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The Alaska BAR RAG

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John Bosshard Installed as Superior Court Judge

Townspeople of Valdez turn out for robing

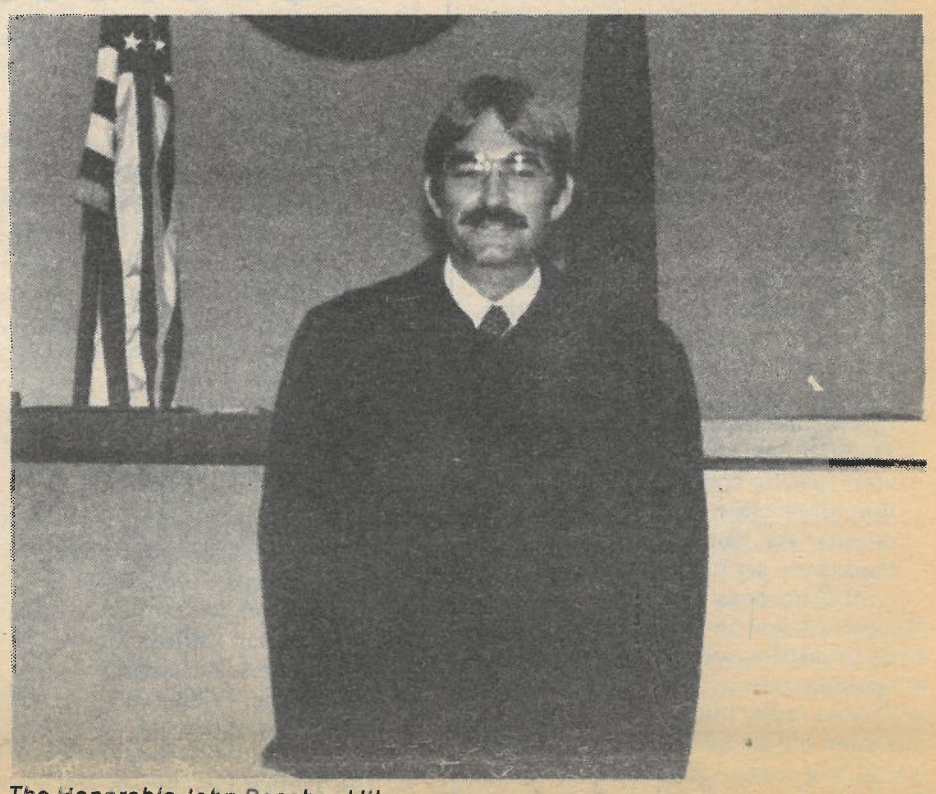
On June 21, 1984 at the Courthouse in Valdez, Alaska, John Bosshard, III was installed in the newly created position of Superior Court Judge for Valdez. The ceremony was conducted in the presence of over 100 enthusiastic friends, well-wishers and relatives including his wife Alice, his father and mother, John and Rylla Bosshard of La Cross, Wisconsin and her parents, Richard and Carolyn Galvin of West Palm Beach, Florida.

Master of ceremonies for the occasion was the Honorable Edmond W. Burke, Chief Justice of the Alaska Supreme Court, who administered the oath of office. The robing ceremony, was conducted by Judge Victor D. Carlson and John Bosshard, the father of the new Judge. After the robing ceremony Judge Bosshard was welcomed to the bench in an address by Chief Justice Burke. He was followed in turn by Mark Rowland, Presiding Judge of the Third Judicial District; Harry Branson, President-Elect of the Alaska Bar Association; William Bixby, President of the Valdez Bar Association; Susie Collins, Mayor of the City of Valdez; and John Kelsey of Valdez, Alaska.

Judge Bosshard then gave a moving speech in which he thanked his wife, relatives and friends for their confidence and support and promised to his utmost and measure up to the responsibilities of his office.

In closing, Chief Justice Burke opined that no one in the audience who knew the man and his work as District Court Judge should have any doubt about his ability or commitment, particularly after hearing him speak that afternoon.

The ceremony was followed by a reception and buffet in the new Valdez Convention Center overlooking the harbor.



The Honorable John Bosshard III

Alaska 1984 Bar Convention Eventful

The 1984 Alaska Bar Asssociation convention held in Anchorage at the Sheraton Hotel on June 6, 7, 8, and 9th, 1984 successfully combined education, business, entertainment, booze and strenuous physical exercise. The only thing that seemed to be missing at this year's event was good food. An enterprising street vendor with a hot dog wagon would have cleaned up at any of the meals served by the Sheraton—particularly during the second halibut luncheon.

The celebration began at the Joint Bench and Bar luncheon with a splendid example of forceful advocacy on the part of Chief Judge James R. Browning of the 9th Circuit Court of Appeals. Judge Browning addressed the proposal before Congress which, if passed, would break up the 9th Circuit into at least two districts. At the business meeting on Saturday morning, June 9th, the membership passed a resolution supporting the continuation of the 9th Circuit in its present state.

Champagne Reception

Following the luncheon, the Anchorage Bar Association hosted a champagne reception in honor of Alaska's retiring Federal Chief Judge James A. von der Heydt. Chief Judge Browning and Judge Fitzgerald were among the principal toasters who reminisced with the crowd over Judge von der Heydt's long and distinguished career as an attorney, State District Court Judge, State Superior Court Judge and Federal District Court Judge in Anchorage.

Banquet

The Bar Bench Banquet that evening featured an address by Bar President, Mary Hughes, commemorating the joint 25th anniversary of the Alaska State Bar Association and the State of Alaska. President Hughes welcomed the Board of Governors of the American Bar Association, introduced its members to the audience, and presented each member with a commemorative silver anniversary print. In addition, she presented 25-year membership plaques to the following bar members.

M. Ashley Dickerson
Dick Gantz
Douglas Gregg
George Hayes
Barry Jackson
Eben Lewis
Julian Rice
John M. Stern, Jr.

President Hughes's speech was interrupted by two chaps in tuxedoes who turned out to be the evening's entertainment—"Good Evening" by Synergy based upon the popular broadway production "Good Evening" by Peter Cook and Dudley Moore.

Kind Words

On Thursday, June 7th, amidst the usual plethora of continuing legal education seminars, Ms. Sara Weddington addressed the first FISH luncheon. Ms. Weddington was Chief Assistant to the President in the Carter administration's efforts to aid Women and Minorities, Professor of Law and Public Administration at the University of New Mexico and currently holds the position of Director of Texas Office of State-Federal Relations in Washington. She gave an enthusiastically received speech based on the somewhat radical premise that attorneys are necessary, worthwhile, interesting and occasionally nice people. She reminisced briefly about her first experience before the United States Supreme Court in the Landmark Abortion Case at the age of 26 years and then went on to tell us how proud she is to be a lawyer.

Guns and Ammo

The following day, at the second FISH luncheon, Michael McCabe, Esq. General Counsel, Institute for Legislative Action, National Rifle Association took our minds off the food with a where-we-are-now speech on gun control in the halls of Congress and the Courts. He immediately established rapport with the audience by telling a Wayne Ross story and then went on to remind us all how good guns can be for one's peace of mind.

The remainder of the afternoon was devoted to section meetings in eleven different areas of the law followed by an evening of gambling for charity at the Silver Bar Saloon. Stanley Ditus raised about $5000 at the auction with his special brand of auctioneering.

The Business Meeting

Saturday morning the survivors assembled to do business at the annual business meeting. After a presentation by Bruce Gagnon, and considerable discussion and debate, the membership passed by an approximate 3 to 2 majority a reciprocity rule for admission to the Alaska State Bar of attorneys from other states which have similar rule (see page 2 for proposed rule). The proposed rule will now be sent to the Supreme Court for its approval.

The membership in attendance at the meeting endorsed a resolution supporting Chief Judge Browning's position on the preservation of the present composition of the 9th circuit.

A resolution calling for the Bar to take a position on the Death Penalty tabled from last year's meeting was also passed by a substantial majority.

Next, the membership elected the following board members to serve as officers for the coming year:

Harry Branson (Anch) President-Elect
Gail Roy Fraties (Anch) Vice President
Paul A. Barrett (Fairbanks) Secretary
Lew M Williams (Ketchikan) Treasurer

Finally the membership picked the sites for the next two annual conventions: Ketchikan in 1985 and Valdez in 1986.

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Proposed Amendment to Alaska Bar Rule 2 Providing for Reciprocity

Amendment to Alaska Bar Rule 2, entitled "Eligibility for Admission."

Section 2 is *repealed* and *reprom-ulgated* to read:

Section 2.

(a) An applicant who meets the requirements of (a) through (d) of Section 1 of this Rule and

(1) has passed a written examination required by another state, territory, or the District of Columbia for admission to the active practice of law, and

(2) has engaged in the active practice of law in one or more reciprocal states, territories or the District of Columbia for five of the seven years immediately preceding the date of his or her initial application, may, upon motion, be admitted to the Alaska Bar Association without examination. The motion shall be served on the Executive Director of the Alaska Bar Association and sponsored by a member in good standing of the Alaska Bar Association. An applicant will be excused from taking the bar examination upon compliance with the conditions above, and payment of a non-refundable fee to be set by the Board for applicants seeking admission on motion. For purposes of this section, "reciprocal state, territory or district" shall mean one which offers admission to attorneys licensed to practice law in Alaska, without examination, upon their compliance with specific conditions detailed by that jurisdiction, providing the conditions are not more demanding than those set forth in this Rule.

(b) Attorneys admitted to the practice of law in other states, territories or districts without taking a written examination will not be eligible for admission under this section. An applicant may not be admitted to the practice of law under this section if he or she has taken and failed to pass an Alaska Bar Examination or engaged in the unauthorized practice of law in Alaska.

(c) For the purposes of this section, the "active practice of law" shall mean:

(1) engaged in representing one or more clients on a fee basis in the private practice of law;

(2) serving as an attorney in governmental employment, provided graduation from an accredited law school is a required qualification of such employment;

(3) serving as counsel for a non-governmental corporation, entity or person and performing legal services of a nature requiring a license to practice law in the jurisdiction(s) in which performed;

(4) teaching law at one or more accredited law schools in the United States, its territories, or the District of Columbia;

(5) serving as a judge in a court of the United States, its states, its territories, or the District of Columbia; or

(6) employed by a Legal Services program or a not-for-profit law firm, performing legal services of a nature requiring a license to practice law in the jurisdiction(s) in which performed.

Section 3. An applicant who meets the requirements of Section 1 of this Rule and

(a) Has passed a written examination required by another state, territory, or the District of Columbia for admission to the active practice of law, and

(b) Has engaged in the active practice of law in one or more reciprocal states, territories or the District of Columbia for five of the seven years immediately preceding the date of his or her initial application, may, upon motion, be admitted to the Alaska Bar Association without examination. The motion shall be served on the Executive Director of the Alaska Bar Association and sponsored by a member in good standing of the Alaska Bar Association. An applicant will be excused from taking the bar examination upon compliance with the conditions above, and payment of a non-refundable fee to be set by the Board for applicants seeking admission on motion.

Attorneys admitted to the practice of law in other states, territories or districts without taking a written examination will not be eligible for admission under this section. An applicant may not be admitted to the practice of law under this section if he or she has engaged in the unauthorized practice of law in Alaska. For purposes of this section, "reciprocal state, territory or district" shall mean one which offers admission to attorneys licensed to practice law in Alaska, without examination, upon their compliance with specific conditions detailed by that jurisdiction, providing the conditions are not more demanding than those set forth in this rule.

Section 4. For the purposes of this Rule, the "active practice of law" shall mean

(i) engaged in representing one or more clients on a fee basis in the private practice of law;

(ii) serving as an attorney in governmental employment, provided graduation from an accredited law school is a required qualification of such employment;

(iii) serving as counsel for a non-governmental corporation, entity or person and performing legal services of a nature requiring a license to practice law in the jurisdiction(s) in which performed;

(iv) teaching law at one or more accredited law schools in the United States, its territories, or the District of Columbia; or

(v) serving as a judge in a court of the United States, its states, its territories, or the District of Columbia.

Successful Bar Examinees

1. Barnett, Ledeen G.
2. Bell, Judy B.
3. Borah, William J.
4. Braga, Debra A.
5. Bremer, Francine M.
6. Brenckle, Carol A.
7. Brown, Glenn H.
8. Burke-Cain, Melissa A.
9. Butigan, William C.
10. Casey, Robert G.
11. Cates, Constance A.
12. Cotton, William T.
13. Craver, Barbara R.
14. Curlee, Allan E.
15. Damrau, Mason W.
16. Davis, Donald S.
17. Dawson, Jon S.
18. Dierdorff, David R.
19. Doherty, Brian M.
20. Dressel, Richard D.
21. DuFour, Colleen M.
22. Ellmers, Richard D.
23. Estelle, William L.
24. Fierro, Andrew J.
25. Fitzgerald, Debra J.
26. Forbes, James H. B.
27. Fuchs, Jan
28. Geraty, III, Charles C.
29. Golter, David A.
30. Hall, Stuart C.
31. Hall, Jr., Robert A.
32. Hartke, Phyllis A.
33. Hiebert, Leslie A.
34. Horton, Bruce E.
35. Hotchkin, Michael G.
36. Ingaldson, William H.
37. Johnson, Alan R.
38. Joyner, James M.
39. Kirk, Jr., Cameron
40. Kohfield, David E.
41. La Pierre, Suzanne S.
42. Lauterbach, Theresa M.
43. Leonard, Cameron M.
44. Lieb, Kenneth S.
45. Maer, William D.
46. Malin, Paul E.
47. Mann, Andrew C.
48. McGee, Melinda J.
49. McKelvie, Dennis E.
50. Minarik, II, Bernard J.
51. Morford, Kevin M.
52. O'Brien, Mary E.
53. Ovestrud, Jr., Richard M.
54. Owens, Robert P.
55. Pallenberg, Philip M.
56. Peterson, Mark A.
57. Prewitt, Jr., J. Frank
58. Randall, Susan E.
59. Rausch, Bruce W.
60. Ray, Jr., Charles W.
61. Regan, Mark W.
62. Restucher, Margaret A.
63. Rice, James S.
64. Ross, Stuart G.
65. Schuldiner, Stanley I.
66. Shelton, III, Sam W.
67. Siff, Brigette E.
68. Snyder, Mark S.
69. Stepovich, Michael A.
70. Stirling, Clark T.
71. Strong, Anthony L.
72. Taylor, II, Warren A.
73. Taylor-Welch, Karla J.
74. Tremble, Michael W.
75. Wagner, James P.
76. Weber, David R.
77. Westphal, Leslie J.
78. Wilhelm, Marc G.
79. Wilkens, James K.
80. Zorea, Moshe C.

Anchorage Association of Women Lawyers June Minutes

No meeting was officially held for the Anchorage Association of Women Lawyers during June 1984.

The Statewide Women Lawyer's Meeting at the Alaska Bar Convention did, however, feature a speaker hosted by AAWL. On Thursday, June 7, Ms. Margaret McKeown of the Seattle firm of Perkins, Coie, Stone, Olson & Williams led an informative discussion of the old and new problems which women face within law firms or similar organizations. Local panelists included Ann Liburd, Sue Mason and Sandra Saville. These four women expressed concern that law firms are unable to keep women through the partnership level and frustration that the reason for this failure is not at all apparent.

Because women comprise over 40% of the current market of entry level applicants, women are not experiencing the problem of "getting hired." The problem is "staying hired" and finding a permanent niche within the firm. Many have chosen to pursue a family instead of partnership obligations while others have left the private sector and gone to work for government or corporate America. Those that chose to stay find themselves in relatively small numbers and face the problem that, for the most part, women are not "rain makers" and therefore unable to hold an economic club over the law firm's head.

To counteract this seeming deficiency in their current marketability, women can look to the idea of specializing in order to increase their value to the firm. A woman, whose departure can create a void in a significant portion of the law firm's practice, can be perceived as an economic asset much the same as a rain maker is.

Finally, the notion of young women finding mentors within and outside of law firms, as well as role models was discussed. It is at best difficult for a young woman to recognize and transfer the identifiable qualities in a successful older man to herself. The need to have female role models is obvious and to that end AAWL hopes to sponsor several luncheon seminars by prominent women in several contexts: as litigators, as negotiators, among others.

Many thanks to Mss. McKeown, Saville, Mason and Liburd for contributing to the success of this well attended event.

Constance Baker Motley Breakfast—On June 23rd AAWL sponsored a breakfast at the home of Adrienne Fedor in the honor of Judge Constance Baker Motley, the distinguished Chief Judge of the Southern District of New York. In 1966 Judge Motley was the first black woman appointed to federal bench and at that point in time was only one of five women on the entire federal bench. Judge Motley was escorted to the event by Caroline Jones who later reported that the Judge enjoyed the opportunity to meet with many of Alaska's women lawyers.

July Meeting—Because the first Wednesday of July is also the 4th of July, the July meeting of AAWL will be held on the succeeding Wednesday, July 11th at noon at the Tea Leaf Restaurant.

Speaker—Connie Sipe and Margie Ennis of the Conflict Resolution Center will present an historical overview of the Center as well as an overview of the Center's usefulness in diverting litigation from the courts.

Dues—Annual dues of $25.00 became due on June 1. Please pay your dues promptly so that AAWL can begin to assess its ability to sponsor events for the coming year. You can either pay at the monthly luncheon or send a check to AAWL, P. O. Box 10-3682, Anchorage, Alaska 99510

Respectfully submitted,
Adrienne P. Fedor

22 Attorneys File For Judgeships Opening

22 attorneys have asked the Alaska Judicial Council for its stamp of approval in the selection process to fill six current judicial vacancies, two on the Anchorage Superior Court and four on the Anchorage District Court. Four of the six positions were created by the Legislature in the session just ended; the other district court vacancies arose as a result of the recent appointment of District Court Judge John Bosshard, III to the Valdez Superior Court, and the resignation of Judge Warren A. Tucker in April.

The applicants will be evaluated by the Council's seven members (the Chief Justice, three public and three attorney members), with the best qualified being nominated to Governor Sheffield for his appointment.

Background investigations, a survey of Alaska Bar members, analysis of writing samples provided by the applicants, and personal interviews with the candidates all go into the Council's evaluations, according to the Council's Executive Director, Francis L. Bremson. The evaluations are designed to result in the nomination of those persons deemed best qualified to serve as judges, according to Bremson.

The bar survey will be distributed next week and the survey results will be made public on or about September 7, 1984. Interviews with selected candidates will be held on September 25-26, 1984, and a list of two or more nominees for each vacancy will be sent to the Governor immediately thereafter. The Governor will then have 45 days to make an appointment from the Council's list of nominees.

Candidates for the Superior Court include:

Andrew M. Brown: Mr. Brown is 36 years old, an Alaska resident for 10 years and engaged in the practice of law for 10 years. He is a 1974 graduate of the Washington University Law School in St. Louis, Missouri. Mr. Brown is currently a Divorce Master with the Anchorage Superior Court.

Edward G. (Ted) Burton: Mr. Burton is 43 years old, an Alaska resident for 19 years and engaged in the practice of law for 18 years. He is a 1965 graduate of Harvard Law School. Mr. Burton is currently associated with an Anchorage law firm.

William Matthews Erwin: Mr. Erwin is 51 years old, an Alaska resident for 19 years. He is a 1965 graduate of the University of Washington Law School. Mr. Erwin is currently a sole practitioner in Anchorage.

Gail Roy Fraties: Mr. Fraties is 56 years old, an Alaska resident for over 15 years and engaged in the practice of law for over 17 years. He is a 1966 graduate of the University of San Francisco Law School. Mr. Fraties is currently an Assistant Attorney General.

Judge William H. Fuld: Judge Fuld is currently a district court judge in Anchorage. He is 45 years old, an Alaska resident for 21 years and engaged in the practice of law for 19 years. Judge Fuld is a 1963 graduate of Columbia Law School.

Rene J. Gonzalez: Mr. Gonzalez is 42 years old, and Alaska resident for over 7 years and engaged in the practice of law for 9 years. He is a 1974 graduate of Southern Methodist University Law School. Mr. Gonzalez is currently a sole practitioner in Anchorage.

James V. Gould: Mr. Gould is 44 years old, an Alaska resident for over 10 years and engaged in the practice of law for 10 years. He is a 1974 graduate of the University of Santa Clara Law School. Mr. Gould is currently the District Attorney for the Second Judicial District.

Joan M. Katz: Ms. Katz is 40 years old, an Alaska resident for over 12 years and engaged in the practice of law for 15 years. She is a 1969 graduate of the University of Berkeley Law School. Ms. Katz is currently a sole practitioner in Anchorage.

Peter Anthony Michalski: Mr. Michalski is 38 years old, an Alaska resident for over 12 years and engaged in the practice of law for 12 years. He is a 1971 graduate of the University of Minnesota Law School. Mr. Michalski is currently an Assistant Attorney General with the Department of Law, Office of Special Prosecutions & Appeals.

Melvin M. Stephens, II: Mr. Stephens is 39 years old, an Alaska resident for 5 years and engaged in the practice of law for 6 years. He is a 1977 graduate of Georgetown University Law Center. Mr. Stephens is currently an associate with the Kodiak law firm of Hartig, Rhodes, Norman, Mahoney & Edwards. (Mr. Stephens is also an applicant for the District Court).

Candidates for the District Court include:

Martha Beckwith: Ms. Beckwith is 34 years old, an Alaska resident for 8 years and engaged in the practice of law for 7 years. She is a 1976 graduate of the University of San Francisco Law School. Ms. Beckwith is currently with the District Attorney's Office in Anchorage.

Dennis Patrick Cummings: Mr. Cummings is 37 years old, an Alaska resident for 17 years and engaged in the practice of law for 3 years. He is a 1980 graduate of Gonzaga University School of Law. Mr. Cummings is currently with the Anchorage Municipal Prosecutor's office.

John Michael Eberhart: Mr. Eberhart is 29 years old, an Alaska resident for 29 years and engaged in the practice of law for 3 years. He is a 1980 graduate of the University of Puget Sound School of Law. Mr. Eberhart is currently a sole practitioner in Anchorage.

Maryann Elizabeth Foley: Ms. Foley is 30 years old, an Alaska resident for 5 years and engaged in the practice of law for 3 years. She is a 1978 graduate of the State University of New York at Buffalo. Ms. Foley is currently an associate with the Anchorage law firm of Lynch, Farney & Crosby.

David P. Gorman: Mr. Gorman is 33 years old, an Alaska resident for 6 years and engaged in the practice of law for 5 years. He is a 1978 graduate of the University of Montana School of Law. Mr. Gorman is currently a sole practitioner in Anchorage.

Andy Hemenway: Mr. Hemenway is 36 years old, an Alaska resident for 6 years and engaged in the practice of law for 6 years. He is a 1974 graduate of the University of Houston School of Law. Mr. Hemenway has been the central staff attorney for the Alaska Supreme Court for the past five years.

Robert Dudley Lewis: Mr. Lewis is 31 years old, an Alaska resident for 6 years and engaged in the practice of law for 6 years. He is a 1977 graduate of the University of California Hastings College of Law. Mr. Lewis is currently associated with an Anchorage law firm.

Connie Joan Sipe: Ms. Sipe is 33 years old, an Alaska resident for 9 years and engaged in the practice of law for 8 years. She is a 1975 graduate of Harvard Law School. Ms. Sipe is currently an attorney with the Attorney General's Office of Consumer Protection in Anchorage.

Ralph Stemp: Mr. Stemp is 39 years old, an Alaska resident for 13 years and engaged in the practice of law for 14 years. He is a 1969 graduate of Washington University School of Law. Mr. Stemp is currently in private practice in Anchorage.

Melvin M. Stephens, II: (See above, Superior Court applicants.)

David C. Stewart: Mr. Stewart is 35 years old, an Alaska resident for 9 years and engaged in the practice of law for 3 years. He is a 1974 graduate of Boston University School of Law. Mr. Stewart is currently an Assistant District Attorney in Anchorage.

Michael N. White: Mr. White is 30 years old, an Alaska resident for 7 years and engaged in the practice of law for 4 years. He is a 1979 graduate of Northeastern University School of Law. Mr. White is currently a District Attorney in Palmer.

Public commentary on the qualifications of these applicants is encouraged during the evaluation phase of the Council's work, in September and October. To comment, or for further information, contact Francis L. Bremson, Executive Director, Alaska Judicial Council, 1031 W. 4th Avenue, Suite 301, Anchorage, Alaska 99501, (907) 279-2526.

Electronic Deposition Service Coming to ABA/Net

CHICAGO, June 25—The American Bar Association has announced that a valuable new service is now available to subscribers of ABA/net, "The Lawyer's Network." This new electronic deposition reporting service will provide lawyers with both a quick and easy means of arranging for deposition reporting and transcription in distant locations and a less expensive means of acquiring and distributing the resulting transcripts.

