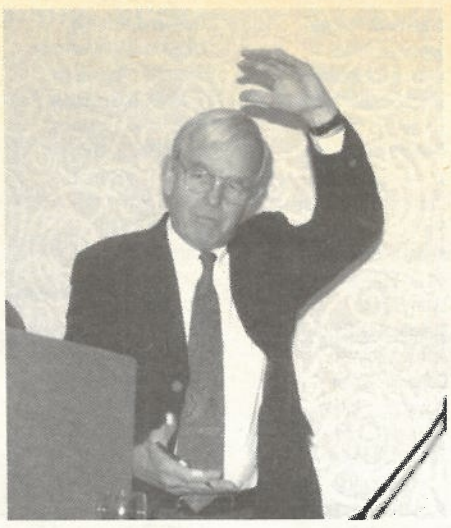


Senior Judge H. Russel Holland recounts his experiences as the Alaska Supreme Court's second Law Clerk. "I always felt a little cheated," he said, "by missing out on the court's earliest beginnings. "

Bar Historian's Committee Chair Leroy Barker joins members of the panel after the luncheon presentation, L-R: Senior Judge H. Russel Holland; L.S. "Jerry" Kurtz, Jr.; Barker; Senior Judge James A. von der Heydt; Senior Judge James M. Fitzgerald; and Robert C. Ely, Moderator.



Juneau attorney Kathryn Kurtz, L, flew to Anchorage to hear her father speak at the luncheon. "That means I have to keep honest with my stories," Jerry Kurtz told the audience. Alaska's first Chief Justice, Buell Nesbett, hired Jerry Kurtz as the Alaska Supreme Court's first Law Clerk. Kurtz recounted the days when the Alaska Court System consisted of a room with a few chairs and desks above a hardware store on 4th Avenue in Anchorage.



Robert Ely demonstrates the size of the stacks of files he routinely delivered to U.S. District Judge (Territorial) J. L. McCarrey for signature in the months preceding the formation of the Alaska Court System. Ely was the last Law Clerk for the U.S. District Court (Territorial) for the District of Alaska.

Judge von der Heydt and his wife Verna visit with friends after the luncheon, L-R: Mark Wilhelm; Verna von der Heydt; Judge von der Heydt; and Mike Kreger.

Members of the luncheon panel sing "Happy Birthday" to Judge James Fitzgerald, R, who celebrated his birthday on the day of the luncheon. Family members in attendance surprised the judge with a piece of birthday cake.

L-R: Anchorage attorneys Mike Mitchell, Doug Pope and Jon Katcher.

L-R: Anchorage attorneys Breck Tostevin, Ellen Toll and Nan Thompson.