The service, being provided through Network Reporting Systems, Inc. (NRS), will help lawyers reduce the cost of taking pretrial discovery depositions, and thus lower the costs clients must bear when they are involved in a lawsuit. This is the latest in on-going enhancements being made to ABA/net, a new computer network especially for lawyers which was developed by the American Bar Association using the facilities of ITT Dialcom, Inc. ABA/net was unveiled at the association's Mid-year Meeting in February 1984.

ABA/net subscribers will be able to contact NRS by completing an on-line order form, available within ABA/net's Legal Services menu. The form will be forwarded to an NRS affiliate, who will arrange for a local court reporter to be present at the scheduled deposition, avoiding the expense of taking a reporter to that city. The reporter will use the most modern techniques of computer-aided transcription, and can deliver the completed transcript directly to the lawyer's ABA/net mailbox. The deposition can also be distributed to other ABA/net mailboxes, either by NRS or later by the lawyer, again avoiding the usual costs associated with such redistribution. Transcripts can also be delivered on a daily copy basis.

Additional New Products

Other new products for ABA/net subscribers were also announced today. NEWS-Tab, a feature of ITT Dialcom news service, will allow users to create and maintain a profile of keywords and phrases which the system will use to scan United Press International and Associated Press newswires. Any stories found which match the profile will then be automatically sent to the user's electronic mailbox. Another new product, ABI/INFORM, is also available. This research tool consists of database of article abstracts from hundreds of publications, including several law-related periodicals.

New user manuals, including a pocket guide, are being readied for release to ABA/net subscribers. The pocket guide is available now and the new main manual will be ready in time for the 1984 ABA Annual Meeting being held in Chicago in August. Both will explain for the user the various procedures involved in using ABA/net, and will update subscribers on the use of improved new menus which have been developed as a result of user feedback.

ITT Dialcom has established a Customer Support Center for ABA/net users. It can be reached by phone, toll-free from any location in the United State, at 800/435-7342. Residents of the District of Columbia should call 495-2400, ext 2411. The Center can also be reached on-line at 98:ABA-HELP.

Suggestions for new products, services and databases for ABA/net are always welcome. Recommendations should be submitted to Richard Allen, American Bar Association, 33 West Monroe, Chicago, IL 60603.

Proposed Amendment to Alaska Bar Rule 4 and Alaska Bar Rule 5

Alaska Bar Rule 4, entitled "Examinations" is amended by *deleting* Section 7 as follows:

[Section 7. AN APPLICANT WHO HAS TAKEN THE MULTISTATE BAR EXAMINATION WITHIN ONE YEAR PRIOR TO THE BAR EXAMINATION AS PART OF AN EXAMINATION REQUIRED BY A STATE, TERRITORY OR THE DISTRICT OF COLUMBIA FOR ADMISSION TO THE PRACTICE OF LAW MAY ELECT TO BE EXCUSED FROM THE MULTISTATE BAR EXAMINATION ADMINISTERED IN ALASKA AND TO HAVE HIS MOST RECENT MULTISTATE BAR EXAMINATION SCALED SCORE SUBSTITUTED THEREFOR, PROVIDED THAT THE RESULTS OF SUCH EXAMINATION ARE CERTIFIED DIRECTLY TO THE ALASKA BAR ASSOCIATION BY THE ADMINISTERING STATE, TERRITORY OR DISTRICT OF COLUMBIA. NOTICE OF WRITTEN ELECTION MUST BE FILED WITH THE APPLICATION REQUIRED PURSUANT TO RULE 3, SECTION 2.]

Alaska Bar Rule 5, entitled "Requirement for Admission to the Practice of Law," is amended in Section 1 as follows:

Section 1. (a) To be admitted to the practice of law in Alaska, an applicant must

(1) pass the bar examination prescribed pursuant to Rule 4;

(2) pass the Multistate Professional Responsibility Examination;

(3) be found by the Board to be of good moral character, **as required pursuant to Rule 2(1)(d);**

(4) be determined by the Board to be eligible in all other respects;

[(5) FILE WITH THE ASSOCIATION, WITHIN ONE YEAR OF RECEIPT OF NOTICE OF QUALIFICATION, A REGISTRATION CARD IN THE FORM PROVIDED BY THE BAR ASSOCIATION;]

[(6) CERTIFY UNDER OATH THAT HE OR SHE IS DOMICILED IN THE STATE OF ALASKA;]

(5) [(7)] pay prorated active membership fees for the balance of the year in which he or she is admitted, computed from **the first day of admission** [DATE OF PAYMENT]; and

(6) [(8)] take the oath prescribed in Section 3 of this rule.

(b) Within 30 days after receipt of notice of passage of the bar examination and certification to the Supreme Court for admission, or within 60 days of receipt of notice of passage of the Multistate Professional Responsibility Examination, whichever comes later, an applicant must file with the Alaska Bar Association a registration card, in the form provided by the Board, formally accepting membership in the Association and admission to the practice of law in Alaska.

(c) [(b)] The Board may conduct a character investigation of an applicant, or may continue such an investigation, after the applicant has been permitted to take, or has passed, the examination prescribed by the Board pursuant to Rule 4. The fact that the Board has permitted the applicant to take the examination, and has given the applicant notice that he or she has passed the examination, shall not thereafter preclude the Board from denying the admission of the applicant on the grounds of lack of good moral character.

In the Supreme Court of the State of Alaska

Supreme Court No. S-163
ORDER

In the Disciplinary Matter Involving,
MELCHOR P. EVANS
Respondent Attorney

Before: Burke, Chief Justice, Rabinowitz, Matthews, Compton and Moore, Justices.

This court has fully reviewed and considered the entire record. We adopt the findings of the Hearing Committee and the Disciplinary Board. However, even assuming that the conversation between Eschbacher and Evans concerning invasion of the escrowed money for payment of legal fees did take place, and that Evans is telling the truth about what Eschbacher said, nonetheless, it remains clear that Evans knew that Eschbacher had no authority to modify the escrow agreement, and Evans' conduct in disbursing money to his firm was a violation of his fiduciary obligations under the agreement.

IT IS ORDERED:

In accordance with Alaska Bar Rule II-12(b), Melchor P. Evans is suspended from the practice of law in the State of Alaska for a period of three (3) years effective 30 days after entry of this order pursuant to Alaska Bar Rule II-26(c). Respondent Evans shall comply with all of the requirements of Bar Rule 26(a)(b)(c)(d) and (g).

Entered by direction of the court and Bar Rule II-25(j) at Anchorage, Alaska on June 1st, 1984.

Clerk of the Supreme Court
Pamela J. McIntire
for David A. Lampen

ccs: Justices
Counsel
Alaska Bar Association
Melchor P. Evans

Supreme Court No. S-160
ORDER

In the Disciplinary Matter Involving:
NICHOLAS G. MAROULES
Respondent Attorney

Before: Rabinowitz, Matthews, Compton and Moore, Justices.
[Burke, Chief Justice, not participating].

This court has fully reviewed and considered the entire record and now enters an appropriate order,

IT IS ORDERED:

In accordance with Alaska Bar Rule II-12(b), Nicholas G. Maroules is suspended from the practice of law in the State of Alaska from January 10, 1983 *nunc pro tunc* through January 11, 1985.

Entered by direction of the court and Bar Rule II-15(j) at Anchorage, Alaska on April 11, 1984.

Clerk of the Supreme Court
David A. Lampen

ccs: Justices
Counsel
Alaska Bar Association
Mr. Nicholas G. Maroules

Execution Forms

Effective June 1, the Alaska Court System is revising all its execution forms. Along with the new forms, the court system will be providing the following two new booklets:

Execution Procedures for Judgment Creditors. This 36-page booklet describes the three types of execution procedure and the forms needed for each:

a. garnishing earnings

b. executing on property other than section .020 property (AS 09.38.020)

c. executing on section .020 property

Judgment Debtor Booklet. This 23-page booklet describes how to claim exemptions and lists the major state and federal exemptions.

Note: This booklet is to be attached to the revised CIV-510, *Notice to Debtor,* when executing upon debtor's property (other than AS 09.38.020 property). It is *not* to be sent to the debtor when the debtor's earnings are being garnished or when executing on the debtor's section .020 property. In both these cases, different NOTICE forms are used.

All My Trials

by Gail Roy Fraties

"Our client was so bad," reminisced Anchorage domestic relations attorney Edward J. "Jack" Fyfe, "that when Judge Singleton gave him visitation rights with his seven year old daughter, it was on the condition that the visits take place only in the presence of an armed policeman."

He was discussing a custody case which he had handled with the able assistance of his former partner, Anchorage trial attorney Gary R. Eschbacher.

Power Accounts Receivable

"Right in the middle of the case," said Jack, "we find out that this space cadet is about to spend a ten thousand dollar check that he had promised to endorse over to us for our fees. Naturally, Gary and I drafted up a TRO and rushed over to the courthouse to prevent this outrage. We arrived there at 4:30, but for some reason couldn't find a judge anywhere, and Gary had a few words to say about it."

"I can imagine," I replied—encouraging him to tell the rest of the story.

"We were coming down on the elevator," Jack continued, "and Gary was holding forth about civil servant bastards, 9 to 5 drones that complain about too much work, but are never around the courthouse when an honest lawyer needs something—you know, the usual thing."

At this point, apparently, Mr. Eschbacher's soliloquy was interrupted by a deep voice from the back of the elevator.

"I'll sign your TRO, Counsel," said Mr. Chief Justice Edmond Burke, stepping forward to do so."

"We never did get our money," Gary said sadly "all we ever got out of the (Oedipal relationship) was a grievance. This happened eight years ago, and I haven't heard anything further about it. You're not going to put this shit in the Bar Rag, are you Gail?"

Your Money or Your Life

Of course Messrs. Fyfe and Eschbacher are not the only lawyers in Alaska that are careful about money. Anchorage attorney and business entrepreneur Brian R. Shute recently did a star turn in an armed robbery, during which he had personally disarmed his assailant and turned her over to the airport police.

Brian came to see me immediately after it had happened, and told me that a young woman at the airport had stuck a .22 Derringer in his face, demanding his money. He thereupon grabbed the gun out of her hand, smashed her to the ground, and dragged her feebly twitching body to the nearest policeman—where he supervised the taking of a confession, complete with **Miranda** warning. It appeared that the defendant had been suffering from hallucinations, and Brian was worried that she might interpose an insanity defense.

"You're the one that ought to be seeing a shrink, Brian," I exclaimed. "What the hell do you mean risking your life instead of giving this turkey your money? Don't you know that a .22 bullet at close range can kill you as easily as a hand grenade?"

Brian was offended. I'm not saying Brian's wallet is an erogenous zone. Personally, he's a very affable and generous man. However, he does tend to get a bit protective when people try to take money away from him.

"Listen, Gail," he replied heatedly, "I had a fifty dollar bill in my wallet. I figured she was going to kill me anyway, and it would just be worse if I died knowing she had my money as well."

Field and Stream

Spring is definitely in the air, even in Anchorage, and I was in an expansive mood the other day as I passed Superior Court Judge J. Justin Ripley on the way to the courthouse. We exchanged greetings and comments about the nice weather, and I told him that I thought I saw some bait fish working near the dock. The seagulls were diving on them, and I had watched the whole thing from my office through field glasses.

(Chief Assistant District Attorney Robert) "Bundy has no class," I continued, "he told me it was just garbage."

"Maybe its a body," said Judge Ripley with a smile. "Think positively, Gail. Crime feeds your family."

A Plea in Mitigation

After protracted debate, the District Attorney's Office has awarded to Anchorage assistant public defender John Salemi the coveted Chutzpah award for his successful argument to Superior Court Seaborn J. Buckalew in a recent sentencing hearing. Mr. Salemi was representing a defendant with a long criminal record, and therefore in a mandatory sentencing posture. His client had just been convicted again for committing five forgeries in the amount of several thousand dollars.

As the criminal bar is well aware, AS 12.55.155(d)(3) provides for mitigation of the mandatory sentence if "the defendant committed the offense under some degree of duress, coercion, threat, or compulsion insufficient to constitute a complete defense, but which significantly affected his conduct." The intrepid defense attorney urged that his defendant needed the money badly to pay his pusher, who was getting ugly about nonpayment.

The prosecutor on the case was so awestruck by Mr. Salemi's bold move that he was unable to frame a proper objection, and the sentence was duly mitigated. Judge Buckalew, however, sternly resisted suggestions that he should further mitigate under (d)(12) "the defendant assisted authorities to detect or apprehend other persons who committed the offense with him" (translation—rolled over on as many of his friends as he could think of in order to get better treatment for himself) and (d)(9) "the conduct constituting the offense was among the least serious conduct included in the definition of the offense" (translation—he needed the money for a good cause).

Prosecution Declined

The Iditarod race has concluded for another year, but dog lovers among my readers should be interested in a further adventure of Nome's former district attorney, William "Bangkok Billy" Garrison. An outraged musher had come to Bill with a complaint that he had caught his neighbor in sexual congress with the complainant's lead dog. She had been howling pitifully, according to her owner, and all his other dogs were in an uproar, tangled up in their traces and generally in sad disarray. Bill, who didn't really want to get involved, continued his questioning as follows:

Mr. Garrison: "Where is she now?"

Owner: "Hell, man,—I shot her. She couldn't even walk properly after that bastard finished with her."

Mr. Garrison: "Well, there you are then. We can't prosecute without a victim."

Body Language

Law in the bush does seem to have a "West of the Pecos" quality that is rarely encountered in the big cities. Anchorage District Attorney Victor C. Krumm told me the other day about a rape case he prosecuted while he was the District Attorney in Bethel. The victim, who spoke only Yupik, needed an interpreter to convey her testimony to the jury.

"She really got into it," said Vic, "and although I couldn't understand a word she said, I could see by all of her body movements that she was describing choking, kicking and gouging. Hell, I was watching a forcible rape going down right in the courtroom."

The victim continued for several moments, after which the interpreter spoke: "She says the gentlemen persauded her to love him."

"I knew that couldn't be right," the District Attorney continued, "and I suspected that the interpreter (a member of a rather austere Christian sect) was using considerable poetic license. However, this lady was so straight that I couldn't get her to use the actual expressions that the victim was obviously trying to convey to the jury. The best I could get was an amplified version."

Interpreter: "The gentlemen was holding a knife at my throat while he twisted my arm. He asked me to LOVE him and said if I do not LOVE him he would kill me, shoot my son, and burn the house down. So I LOVED him."

Quotable Quotes

Fairbanks District Attorney Harry Davis: "It's better to win and get reversed than never to have won at all."

Chief Justice Edmond W. Burke: "I can't define the practice of law, but I know it when I see it."

Anchorage defense attorney Eric Hanson's client, on being told that she was released OR, on condition that she obey all laws: "How can I do that? I'm a prostitute."

Distraught mother to Superior Court Judge Ralph E. Moody, on being asked why she no longer wished to be her son's third party custodian: "He just butchered the family dog in the bathtub." Judge Moody: "Yes, but did he violate any of his conditions?"

Trooper and free-lance exorcist James A. Stogsdale, discussing the implications of the **Miranda** warning with murder suspect John Noah: "Get it off your chest and get it out of your system, because tonight you're going to go back home and you're going to wake up in the middle of the night and there is going to be some visisons. David's soul is still in your cabin looking for a place to go, because he doesn't know what happened to him. And David's soul is going to wander around that cabin until somebody knows what happened. I just want to help you, John, and I can do it."

When Does Contingent Legal Fee Become Abusive?

Litigation debate the point

CHICAGO, April 13—When a team of three lawyers wins a $7.1 million award for a person injured by medical malpractice, is a legal fee approaching $3 million "obscene?"

Some lawyers maintain that fees in that range are abusive and unjust, but others cite benefits to society from a system that permits such fees, and deny that individual clients are abused by it. This subject is debated in an article in the current issue of "Litigation News," a newsletter published for the more than 40,000 members of the American Bar Association Section of Litigation. Section members include both plaintiff and defense counsel, and lawyers practicing in both civil and criminal law.

The article by Scott Fortune, associate editor, cites Peter Fryefield and his two partner as an example of the kind of case that prompts such debate. Fryefield's firm received nearly five times its ordinary billing rate as a result of representing the plaintiff in a medical malpractice action where the jury awarded $9.3 million. To avoid appeal, the plaintiffs settled for $7.1 million and the firm received a $2.8 million fee.

Fryefield's clients, a working-class couple, were the parents of a child born with brain damage due to complications immediately before birth.

The case "was not a sure winner," said Fryefield, although it "sounded like a good case." Fryefield and his partners invested 5,000 hours and nearly $60,000 of their own money in the case before it went to trial.

The defendant doctor's lawyer, James C. Rinaman Jr., is not against the concept of contingent fees, but maintains that the overall recovery was "obscene."

"The fee is excessive only because the verdict was excessive," said Rinaman. And he argues that the lawyers should not receive such large amounts of money from winning contingency cases in order to finance other cases that are losers.

Among other lawyers joining the dispute is W. C. Gentry, a lawyer in practice since 1971 who recenly won a $6.5 million verdict in a wrongful-death case.

Without the contingent fee arrangement, Gentry maintains "90 percent of the public—not just poor people—could not afford a lawyer." He notes that he spends an average of $20,000 for expenses connected with every medical malpractice case he intends to bring to trial, and that applying reasonable hourly fee rates to his time adds $25,000 to $100,000 to the cost of preparation.

At those rates, argues Gentry, "the opportunity to recoup more than a standard hourly fee must exist in order to allow the lawyer to continue handling contingent fee cases after he has lost one."

Gentry also cites cases where he has reduced his fees because clients needed larger portions of the funds received from litigating a case.

As a final argument, Gentry maintains that contingent fees reduce the incidence of frivolous litigation. "When you know you're going to lose a lot of time and money if you don't ultimately get a recovery, you're going to be much more selective about which cases to accept and which to reject as frivolous. This benefits not only the legal system, but everyone involved with it—the public—as well," he says.

Although the lawyers Fortune interviewed agree that contingency fee arrangements can be abused, they disagreed about when profit becomes abuse, with Rinaman rarely charging more than 20 per cent (along with a reduced hourly fee) in contingent cases but Fryefield and his partners maintaining that in some cases a fee of 50 per cent may be reasonable.

American Bar Association 1984 Annual Meeting Aug. 2–9

Recommendations to the policy-making ABA House of Delegates are currently being processed. A complete list of those recommendations submitted in advance of the meeting for consideration by the House of Delegates will be issued within ten days.

In the meantime, updated information on major programs and speakers is provided as follows:

Among the key speakers expected to address annual meeting attendees are: Vice-President George Bush; Secretary of State George Schultz; Supreme Court Justice Sandra Day O'Connor; Deputy Attorney General Carol Dinkins; Senator Charles Percy; Pulitzer Prize-Winning Author George F. Will; David L. Ladd, Register of Copyrights; Secretary of the Treasury Donald T. Regan; Illinois Governor James R. Thompson; Senator Charles Mathias, Jr.; Archbishop of Chicago Cardinal Bernardin; Solicitor General Rex E. Lee; Northern District of Illinois Judge Susan Getzendanner; former Watergate Special Prosecutor James Neal; U.S. Attorney for the Northern District of Illinois Daniel Webb; Attorney General of New Jersey Irwin I. Kimmelman; Psychologist Dr. Joyce Brothers; former Attorney General Benjamin Civiletti; Houston Chief of Police Lee Brown; Assistant Secretary of Commerce Gerald J. Mossinghoff; and many others.

A sample of some of the program activities includes:

THURSDAY and FRIDAY, AUGUST 2 and 3

- The ABA Board of Governors will meet to review resolutions proposed for consideration by the House of Delegates on Tuesday and Wednesday, August 7 and 8.

FRIDAY, AUGUST 3

- Clear Writing By Doctors and Lawyers: The Common Failures of Both Professions to Communicate in Simple English
- The Judge's Role in Creating, Alleviating and Solving the Crisis in America's Jails and Prisons.

SATURDAY, AUGUST 4

- Computers and the Law
- Treating Defective Newborns—The Legal and Ethical Issues
- Law, Ethics and Investigative Reporting (panelists include representatives from ABC News, Better Government Association, Capitol Legal Foundation and the Reporters Committee for Freedom of the Press)
- The Role of the Religious Leader in Forming Public Policy (with remarks by Joseph Cardinal Bernardin)

SUNDAY, AUGUST 5

- The Free Movement of People, Information and Ideas Across the American Border
- Acid Rain—A Public Policy Debate
- Exit Polls and Election Projections
- The Fourth Amendment: Hello Good Faith, Goodbye Warrant Clause

MONDAY, AUGUST 6

- Put A Little Law In Their Lives (Showcase program by ABA Public Education Division Steering Committee and Special Committee on Youth Education for Citizenship)
- Plain Language—Policies, Communications, Simplified Procedures and Jury Instructions
- Environmental Implications of Transportation of Energy Resources and Hazardous Materials
- Dealing With Legal Issues Presented When Life Support Systems are Withdrawn from a Terminally Ill Patient
- Controls on Scientific Information Exports: Have We Been Giving Away The Store?
- The Grapes of Wrath: The Next Generation—Current Legal Issues Affecting Migrant and Seasonal Farm Workers
- The Caribbean Basin Initiative
- Who Regulates the Regulators: Life Without the Legislative Veto
- Undercover Investigations of the Judiciary, Other Public Officials and White Collar Suspects

TUESDAY, AUGUST 7

- Environmental Problems and Damages: Toxic Waste Discharges
- New Genetic Technologies, Medical Promises and Legal Pitfalls
- Privacy 1984—Challenges for Business
- Negotiating: The Neglected Skill
- Drugs and Violence in Juvenile Institutions of Juvenile Detention
- Interjurisdictional Enforcement and Conflicts—Problems in Family Law
- Crisis in Criminal Justice: Postconviction Death Penalty Representation

WEDNESDAY, AUGUST 8

- Cancerphobia/The Increased Risk of Cancer—Compensable Injuries
- Industrial Policy As It Might Affect Labor Relations and Collective Bargaining
- The Military Family
- New Concepts in Alimony, Maintenance and Support
- Private Sector Activities in Outer Space: Emerging Law and Practice

In addition to the above mentioned programs, following is a schedule for traditional and special events:

SUNDAY, AUGUST 5

- Annual Prayer Breakfast
- Open-house and dedication ceremonies for the American Bar Association's new headquarters at 750 N. Lake Shore Drive on the campus of Northwestern University
- Special conference with representatives of more than thirty foreign bar associations including the International Bar Association, Inter-American Bar Association, and Union Internationale des Avocats. Tentative discussion topics include establishment of institutional relationships and forms of cooperation, both bilateral and multilateral, between the ABA and foreign bar associations, educational programs and attorney-client privilege.

MONDAY, AUGUST 6

- ABA Opening Assembly
- Gavel Awards Assembly Luncheon

TUESDAY, AUGUST 7

- Assembly Luncheon
- House of Delegates Meetings

WEDNESDAY, AUGUST 8

- Assembly Luncheon
- House of Delegates Meetings

A detailed listing of topics for consideration by the House of Delegates will be issued as soon as possible.

In the meantime, please note that the deadline for advance press registration and housing registration is June 29. Should you have any questions concerning the ABA Annual Meeting please contact the ABA Division of Communications and Public Affairs at (312) 621-9200.

Disciplinary Enforcement Rules Overhauled

Like the '37 Ford sitting patiently in the back of the garage, the Rules of Disciplinary Enforcement have at long last undergone a comprehensive overhaul. In this issue of the *Alaska Bar Rag*, the Board of Governors has published one of the most comprehensive rewrites of the Rules of Disciplinary Enforcement since statehood.

The rewrite project started with a visit in June 1983 from an evaluation team of the American Bar Association Center for Professional Responsibility in Chicago. **Mark Harrison,** Chairman of the Standing Committee on Professional Discipline; **Michael Franck,** Executive Director of the State Bar of Michigan; and **Timothy McPike**, Discipline Counsel with the National Center for Professional Responsibility spoke with persons involved in the disciplinary process at all levels from complainants to members of the Supreme Court. Their report was presented to the Alaska Supreme Court and the Board of Governors in January of this year and it recommended a number of comprehensive changes to the disciplinary process.

The team identified processing time and credibility of the disciplinary process as two of the most critical factors facing the Bar Association. The Board of Governors hired **Kathy Anderson** to undertake the comprehensive revision of the current rules in light of the Board-approved changes. After many hours of drafting and redrafting and a number of work sessions with the Board of Governors, the new rules emerged in the form presented in the *Bar Rag* today.

The proposed rules clearly delineate the duties and responsibilities of parties at each level. While there are a number of differences between these rules and the current rules, there are 14 major changes to be considered by the Court.

The first of these changes is proposed Rule 11 which gives the Discipline Counsel of the Alaska Bar Association the authority to verify the accuracy of an attorney's bank account when there is probable cause to believe that client funds have not been properly handled. Counsel must request the permission of a hearing committee member for the audit.

Proposed Rule 14 provides for the first time a clear designation of the responsibilities of the Executive Director of the Bar Association. The Executive Director assumes a role as "clerk" of the Disciplinary Board in the scheduling of disciplinary matters and the selection of hearing committee members for disciplinary hearings, procedural motions, and the issuance of discovery subpoenas.

Traditionally, there had been only five types of discipline: disbarment, suspension up to five years, or public censure by the Supreme Court; private reprimand by the Board; and private informal admonition by Bar Counsel. Proposed Rule 16 adds two more possible dispositions: imposition of probation by the Court or public reprimand by the Disciplinary Board. These new alternatives give the Board more latitude in disposing of disciplinary matters, and in the case of probation, allows the Board to monitor the conduct of an attorney whose practice needs supervision for a period of time.

Immunity from criminal prosecution was a prime suggestion of the ABA evaluation team. The team argued that witnesses could be intimidated by respondent attorneys in the disciplinary process and that immunity was necessary to assure their complete cooperation. That proposed change is found under Rule 17(B).

Proposed Rule 18 adds the concept of the statute of limitations to disciplinary matters. Under the proposed rule, grievances against attorneys must be filed within five years of the time that the complainant discovers, or should have discovered, the misconduct. However, the rule allows consideration of traditional principals of tolling, equity and due process.

Perhaps the most significant change in the proposed rules is Rule 21 which opens attorney discipline proceedings to the public following the filing of a Petition For Formal Hearing. Under this rule, members of the public will be able to attend formal hearings before hearing committees or the Disciplinary Board except in cases involving disability. The Executive Director's file, maintained in the Alaska Bar Association office, will constitute the record available to the public, much the same as records filed in criminal and civil are available to the public in the Clerk of Court's office. Allied closely with this new procedure is the increased standard of proof required for proving attorney misconduct. Under the current rules, the Bar Association is required to prove misconduct by the preponderance of the evidence. However, under new Rule 22(e), Discipline Counsel has the burden of showing by clear and convincing evidence that attorney misconduct has occurred.

Proposed Rule 22 has also opened new procedural safeguards to the discipline process. Under subsection (e), Discipline Counsel must obtain the consent of a hearing committee member for the filing of a Formal Petition against a respondent attorney. Previously, Discipline Counsel was required to obtain permission from a hearing committee member only for the administration of a private informal admonition. Discipline Counsel's decision to dismiss a complaint may be appealed by a complainant under new Rule 25 (c).

In several cases arising in the past several years, counsel for the Bar Association and the respondent have agreed that a particular disposition may be appropriate in a respondent attorney's case. However, because of the structure of the current rules, any stipulated disposition still required hearing committee consideration, Disciplinary Board consideration and ultimate approval by the Supreme Court. Under proposed Rule 22(h), this process has been shortened considerably. Now a respondent

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A. Misconduct

Rule 9.
General Principles and Jurisdiction.

(a) **License.** The license to practice law in Alaska is a continuing proclamation by the Supreme Court of the State of Alaska (hereinafter the "Court") that the holder is fit to be entrusted with professional and judicial matters and to aid in the administration of justice as an attorney and counselor, and to act as an officer of the courts. As a condition of the privilege to practice law, it is the duty of every member of the Bar of this state to act at all times in conformity with the standards imposed upon members of the Alaska Bar Association (hereinafter the "Bar"). These standards include, but are not limited to, the Code of Professional Responsibility and the Code of Judicial Conduct that have been or may hereafter be adopted or recognized by the Court.

(b) **Duty to Assist.** Each member of the Bar has the duty to assist any member of the public in filing grievances against members of the Bar with the Discipline Counsel of the Alaska Bar Association (hereinafter "Discipline Counsel"). Each member of the Bar has the duty to assist Discipline Counsel in the investigation, prosecution, and disposition of complaints filed with or by Discipline Divisions in the performance of their duties.

(c) **Attorney Jurisdiction.** Any attorney admitted to the practice of law in Alaska, or any other attorney who appears, participates, or otherwise engages in the practice of law in this state, is subject to the jurisdiction of the Court, the Disciplinary Board of the Alaska Bar Association, and these Rules of Disciplinary Enforcement (hereinafter "Rules"). These Rules will not be interpreted to deny to any other court the powers necessary for that court to maintain control and supervision over proceedings conducted before it, such as the power of contempt.

(d) **Venue.** Disciplinary jurisdiction in this state will be divided into the following areas:

1) Area 1—The First Judicial District;
2) Area 2—The Second and Fourth Judicial Districts;
3) Area 3—The Third Judicial District.

Venue will lie in that area in which an attorney maintains an office or any area in which the conduct under investigation occurred.

(e) **Attorney Roster.** Within 15 days of any change, each member of the Bar has the duty to inform the Bar of his or her current mailing address and telephone number to which communications may be directed by clients and the Bar.

Rule 10. The Disciplinary Board of the Alaska Bar Association.

(a) **Definition.** The Board of Governors of the Bar, when meeting to consider grievance and disability matters, will be known as the Disciplinary Board of the Alaska Bar Association (hereinafter the "Board"). The President of the Board (hereinafter "President"), or a Board member at the President's direction, may direct the submission of any matter to the Board by mail, telegraph or telephone. The votes on any matter may be taken in person at a Board meeting, or by conference telephone call.

(b) **Quorum.** Five members will constitute a quorum and the Board will act only with the agreement of a majority of the members sitting.

(c) **Powers and Duties.** The Board will have the powers and duties to:

(1) appoint and supervise Discipline Counsel and his or her staff;

(2) supervise the investigation of all complaints against attorneys;

(3) retain legal counsel and appoint Special Discipline Counsel;

(4) hear appeals from the recommendations of Hearing Committees and modify the findings of fact, conclusions of law, and recommendation of Hearing Committees regardless of whether there has been an appeal to the Board, and without regard to the discipline recommended by the Hearing Committee;

(5) recommend discipline to the Court as provided in Rule 16(a)(1), (2), (3) or (4), or order discipline as provided in Rule 16(a)(5).

(6) in cases where the Board has recommended discipline as provided in Rule 16(a)(1), (2), (3), or (4), forward to the Court its findings of fact, conclusions of law, recommendation, and record of proceedings;

(7) impose private reprimand as a Board upon a Respondent attorney (hereinafter "Respondent") upon referral by Discipline Counsel under Rule 22(d); and

(8) maintain complete records of all discipline matters in which the Board or any of its members may participate, and furnish complete records to the Discipline Counsel upon final disposition. These records are subject to the provisions of Rule 21 concerning public access and confidentiality.

(d) **Judicial Members.** The Board will have the authority to recommend to the Court discipline for judicial members of the Bar.

(e) **Proceedings Against Members.** Investigations of grievances and proceedings against members of the Board will be conducted in the same manner as investigations and proceedings against other Respondents, except that in the

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attorney and Discipline Counsel may submit a proposed disposition by consent to the Board of Governors for discipline at its level or recommendation to the Court for discipline at the Court's level.

The Supreme Court currently has had the power to immediately suspend an attorney convicted of a serious crime. The concept of interim suspension has been expanded under the proposed Rule 26 to enable the Court to suspend an attorney for conduct which constitutes a substantial threat of irreparable harm to his or her clients or prospective clients or where there is a showing that the attorney's conduct is causing great harm to the public by a continuing course of conduct. This provision will enable the Bar Association to move quickly to stop the harmful practices of an attorney pending formal resolution of the matter through the disciplinary process.

The duties of disciplined attorneys have been made more specific under the proposed Rule 28. Under that rule, duties are identified for three categories of disciplined attorneys: attorneys disbarred, suspended more than 90 days or on interim suspension; 2) attorneys suspended 90 days or less; 3) attorneys on probation. Likewise, proposed Rule 29 streamlines the reinstatement process for attorneys who have been suspended for six months or less. Under this proposed rule attorneys suspended for six months or less may resume practice without order of the Court upon the expiration date of the suspension, provided that no opposition is filed by Discipline Counsel to the reinstatement.

Proposed Rule 31 deals with the particularly difficult problem of an attorney who has disappeared, abandoned his practice or has been transferred to disability inactive status and leaves no person in a business relationship with him or her to handle his or her legal affairs. This rule provides for the appointment of a "trustee" counsel who will notify clients of the unavailable attorney as well as inventory the practice and report to the Court on the progress of his or her efforts.

Lastly, proposed new Rule 32 permits Discipline Counsel to expunge and destroy all files of any disciplinary or disability proceedings terminated by dismissal five years after the date of dismissal. While administrative and statistical data will be maintained, this rule will enable the discipline section to reduce the substantial number of files currently in permanent storage.

The Board of Governors sincerely requests the comments of the membership not only on these major changes but also on proposed rules as a whole. It is expected that the proposed rules will be submitted to the Court for its consideration and approval later this summer.

Rules of Disciplinary Enforcement . . .

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event a formal petition is filed, the Court will perform the duties and have the powers of the Board, as provided in these Rules.

Rule 11.
Discipline Counsel of the Alaska Bar Association.

(a) **Powers and Duties.** The Board will appoint an attorney to be the Discipline Counsel of the Alaska Bar Association (hereinafter "Discipline Counsel") who will serve at the pleasure of the Board. Discipline Counsel will

(1) with the approval of the Board, employ attorneys as Assistant Discipline Counsel and other staff as needed for the performance of his or her duties;

(2) supervise Assistant Discipline Counsel and the staff of the discipline section of the Bar;

(3) retain and supervise investigators;

(4) supervise the maintenance of any records;

(5) aid members of the public in filing grievances;

(6) process all grievances;

(7) investigate alleged misconduct of attorneys;

(8) after finding probable cause to believe that client funds have not been properly handled, and with the approval of one Area Division member, verify the accuracy of a Respondent's bank accounts that contain, should contain, or have contained client funds; Discipline Counsel will serve upon Respondent the results of the verification in writing; any costs associated with the examination or subsequent proceedings may be assessed against the Respondent when substantial irregularities in the records are found;

(9) dismiss grievances if it appears from the investigation that there is no probable cause to believe that misconduct has occurred;

(10) in his or her discretion, refer a grievance to the Attorney Fee Review Committee for proceedings under Part III of the Alaska Bar Rules, if the grievance concerns a fee dispute;

(11) in his or her discretion, refer a grievance to a Conciliator, for proceedings under Rule 13, if the grievance concerns matters other than a fee dispute or conduct referred to in Rule 15;

(12) in his or her discretion, upon a finding of misconduct and with the approval of one member of an Area Hearing Division, impose a written private admonition upon a Respondent;

(13) in his or her discretion, after seeking review in accordance with Rule 25(d), and upon a finding of probable cause to believe that misconduct has occurred, file a petition for formal hearing initiating public proceedings;

(14) in his or her discretion, prosecute grievances and appeals; (s)he may advocate discipline other than that recommended or ordered by a Hearing Committee or the Board;

(15) in the absence of a specific grievance, initiate investigation of any misconduct and prepare and file grievances in the name of the Bar;

(16) appear at reinstatement hearings requested by suspended or disbarred attorneys;

(17) report to the Commission on Judicial Conduct any grievance involving a judge, even if the grievance arises from the judge's conduct before (s)he became a judge, or from conduct unconnected with his or her judicial office;

(18) in his or her discretion, initiate a grievance proceeding against a Respondent who is the subject of disciplinary proceedings before the Commission on Judicial Conduct, whether or not a finding of misconduct has been made by the Commission;

(19) keep the Board fully informed about the progress of all matters in his or her charge;

(20) cooperate with individuals authorized by other states to perform disciplinary functions for that state; and

(21) perform other duties as set forth in these Rules or as assigned by the Board.

(b) **Grievance Forms.** Discipline Counsel will furnish forms which may be used by any person to allege misconduct against an attorney. The forms will be available to the public through the office of the Bar and through the office of every clerk of court.

(c) **Dismissal of Grievance.** Any grievance dismissed by Discipline Counsel will be the subject of a summary prepared by Discipline Counsel and filed with the Board. Discipline Counsel will communicate disposition of the matter promptly to the Complainant and Respondent.

(d) **Record Keeping.** The Discipline Counsel will maintain records of all grievances processed and maintain statistical data reflecting

(1) the subject of the grievances received and acted upon;

(2) the status and ultimate disposition of each grievance; and

(3) the number of times each attorney is the Respondent in a grievance, including the subjects of the grievances, and the ultimate disposition of each.

(e) **Delegation to Assistant Discipline Counsel.** Discipline Counsel may delegate such tasks as (s)he deems appropriate to Assistant Discipline Counsel (hereinafter "Assistants"). Any reference in these Rules to Discipline Counsel will include the Assistants, when the tasks referred to in the Rules have been delegated to the Assistants by the Discipline Counsel.

(f) **Proceedings Against Discipline Counsel.** Proceedings against Discipline Counsel or any Assistant Discipline Counsel will be conducted in the same manner as proceedings against any other Respondent. In these matters, the Board will appoint Special Discipline Counsel who will perform the duties and have the powers of Discipline Counsel as provided in these Rules.

(g) **Expunction of Files.** Discipline Counsel will expunge files of disciplinary, disability, and reinstatement proceedings in accordance with Rule 32.

Rule 12.
Area Discipline Divisions and Hearing Committees.

(a) **Appointment of Area Division Members.** Members of Area Discipline Divisions (hereinafter "Area Divisions"), will be appointed by the President, subject to ratification by the Board. Each Area Division will consist of

(1) not less than six members in good standing of the Bar, each of whom maintains an office for the practice of law within the area of disciplinary jurisdiction for which he or she is appointed; and

(2) not less than three non-attorney members of the public (hereinafter "public member"), each of whom resides in the area of disciplinary jurisdiction for which he or she is appointed, is a United States Citizen, is at least 25 years of age, and is a resident of the State of Alaska.

Area Division members will each serve a three-year term, with each term to commence on July 1 and expire on June 30th of the third year. No member will serve for more than two consecutive terms. A member whose term has expired prior to the disposition of a disciplinary or disability matter to which he or she has been assigned will continue to serve until the conclusion and disposition of that matter. This continued service will not prevent immediate appointment of his or her successor. A member who has served two consecutive terms may be reappointed after the expiration of one year.

(b) **Powers and Duties of Area Division Members.** Upon selection and assignment by the Director, Area Division members will have the powers and duties to

(1) sit on Hearing Committees;

(2) review requests from Discipline Counsel to impose private admonitions upon Respondents pursuant to Rule 22(d);

(3) hear appeals from complainants from dismissals of grievances pursuant to Rule 25(c);

(4) review Discipline Counsel's decision to file a formal petition pursuant to Rule 25(d) or (e);

(5) review challenges to Hearing Committee members pursuant to Section (f) of this Rule; and

(6) issue subpoenas and hear challenges to their validity pursuant to Rule 24(a).

(b) **Representation of Respondents Prohibited.** Members serving on Area Divisions will not represent a Respondent in disability or grievance matters during his or her term.

(b) **Failure to Perform.** The President has the power to remove an Area Division member for good cause. The President will appoint, subject to ratification by the Board, a replacement attorney or public member, to serve the balance of the term of the removed member.

(c) **Assignment of Hearing Committee Members.** The Executive Director of the Bar (hereinafter "Director") will select and assign members of an Area Division to a Hearing Committee of not less than two attorney members and one public member. In addition, the Director will appoint an attorney member as chair of the Hearing Committee.

(d) **Hearing Committee Quorum.** Each Hearing Committee will act only with the agreement of a majority of its members sitting for the matter before it. Three members will constitute a quorum, one of whom will be a public member. The Hearing Committee chair will vote except when an even number of Hearing Committee members is sitting.

(e) **Conflict of Interest.** A Hearing Committee member may not consider a matter when

(1) (s)he is a party or is directly interested;

(2) (s)he is a material witness;

(3) (s)he is related to the Respondent by blood or affinity within the third degree;

(4) the Respondent has retained the Hearing Committee member as his or her attorney or has been professionally counseled by him or her in any matter within two years preceding the filing of the formal petition before the Committee; or

(5) (s)he believes that, for any reason, (s)he cannot give a fair and impartial decision.

(f) **Challenged Member.** Any challenge for cause to an Area Division member assigned to a Hearing Committee must be made by either Respondent or Discipline Counsel within 10 days following notice of the assignment, unless new evidence is discovered which establishes grounds for a challenge for cause. The challenge will be ruled upon by an impartial Area Division member selected by the Director from the Area Division from which the Hearing Committee was chosen. If the Area Division member finds the challenge well taken, he or she will notify the Director, who will assign another member of the Area Division to the Hearing Committee. If a quorum exists in the absence of the challenged member, the Director need not assign a replacement.

Within 10 days of the notice of assignment of Hearing Committee members, a Respondent may file one peremptory challenge and the Discipline Counsel may file one peremptory challenge. The Director will at once, and without requiring proof, relieve the challenged member of his or her obligation to participate, and the Director will assign another member of the Area Division to the Hearing Committee. If a quorum exists in the absence of the challenged member, the Director need not appoint a replacement.

(g) **Powers and Duties of Committees.** Hearing Committees will have the powers and duties to

(1) swear witnesses, who will be examined under oath or affirmation, and conduct hearings on formal charges of misconduct referred to them by Discipline Counsel;

(2) acting as a body, or through a single member, issue subpoenas and consider challenges to their validity;

(3) direct, in their discretion, the submission of proposed findings of fact, conclusions of law, recommendations, and briefs; and

(4) submit a written report to the Board. This report will contain the Hearing Committee's findings of facts, conclusions of law, and recommendation, and will be submitted together with the record, including any briefs submitted and a transcript of the proceedings before it.

(h) **Proceedings Against Members.** Proceedings against attorney members of Area Divisions will be conducted in the same manner as proceedings against any other Respondent. In the event a formal petition is filed against an Area Division member, (s)he will not be assigned to any future discipline matters pending disposition of the proceeding. If a finding of misconduct or disability is made against an Area Division member, he or she will be removed from the Division in accordance with Section (6) of this Rule.

Rule 13.
CONCILIATION PANELS.

(a) **Definition.** Conciliation panels will be established for the purpose of settling disputes between attorneys and their clients not concerning fee disputes or misconduct as set out in Rule 15. At least one conciliation panel will be established in each area defined in Rule 9.

(b) **Terms.** Each conciliation panel will consist of at least three active members in good standing of the Bar, each of whom maintains an office for the practice of law in the area for which he or she is appointed. The members of each conciliation panel will be appointed by the President subject to ratification by the Board. The members will serve staggered terms of three years, each to commence on July 1 and expire on June 30th of the third year.

(c) **Powers and Duties.** A member of a conciliation panel will be known as a Conciliator. Only one Conciliator need act on any single matter. Conciliators will have the power and duty to mediate disputes referred to them by Discipline Counsel pursuant to Rule 11(a)(11).

(d) **Informal Proceedings.** Proceedings before a Conciliator will be informal. A Conciliator will not have subpoena power or the power to swear witnesses. A Conciliator does not have the authority to impose a resolution upon any party to the dispute.

(e) **Written Agreement.** If proceedings before a Conciliator produce resolution of the dispute in whole or in part, the Conciliator will prepare a written agreement containing the resolution which will be signed by the parties to the dispute.

(f) **Report to Discipline Counsel.** When the dispute has been resolved, or when in the judgment of the Conciliator further efforts at conciliation would be unwarranted, the Conciliator will submit a written report to the Discipline Counsel which will include:

(1) a summary of the dispute;

(2) the contentions of the parties to the dispute;

(3) any agreement which may have been reached;

(4) any matters upon which agreement was not reached;

(5) the opinion of the Conciliator on the merits of the dispute; and

(6) the opinion of the Conciliator on the good faith or lack of good faith of the efforts made by any attorney to resolve the dispute.

(g) **Failure of Attorney to Participate in Good Faith.** Any attorney

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involved in a dispute referred to a Conciliator has the obligation to confer expeditiously with the Conciliator and with all other parties to the dispute and to cooperate in good faith with the Conciliator in an effort to resolve the dispute. Failure by any attorney to participate in good faith in an effort to resolve a dispute submitted to a Conciliator may be grounds for disciplinary action under these Rules.

Rule 14.
EXECUTIVE DIRECTOR OF ALASKA BAR ASSOCIATION.

The Executive Director of the Alaska Bar Association (hereinafter "Director"), or an assistant designated by the Director, has the administrative powers and duties to

(1) appoint and supervise an administrative staff for purposes of maintaining documents generated by disciplinary, disability, and reinstatement proceedings;

(2) on behalf of Hearing Committees and the Disciplinary Board

(A) accept petitions for formal hearing;

(B) accept Board and Hearing Committee reports, records, pleadings, and other documents generated in the course of disciplinary, disability, and reinstatement proceedings; and

(C) act as clerk in calendaring and scheduling hearing matters;

(3) select and assign not less than three impartial members of area Divisions to serve on Hearing Committees in accordance with Rule 12(c), and to appoint an attorney as chair of the Hearing Committee;

(4) replace and assign Hearing Committee members when necessary in accordance with Rule 12(f);

(5) as set forth in these Rules, select impartial members from the Area Divisions for purposes of

(A) consultation with Discipline Counsel;

(B) appeals from or review of Discipline Counsel determinations; and

(C) review of challenges to Hearing Committee members; and

(6) perform other duties for and on behalf of the Board as set forth in these Rules or as assigned by the President of the Board.

Rule 15.
GROUNDS FOR DISCIPLINE.

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

(1) conduct which results in conviction of a serious crime;

(2) conduct which results in attorney or judicial discipline in any other jurisdiction, as provided in Rule 27;

(3) knowing misrepresentation of any facts or circumstances surrounding a grievance;

(4) failure to anser a grievance, failure to answer a formal petition for hearing, or failure to furnish information or respond to a request from the Board, Discipline Counsel, or a Hearing Committee in conformity with any of these Rules;

(5) failure to cooperate in a conciliation, as required by Rule 13(g);

(6) contempt of the Board, of a Hearing Committee, or of any duly appointed substitute;

(7) engaging in the practice of law while on inactive status, or while disbarred or suspended from the practice of law for any reason;

(8) failure to perform or comply with any condition of discipline imposed pursuant to these Rules; or

(9) failure to inform the Bar of his or her current mailing address and telephone number as provided in Rule 9(e).

Rule 16.
TYPES OF DISCIPLINE AND COSTS.

(a) **Discipline Imposed by the Court or Board.** A formal finding of misconduct will be grounds for:

(1) disbarment by the Court; or

(2) suspension by the Court for a period not to exceed five years; or

(3) probation imposed by the Court for a period not to exceed two years; or

(4) public censure by the Court; or

(5) public reprimand by the Disciplinary Board.

(b) **Discipline Imposed by Discipline Counsel.** When Discipline Counsel has made a finding of probable cause to believe that misconduct has occurred, the following discipline may be imposed:

(1) private reprimand in person by the Board; or

(2) written private admonition by Discipline Counsel.

(c) **Restitution; Reimbursement; Costs.** When a formal finding of misconduct is made, in addition to any discipline listed above, the Court or the Board may impose the following requirements against the Respondent:

(1) restitution to aggrieved persons or organizations;

(2) reimbursement of the Client Security Fund; or

(3) payment of the costs of the proceedings or investigation or any parts thereof.

Rule 17.
IMMUNITY.

(a) **General Immunity.** Members of the Board, members of Area Divisions, Discipline Counsel, Special Discipline Counsel, the Executive Director, and all Bar staff are immune from suit for any conduct in the course of their official duties as set forth in these Rules.

(b) **Witness Immunity.** The Court, or its designee, upon application by the Board, Discipline Counsel, or counsel for Respondent, may in its discretion grant immunity from criminal prosecution to witnesses in disciplinary, disability, or reinstatement proceedings.

Rule 18.
STATUTE OF LIMITATIONS.

Grievances against Respondents will be filed within five years of the time that the Complainant discovers or reasonably should discover the misconduct. This Rule, however, will be interpreted to allow traditional principles of tolling, equity, and due process.

Rule 19.
REFUSAL OF COMPLAINANT TO PROCEED.

The unwillingness of a Complainant to continue his or her grievance, the withdrawal of the grievance, a compromise between the Complainant and the Respondent, or restitution by the Respondent, will not in and of itself justify abatement of a disciplinary investigation or proceeding.

Rule 20.
MATTERS RELATED TO PENDING CIVIL OR CRIMINAL LITIGATION.

Prosecution of grievances involving material allegations which are substantially similar to the material allegations of criminal or civil litigation pending in a court will not be deferred unless the Board, in its discretion, and for good cause shown, authorizes deferement. In the event deferment of a disciplinary investigation or proceeding is authorized by the Board, the Respondent will make all reasonable efforts to obtain a prompt trial and disposition of the pending litigation. In the event the litigation is unreasonably delayed, the Board may direct, upon motion, that the investigation and any subsequent disciplinary proceedings be conducted promptly.

The acquittal of the Respondent on criminal charges or a verdict or judgment in his or her favor in civil litigation involving substantially similar material allegations will not in and of itself justify abatement of a disciplinary investigation or proceeding predicated upon the same material allegations.

Rule 21.
PUBLIC ACCESS TO DISCIPLINARY PROCEEDINGS.

(a) **Discipline and Reinstatement Proceedings.** After the filing of a petition for formal hearing, hearings held before either the Hearing Committee or the Board will be open to the public. This Rule will not be interpreted to allow public access to disability proceedings described in Rule 30.

(b) **Deliberations.** Deliberations of any adjudicative body will be kept confidential.

(c) **Discipline Counsel's Files.** All files maintained by Discipline Counsel and staff will be confidential and are not to be reviewed by any person other than Discipline Counsel or individuals appointed for purposes of review or appeal under these Rules. This provision will not be interpreted to:

(1) preclude Discipline Counsel from introducing into evidence any documents from his or her files;

(2) establish additional evidenciary privileges for discovery purposes;

(3) deny a complainant information regarding the status or disposition of his or her grievance; or

(4) deny the public facts regarding the stage of any proceeding or investigation concerning a Respondent's conviction of a crime.

(d) **Director's File.** The file maintained by the Director, acting in his capacity as clerk, will be open for public review.

(e) **National Discipline Data Bank.** The Board will transmit to the National Discipline Data Bank maintained by the American Bar Association notice of all public discpline imposed by the Court or the Board, all transfers to inactive status due to disability, and all orders granting reinstatement.

Rule 22.
PROCEDURE.

(a) **Grievances.** Grievances will be in writing, signed by the Complainant, and contain a clear statement of the details of each act of alleged misconduct, including the approximate time and place of each. Grievances will be filed with Discipline Counsel. Discipline Counsel will review the grievance filed to determine whether it is properly completed and contains allegations which, if true, would constitute grounds for discipline as set forth in Rule 15. Discipline Counsel may require the Complainant to provide additional information prior to accepting a grievance. If Discipline Counsel determines that the allegations contained in the grievance are inadequate or insufficient to warrant an investigation, (s)he will so notify the Complainant and Respondent.

If Discipline Counsel accepts a grievance for investigation, (s)he will serve a copy of the grievance upon the Respondent for a response. Discipline Counsel may require the Respondent to provide, within 20 days of service, full and fair disclosure in writing of all facts and circumstances pertaining to the alleged misconduct. Misrepresentation in a response to Discipline Counsel will itself be grounds for discipline. Failure to answer within the prescribed time, or within such further time that may be granted in writing by Discipline Counsel, will be deemed an admission to the allegations in the grievance.

(b) **Confidentiality.** Prior to the intiation of formal proceedings, Complainants and all persons contacted during the course of an investigation have a duty to maintain the confidentiality of discipline and disability proceedings. It will be regarded as contempt of court to breach this confidentiality in any way. It will not be regarded as a breach of confidentiality for a person so contacted to consult with an attorney.

(c) **Dismissal before Formal Proceedings.** If after investigation it appears that there is no probable cause to believe that misconduct has occurred, Discipline Counsel may dismiss the grievance.

(d) **Imposition of Private Admonition or Reprimand.** Upon a finding of misconduct, and with the approval of one Area Division member, Discipline Counsel may impose a written private admonition upon a Respondent. A Respondent will not be entitled to appeal a private admonition by Discipline Counsel but may demand, within 30 days of receipt of the admonition, that a formal proceeding be instituted against him or her before a Hearing Committee. If Respondent demands a formal proceeding, the admonition will be vacated and Discipline Counsel will proceed under Section (e) of this Rule.

In the discretion of Discipline Counsel, (s)he may refer a matter to the Board for approval and imposition of a private reprimand by the Board, provided that the Respondent has, under Section (h) of this Rule, consented to the discipline before the Board.

(e) **Formal Proceedings.** Upon a finding of misconduct, and after seeking review in accordance with Rule 25(d), Discipline Counsel may initiate discipline proceedings by filing with the Director a petition for formal hearing which specifically sets forth the charge(s) of misconduct. A copy of the petition will be served upon the Respondent. Service will be accomplished in accordance with Rule 4 of the Alaska Rules of Civil Procedure.

Respondent will be required to file the original of his answer with the Director, and serve a copy upon Discipline Counsel, within 20 days after the service of the petition for formal hearing. Should Respondent fail to timely answer, the charges will be deemed admitted without need of any further action by Discipline Counsel. Charges before a Hearing Committee will be presented by Discipline Counsel. Discipline Counsel will have the burden at any hearing of demonstrating by clear and convincing evidence that the Respondent has, by act or omission, committed misconduct as provided in Rule 15.

Discipline Counsel may amend a petition for formal hearing at any time before an answer is filed. Discipline Counsel may amend a petition for formal hearing after an answer is filed only by leave of the Hearing Committee or by written consent of the Respondent. Leave to amend will be freely given when justice requires. A Respondent will file an answer to an amended petition for formal hearing within the time remaining to file an answer to the original petition, or within 10 days after service of the amended petition, whichever is later.

(f) **Assignment to Hearing Committee.** In accordance with Rule 12(c), a petition for formal hearing will be assigned by the Director to a Hearing Committee after an answer is filed or the expiration of the time for filing an answer unless Respondent tenders conditional consent to a specific discipline.

(g) **Pre-Hearing Conference.** A prehearing conference may be convened by the chair of the Hearing Committee for stipulation as to matters of fact, simplification of issues, identification of preliminary motions, and other similar matters which may be resolved prior to hearing.

(h) **Discipline by Consent.** Respondent may tender a conditional consent to a specific discipline contained in Rule 16. This conditional consent will be submitted to Discipline Counsel for his or her approval. If accepted by Discipline Counsel, (s)he will refer the conditional admission to the Board for its

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approval or rejection of the requested discipline.

The consenting Respondent will present to the Board an affidavit stating that (s)he desires to consent to the specific discipline and that

(1) his or her consent is freely and voluntarily given and is not the subject of any coercion or duress; and

(2) (s)he admits to the charges stated in the grievance.

Acceptance of the conditional consent by the Board will be subject to Court approval if the specific discipline to be imposed includes discipline provided in Rule 16(a)(1), (2), (3) and (4). Any conditional admission rejected by the Board or the Court will be withdrawn and Discipline Counsel will proceed under Section (e) of this Rule. Any admission made by Respondent in a conditional consent rejected by the Board or the Court cannot be used against the Respondent in any subsequent proceeding.

If the Court or the Board rejects a conditional consent, the matter will be remanded to the Hearing Committee, if any, which was appointed to hear the petition. If no Hearing Committee has been appointed, the Director will appoint one in accordance with Section (f) of this Rule.

(i) **Notice of Hearing.** The Director will serve a notice of formal hearing upon Respondent, or his or her counsel, indicating the date and place of the formal hearing and the names and addresses of the members of the Hearing Committee before whom the matter will be heard. The notice of formal hearing will advise the Respondent that (s)he is entitled to:

(1) be represented by counsel;

(2) examine and cross-examine witnesses;

(3) present evidence in his or her own behalf;

(4) have subpoenas issued in his or her behalf; and

(5) challenge peremptorily and for cause members of the Hearing Committee, as provided in Rule 12(f).

(j) **Rules of Evidence.** The rules of evidence applicable in administrative hearings will apply in all hearings before Hearing Committees. No new evidence shall be allowed by the committee chair after the hearing without notice to the opposing party and an opportunity to respond.

(k) **Motions, Findings, Conclusions, Recommendation.** Hearing Committees may consider and rule on prehearing motions. On procedural motions, the committee chair will rule; on dispositive or substantive motions, the full Hearing Committee will rule. The Hearing Committee may direct either or both parties to submit proposed findings of fact, conclusions of law, and recommendation after the formal hearing, which will be filed within 10 days of the date of the request by the Committee.

(l) **Report of Hearing Committee.** Within 30 days of the conclusion of a formal hearing, the Hearing Committee will submit its report to the Board in accordance with 12(g)(4), unless an extension of time is granted by the President of the Board. Within 10 days of the submission of the report, Discipline Counsel or Respondent may appeal the Hearing Committee's findings of fact, conclusions of law, and recommendation and request oral argument before the Board, as provided in Rule 25(f). The Director will thereafter set the dates for submission of briefs and oral argument before the Board.

(m) **Oral Argument.** Oral argument before the Board will be waived unless either Discipline Counsel or Respondent requests argument as provided in Section (1) of this Rule.

(n) **Board Recommendation or Order.** The Board will review the Hearing Committee report and record and enter an appropriate recommendation or order as provided in Rule 10(4) and (5). If the Board has recommended discipline as provided in Rule 16(a)(1), (2), (3) or (4), it will submit to the Court its findings of facts, conclusions of law, recommendation, and the record. The record will include a transcript of all proceedings before the Board as well as the Hearing Committee report.

(o) **Notification of Disposition.** The Director will promptly notify all parties of the Board's action.

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

Rule 23.
SERVICE.

All service of petitions will be accomplished in accordance with Rule 4 of the Alaska Rules of Civil Procedure. All service of pleadings, motions, and other documents contemplated by any requirement of these Rules will be accomplished in accordance with Rule 5 of the Alaska Rules of Civil Procedure.

Rule 24.
DISCOVERY; SUBPOENA POWER; WITNESS COMPENSATION; INDIGENT RESPONDENTS.

(a) **Subpoenas during Investigation.** At any stage of an investigation, only the Discipline Counsel will have the right to summon witnesses and require the production of records by issuance of subpoenas. Subpoenas will be issued at the request of Discipline Counsel by any member of any Area Division. Subpoenas will be served in accordance with Rule 23. Any challenge to the validity of a subpoena so issued will be heard and determined by any member of any Area Division. All subpoenas issued under this section will clearly indicate on their face that they are issued in connection with a confidential investigation and that it is regarded as contempt of court for any member of the court system or a person subpoenaed to in any way breach the confidentiality of the investigation. It will not be regarded as a breach of confidentiality for a person subpoenaed to consult with an attorney.

(b) **Subpoenas during Formal Proceedings.** Both Discipline Counsel and Respondent have the right to summon witnesses before a Hearing Committee and to require production of records before the Committee by issuance of subpoenas. Subpoenas will be issued at the request of Discipline Counsel or Respondent by any member of the Hearing Committee. Subpoenas will be served in accordance with Rule 23. Any challenge to the validity of a subpoena will be heard and determined by the chair of the Hearing Committee or any committee member designated by the chair.

(c) **Strength and Scope of Subpoenas.** Subpoenas issued pursuant to this Rule will be enforceable in any superior court in this state. Where subpoenas are to be served out of the State of Alaska, a certified copy of the order signed by the Hearing Committee chair will constitute sufficient authority to effect service.

(d) **Discovery.** Requests for production, requests for admissions, and the taking of deposition testimony, may ensue for a period of 60 days following the filing of Respondent's answer to a petition for formal hearing. Both Discipline Counsel and Respondent will be afforded reciprocal discovery under this rule of all matters not privileged. Any disputes under this section will be ruled upon by the chair of the Hearing Committee. Any discovery ruling is interlocutory and cannot be appealed before final disposition of the matter by the Hearing Committee. The Alaska Rules of Civil Procedure, to the extent applicable, will govern discovery under this Rule.

Deposition testimony may be taken by stenographic, electronic, or video means. The Court will furnish, at its expense, the necessary equipment, operator, and stenographic services for recording and transcription of deposition testimony taken by Discipline Counsel.

(e) **Witness Compensation.** Witnesses may be compensated in accordance with the applicable administrative rules of court. Respondents will not be paid witness fees for attendance at hearings.

Rule 25.
APPEALS; REVIEW OF DISCIPLINE COUNSEL DETERMINATIONS.

(a) **Interlocutory Appeal.** Only upon the conditions, and subject to the rules of procedure set forth in Part IV of the Alaska Rules of Appellate Procedure, may parties petition the Court for review of an interlocutory order, recommendation, or decision of:

(1) any member of any Area Division;

(2) a Hearing Committee or a single member thereof; or

(3) the Board or a single member thereof.

(b) **Admonition Not Appealable.** A Respondent cannot appeal the imposition of a written private admonition. In accordance with Rule 22(d), (s)he may request initiation of formal proceedings before a Hearing Committee within 30 days of receipt of the admonition.

(c) **Appeal by Complainant from Discipline Counsel's Decision to Dismiss.** A Complainant may appeal the decision of the Discipline Counsel to dismiss a complaint within 15 days of receipt of notice of the dismissal. The Director will appoint an impartial member of an Area Division of the appropriate area of jurisdiction to review the Complainant's appeal. The appointed Area Division member may reverse the decision of Discipline Counsel, affirm the decision, or request additional investigation. This Division member will be disqualified from any future consideration of the matter should formal proceedings be initiated. The Complainant may appeal a decision of the Area Division member to the Court only on the grounds that the Area Division member acted arbitrarily, capriciously or unreasonably.

(d) **Review of Discipline Counsel's Decision to File Formal Petition.** A decision by Discipline Counsel to initiate formal proceedings before a Hearing Committee will be reviewed by an impartial member of any Area Division designated by the Director. The Area Division member will, within 20 days, approve, modify, or disapprove the filing of a petition, or order further investigation.

(e) **Appeal by Discipline Counsel.** Discipline Counsel may appeal the decision made under Section (d) of this Rule within 10 days following receipt of the Area Division member's decision. The Director will designate a second impartial Area Division member to hear this appeal. The decision of the second Area Division member will be final.

(f) **Appeal of Hearing Committee Findings, Conclusions, and Recommendation.** Within 10 days of service of the Hearing Committee's report to the Board, as set forth in Rule 22(1), the Respondent or Discipline Counsel may appeal the findings of fact, conclusions of law, or recommendation by filing with the Board, and serving upon opposing party, a notice of appeal. Oral argument before the Board will be waived unless either Discipline Counsel or Respondent requests argument as provided in Section (1) of Rule 22.

(g) **Appeal from Board Recommendation or Order.** Discipline Counsel or 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 order. Part II of the Rules of Appellate Procedure will govern appeals filed under this Rule.

Rule 26.
CRIMINAL CONVICTION; INTERIM SUSPENSION.

(a) **Interim Suspension for Criminal Conviction.** Upon the filing with the Court of a certificate that an attorney has been convicted of a serious crime as defined in Section (b) of this Rule, the Court will enter an order of interim suspension immediately suspending the attorney. The order of interim suspension will be entered whether the conviction resulted from a plea of guilty or nolo contendere, or from a verdict after trial, or otherwise, and regardless of the pendency of an appeal. The Court will notify the Bar and the attorney of the order placing the attorney on interim suspension. The order of interim suspension will continue in effect pending final disposition of the disciplinary proceeding initiated by reason of the conviction.

(b) **Definition of Serious Crime.** The term "serious crime" includes any crime, a necessary element of which, as determined by the statutory or common law definition of the crime, involves his or her conduct while acting as an attorney; interference with the administration of justice; false swearing; misrepresentation; fraud; decit; bribery; corruption; extortion; misappropriation; theft; illegal conduct as set out in the Code of Professional Responsibility; or an attempt, solicitation of another, or

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conspiracy, to commit a "serious crime."

(c) **Certificate of Conviction.** A certificate of conviction for any crime will be conclusive evidence of the commission of that crime in any disciplinary proceeding instituted against an attorney based upon the conviction. A certificate of conviction may be filed with the Court by any clerk of courts, Discipline Counsel, the Board, or any District Attorney. Within 10 days of the judgment of conviction, the certificate of conviction will be transmitted to the Court by any clerk of courts within the state in which the attorney is convicted. Should Discipline Counsel or a District Attorney learn of a criminal conviction of an attorney where there is no certificate of conviction, it will be the responsibility of Discipline Counsel or the District Attorney to obtain the certificate and transmit it to the Court.

(d) **Interim Suspension for Threat of Irreparable Harm.** Interim suspension will be imposed by the Court on a showing by Discipline Counsel of conduct by an attorney that constitutes a substantial threat of irreparable harm to his or her clients or prospective clients or where there is a showing that the attorney's conduct is causing great harm to the public by a continuing course of misconduct.

(e) **Reinstatement after Interim Suspension.** An attorney suspended under Section (a) of this Rule may petition for reinstatement upon the filing of a certificate demonstrating that the underlying conviction for a serious crime has been reversed. The reinstatement will not terminate any formal proceeding then pending against the attorney, the disposition of which shall be determined by the Hearing Committee and the Board on the basis of the available evidence.

(f) **Proceedings Following Interim Suspension.** Upon receipt of the certificate of conviction for a serious crime, the Court, in addition to suspending the attorney in accordance with Section (a) of this Rule, will refer the matter to Discipline Counsel for the initiation of a formal proceeding before a Hearing Committee. The sole issue to be determined by the Hearing Committee will be the extent of the final discipline to be imposed; however, the matter will not be brought to hearing until all appeals from the conviction are concluded, unless the Respondent requests an earlier hearing.

(g) **Proceedings Following Conviction for Other Than Serious Crimes.** Upon receipt of a certificate of conviction for a crime other than those described in Section (b) of this Rule, the Court may, in its discretion, refer the matter to Discipline Counsel for whatever action (s)he deems warranted, including the possible initiation of a formal proceeding.

(h) **Interim Suspension, General Provisions.** If interim suspension is imposed by the Court, the Court may appoint a trustee in accordance with Rule 31. In any case in which interim suspension has been ordered, the disciplinary proceedings will be diligently prosecuted. Interim suspension will terminate upon the final disposition of disciplinary proceedings, or upon the earlier entry of an order by the Court terminating interim suspension.

(i) **Notification.** An attorney placed on interim suspension must comply with Rule 28 concerning notification of parties.

Rule 27.
RECIPROCAL DISCIPLINE.

(a) **Notice to Disciplined Attorney.** Upon receipt of a certified copy of an order demonstrating that an attorney admitted, specially admitted to practice in this state, or engaged in the practice of law in this state has been disciplined in another jurisdiction, the Court will issue a notice to him or her containing a copy of the order from the other jurisdiction and an order directing that the attorney inform the Court within 30 days from service of any reason why the imposition of the identical discipline in this state would be unwarranted, and the reasons therefor. The Court will cause this notice to be served upon the attorney and Discipline Counsel.

(b) **Stay of Discipline.** In the event the discipline imposed in the original jurisdiction has been stayed by that jurisdiction, any reciprocal discipline to be imposed in this state will be deferred until the stay expires.

(c) **Imposition of Identical Discipline.** Upon the expiration of 30 days from service of the notice and order issued pursuant to Section (a) of this Rule, the Court will impose the identical discipline imposed by the original jurisdiction unless Discipline Counsel or Respondent demonstrates that:

(1) the procedure in the original jurisdiction was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process;

(2) an infirmity of proof establishing the misconduct exists which gives rise to the clear conviction that the action of the original jurisdiction should not be accepted;

(3) the imposition of the same discipline would result in grave injustice;

(4) the misconduct established has been held to warrant substantially different discipline in this state; or

(5) the conduct does not violate Rule 15.

The Court will enter an order as it deems appropriate when the Court determines that any of the above exceptions to the discipline imposed by the original jurisdiction exist.

(d) **Conclusive Evidence.** Unless the Court has made an exception under Section (c) of this Rule, the final adjudication of misconduct in another jurisdiction will be conclusive evidence of misconduct for purposes of discipline in this state.

Rule 28.
ACTION NECESSARY WHEN DISBARRED, SUSPENDED, OR PLACED ON PROBATION.

(a) **Notice.** An attorney who has been disbarred, suspended, placed on probation, or who is under an order of interim suspension, will promptly provide notice of the discipline imposed as required by this Section. The notice will be sent by certified or registered mail, return receipt requested. The notice to clients need only be sent to clients represented by the disciplined attorney on the entry date of the Court's order. Notice required to attorneys representing opposing parties in pending litigation or administrative proceedings need only be sent if the disciplined attorney is an attorney of record at the time of the entry date of the Court's order. The following notice will be provided:

(1) an attorney who has been disbarred, suspended for more than 90 days, or who is under an order of interim suspension, will promptly notify

(A) each of his or her clients who is involved in pending litigation or administrative proceedings, and each attorney representing opposing parties in the proceedings, of his or her disbarment or suspension, and his or her inability to practice law in the state after the effective date of the practice law in the state after the effective date of the disbarment or suspension; the notice given the client will advise the client of the necessity to promptly seek substitution of another attorney; the notice served upon the attorneys for the opposing parties will state the mailing address of the client of the disbarred or suspended attorney; and

(B) each of his or her clients who is involved in any matters other than litigation or administrative proceedings; the notice will advise the clients of his or her disbarment or suspension, his or her inability to practice law in the state after the effective date of the disbarment or suspension, and the need to seek legal advice from a different attorney;

(2) an attorney who has been suspended for 90 days or less will notify all clients in any matters, and each attorney representing opposing parties in any pending litigation or administrative proceedings, that (s)he will be unavailable for the period of time specified in the Court's order; the disciplined attorney will advise his or her clients that they may seek substitute counsel at their discretion; and

(3) an attorney who has been placed on probation will notify all clients in any matters, and each attorney representing opposing parties in any pending litigation or administrative proceedings, of the terms of his or her probation, unless the Court, in its order placing the attorney on probation, relieves the attorney of this duty.

(b) **Substitute Counsel.** An attorney suspended for 90 days or less will assist his or her clients in arranging for alternate representation where necessary or requested.

Should the client of an attorney who has been disbarred, suspended for more than 90 days, or who is under an order of interim suspension not obtain substitute counsel before the effective date of the disbarment or suspension, the disciplined attorney will move for leave to withdraw in the court or administrative agency in which the proceeding is pending.

(c) **Prohibition on Practice.** An attorney who has been disbarred, suspended, or who is under an order of interim suspension will, during the period of his or her disbarment or suspension, cease all practice of law, including the acceptance of any new clients.

(d) **Probation.** Probation may be imposed in accordance with Rule 16(a)(3), only in those cases where there is little likelihood that the attorney on probation will harm his clients or the public during the period of probation and where the conditions of probation can be adequately supervised. Probation may be renewed by the Court for an additional period, not to exceed two years, if the Board so recommends and the Court concurs in the recommendation. The Board's recommendation for renewal of probation will be submitted to the Court not more than six months, nor less than 60 days prior to the expiration of the original probation period. The attorney on probation will be advised of the recommendation and be given an opportunity to be heard by the Court. The conditions of probation will be specified in writing.

(e) **Effective Date of Order.** Orders imposing disbarment, suspension, or probation will be effective 30 days after the entry date, unless otherwise ordered by the Court in the order imposing discipline. After the entry date of a disbarment or suspension order, the disciplined attorney will not accept any new retainer or accept employment in any new case or legal matter of any nature. However, during the period from the entry date of the order to its effective date, (s)he may, unless otherwise ordered by the Court in the order imposing discipline, wind up and complete, on behalf of any client, all matters which were pending on the entry date of the order.

(f) **Compliance by Disciplined Attorney.** Within 10 days after the effective date of a disbarment or suspension order, the disciplined attorney will file with the Court, and serve upon Discipline Counsel, an affidavit showing that

(1) (s)he has fully complied with the provisions of the order and with these Rules; and

(2) (s)he has notified all other state, federal and administrative jurisdictions to which (s)he is admitted to practice of his or her discipline.

The affidavit will also set forth the residence and mailing addresses of the disciplined attorney where communications may thereafter be directed. Pursuant to Rule 9(e), it is the ongoing responsibility of the disciplined attorney to keep the Bar apprised of his or her current address and telephone number.

(g) **Public Notice.** The Board will cause a notice of the disbarment, suspension, interim suspension, or probation to be published in

(1) a newspaper of general circulation in the cities of Anchorage, Fairbanks, and Juneau, Alaska;

(2) the official Alaska Bar Association publication; and

(3) a newspaper of general circulation serving the community in which the disciplined attorney maintained his or her practice.

(h) **Circulation of Notice.** The Board will promptly transmit a copy of the order of disbarment, suspension, interim suspension, or probation to the presiding judges of the superior court and district court in each judicial district in Alask; to the presiding judge of the United States District Court for the District of Alaska; and to the Attorney General for the State of Alaska, together with the request that the Attorney General notify the appropriate administrative agencies. The presiding judges

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will make such orders as they deem necessary to fully protect the rights of the clients of the disbarred, suspended, or probationary attorney.

(i) **Record Keeping.** A disbarred, suspended, or probationary attorney will keep and maintain records of the various steps taken by him or her pursuant to these Rules so that proof of compliance with these Rules and with the disbarment, suspension or probationary order is available. Proof of compliance with the Rules will be a condition precedent to any petition for reinstatement.

(j) **Surrender of Bar Membership Card.** Any attorney upon whom disbarment, suspension, or interim suspension has been imposed will, within 10 days of the effective date of the order, surrender his or her Alaska Bar Association membership card to the Director by delivery in person, or by certified or registered mail, return receipt requested.

Rule 29.
REINSTATEMENT.

(a) **Reinstatement Proceedings.** An attorney who has been disbarred or suspended for more than six months may not resume practice until reinstated by order of the Court. An attorney who has been suspended for six months or less may resume practice without order of the Court upon the expiration date of the suspension. Interim suspension will end only in accordance with Rule 26.

(b) **Disbarred Attorneys.** Petitions for reinstatement by disbarred attorneys will be filed with the Court with a copy served upon the Director for initiation of reinstatement proceedings. An attorney who has been disbarred by order of the Court may not be reinstated until the expiration of at least five years from the effective date of the disbarment. A disbarred attorney may petition for reinstatement no earlier than 90 days prior to the expiration of the five year period following the effective date of disbarment. Proceedings 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 disbarment; the Hearing Committee will promptly schedule a hearing to take place within 30 days of the filing of the petition; at the hearing, the Petitioner will have the burden of demonstrating that (s)he has the moral qualifications, competency, and knowledge of law required for admission to the practice of law in this state and that his or her resumption of the practice of law within 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 facts, conclusions of law, and recommendation; the Committee will serve a copy of the report upon Petitioner and Discipline Counsel, and transmit it, together with the record of the hearing, to the Director; any appellate action will be subject to the appellate procedures set forth in Rule 25;

(2) within 45 days of its receipt of the Hearing Committee's report, the Board will review the report and the record; the Board will file its findings of facts, 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 oral argument within 60 days after receipt by the Court of the Board's recommendation;

(3) in all proceedings concerning a petition for reinstatement, Discipline 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.

(c) **Suspended Attorneys.** An attorney who has been suspended for more than six months and who seeks reinstatement will, 90 days prior to the ending date of the suspension, or 90 dyas prior to the date on which (s)he seeks reinstatement, whichever comes later, file a petition for reinstatement with the Court, with a copy served upon the Director for initiation of reinstatement proceedings. The attorney will swear or affirm the names and addresses of all employers during the period of suspension; the scope and content of the work performed by the attorney for each such employer; and the names and addresses of at least three character witnesses who had knowledge concerning the activities of the suspended attorney during the period of his or her suspension. The petition will state the date upon which the suspended attorney seeks reinstatement. Proceedings will be conducted as follows:

(1) the Petitioner will be automatically reinstated by the Court unless a motion to deny reinstatement is filed by Discipline Counsel with the Court and served upon the Board and the Petitioner at least 60 days prior to the ending date of suspension, or the date upon which reinstatement is sought, whichever occurs later; the motion to deny reinstatement will state the basis for the original suspension, the ending date of the suspension, and the facts which Discipline Counsel believes demonstrate that the petitioner should not be reinstated; and

(2) upon receipt by the Director of a copy of the petition to deny reinstatement, reinstatement proceedings will be initiated in accordance with procedures outlined in Section (b) of this Rule.

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

B. DISABILITY

Rule 30.
PROCEDURE: DISABLED, INCAPACITATED OR INCOMPETENT ATTORNEY.

(a) **Immediate Transfer to Interim Disability Inactive Status.** The Court will immediately transfer an attorney to interim disability inactive status upon a showing that

(1) the attorney has been declared incompetent by judicial order;

(2) the attorney has been involuntarily committed to an institution because of incapacity or disability; or

(3) the attorney has alleged during a disciplinary proceeding that he or she is incapable of assisting in his or her defense due to mental or physical incapacity.

The period of interim disability inactive status will continue until further order of the Court. A copy of the order will be served upon the attorney so transferred, his or her guardian, or the director of the institution to which (s)he has been committed or in a manner that the Court may direct. The order of transfer to interim disability inactive status will be in effect pending final disposition of a disability hearing proceeding. The hearing will be commenced upon the transfer to interim disability inactive status, and will be ocnducted to accordance with Section (b) of this Rule. The transfer to interim disability inactive status will terminate upon the final disposition of the disability proceedings, or upon the earlier entry of an order by the Court terminating interim disability inactive status. An attorney transferred to interim disability inactive status may petition the Court for a return to active status upon the filing of documentation demonstrating that the attorney has been judicially declared competent. The reinstatement will not terminate any formal disability proceeding then pending against the attorney.

(b) **Transfer to Disability Inactive Status Following Hearing.** The Court may transfer an attorney to disability inactive status upon a showing that the attorney is unable to continue the practice of law by reason of mental or physical infirmity or illness, or because of addiction to controlled substances. Hearings will be initiated by Discipline Counsel and conducted in the same manner as disciplinary proceedings under Rule 22, except that all proceedings will be confidential. Upon petition of Discipline Counsel for good cause shown, the Court may order the Respondent to submit to a medical and/or psychological examination by a court-appointed expert.

(c) **Stay and Appointment of Counsel.** The Court may appoint counsel to represent the attorney in a disability proceeding if it appears to the Court that the attorney is unable to obtain counsel or represent himself or herself effectively, due to incapacity. Any pending disciplinary proceedings against the attorney may, at the discretion of the Board, be stayed pending the removal or cessation of the disability. If the Court determines that the attorney is not incapacitated from practicing law, it will take action as it deems appropriate, including an order for the resumption of the disciplinary proceeding against the attorney.

(d) **Hearing Committee and Board Duties and Obligations.** The Hearing Committee will recommend to the Board whether the attorney is unable to continue the practice of law because of the reasons set out in Section (b) of this Rule, and whether the reasons justify the transfer of the attorney to inactive status. The Board will make recommendations to the Court as to whether the alleged incapacity justifies transfer to disability inactive status.

(e) **Notice to Public of Transfer to Disability Inactive Status.** The Board will cause a notice of transfer to disability inactive status, whether imposed after hearing or on an interim basis, to be published in

(1) a newspaper of general circulation in the cities of Anchorage, Fairbanks, and Juneau, Alaska;

(2) the official Alaska Bar Association publication; and

(3) a newspaper of general circulation primarily serving the community in which the disabled attorney maintained his or her practice.

When the disability or incapacity is removed and the attorney has been restored to active status, the Board will cause a notice of transfer to active status to be similarly published.

(f) **Circulation of Notice Transferring to Inactive Status.** The Board will promptly transmit a copy of the order of transfer to disability inactive status to the presiding judge of the superior and district court in each judicial district in the state; to the presiding of the United States District Court for the District of Alaska; and to the Attorney General for the State of Alaska, together with the request that the Attorney General notify the appropriate administrative agencies. The Board will request action under Rule 31, as may be necessary, in order to protect the interests of the disabled attorney and his or her clients.

(g) **Reinstatement.** No attorney transferred to disability inactive status under the provisions of this Rule may resume active status until reinstated by order of the Court. Any attorney transferred to disability inactive status under the provisions of this Rule will be entitled to apply for reinstatement to active status once a year, but initially not before one year from the date of the Court order transferring him or her to disability inactive status, or at such shorter intervals as the Court may direct in the order transferring the Respondent to inactive status or any modification thereto.

The application will be granted by the Court upon a showing that the attorney's disability has been removed and (s)he is fit to resume the practice of law. Upon application, the Court may take or direct any action it deems necessary to determine whether the attorney's disability or incapacity has been removed, including an order for an examination of the attorney by qualified medical and/or psychological experts that the Court may designate. In its discretion, the Court may order that the expense of the examination be paid by the attorney.

(h) **Burden of Proof.** In a proceeding seeking transfer of an attorney to disability inactive status under this Rule, Discipline Counsel will have the burden of proving, by clear and convincing evidence, that the attorney should be so transferred. In a proceeding seeking an order of reinstatement to active status under this Rule, the same burden of proof will rest with the attorney.

(i) **Waiver of Physician and Psychotherapist—Patient Privilege.** The filing of an application for reinstatement by an attorney transferred to disability inactive status because of disability or incapacity will be deemed to constitute a waiver of any physician and psychotherapist-patient privilege with respect to any treatment of the attorney during the period of his or her disability. The disabled attorney will be required to disclose the name of every psychiatrist, psychologist, physician and hospital or other institution by whom or in which the attorney has been examined or treated since his or her transfer to disability inactive status. (S)he will furnish to the Court written consent for each person or organization to divulge information and records as requested by court-appointed medical experts.

Rule 31.
APPOINTMENT OF TRUSTEE COUNSEL TO PROTECT CLIENTS' INTERESTS.

(a) **Appointment; Procedure.** Whenever an attorney has disappeared; died; abandoned the practice of law leaving a client matter unattended; or been transferred to disability inactive status because of incapacity or disability (hereinafter "unavailable attorney"), and no partner of the attorney nor shareholder in the professional corporation of which the unavailable attorney was an employee is known to exist, Discipline Counsel will petition the superior court in the judicial district in which the unavailable attorney maintained an office for the appointment of a trustee attorney to represent the interests of the unavailable attorney and his or her clients.

The trustee attorney will be bound by the attorney-client privilege with respect to the records of the unavailable attorney, except to the extent necessary to effect the order appointing him or her trustee counsel. This petition will be made ex parte, will state the basis for its filing, and will state that the appointment of trustee counsel is necessary for

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Best of Bar Exam Rejects

by J. B. Dell

Recently the Alaska Bar Association has again come under attack regarding the relative merits of the Alaska Bar examination. In defense of the Alaska Bar, the Bar Rag has obtained copies of questions which were devised by the Bar Examiners but eventually rejected for inclusion in the bar examination. It is felt that by presenting the rejected questions, the bar exam itself will be better appreciated.

Criminal Law

1. What happens after a defendant blows into a breathalyzer?
   a. If the rabbit dies, the defendant is intoxicated.
   b. If the rabbit lives, the defendant is intoxicated.
   c. The defendant is intoxicated if the rabbit is unable to do the heel to toe test.
   d. Rabbits are only used in paternity cases.

Sex Discrimination

2. The City of Moose Loin has only 10% female police officers in 1975. By court order, the City must hire two female police officers for every new male officer it hires for the next five years. How many female officers will there be in 1982?
   a. A=MV.
   b.
   c. −1
   d. Girls being girls, probably at least 25%.

Landlord Tenant

3. You are asked by Mr. Brown, a landlord, which of the following are grounds for evicting a tenant in Alaska. Your response should be:
   a. Possessing more than three wildebeest.
   b. Running a bondage and discipline parlor.
   c. Selling concrete Mexicans.
   d. Every lawyer knows you should not take a landlord/tenant case.

Criminal Code

4. Which of the following is a crime under the Alaska Criminal Code:
   a. Gawking with intent to ravish.
   b. Impersonating a mortician.
   c. Converting the chattels of a minor.
   d. Calling people late at night (AS 11.61.120[a][3]).

Alaska Constitutional Law

5. Which of the following violates the Alaska Constitutional right of privacy?
   a. Picking through your neighbor's dumpster.
   b. Sending your neighbor chain letters.
   c. Coveting your neighbor's goods.
   d. Trying to sell your neighbor Amway products.

Civil Procedure

6. Which of the following constitutes ground for a challenge for cause of a prospective juror:
   a. Juror requests extra seat for invisible friend.
   b. Juror believes that "burden of proof" refers to method of whiskey production.
   c. Juror reads *National Enquirer.*
   d. Juror writes for *National Enquirer.*

Criminal Procedure

7. Which of the following constitutes judicial misconduct during a criminal trial:
   a. Judge laughs after defense counsel's opening statement.
   b. Judge reads jury instructions in pig latin, just for a "change of pace" for the jury.
   c. Judge allows break dancing during final argument.
   d. Judge relies upon Judge Wopner as controlling authority.

Tort

8. What is the holding of *Sturm Ruger II?*
   a. Punitive damages are only allowed in divorce cases.
   b. Punitive damages cannot be excessive.
   c. Punitive damages cannot be awarded if the defendant is sorry.
   d. Punitive damages cannot be the result of passion and prejudice, but a little latent hostility is okay.

Evidence

9. In a medical malpractice case against a surgeon, which of the following constitutes an admission against interests:
   a. "Oops."
   b. "Where is my other glove?"
   c. "Hand me the shiny thing with the rubber stuff on the end."
   d. "That's O.K., he only needs one of these."

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the protection of the unavailable attorney and his or her clients. The petition will be heard ex parte at the earliest available time.

(b) **Powers and Duties.** The order granting the petition will grant the trustee attorney all the powers of a personal representative of a deceased under the laws of the State of Alaska insofar as the unavailable attorney's practice is concerned. It will further direct the trustee attorney to

(1) notify promptly, by certified or registered mail, return receipt requested, all clients being represented in pending matters, other than litigation or administrative proceedings, of the basis for the entry of the order and of the need to seek legal advice from another attorney;

(2) notify promptly, by certified or registered mail, return receipt requested, all clients who are involved in pending litigation or administrative proceedings of the basis for the entry of the order and that they should promptly seek the substitution of another attorney;

(3) promptly inventory all of the files of the unavailable attorney and, with respect to each file, prepare a brief summary of the status of the matters involved and an accounting of the costs and fees involved; and

(4) render an overall accounting of the practice of the unavailable attorney.

The order will further provide for reasonable compensation to be paid by the estate of the unavailable attorney or by the Court in the event that the estate of the unavailable attorney is insufficient to cover the costs of compensation.

(c) **Lien on Files.** The notices required in Section (b) of this Rule will inform the clients

(1) of the lien of the unavailable attorney, or of the estate of the deceased attorney, on all his or her files;

(2) of the requirement that all transers of files require suitable arrangements regarding costs and fees; and

(3) that transfer will require the pproval of the superior court.

Trustee counsel will take all reasonable steps to arrange payment of the costs and fees by the clients of the unavailable attorney before any transfer of the files to substitute counsel.

(d) **Requirement of Bond.** The superior court may require the trustee attorney to post bond, conditioned upon the faithful performance of his or her duties.

(e) **Disposition of Assets.** Any monies or assets remaining fter the completion of the client matters will be returned to the unavailable attorney or to his or her guardian or personal representative.

(f) **Force and Effect of Appointment.** The powers and duties of a trustee attorney are not affected by the appointment of a guardian or personal representative or by any other rule or law of the State of Alaska.

(g) **Waiting Period.** Neither a trustee attorney nor a partner or employee of the professional corporation to which the trustee attorney belongs may, for a period of six months from the completion of the administration of the unavailable attorney's estate under this Rule, represent clients of the unavailable attorney unless the client was previously represented by the trustee attorney, by a partner, or by another employee of the professional corporation to which the trustee attorney belongs.

(h) **Reports to Discipline Counsel.** Trustee attorneys appointed under this Rule will make written reports to Discipline Counsel within six months of the date of the order appointing him or her as trustee, and every six months thereafter until completion of his or her duties under this Rule. The report will state the progress made under Section (b) of this Rule and the work to be accomplished within the next six-month period.

C. MISCELLANEOUS

Rule 32.
EXPUNCTION OF FILES.

(a) **Expunction of Files Concerning Deceased Attorney.** Any time after the expiration of one year from the death of an attorney, Discipline Counsel may destroy all files of any discipline, disability, or reinstatement proceedings in which the deceased attorney was a Respondent unless, prior to destruction, the Board receives a request that the files not be destroyed. If the Board receives a request, it will grant the requesting party an opportunity to be heard to show cause why the files should not be destroyed. After hearing and review, the Board will enter an order as it deems appropriate.

(b) **Expunction of Dismissals.** Any time after the expiration of five years from the date of dismissal, Discipline Counsel may destroy all files of any discipline or disability proceeding terminated by dismissal.

(c) **Administrative Records.** Discipline Counsel will not expunge records maintained in accordance with Rule 11(d).

(d) **Compliance with Confidentiality.** All orders entered by the Board under Section (a) of this Rule, and proceedings in connection with the expunction of files under Section (a) of this Rule, will be consistent with the provisions of Rules 21 and 30 with regard to public access.

Rule 33.
EXPENSES.

Except as otherwise provided herein, the salaries of Discipline Counsel and staff will be paid by the Alaska Bar Association. The expenses and administrative costs incurred by Discipline Counsel and staff hereunder, and the expenses and administrative costs of the Board and of Hearing Committees, will be paid by the Court.

Rule 34.
DISCIPLINARY AND DISABILITY MATTERS TAKE PRECEDENCE.

Disciplinary and disability matters take precedence over all other matters before any court or administrative agency in this state, unless otherwise ordered by a justice of the Court for good cause shown. Upon the filing of an affidavit stating the existence of a pending disciplinary or disability matter, any judge of any court in this state, and any hearing officer or other person responsible for the conduct of any administrative proceeding in the state, will continue or take other action necessary to effect the requirements of this Rule. The Respondent or his attorney, Discipline Counsel, any member of an Area Division, and any member of the Board will have authority to file an affidavit on behalf of himself or herself or any other person. Discipline Counsel may have the additional authority to file such an affidavit on behalf of the Respondent and his or her attorney.

Rule 35.
EFFECTIVE DATES.

These Rules will take effect _____. Rule 21 will only apply to those formal proceedings filed after the effective date of these Rules.

Poems

Alaskan Follies

The utter valleys and the absolute hills
Catch and cradle the snow crumbs ...
The misty clouds in hunger suck at icy tits
As wailing winds tear and tug ...
WHILE THE EARTH TREMBLES
"Mr. Czar, what'll yu take fer yer white elephant?"
"Well, Mr. Seward, gimme two cents an acre
And the frosted folly's all yers,
Including tax and all the Aleuts to boot."
AND THE EARTH QUAKES
Beautiful shining mountains ... and trash dumps!
Luxury suburbs ... and ramshakle slums!
Natives colorful ... and booze polluted!
Pipe lines winding ... permafrost defying
WHILE THE EARTH HEAVES
Defensively proud Cheechakos pillaging,
Boasting the murdered moose and bear,
Pride expressed in antlered skulls and dried skins—
And wild shrieks reverberating among the peaks
WHILE THE EARTH QUIVERS
The dullards and clods, lured by the riches
Selling their bone and brawn at bonus prices ...
The kind who love her and leave her shamed,
Victim of their venal passions
WHILE THE GROUND SEETHES BENEATH
Venting their lust in, eager guns, tackle, and axes ...
Leaving the hills bald, naked to rain and snow ...
Without emotion, seeing them ravished, cold and hurting
...
Cowering in fear, hearing the wind sob over the tundra
WHILE THE EARTH SHIVERS
The looters, the spoilers, the thieves, the betrayers,
Repaying the earth's bounty with taking and wasting ...
Defiling with filth, fouling oil seeps ...
A dubious tomorrow of uncertain tent and trailer towns
AND THE SKIES WEEP

—Wilbur Throssell
Marianna, FL

The Hotel Lifshin

is not a
fishing re
treat, she's
not into any
thing fishy
doesn't want
to be hooked
or speared
pulled in
on a line
or mounted

—Lyn Lifshin
Niskayuna, NY

Gifts

What they are: a shiny stone
to slip into the sagging pocket
of that old jacket you seldom
wear, a smooth shell to stash
far back is a kitchen drawer
you don't often use—to be
surprised by when you've forgot-
ten, to spark a thought—
and one striped sunflower seed
to tuck into black earth
in a quiet corner of next
year's garden, to disremember,
to be taken unawares by
when it sprouts.

—Robert Hillebrand
Oconomowoc, WI

On Being Admitted to the Bar

Saloons are important to me
They're part of my life, don't you see
A refuge from worry,
The hustle and hurry,
And troubles that weigh heavily.

I never indulge before six
My work gives me plenty of kicks
But, still, it is taxing
And I'm for relaxing
I'm ready to mingle and mix.

Martinis are always my choice
They're not recommended for boys.
They're my anesthetic
And mild diuretic
And they help me ignore all the noise.

But drinking alone I can't do.
Please join me and let's have a few
Our friendship we'll christen
I'll sit back and listen—
I'd like to know more about you.

Consider how lucky we are
To know there is always a bar,
A tavern or club,
A bistro or pub
That's, thankfully, not very far.

—William Hester
Tucson, AZ

Alaska

A hiding place
from newspaper headlines
and international hustle
and bossy street lights.
A chance for my mind
to take off its shoes
and lie back and
just smoke a pipe.

—Sally Love Saunders

Done

They picked at the beans, Dana spoke
to both of them, they picked all the leaves.
She's done speaking. They teased
with the water hose, Dana's finger poked,
did they stop? Dana's done poking, she's
done yelling about the wash. She'll be pleased
if swatting gets their pestering done.

Mrs. Schussmann with her white hair and green
mowing and raking clear as water
done. The jaunt with her daughter,
whose car doesn't cut off. Done. Morning
done. Dishes, laundry. On tiptoe her
highest curl, halfway up the shutter,
to the number. Polishing of that—done.

On his shady stoop, braided and beaded face,
after forty years steering the half-wit
shouting she's dying, shouting spit,
Owen Adams done with that, for a day,
while unnamable glues knit
elbows to knees and that one cigarette
crinkles to the silence of done.

—Jay S. Paul
Newport News, VA

An Iron Railing, A Stream

She slipped a ten-dollar bill into his pants
pocket. The headlights faded
into the cold asphalt.

The sun burned through the fabric
of yellow clouds. His fingers fumbled
at the waist of her skirt.

"Pass the salt," she said, yawning.
Under the bridge he twisted
her toes to make her whimper.

The jury slept through the victim's
testimony. Along the fence, blackberries
were turning to rust.

She held the safety pin
tightly, her only weapon. The doctor
whistled a barbed-wire melody.

"Let's make love
like the Dutch," she said. The peach
lay in its cold skin, pitless and moist.

The smell of hot canvas woke him
at noon. On the living room carpet
she lay naked, waiting.

Road signs melted in the moonlight
She burned the shoe-box
in the barbecue grill.

On the cross-town streetcar
an old woman dozed over a mystery. Above the fields
a flock of blackbirds entered the clouds.

She bared her shoulders
and back to his lips. A thin glaze
of moisture covered the mirror.

—Malcolm Glass
Clarksville, TN

All Wet With It

All wet with it
and doped with wind.
Bark and stars in the
braids of rain blend
their pungent spices.
This night goes soft
and damp and deep
I fall asleep with
the lives I pass while
walking. The old ones
and the young in their
dark houses. Their
pillows clutched like
rafts in dreams or
hands fallen open,
cupping puddles of
moonlight. Or faces
turned to silhouettes
by dark. I dream their
dreams tonight. Their
houses shut tight against
me. Wooden and dark and warm.
I dream their dreams,
so doped by wind and
soaked with rain. In a
gust of wind we merge and
bleed, as if all life
tonight, as if all life,
wet and mixed with bark
and stars and dreams
were one.

—Susan Stayer Deal

Convention Pix

The Gang's All Here

A Matter of Inches

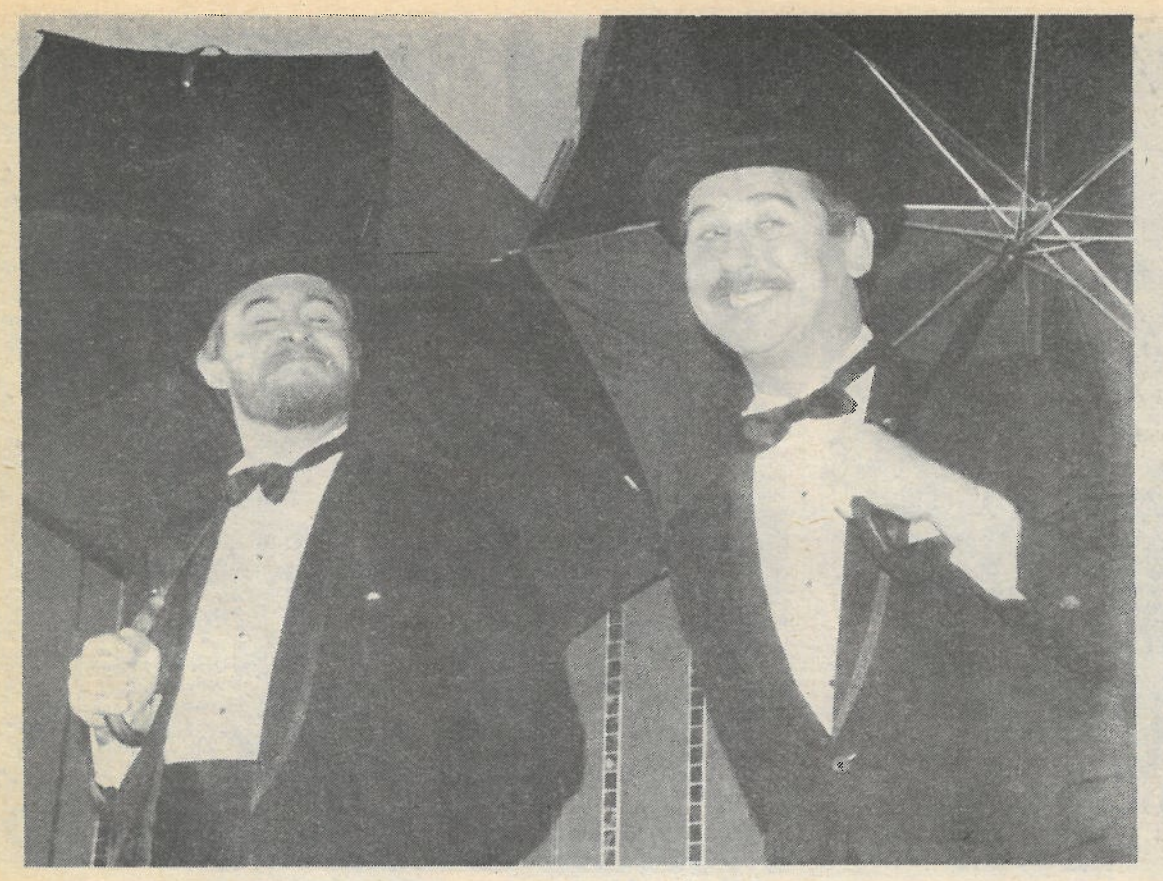
Ah Gee Shucks

Crowning Glory

Intrepid Voyagers

Member of the Wedding

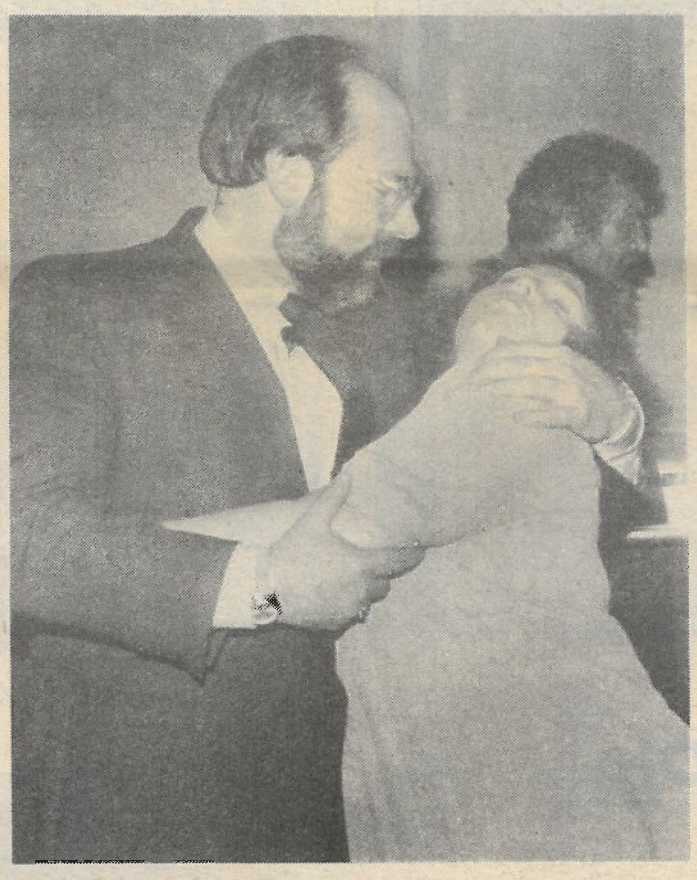
Convention Pix



Mad Dogs and Englishmen

The Gambler

Sweet Mary



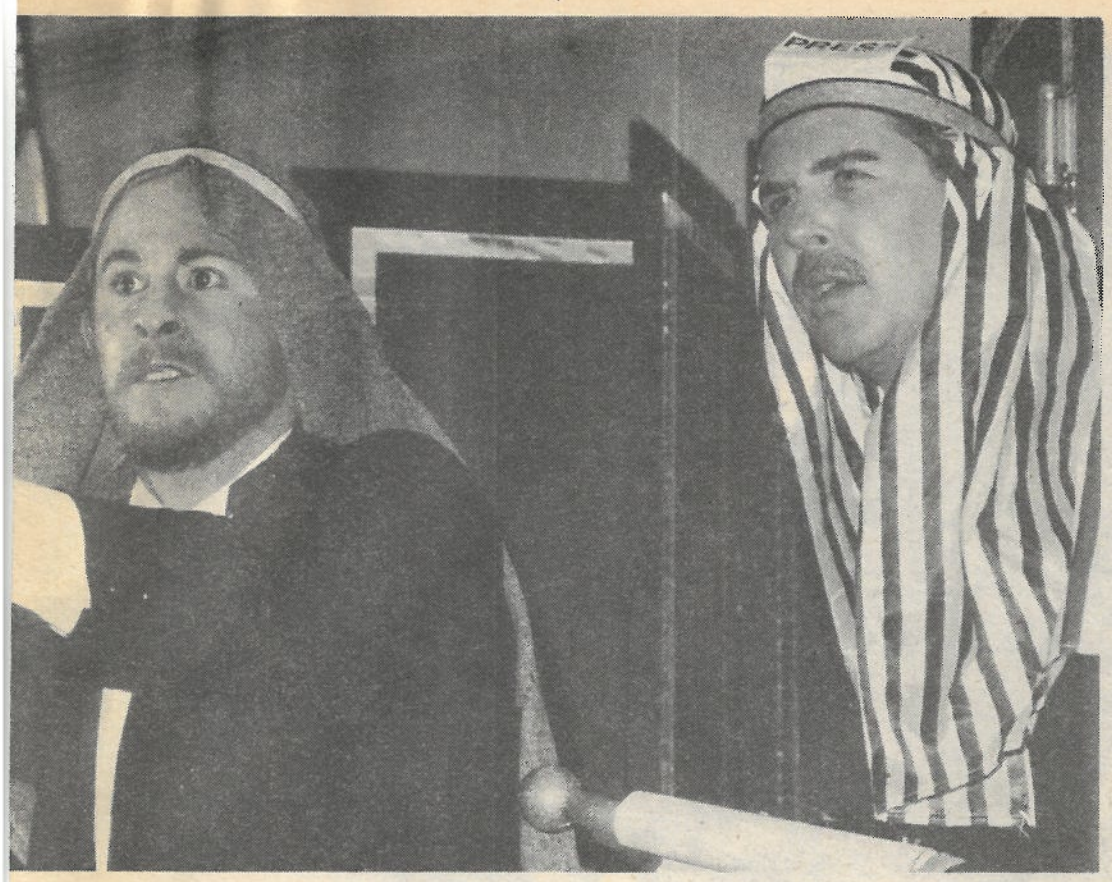
The Last of the Red-Hot Lovers

Eyes of Texas

Profiles

The Beautiful People

Good News



Delegates

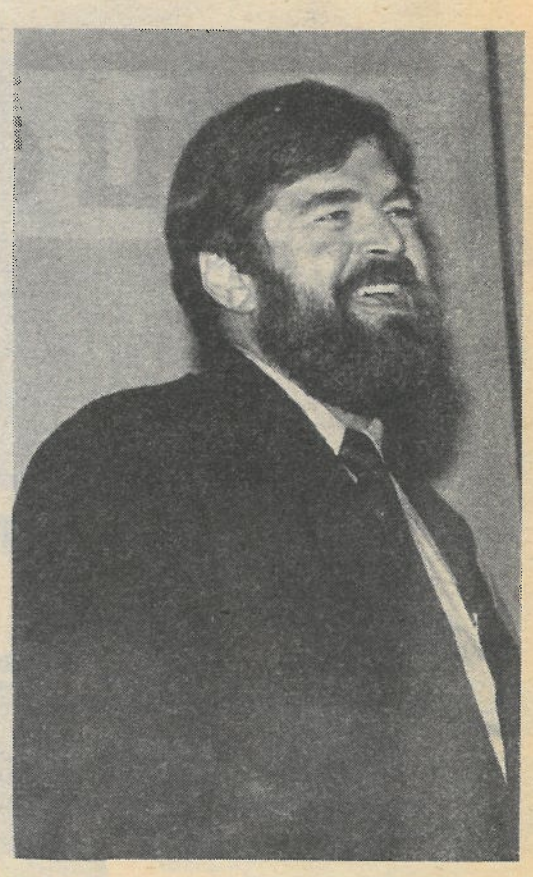
Live Mike

Mind Reader

Victor D

Debbie 'O

Innocent Bystanders



Hale Fellow

Primal Scream

He Knows Something

The Pleasure of Their Company

Photos by Ken Roberts

Rule No. 1: Keep Your Eyes on the Dealer

Here We Go!

Poems

Never Send An Old Fart Into the Woods, He'll Only Be Disappointed

Yosemite—1982

1.
I thought
I was out to lunch,
in my 99¢
candystriped
backcountry
imported Italian hat,
then I heard my neighbor
at the Penned Sheep Campground
say
to his drunk boyfriend
in the night:

c'mon bitch,
you have to unroll your sleeping bag
before you
get
in
it

and the boyfriend giggled and giggled
like a B-girl on the hustle
but he still couldn't
figure
how the thing worked

2.
Five miles along the trail,
knees aching from too many years
of blacktop basketball
(deadly on the downslope).
and she announced:

Well,
I guess even the backpackers are assholes
these days.

No
wait,
I said,
these assholes aren't really backpackers
they're daytrippers
and when we get further out
things will
improve,
you'll see.

Then
(further out).
we saw a guy hauling full pack
and headed for the deep woods,
with a Sony WalkPerson
jammed into his
ears.

3.
the bear came out of the forest
quietly,
sifted through our belongings
with elaborate courtesy
and finding nothing of interest,
moved on,

then
the next campers,
four teenagers younger than I ever was,
treed him with their flashlights
& whooped
& hollered
around the tree's base
for a half hour,
or until they got bored,
whichever
came first

the bear was a small one
and I found myself wishing
it had been a cub
with its mother
nearby

—Doug Hornig
Afton, VA

The Company of Men

Bob tells us
about his girlfriends,
but he doesn't say anything
about the long days at sea,
about the weeks of sea,
about the boredom
or the drink
or the marijuana
or the men he's teaching
to write poetry
on the S.S. Punctured Rectum.
Every other day,
Bob runs three miles
on the flight deck,
back and forth, back and forth,
twelve times. It's exhilarating.

Bob doesn't say anything
about his last weeks here
before he dropped out of college
or about his friends
who didn't understand
how confusing it was
to be bisexual. Instead,
Bob tells us
Divine is getting a divorce,
and the girl
Bob used to be engaged to
is marrying someone else.

Bob tells us he earns
twenty-three thousand a year,
and he doesn't know how
to spend the money.
When he's on shore,
he always orders lobster
and Dom Perignon,
and he's never been so happy.
His belly bulges with joy.

Bob smiles sadly
and has another drink
and another
altho it's almost midnight.
Bob phones a friend
he hasn't seen since he left
because there's something
depressing about the thought
of going home.

Next time Bob ships out
he's going around the world,
and he won't be back
for eight months.
The Navy has given him
the chance to find himself,
Bob says,
fingering his goatee.
He has never been so happy.

—Arthur Winfield Knight
California, PA

Kodiak Graves

I had never seen such a sight before:
behind a church
a few graves
transformed under trees
enshrouded by fog and rain
and hail and fog.

It was morning,
but the scene was dark:
the ground spattered
with winter water,
the graves wet
with weathering; the dirt
finally opening to spring
as a mouth at birth.

The only movement there
was of the rustling of trees
and of three dozen birds
black and blacker with wetness
which flattened and matted
their feathers.

The birds saw me looking through the gate:
one turned his head
two flew away
but the rest remained
and moved little as if time
and distance were the same.

The closest bird looked up once:
then ignored me
as he rolled his head and upper body
in a puddle where he stood
amid three graves. . .
no bathers there.

Accustomed to death, this bird
paid me no heed
among the dark stones,
damp reminders of an end.
In his home, he lived apart
from those who wandered
near this park.

—(Ms.) Averill Babson

End of Love

When we told ourselves we loved each other
I thought one of us must be lying.
I was so sure it had to be you.

For you love never ends.
You push it to the side
thinking you can go back to it later.

For me love always ends.
It comes to a sudden stop.
I try not to let it squash me.

—Hal Sirowitz
Flushing, NY

Resolution of the Alaska Bar Association 1984 Convention

WHEREAS, A bill has been introduced in the United States Senate, S. 1156, to Divide the Ninth Judicial Circuit of the United States into Two Circuits, and for other purposes; and

WHEREAS, A division of the Ninth Judicial Circuit as proposed in this legislation would not serve to improve the administration of justice, particularly as related to the administration of justice by the United States District Courts and the Ninth Judicial Circuit as relates to the State of Alaska;

NOW THEREFORE, BE IT RESOLVED by the Alaska Bar Association in convention assembled, that the Alaska Bar Association opposes the reorganization, the division, or splitting of the Ninth Judicial Circuit in any way.

ENACTED BY the Alaska Bar Association on the _____ day of June, 1984.

The Bar Rag
Thanks
its Advertisers

Letters

May 16, 1984

Dear Editor:

This is a proposal for a change in the court transcript system and the court reporting system now used in Alaska, based on our experience over the years, and particularly on our experience in a recent case in which we were adversaries, which went through many depositions and through a jury trial.

New computer equipment now available at moderate prices to traditional "shorthand" court reporters makes it possible to have very accurate transcripts on an immediate basis at very low cost. We think such a system should be used here, since it will greatly raise the quality of litigation without significantly increasing the cost.

Here is how it works, illustrated with concrete examples. We took the deposition of a neurosurgeon at 4 p.m. The court reporter came to the deposition with the little shorthand machine on a tripod, as they do in many localities Outside. The next morning, we deposed the radiologist at 8 a.m. Before the radiologist's deposition, the court reporter handed us our copies of the completed, final transcript of the neurosurgeon's deposition from the previous afternoon. There was no extra charge for rush service because the court reporter told us that he had not had to stay late or do anything out of the ordinary. He just dumped the text into his office computer, edited the formating, and had the computer print it out.

The charge to the party taking the deposition, for the original to the court and one copy, was $186 plus $3 for photocopies. The charge to the cross-examining party, for one copy, was $36. The deposition was 44 page long, plus 12 pages of exhibits.

By comparison, the local court reporters, using a tape recorder and delivering to us a typed transcript a few weeks after the deposition, would have charged for an original and one copy in the neighborhood of $3.25 per page of transcript and 25 cents per page to xerox the exhibits, plus $30 per hour for the court reporter, for a total of $176. The charge to the other party, for one copy, would be $53.60.

At our jury trial, we both strongly felt the need for similar services. When the time came to prepare final argument, exact words spoken by several witnesses mattered a great deal. The amount of time available between the recess on the last day of testimony and the beginning of final arguments was not sufficient to obtain cassettes or to audit the tapes in the transcript office. This left both of us with no practical alternative but to argue to the jury about what we remembered about what we thought we had heard the witnesses say, and leave it to them to use their own memories or ask that the tapes be played for them. This was especially annoying to both of us, since our Nevada experience had recently made us so aware of a better alternative.

Sincerely yours,
Andrew J. Kleinfeld
Stephen C. Cowper

April 12, 1984

Mr. Gail Roy Fraties
c/o THE BAR RAG

Dear Gail:

You have solicited comments from the bar concerning your proposal for a designated whipping person to take the burden of the Court's wrath on occasions when the author and advocate for a particular motion cannot make it to court on the same day. I have taken the liberty of drafting a proposed addition to the rule, and I invite your consideration.

Criminal Rule 60(e):

> "In lieu of the above procedures, any law firm in the State of Alaska may designate one law clerk to serve as its "Designated Whipping Person." Such whipping person shall be a student at a non-accredited law school which offers only night instruction in the law. In addition, such person shall never have appeared in a court of law, except to serve as designated whipping person for the law firm, and shall not have attained the age of twenty-three years. In the event of such designation, the time limitations contained in sections (1) through (4) above shall not apply.

As you will no doubt perceive, the above amendment will have significant advantages. I predict that it will rapidly become the predominant provision regarding whipping persons.

In the first place, it is well known that every large law office has literally dozens of law clerks on the staff, who have iron constitutions and egos quite large enough to stand up to the challenge presented by the DWP position.

Why pay a staff *attorney* to do the job when it is arguable whether a warm body is even necessary? I doubt whether the Court will ever notice the difference, and certainly it will appreciate the advantage of not having to gauge its response by the clock. The firm having the foresight to comply with this provision can no doubt expect very favorable treatment from a bench which is at liberty to tee off at will.

Finally, think of the advantages to these DWPs. They will probably think they are having a "meaningful clinical experience." Another way to look at it is that the poor bastards are too dumb to know what's going on anyway.

I applaud your efforts to streamline the judicial process and to make all of our berths a little bit cushier. I hope that this suggestion has been helpful.

Best regards,
Paul H. Grant

March 13, 1984

Ms. Donna Gardner
Alascom
949 East 36th Avenue
Pouch 6607
Mail Stop No. H280
Anchorage, Alaska 99502

Re: Auto Quote

Dear Ms. Gardner:

This letter is to inform the Marketing Division of Alascom of what I believe is a tremendous need that exists in the user community.

As an attorney operating two small law offices in Southeast Alaska I face a problem in that I receive my telephone billings long after the actual calls have been placed. This may not be a major problem for other business enterprises, but in the service field it is necessary to account for the costs of doing business back to the client, so that the client may promptly reimburse you.

The billings for long distance telephone charges are sometimes not received for three and four months after the call is initiated. This often leaves one stuck with the bill as the client's problems were resolved in a short period of time and the final billing did not reflect the charges incurred for long distance services. Of course this difficulty can be alleviated by having the operator place another call back to each of my offices to indicate to the secretary what the time and charges were for each call placed. However, this is a tremendous inconvenience to both my secretarial staff and also to the operator, who must, during that period of time, tie up a telephone line that someone else is more than likely willing to use and pay for. In addition to that it is billed as an operator assisted call which results in a higher cost for the utilization of the service. There are in excess of 2000 attorneys presently practicing in the state of Alaska. I know that each of them face a similar problem on telephone charges.

Recently I had an opportunity to watch your "Auto System" working in the Stikine Hotel at Wrangell, Alaska. For that reason I contacted your offices to see if I might also apply to have such a machine installed in my office. You then informed me that the tariff for utilization of that equipment had been set at a minimum of 300 phone calls per month. Though my long distance phone bill averages between $500 and $600 per month I do not qualify for that equipment in that my phone calls average approximately 150 per month.

I would be happy to pay the additional cost for the installation of that equipment at its presently quoted rate of $90 per month, just to have the convenience for billing purposes and the prompt information for accounting purposes in my office.

I am certain that many other attorneys would also be inclined to utilize this equipment if the price could be reduced slightly and if the equipment was available. In our telephone conversation of March 12, I suggested you contact Harry Branson, the publisher of the *Alaska Bar Rag* (a professional journal published quarterly in the state of Alaska), to see if he might solicit information from law firms interested in the utilization of the "Auto System." Hopefully your inquiries to Mr. Branson and this letter will prompt at least further inquiries into establishing a new tariff so that those of us who do not place 300 long distance phone calls per month might also have this excellent equipment available. Hopefully this letter will be of some assistance to you in that regard.

Sincerely yours,
Robin L. Taylor
cc: Mr. Harry Branson

June 12, 1984

To whom it may concern:

This is to advise that the membership of the Alaska Bar Association, meeting during the Association's June 9, 1984 Annual Business Meeting, adopted the following resolution:

> WHEREAS, a bill has been introduced in the United States Senate, S. 1156, to Divide the Ninth Judicial Circuit of the United States into Two Circuits, and for other purposes; and
>
> WHEREAS, a division of the Ninth Judicial Circuit, as proposed in this legislation, would not serve to improve the administration of justice, particularly as related to the administration of justice by the United States District Courts and the Ninth Judicial Circuit as relates to the State of Alaska;
>
> NOW, THEREFORE, BE IT RESOLVED by the Alaska Bar Association in convention assembled, that the Alaska Bar Association opposes the reorganization, the division, or splitting of the Ninth Judicial Circuit in any way.
>
> ENACTED BY the Alaska Bar Association on the 9th day of June, 1984.

Should there be any question concerning this matter, please do not hesitate to contact this office.
Randall P. Burns
Executive Director
Alaska Bar Association

NOTICE

Anchorage Equal Rights Commission is soliciting applications from individuals wishing to serve as hearing examiners on issues before the Commission. Section 5.70.7 (RAP), *Powers and Duties of Hearing Examiner* require, "The hearing examiner be a member in good standing of the Alaska Bar."

Interested and qualified individuals requiring more information should contact the Commission office at 620 East 10th, #204, telephone 264-4342.

Letters

April 5, 1984

Dear Harry:

Enclosed please find a copy of the "Word-A-Day" word for April 3, 1984.

I was pleased to at last learn the medical term for that debilitating malady which has so long afflicted certain prominent members of the Alaska bench and bar.

As this valetudinary condition strikes members of our profession so frequently (and usually during their peak earning years), couldn't you and your cousin, Stan Ditus, present a Jerry Lewis-style telethon to raise funds to finance medical research seeking a painless cure for sufferers? Alternately, you might consider a tasteful ad in the *Bar Rag* warning our brethren of this insidious condition and soliciting donations, perhaps including some sympathetic art work, or a few photos depicting portly victims sitting at their desks, waddling to court, or even astride bicycle seats.

"Fat, fair and forty were all the toasts of the young men."

John O'Keefe,
The Irish Mimic (1795)

Crapulently yours,
John E. Duggan

steatopygia
(ste' e to pi' je e) n. extreme accumulation of fat on and about the buttocks
The model felt as if she had *steatopygia* if she so much as gained one pound.

June 12, 1984

To whom it may concern:

This is to advise that the membership of the Alaska Bar Association, meeting during the Association's June 9, 1984 Annual Business Meeting, adopted the following resolution:

RESOLVED: That the Alaska Bar Association take a stand against the death penalty.

ENACTED BY the Alaska Bar Association on the 9th day of June, 1984.

Should there be any questions concerning this matter, please do not hesitate to contact this office.

Randall P. Burns
Executive Director
Alaska Bar Association

May 26, 1984
Sirs,

Reference the newspaper article at the bottom of this page. I do not know this person, or anything about him. The reason I'm writing to you is that this article reminded me of the few times I have had to deal with an attorney in AK. I have not been very impressed at all with the professionalism (or lack of) of any of them. I have had numerous people here in AK agree with me on these feelings. They charge outrageous prices, then don't really seem to have your interest at heart. Frankly I have been appalled by some of the actions of some of these attorneys. Surely they can't be so stupid as to think that the general public can't see through their "front."

I really feel that perhaps the AK Bar Association should in some way let the state's attorneys know that there are numerous of us out here that are dissatisfied with their lack of professionalism, terrible attitude, lack of ethics, etc., etc. I don't really expect the Bar to take any serious action toward their "brothers in the bar," since your reputation is not all that great either.

The lawyers in AK are ripping the public off, and giving very substandard service in return, and it's past time that they start getting their act together.

Ted Johnson
Anchorage

P.S. The public would be better off if a lot more of the attorneys were suspended . . . permanently.

Mary Kay Hughes, Esq.
President, Alaska Bar Association
509 West Third Avenue
Anchorage, Alaska 99501

Re: Code Revision Commission

Dear Mary:

This month I have some good news, and some bad news. Before I get to that, enclosed are copies of the tentative agenda of our May 1-2 meeting, which we covered, and a copy of the minutes of our March 2-3 meeting, which were approved.

The good news is that the bills pushed in the Code Revision Commission and the Legislature by both the Probate section and myself have met with considerable success. Senate Bill 513, concerning renunciation of rights by heirs, has passed the Legislature and probably will be signed by the Governor. The Community Property Rights at Death Act, House Bill 697, also has passed the Legislature and probably will be signed by the Governor. The latter bill had been introduced into two previous Legislatures without success. **Kathryn Black** is to be commended for her efforts in obtaining passage of these bills, as is **Dickerson Regan,** the Research Director of the Code Revision Commission. House Bill 693, providing for allocation of principal and income of trusts, and House Bill 694, providing for increasing the dollar exemptions in the probate code to compensate for inflation, both are in Senate Rules, and are almost certain to pass. The same two people are responsible for that. Most of these bills are "Motherhood" or "Fatherhood" bills, but that does not mean they are easy to get enacted. The fifth bill supported by the Probate Section and the Commission, Senate Bill 514, concerning married persons rights in the family home, is in House Judiciary and may well escape intact. (That bill permits an owner of the family home, be it male or female, to convey the home.)

Additional good news, at least from my point of view and from the point of view of the other Alaska Bar members of the Commission, is that **Mary A. Nordale** of Fairbanks has been appointed to the Code Revision Commission for a term ending June 30, 1986, as a public member of the Commission. This leaves the Commission with all of its positions filled, and Mary has been a voice of common sense and logic in the Fairbanks Bar for many years.

The bad news is that the Bar in its inimitable manner has the Legislature completely confused regarding the Corporations Bill. The members of the Bar on the Code Revision Commission, including **Judge Stewart, Fred Brown, John Abbott,** and yours truly, support the proposed Business Corporations Code with enthusiasm, although the enthusiasm is of varying degrees. The Business Law section of the Alaska Bar has taken no official position, but its chairman and several of its members (particularly **Stan Reitman**) have taken a strong position against the bill. Other members of the "ad hoc committee" of the Business Law section have indicated that the matter needs more study. Being men of good sense (we have no women Legislators who are attorneys), the members of the Bar int he Legislature are looking for the nearest cove regarding this matter. Meanwhile, they are once again wondering why the Alaska Bar Associaiton cannot present a united front. When asked that question, all I can do is explain to the members of the Legislature that attorneys are attorneys, and that I cannot guaranty unanimity amongst the 2,000 or so attorneys we have in the state.

One thing has become apparent from the recent hearings concerning the proposed Business Corporations Code. Most attorneys either feel that some legislation is needed in this area, or are saying that some legislation is needed whether they believe it or not. It is still possible that the existing Legislature will do something with the bill, but whether it does nor not, the subject is quite likely to receive attention next year. While I am not in complete agreement with their views, **Dick Rosston, Ken Eggers** and **Ray Gardner** have made a sincere effort to shed some light rather than heat on whether the proposed bill should be passed. Other members of the Bar have done otherwise. If you have any influence over the matter, I hope one of the three people just named will head the Business Law section during the next year. To my recollection, this is the first positive request I have made of the Bar Association for some time. I hope you can help me.

Sincerely,
L. S. Kurtz, Jr.

P.S. You have done a commendable job this year of allowing the pot to boil while keeping the public from realizing that it always is. That is perhaps the most any Bar president can achieve.

New Book on Legal Rights of Children

When can children sue their parents? Can local communities limit a child's access to video arcades? Are children entitled to their own attorneys when their parents are going through a bitter custody battle? When can the state remove a child from his or her home? How can the law help find a missing child or protect a sexually abused child?

A new book, *Legal Rights of Children*, takes a look at these and hundreds of other questions arising from new laws and case law developments in the rapidly evolving field of children's law. The book, edited by Robert Horowitz and Howard Davidson of the American Bar Association's National Legal Resource Center for Child Advocacy and Protection, includes contributions from many of the nation's leading child advocates addressing some of the most difficult issues that have resulted from an increased recognition and enforcement of children's rights.

Noting that legal issues affecting children are complex, substantial and growing, Horowitz and Davidson said that the book is the first time information on the whole range of issues arising from children's law has been put together in one volume, and should serve as a valuable reference tool for practitioners.

The 674-page book goes beyond traditional children's issues such as delinquency and child abuse. It examines such topics as educational and institutional rights, rights and restrictions of adolescents, child support, child sexual exploitation, parental kidnapping of children, foster care, adoption, and public benefit programs affecting children.

The editors said that the book touches upon issues which are making headlines on an almost daily basis.

"News stories on children who are missing, sexually victimized, and jailed for refusing to testify have kindled public debate about society's ability to protect our children and have moved Congress and state legislatures to consider and enact new laws and policies that will greatly affect many children," said Horowitz and Davidson.

They cited as examples of increased legislative activity the enactment of the Child Protection Act of 1984, which toughens federal laws on child pornography, creation of a National Center on Missing and Exploited Children, and the review of policies relating to child witness testimony in many states.

"All of these issues are examined in The Legal Rights of Children," they said, and added, "The book takes an indepth look at these problems, the law's response and the potential impact of the law."

Legal Rights of Children has been published by Shepard's/McGraw Hill. It costs $70, and may be obtained by calling the toll free number 800/525-2474 or writing Shepard's/McGraw Hill at P.O. Box 1235, Colorado Springs, CO 80901.

Alaska Attorneys Organize Weekly Public Open Forums by Dalene Perrigo

The director of Alaska Pro Bono programs foresees weekly public forums in Anchorage—an Alaska version of the information exchanges that occurred in the ancient Roman forum.

"We have the need for free open forums in Anchorage and we have the attorneys, paralegals and members of the legal services who have offered their time to prepare statements on issues and answer questions for the public," said Seth Eames, Pro Bono program coordinator.

"Hopefully, the Tuesday Night Bar will become a center where all social service issues in Alaska can be discussed in a purely intellectual manner," he added.

Anchorage's Tuesday Night Bar meets 5 to 7 p.m. on the second and fourth Tuesday of each month, in the Legal Services Offices, 550 W. Eighth Ave., Suite 200.

Today's two-hour session will feature a talk on Landlord/Tenant Relations by attorney Jim Gorski with relevant questions and discussion for the first hour to be followed by questions and discussion of other pertinent issues.

"Divorce and Disolution" is the topic for July 10 and "Landlord/Tenant Relations" is again the topic on July 17.

Mary Hughes, immediate past president of the Anchorage Bar Association, is enthusiastic about the entire Pro Bono program and especially about the Tuesday Night Bar which she is "really excited about."

"At the first session we were able to give great practical and educational information and yet stay out of areas where we could be in conflict of interest," she said.

The subjects were pertinent and in many cases could be answered with a simple statement; some were more complicated.

"What do I do if my public assistance check does not arrive on time?"

"What can I do when I can't get my neighbor's dog to be quiet?"

"I applied for food stamps two months ago and haven't received them. What should I do now?"

The common thread running through the group of concerns discussed by the forum seems to be a lack of knowledge on how to keep records, which records to keep and which to throw away and how to file documents so an accurate report can be made. "Surprisingly, this was true in almost every question," Hughes said.

The Tuesday Night Bar, named after the Thursday Night Bar in Boston, is only one of the services provided by the Alaska Pro Bono Program which was started in February, 1983 to combat the rising need for high-quality legal help for the poor in Alaska. An allied effort of the Alaska Bar Association and the Alaska Legal Services Corporation, Pro Bono also gives free legal service where needed, sponsors a self-help divorce clinic and works in cooperation with community service groups.

In its beginning year, the program recruited over 275 Alaskan attorneys, and now has 30 to 35 percent of the private attorneys in Alaska in the program.

"This is 65 percent less than I'd like to see," said Eames but he says that the program is growing.

To date Eames said there are Pro Bono lawyers in 22 communities but Anchorage has the only public forum. And as great as its potential for answering questions in a public forum, it will not be able to answer every question brough to the forum.

No matter how well organized or intellectual the Tuesday Night Bar, Eames said, "For some questions, the only feasible answer is 'see your lawyer.' "

Reprinted from
Anchorage Times

Federal Court Studies System for Appointing Attorneys

At the request of Chief Judge James A. von der Heydt and Judge James M. Fitzgerald of the United States District Court, a committee has been established to review the current composition, administration and management of private attorneys under the Criminal Justice Act (CJA) in the District of Alaska and to make recommendations to the U.S. District Court for changes in local implementation. The panel is composed of the two lawyer delegates to the judicial conference, R. Everett Harris and Jeffrey M. Feldman; two representatives of the Alaska Bar Association, A. Harry Branson and Gail Fraities; two representatives from the Anchorage Bar Association, John R. Lohff and Rene J. Gonzalez; and the U.S. Magistrate John D. Roberts.

A lack of participation, especially by civil lawyers in the CJA program, has caused the burden of appointments to fall on a few according to U.S. Magistrate John D. Roberts who heads the panel. Members of the bar and interested parties are urged to contact any of the panel members with suggestions to assist the panel in developing a system to involve more members of the federal bar in the acceptance of appointed cases. The court panel is studying whether the present level of voluntary participation is adequate and whether all trial lawyers who are members of the federal bar should be required to represent indigents in either criminal or civil cases. The panel has been requested to assist the federal court in developing an efficient and fair procedure for handling the requests for the appointment of counsel under the CJA and for *pro se* civil litigants under 28 U.S.C. § 1915 such as civil rights actions.

The Federal Court has already tightened its procedures for permitting attorneys to decline an appointment to a federal criminal case. Once an attorney is appointed, he or she must apply to the trial judge to be relieved from representation.

The panel hopes to come up with recommendations for the court which would render the distribution of appointments fairly among members of the bar by determining guidelines for panel participation and individual appointments. Under the CJA, each district is required to submit to the Circuit's Judicial Council its plan for implementation of the CJA. The present plan of the United States District Court for the District of Alaska was implemented when The Honorable Raymond E. Plummer served as Chief Judge. The total number of attorneys presently on the CJA list for the Anchorage Division represents only about twenty-one percent of the number of attorneys admitted to the federal bar who practice law in the Third Judicial District.

The panel is already aware that the rates of compensation for services rendered under the CJA is well below the current billing rate for private attorneys and can be less than an attorney's overhead costs. These concerns are not before the panel since they are being addressed in a national study by the Judicial Conference Committee to Implement the Criminal Justice Act chaired by The Honorable Thomas J. MacBride, Senior Judge, U.S. District Court, Sacramento, California. The Ninth Circuit Judicial Conference has recently passed resolutions urging Congress to increase the compensation rates set by the CJA.

Anchorage Bar Association Schedule of Upcoming Events

June 1–December 31, 1984

The Anchorage Bar Association continues to meet for informal luncheons Fridays at noon at the Fourth Avenue Diner; except as otherwise noted, these meetings will continue to be exclusively social in nature with no formal program or announcements; the programs unless otherwise noted, are open to the public.

Sunday, July 29—The Anchorage Bar Association hosts the Annual Train Tour and Picnic at Snider Park, Wasilla; more details to follow.

Wednesday, August 8—The Anchorage Bar Association will fete visiting dignitary the Right Honorable Sir John Donaldson, Master of the Rolls, and President of the British Maritime Law Association. [The Master of Rolls is roughly equivalent in dignity to an American Supreme Court Justice.] Further details will be provided later.

Friday, September 28—Annual meeting and elections.

Approximately October—The First Annual Fall Ball, presently in the planning stage under the direction of Benjamin O. Walters, Jr., Esq.

Approximately December—The Annual Christmas Bash.

Bar Convention—Site of Barrister First General Meeting

The Barristers held their first general meeting at the Alaska Bar Convention held at the Sheraton Hotel on June 6, 1984. Topics which were discussed include the role of the Barrister's Section in the Anchorage legal community and projects which the Section plans to undertake. The Executive Committee reported that the joint project with the Conflict Resolution Center to set up a divorce mediation service is underway. The Executive Committee has met with the Conflict Resolution Center Board to discuss policy considerations and will meet again in July to evaluate the ongoing project.

The next project which was discussed is the Forum Committee for arranging for speakers at Barristers meetings. One suggestion was made to contact candidates for the upcoming election.

Another project which is underway is a program whereby the Barristers will assist with the Law Explorer Scouts and work with young people interested in learning more about law as a career.

G. Nan Thompson and Mark E. Wilkerson are the newest members of the Anchorage Bar Association Young Lawyers Section ("Barristers") Executive Committee. They join the other three members of the Executive Committee, Lynn Allingham, Chairperson, Doug Marston, Vice-chairperson, and Shelby Nuenke-Davison, Secretary-Treasurer.

The next meeting of the Barristers Section will be June 27 at noon at the conference room at Ely, Guess & Rudd, 510 "L" Street, Suite 700, Anchorage, Alaska, 99501. It will be a brown bag lunch and all interested persons are invited to attend.

Family Mediation Pilot Project

The Conflict Resolution Center began a six month family mediation pilot project on June 1, 1984 with help of a grant from the American Bar Association obtained by the Young Lawyers Section of the Anchorage Bar Association. The purpose of this family mediation project is to provide an alternative forum for the resolution of the child custody and visitation disputes, and spousal support and property issues which arise in divorces.

The Conflict Resolution Center's pilot project is part of a growing trend in the United States to seek alternatives to the traditional adversary model for divorces. Courts and social service agencies in 37 states have established mediation or conciliation services. Private individuals also offer mediation services. (Dispute Resolution Program Directory, compiled by the Special Committee on Alternative Dispute Resolution of the Public Services Activities Division, American Bar Association, Washington, D.C., 1983.) In 1982 the Alaska legislature amended the child custody statute to permit the court to order parties who have filed child custody petitions to submit their dispute to mediation. AS 25.20.080

The purpose of mediation is two-fold: (1) to help the parties reach an agreement that they can live with, and (2) to get the parties involved in the process of resolving their differences so that they can have an adequate opportunity to discuss all of the issues which are important to them. Mediation supports the idea that each individual is responsible for resolving their disputes, and facilitates the development of a new relationship between the former spouses. In cases where there are children, the couple will probably continue to share parental responsibilities. They must develop a new method of communication which will enable the couple to better cope with the dissolution of their marriage and to ease the transition into the new family relationship.

The Conflict Resolution Center has hired an experienced mediator, Ms. Jacqueline Erthischeek. She will assist the couple in isolating points of agreement and disagreement, developing options and considering compromises. The result of the mediation will be a memorandum of understanding setting forth the couple's resolution of child custody, support and property issues. The memorandum of understanding can be turned over to the parties' respective attorneys and incorporated into a final settlement agreement.

The family mediation project is not intended as a replacement for the services provided by attorneys, but rather as a supplement to them. The mediator will urge the parties involved to seek legal counsel so that they fully understand their rights and obligations. The couple will also require the services of an attorney to prepare the necessary pleadings. The mediation project is designed to help the parties who want to resolve the property and child custody disputes in a cooperative, rather than adversarial forum to do so.

The mediation process at the Conflict Resolution Center begins with an orientation session. The parties must agree to participate in the mediation, to adhere to the Conflict Resolution Center's rules and policies and to commit to payment of the mediator's fee. The mediator's fees are between $60 and $80 an hour, depending on the parties' incomes. The Conflict Resolution staff estimates that most couples will require five or six sessions of two hours in length in order to formulate a memorandum of understanding.

During the initial six month pilot period, the participants are being asked to fill out evaluation forms prepared by the Conflict Resolution Center staff and the Young Lawyer Section Oversight Committee. The attorneys representing the parties will also be asked to evaluate the process and results of the Family Mediation Service. The Conflict Resolution Center staff, and the Young Lawyer's Section Oversight Committee are hopeful about the prospects for the success of this project, and will study the evaluation carefully to determine whether the Family Mediation Service should be continued, and what changes in the process should be made. You may contact the Conflict Resolution Center at 943 West 6th, Suite 210, Anchorage, Alaska 99501, 272-5922, to learn more about the pilot project or offer your comments on it.

Drunk in Alaska

by Russ Arnett

When I met the Champagne Kid he was working as a jailer in Nome. His real name was Alfred J. P. Hansen, the J. P. being after J. Pierpont Morgan. He always insisted that the J. P. be included when his name was written. He had been at Council, Alaska during the gold strike there about 1914. He struck a streak of pay and within a short period took out $7,000 in gold. He used the gold to buy all the champagne in Council and invited the entire camp to a celebration. After several days most of the camp was drunk and the host was on the floor. Only one case of champagne remained and he was asked what to do with it. "Oh, pour it on me," he said. They did.

When he sobered up and returned to his claim he found that his earlier efforts had exhausted the claim and there was no more gold. Years later, known by then universally as the "Champagne Kid," he would repeat in his Scandinavian accent "seven thousand dollars," and shake his head.

Jimminy Crickets was one of the drunks in Anchorage in the '40s. He discovered that if one person stood on the toilet in one of the Fourth Avenue bars and card parlors his partner could climb on his shoulders and enter a trap door in the ceiling. There they would hibernate with a jug of wine in the warm space under the roof, sometimes for days. Once after sleep overcame him, he rolled onto the ceiling, crashed through, and landed in the middle of the panguingue table during a game. Cards and drinks went everywhere. Jimminy must have found the free fall exhilarating as he landed on the run.

Until the '40s Natives were not permitted in Fourth Avenue bars. Nevertheless, one entered a bar only to be greeted with "I'm sorry. We don't serve Natives." The Native answered, "I'm not here to drink. I'm from the Internal Revenue Service."

Every morning the drunks picked up the night before were brought before the Anchorage City Court. Ike Eisenhower was a regular. Perhaps out of sympathy, Magistrate Buell Nesbitt asked Wendell Kay, who was present on another matter, to represent him. Wendell agreed and consulted with his client. Was he drunk asked Wendell. "No. I may have been intoxicated, but I was not drunk." When asked to plead, Eisenhower stood and, because his belt was removed to prevent a suicide attempt, his pants fell down, revealing some very raunchy shorts. He then entered a plea to having been intoxicated but not drunk, which was accepted.

Late one night I saw an Eskimo woman drunk and asleep on a snow bank in Nome. It was very cold so she would probably be dead by morning. I was appalled. I called the police. The Chief arrived. He said it was One-eyed Maggie. I helped him take her to her cabin where a nice driftwood fire was burning.

A fur trapper who lived in Talkeetna had left Yugoslavia to avoid military service in World War I. He was over seventy when he contacted the government of Yugoslavia about returning. They were no longer prosecuting World War I draft dodgers so he returned. I later saw his friend who was a bush pilot and asked about the ex-trapper. Apparently he spent every evening in a local tavern in Yugoslavia in a convivial fashion and occasionally would do headstands. He died within a year.

Appellate Advocacy in Subject of ABA Monograph

WASHINGTON, D.C., June 21—Appellate advocacy in criminal cases is the subject of a monograph recently released by the American Bar Association's Criminal Justice Section.

The Criminal Appeals Primer is the first issue of a Criminal Law and Justice Monograph Series. It examines the "how to's" of appellate advocacy in a way designed to assist the criminal practitioner.

The 27-page publication deals with a wide variety of issues and procedures that confront criminal lawyers faced with appeals, from making the initial decision on whether to appeal, the legal research and writing involved in appeal, and the ins and outs of the process.

In the introduction, author Phylis Skyloot Hamberger points out that lawyers who appear in appellate courts "are often criticized for claimed, frequently real, lack of skill in research, writing and argument." Furthermore, she adds, court practices that encourage lawyers to write briefs without full transcripts or adequate preparation time also adversely affect appellate advocacy.

"Appellate practice requires skilled, knowledgeable attorneys," she says, and suggests that the monograph should help contribute to this goal.

Copies of the monograph can be obtained by writing the American Bar Association, Order Fulfillment, 750 North Lake Shore Drive, Chicago, Illinois 60611. The price is $13.20 for ABA members, or $16.50 for non-members. For additional information contact Marcia Christensen at (202) 331-2260.

The U.S. Department of Housing & Urban Development needs Multifamily Foreclosure Commissioners. See Federal Register, Vol. 49, No. 38, Friday, February 24, 1984, pages 7072-7080. Contact Geoff Patton for details at (202) 755-5351 or Susan Olsen at (907) 271-4683.

Aliens Subject to Deportation Crimes

by Dan P. Danilov
Exclusion from Admission to the United States

Aliens convicted of a crime involving moral turpitude or aliens who admit the commission of such a crime are excluded from entry to the United States. Section 212(a)(10) of the Immigration and Nationality Act (INA) likewise prohibits the entry of aliens who have been convicted of two or more offenses, regardless of whether the confiction arose from a single scheme of misconduct, if the aggregate sentences to a confinement total of at least five years.

Aliens may apply for exemptions from exclusion into the United States on the following grounds:

(a) purely political offenses; (b) juvenile offenses committed five years prior to application for admission to the United States; and (c) petty offenses or misdemeanors, except under 18 U.S.C. 1(3). Aliens who are spouses, parents, and children of U.S. citizens or permanent residents may also apply for a waiver of exclusion for criminal offenses.

Any conviction for illicit possession or traffic in narcotic drugs or marijuana constitutes a separate offense and is not subject to the petty offenses exemption and may not be waived regardless of family ties.

Deportation of Aliens for Crimes

Section 241(a)(4) of the INA provides that aliens are subject to deportation for crimes involving moral turpitude. "Moral turpitude" involves an act of baseness, vileness, or depravity contrary to justice or good morals. Examples include murder, rape, and theft.

Three classes of aliens are subject to deportation for committing or admitting to such crimes. First, aliens who were excludable at time of entry for committing or admitting to such crimes. Second, aliens who have been convicted of the crime within 5 years after entry into the U.S. and sentenced to confinement in a prison or corrective institution for one year or more. Third, aliens who have been convicted of two crimes involving moral turpitude, regardless of confinement; they are deportable provided that the crimes did not arise out of a single scheme of misconduct.

Washington State Courts must advise alien defendants of the consequences of a plea of guilty or conviction of crimes involving moral turpitude. 1983 Wash. Laws 1095, Ch. 199 (to be codified at RCW 10.40.200).

Defenses Against Deportation

Has the alien been "convicted" within the meaning of INA Section 241(a)(4)? Unlike the exclusion provision in Section 212(1)(9), admission of a crime without a conviction does not lead to deportation, although the alien may be denied naturalization.

A conviction must be final; a conviction that is being appealed does not give rise to deportation until it has been affirmed.

For single crime deportations, the critical inquiry is whether the alien has been "sentenced" to confinement in "prison" or "corrective institution" for a year or more. Suspension of the "imposition" of a sentence does not result in deportability. Matter of L.R., 71 & N 318 (A.G. 1957). Suspension of the "execution" of a sentence, however, is a sufficient "sentence" under the statute. Arellanos-Flores v. Hoy, 262 F.2d 667. Confinement in an institution of "rehabilitation" rather than prison may enable the alien to avoid deportation. Holzapfel v. Wyrsch, 259 F.2d 890.

A deferred execution or suspended sentence will not relieve the alien from deportation if the sentence deferred or suspended was in excess of one year. Matter of Johnson, Int. Dec. 1528 (1965). A deferred sentence must be distinguished from deferral or execution of sentence. In the deferral of execution of a sentence, there is an actual sentence imposed, which would satisfy the deportation of the alien. Under the deferral of sentence, there is no sentence, and thus the requirement of the immigration statute is not met. For multiple criminal convictions after entry into the U.S. the deferral of imposition of sentence does not act to stay deportation since, under Section 241(a), no sentence is required.

"Deferred prosection" means a special supervision program ordered for a specified period of time by the court before trial on a felony charge. If the defendant has satisfied all the conditions of the program, the charge will be dismissed. If the defendant does not meet the conditions, the court may rescind the deferred prosecution and authorize the prosecution to proceed. There is, of course, no conviction for either the purposes of the single crime or multiple crime division if the charges are dismissed.

Significance of "Entry" into the United States

Under Section 101(a)(13), the "entry" of an alien into the U.S. means "any coming" into this country. The five-year period in which an alien can be deported for a crime involving moral turpitude begins from his last entry. Therefore, every time an alien departs, even for a short period, the five-year hazard may begin to run anew.

An ingenious defense has been claimed that there is no "entry" when the alien did not make a "meaningful departure." Rosenberg v. Fleuti, 374 U.S. 449, held that an alien who has left the U.S. to visit Mexico for a few hours did not make "an entry" on his return. Thus, it is possible to defend on the basis that a crime was not committed within the prescribed five-year period after "entry," even though the alien did leave and depart for a few days. See also Vargas-Banuelos vs. INS, 466 F. 2d1371. However, a departure and re-entry after a month's vacation was held to constitute a new entry, rendering an alien deportable for conviction of manslaughter within five years of such entry. Munoz Casares v. INS, 511 F. 2d 947.

Multiple Crimes Involving Moral Turpitude

When deportation is based on multiple crimes involving moral turpitude the concepts of entry, confinement, and sentence are of no help because deportation results regardless of confinement or period of residence. There are a number of options available, however, including vacating or expunging the convictions, obtaining full and unconditional pardons to remove the basis for deportation, and recommendation from the sentencing court at the time of passing sentence.

When the multiple crimes arose out of a single scheme or misconduct, courts are divided on whether several criminal acts constitute a "single scheme." Two separate thefts of an automobile within one day of each other, Sawhow v. INS, 314 F. 2d 34 and two robberies by the same group three days apart Wood v. Hoy, 266 F.2d 825, have been held to be a single scheme. Other federal courts found not single scheme present in tax evasions for separate years, Khan v. Barber, 253 F. 2d 547, cert. denied, 357 U.S. 920.

Narcotic Offenses

Violation of a narcotic law relating to the illicit possession or traffic in narcotic drugs or marijuana results in deportation under Section 241(a)(11). Pardons and judicial recommendations against deportation do not help aliens convicted of narcotic violation. Section 241(b). Complete vacation of sentence, In re O'Sullivan, 10 I. & N. 320, and expungement under Federal or State Youth Correction Acts may save aliens from deportation. See Mestra Morera v. INS, 462 F. 2d 1030; Rehman v. INS, 544 F. 2d 71.

Section 212(c) provides that an alien returning from abroad to an unrelinquished legal domicile of seven years in the United States may be re-admitted notwithstanding a conviction involving narcotics. Francis v. INS, 532 F. 2d 268, held that an alien who was a permanent resident in the United States and who had not departed following a narcotic conviction, was entitled to apply to the attorney general for discretionary relief under Section 212(c).

Dan P. Danilov

Dan P. Danilov is a Seattle Attorney practicing in U.S. Immigration and Naturalization Laws.

Mr. Dan P. Danilov is a practicing attorney in Seattle, Washington who has practiced in Immigration and Nationality Laws for the past 26 years. A graduate of the University of Washington School of Law, he is a member of the American Bar Association and Washington State Bar Association. He has also been admitted to practice before the Supreme Court of the United States and the local U.S. District Courts.

He was an immigrant himself who came to the United States from China in 1947 and he is personally familiary with problems of immigration to the United States. He is the author of numerous articles on U.S. Immigration Laws in various legal journals and newspapers, as well as a frequent lecturer for bar associations and other organizations, including the Practicing Law Institute. He is the author of a popular guide on immigration to the United States entitled, "A Welcome to the U.S.A. for Immigrants, Businessmen, Students Visitors, and Workers." This guide has been translated into the Korean Language by Northwest Orient Airlines and made available to all passengers traveling to the United States.

He is a member of the American Immigration Lawyers Association and was a member of the Board of Governors thereof; and has been Editor of the *Immigration Journal* for the American Immigration Lawyers Association. Recently, Mr. Danilov served as Special Editor of *La Luz*, a Hispanic February, 1978. Mr. Dan P. Danilov is Managing Editor of Immigration Laws for *The Common Law Lawyer* and Executive Editor of the *Transnational Immigration Law Reporter.*

In September, 1978, Mr. Dan P. Danilov completed a new 238 page book on U.S. Immigration Laws entitled, *Immigrating to the U.S.A.* This publication has been updated by Mr. Danilov in May, 1979, and a Third Edition was released in June, 1980. The new Fourth Edition has been published and released several months ago.

Recently, a new and monumental book on the United States Immigration Laws was published by Butterworth (Legal Publishers) Inc. entitled, *Danilov's U.S. Immigration Law Citator* for the legal profession and others engaged in the administration of the U.S. Immigration Laws. This new book took 12 years to complete by Mr. Danilov and his staff—it contains all of the United States Court Cases which interpret the U.S. Immigration Laws from 1965 until the present time. New supplements to update the book will be published twice a year by Butterworth (Legal Publishers) Inc.

Mr. Dan P. Danilov is also Co-Author with Allen E. Kaye, Esquire of New York, New York of the weekly and now monthly publication entitled, *United States Immigration News* which is available for subscription and has been forwarded to all of the American Consulates throughout the world, offices of the Immigration and Naturalization Service, and other governmental agencies as well, as a public service. This *Newsletter* has been republished in numerous other publications in the United States and abroad.

Studies Find Few Arrests Thrown Out Because of Illegal Searches

A federal government study of criminal prosecutions is "misleading and exaggerated" according to research by Thomas Y. Davies just published by the American Bar Foundation. The federal study had claimed that court rulings prohibiting the use of evidence obtained by police through illegal searches—the so-called "exclusionary rule"—are a "major" factor in causing criminal prosecutions to be dropped. Another new study by Peter F. Nardulli, also published by the Foundation, finds that only 6 in every 1,000 arrests are thrown out of court because of illegal searches.

The 1982 government study by the National Institute of Justice, a research branch of the U.S. Justice Department, claimed that 4.8% of all arrests rejecte by California prosecutors were declined because of illegal searches, and that nearly one-third of all felony drug arrests were lost because of illegal searches. The NIJ statistics have been a centerpiece in the Reagan administration's attacks on the exclusionary rule in the Supreme Court and Congress.

Davies, a lawyer and political scientist on the staff of the American Bar Foundation, argues that the 4.8% figure is misleading because it is the percentage of only the *rejected* arrests—that is, of those arrests that prosecutors dropped for one reason or another—rather than being the percentage of total arrests that were lost because of illegal searches. Using NIJ's own data, Davies calculates the percentage of *all* felony arrests to be only 0.8% (or 8 in 1,000), NIJ did not calculate that figure.

Davies also shows that the same statewide California data used by NIJ indicate that prosecutors only drop 2.4% of felony drug arrests because of illegal searches, not 30%, but NIJ failed to report the lower figure. Davies suggests that NIJ's 30% figure, which is based on an examination of less than 300 cases from Los Angeles only, is the result of faulty research methods.

The statewide California data discussed by Davies also show that the exclusionary rule only rarely causes the loss of arrests for violent crimes; prosecutors dropped only 6 in every 10,000 homicide arrests because of illegal searches, and only 1 or 2 in every 1,000 rape, robbery, or assault arrests. Although these data were available, the NIJ study also failed to calculate the very low loss rates for violent crimes.

In the second study published by the American Bar Foundation, Nardulli, a professor at the University of Illinois, examined court records in 7,500 felony criminal cases and found that only 40 ended in nonconvictions following a defendant's successful motion to suppress evidence seized illegally by police. He also found that most of the 40 released defendants were charged with drug or weapons possession offenses, that half were first offenders, and that half would have received sentences of less than 2 months in jail if they had been convicted. He concludes that the rule causes the release of "only a relatively few marginal offenders." Nardulli studied courts in nine moderate size counties in Illinois, Michigan, and Pennsylvania.

The two studies are likely to receive the attention of lawmakers because both the Supreme Court and Congress are considering proposals to create a "good faith" exception to the "exclusionary rule" that now prevents prosecutors from using illegally seized evidence in criminal trials. Both Nardulli and Davies conclude that the data on lost arrests demonstrate that the proposed change in the present rule is not needed.

The 1982 NIJ study also asserted that there were few other studies of the effects of the rule, but Davies identifies several studies that NIJ did not mention, all of which indicate that the exclusionary rule causes only a small percentage of arrests to be dropped. For example, three studies by the Institute for Law and Social Research in the 1970s show that urban prosecutors typically reject less than 1% of arrests because of illegal searches—a finding consistent with Davies's calculation that 0.8% of arrests in California are rejected by prosecutors because of illegal searches. Davies notes that the omission of these studies by NIJ is inexplicable since NIJ (and its predecessor LEAA) funded them.

Davies concludes that the empirical data who that a "good faith" exception to the exclusionary rule would save relatively few lost arrests. He also notes that studies to date have not distinguished between illegal searches that resulted from "good faith" police mistakes and those that were blatantly illegal. He suggests, however, that the concentration of lost arrests in drug offenses suggest that many of the illegal searches were of the blatantly illegal variety.

Both studies were supported by the American Bar Foundation and have been published in the current issue of the foundation's *Research Journal.*

Thomas Y. Davies, author of "A Hard Look at What We Know (and Still Need to Learn) About the 'Costs' of the Exclusionary Rule," is a project director on the staff of the American Bar Foundation and editor of the Foundation's *Research Journal.* He has published previous research on criminal appeals and the effects of criminal due process rules, including the exclusionary rule. Last year Davies advised defendants' counsel regarding empirical studies of the exclusionary rule when the U.S. Supreme Court heard arguments regarding the proposed "good faith" exception in *Illinois v. Gates,* but the Court did not decide the issue in that case.

Peter F. Nardulli, author of "The Societal Cost of the Exclusionary Rule: An Empirical Assessment," is an attorney and political scientist and an associate professor in the Institute of Government and Public Affairs at the University of Illinois. Nardulli specializes in studying criminal court processes. His study of illegal search motions is part of a larger study of conviction and sentencing patterns in 9 felony courts.

Tips on Preventing Malpractice Vulnerability

Increasing insurance premiums and decreasing insurance coverage are making lawyers more aware of malpractice as a liability of their own professional activities.

Planners of a continuing legal education program, "The National Legal Malpractice Institute on Prevention, Liability, Litigation and Insurance," see those changes as the result of a dramatic increase in the number of clients suing their lawyers, and in the amounts of money paid to those clients in settlements and judgments. The institute, April 24 and 25, will be in the Denver Hilton hotel. Sponsors are the American Bar Association Division of Professional Education, Standing Committee on Lawyers' Professional Liability and Section of General Practice.

Two attorneys experienced in litigating malpractice cases will teach the two-day course. Ronald E. Mallen, San Francisco, is chairman of the ABA Standing Committee and author of the textbook *Legal Malpractice.* Jeffery M. Smith of Atlanta, a member of the Standing Committee and chairman of the ABA Section of Tort and Insurance Practice Committee on Professional, Officers' and Directors' Liability, is author of the text *Preventing Legal Malpractice.*

First day programming will start with statistical analyses of the malpractice problem and the relationship between malpractice and issues of legal ethics. It will include discussions of preventive steps that lawyers can take in managing their own offices, their potential for vicarious liability stemming from partnerships or other relationships, potential liability to persons other than their clients, liability to clients, fiduciary obligations, liability for errors in judgment, standards of care, damages and defenses. Second day topics will include such recurring problem areas as time limitations, particular problems distinct to different legal specialties, litigating malpractice cases and malpractice insurance.

Copies of the textbooks written by the teachers will be available at the institute. Cost of registration for those wishing to purchase the books is $300 for ABA members, $325 for non-members and $125 for students. Registration fees are $25 lower in each category for those who do not wish to purchase the texts.

Additional information is available from program attorney Azike Ntephe at (312) 567-4725, or by writing to the American Bar Association, Division of Professioonal Education, 10 West 35th Street, Chicago. IL 60616.

Testing Dates for Certified Legal Assistant Examination

The next CLA examination will be offered July 13-14, 1984, in Norfolk, Virginia. Application forms are available from NALA Headquarters and should be submitted by June 14, 1984, 30 days prior to the test date.

This voluntary certification program was established in 1976 by the National Association of Legal Assistants after two years of careful study and investigation by the NALA Certifying Board for Legal Assistants. The Board is composed of five legal assistants who have attained the CLA designation, two members of the American Bar Association and two members of the field of education active in legal assistant training. The CLA program involves successful completion of a two-day comprehensive examination covering the topics of Communications; Legal Research; Ethics; Human Relations and Interviewing Techniques; Legal Terminology; Judgment and Analytical Ability; and Substantive Law. Thereafter, evidence of continuing legal education must be submitted periodically in order to maintain certified status.

To date, 684 legal assistants have been certified in 42 states; over 1,000 have participated in the program.

Specialty certification in the areas of Civil Litigation, Probate and Estate Planning, Corporate and Business Law, and Criminal Law and Procedures is available for persons who have already attained the CLA designation. Specialty certification examinations are administered in July and in March during the same time as the regular testing.

Several NALA state and local affiliated associations offer CLA examination review courses and study groups. Information regarding these programs and the examination program may be obtained by contacting:

NALA Headquarters
1420 South Utica
Tulsa, Oklahoma 74104
(918) 587-6828

Private Admonitions

Nature of Complaint: DR 6-101; Neglect

Ms. P originally filed a complaint with the Attorney General's Office, which forwarded the matter to the Alaska Bar Association, where it was heard as a Fee Arbitration. The fee arbitrator referred the matter to the Bar Association for appropriate disciplinary investigation.

Ms. P agreed to pay Attorney X $590.00 to obtan a divorce. Ms. P told Attorney X that she was afraid that her husband would take all the money out of their bank accounts. Attorney X agreed that he would obtain a court order freezing the bank accounts until the divorce was completed. He acted promptly to initiate the divorce and to freeze the bank accounts. However, Ms. P subsequently reconciled with her husband and Attorney X did not hear anything more from her. He wrote her stating that he had assumed that she had reconciled:

> If you and your husband have reconciled, you should let me know so that the divorce action can be dismissed. If you have not reconciled you should contact me immediately, so that the divorce can proceed.
>
> I consider that your bill is fully paid as of this date, but any further work will be billed at my normal billing rate of $75.00 per hour plus city tax.

Attorney X again wrote Ms. P requesting her to sign an enclosed stipulation for dismissal if she had reconciled with her husband. She went with her husband to Attorney X's office and signed the stipulation. At that time, she advised Attorney X that she had been unable to gain access to her bank accounts. He advised her that the stipulation for dismissal would resolve the problem. He sent the stipulation to the husband's former attorney for approval. The stipulation was ultimately signed by the court, but there is no evidence that the stipulation was ever mailed to Ms. P. Attorney X assumes that he would have done so, but there is no cover letter in his file. All of the other documents sent to Ms. P were accompanied by cover letters. It is clear from Ms. P's testimony that she never received the stipulation for dismissal.

Ms. P and her husband asserted that they attempted to talk to Attorney X on a number of occasions about the frozen bank accounts. They were also concerned about a refund of part of the $590.00 fee, or at least an accounting to show why he felt that the full amount had been earned. None of these calls were returned. Attorney X stated that he was only advised by his secretary of one call, and that he told her to tell Ms. P that he felt his entire fee had been earned. Subsequent to the fee arbitration hearing, Attorney X advised this office that Ms. P did contact his office about the frozen accounts on several occasions after she signed the dismissal stipulation, but that the contacts were before the order of dismissal was signed, so that he did not return the calls. He stated that he mailed the stipulation of dismissal to her and assumed that she had successfully used it to unfreeze the bank accounts. He asserted that the next he heard about the matter was when she filed the consumer protection complaint. Richard Ray, former discipline counsel, wrote Attorney X requesting his comments to the consumer complaint lodged by Ms. P. There is no response in the file. Although the complaint stated clearly that the bank accounts were still frozen at that time, Attorney X took no further action to unfreeze the accounts. He testified that he was surprised when he learned shortly before the hearing that the accounts were still frozen. He stated that he felt that his obligations to Ms. P ended when she filed the consumer complaint, including any duty to unfreeze the account.

The Discipline Section found that Attorney X's failure to forward the signed stipulation to Ms. P was an oversight, rather than intentional conduct. However, if he had ever returned any of Ms. P's calls, he would have learned that she never received it. Attorney X received notice that Ms. P was having trouble reopening her account when he received a copy of the consumer complaint from this office. However, he failed to respond to that notice, or to take advantage of the ten-day period set out in the Notice of Hearing in order to resolve the matter.

Attorney X was issued a private letter of admonition for violation of DR 6-101(A)(3), neglecting a legal matter entrusted to him, and DR 7-101(a)(2), failing to carry out a contract of employment. He was advised that his obligations to a client do not end when the client files a complaint against him.

Nature of Complaint: DR 5-105, Mishandling Escrow Account

Mr. E filed a complaint against Attorney W alleging that he had acted inappropriately in handling an escrow account. Mr. E deposited $2,000.00 with Attorney W, who represented the seller, as earnest money for the purchase of a mortgage. The seller filed for personal bankruptcy, and Mr. E withdrew from the sales transaction, feeling that the seller could not present clear title as a result. The seller and Attorney W took the position that the personal bankruptcy did not interfere with title, and that Mr. E was required to pay the expenses of the failed transaction. Attorney W withdrew the earnest money from the trust account, paid his own legal bill which was solely based on the sales transaction, and sent the remainder to Mr. E.

The central question involved Attorney W's responsibility once there was a dispute about entitlement to the escrow account. There was no written agreement to clarify Attorney W's obligations. He agreed that he accepted the funds in escrow.

Traditionally, an attorney for the beneficiary of an escrow could not hold an escrow deposit because an attorney is an agent for his client. Although that is still the rule in some jurisdictions, others have allowed an attorney to hold escrow money if it involves no violation of duty to his client. Under this new rule, the attorney becomes the agent of *both* parties for the purpose of the escrow. See generally 28 Am. 2d *Escrow* 12-14. Once Attorney W agreed to hold the escrow money for Mr. E, he could no longer act solely on behalf of his client in regard to that money.

DR 5-105 is generally applicable to this fact situation. By agreeing to act as an escrow agent for the buyer and seller, Attorney W incurred fiduciary responsibilities to both of them. When their interests became adversary, he could not choose to advance the interests of the seller over those of the buyer. DR 1-102(A)(5) is also applicable as his conduct can be considered prejudicial to the administration of justice.

The Discipline Section determined that disciplinary action was appropriate because Attorney W acted solely on his client's instructions in determining the disposition of the escrow account and did not act to protect the fiduciary relationship established between himself and Mr. E. A private admonition was deemed the proper resolution of the matter because the evidence did not show dishonesty on Attorney W's part. Attorney W was advised that he should have drafted a written agreement which clearly outlined his obligations to the parties and the method for disposition of the money should the transaction not be completed.

Nature of Complaint: DR 7-107(A)(2), Failure to Carry Out a Contract of Employment

Ms. S alleged that Attorney J refused to appear for the final hearing in her divorce because she stated her intention to appear. Attorney J agreed that he refused to appear at the final divorce hearing because Ms. S indicated that she wanted to attend. He stated that he did not want her to attend because he was afraid that she would make a scene. When she insisted on being present, he told her that he would not attend.

When Attorney J failed to appear at the hearing, he received a telephone call from the opposing counsel advising him that the master had refused to proceed with the hearing in his absence. Attorney J then went to the hearing, which commenced approximately twenty-five minutes after the scheduled time.

A private informal admonition was issued to Attorney J. He was advised that, if he intended to withdraw from representation of his client by refusing to attend the final divorce hearing, he violated Disciplinary Rule 2-110 by failing to seek permission of the tribunal prior to withdrawing representation. If he intended to continue his representation, his initial refusal to attend the final hearing and failure to appear at the scheduled time was a violation of DR 7-107(A)(2), in that he failed to carry out a contract of employment.

Additionally, the Area Hearing Committee member who was consulted about the private admonition requested that comment be made on Attorney J's repeated references in his letter to Bar Counsel about his client's adultery. The Area Hearing Committee member stated:

> When a grievance is filed against an attorney, to the extent that the privilege must be waived, it is deemed waived. However, that does not justify a wholesale disclosure of attorney/client confidences that have little or no bearing on the issues of the disciplinary complaint. . . .
>
> His oft repeated reference to the client's adultery could have been intended for no other purpose than to urge the disciplinary administrator to think poorly of a complainant in matters not germane to the issues.

That portion of the Area Hearing Committee member's letter was excerpted for Attorney J.

Nature of Complaint: DR 3-102, A Lawyer or Law Firm Shall Not Share Legal Fees With a Non-Lawyer

The three respondent attorneys entered into an agreement with their office manager providing that she would receive a minimum salary of at least twenty percent of the net earnings of the firm. There was no evidence that the office manager ever actually participated in the unauthorized practice of law or that she was encouraged to seek clients for the firm. However, the agreement violated DR 3-102 which prohibits a law firm from sharing of legal fees with a non-lawyer and it had the possible effect of encouraging her to take a direct interest in the profits of the firm. The three attorneys involved were given private letters of informal admonition.

Nature of Complaint: DR 3-103, Practice with a Non-Lawyer; DR 2-105, Statement that "Specialist"

Attorney N complained that he had received an unsolicited communication from L & M, a professional services partnership. He felt that statements made in the advertisement were in violation of the Code of Professional Responsibility. Mr. L of the professional services partnership was an attorney, but Mr. M was not. The Discipline Section only investigated those allegations which would be violations of the Model Rules of Professional Conduct as well as the Code of Professional Responsibility. The Discipline Section found that the advertising circular did not violate those codes except in the statement that attorney L was a "specialist" in a field of law. Additionally, although not alleged, the Discipline Section noted that Attorney L had associated in a partnership with a non-lawyer when one of the activities of the partnership was the practice of law. DR 3-103 prohibits such conduct.

Attorney L agreed that he had unintentionally violated the Disciplinary Rules by stating that he was a "specialist" in a field of law and by associating in a partnership with a non-lawyer when one of its activities was the practice of law. A private informal admonition was administered.

Judicial Vacancies

As a result of Judge Tucker's resignation on April 30th; Judge Bosshard's appointment to the Valdez Superior Court on May 29th; and the Legislature's recent creation and funding of four new positions; there are currently six judicial vacancies in Anchorage (4 District, 2 Superior). Judicial Council recruitment for these positions began in early June and will culminate in interviews and nominations at the Council's September 25-26 meeting.

Persons who have already applied for the district court vacancy created by Judge Tucker's resignation have been advised that they will be considered with all other district court applicants for all Anchorage district court vacancies. The bar survey for all six positions will be issued in mid-July and survey results will be available on or about September 1st.

Information Packet on Bankruptcy Rules

An information packet containing the following material on the new Bankruptcy Rules and on the Local Bankruptcy Rules for the District of Alaska is available from the Office of the Clerk of the Bankruptcy Court:

- Memo from the Court outlining the major changes in the Bankruptcy Rules and Local Bankruptcy Rules
- List of the current Local Bankruptcy Forms used for noticing
- "How to" outline of the most commonly used new procedures in the Bankruptcy Court

The office of the Clerk is located at Room A110, 701 C Street, Box 47, Anchorage, Alaska 99513, telephone number (907) 271-5232.

Local Forms are also available upon request.

Copies of the Local Bankruptcy Rules may be purchased from Book Publishing Company, 201 Westlake Avenue North, Seattle, Washington 98108, telephone number (206) 343-5700.

Rules on Exhibits and Electronic Depositions

The Alaska Supreme Court is inviting your comment on several proposed rules changes. The first proposal concerns the marking and handling of exhibits. The second proposal concerns audio and audio-visual depositions.

As early as 1981, the Alaska Court Clerks' Conference had circulated a proposal to make uniform statewide exhibit procedures. The major issue to be addressed by the proposed exhibit rules is the lack of a uniform statewide procedure regarding the marking, admitting, storing, and disposing of exhibits used in trials. The proposed civil rule contemplates that exhibits would be marked prior to trial in order to increase the simplicity of the trial proceeding themselves. The proposed criminal exhibits rule would *not* require pre-trial exhibit marking primarily in deference to the right of the defendant to remain silent.

The proposed audio/audio-visual deposition rule has been under consideration for some time by the Supreme Court. In 1974 the Federal Judicial Center issued guidelines for pre-recording testimony on video tape prior to trial. That proposal was followed in 1978 by the draft and issuance of a uniform audio-visual deposition rule from the National Conference of Commissioners on Uniform State Laws. That uniform draft is a part of the basis for the present proposed rule for Alaska use. However, a major change is that the proposed Alaska rule also would allow audio depositions to be taken. The major impetus behind this type of rule is the potential cost savings it may allow. In a state as large and underpopulated as Alaska, those savings may be very great.

Again, your comment is invited on any part of all of the proposed rules which follow. Questions, concerns, or suggestions for amendments should be directed to Don Bauermeister, Court Rules Attorney, 303 K Street, Anchorage, Alaska 99501. My phone number is 264-0522. Please note that the deadline for receipt of comments is June 25, 1984.

I want to thank you in advance for your help in contributing to the development of these rules.

PROPOSED EXHIBITS RULES

Separate rules are proposed to control the marking and handling of exhibits in civil and criminal cases. The procedure proposed in civil cases would be for parties to mark their own exhibits prior to trial under the guidelines listed. Criminal case exhibits would continue to be marked at trial as is the present practice.

Civil Rule ____
Exhibits

A. **Parties Mark Exhibits.** All proposed exhibits shall be marked by the parties for identification prior to trial. At the beginning of trial identified exhibits and an exhibit list shall be filed with the clerk of court. Exceptions to this rule may be allowed for good cause shown upon order of the court.

B. **Procedure.** Parties shall obtain an exhibit list form and exhibit identification stickers from the clerk of court prior to trial. The identified exhibits shall be listed on the exhibit form in the order of their expected use at trial. A brief typed description of each identified exhibit shall be given in the space provided. The completed list shall be filed with the clerk of court along with the identified exhibits.

The exhibit identification stickers are color-coded as follows: Plaintiffs—YELLOW; Defendants—BLUE; Grand Jury or Coroner Hearings—RED; and Miscellaneous —GREEN. Each sticker shall be marked with a full case number and an exhibit identification number or letter. Plaintiff's exhibits must be marked in numerical order. Defendant's exhibits must be marked in alphabetical order. In cases with more than two parties, parties shall precede their proposed exhibit numbers or letters with the first letter of their last name. All exhibit identification numbering shall be consecutive. Parties shall not reserve numbers for proposed exhibits not available at the beginning of trial. Proposed exhibits marked for identification during trial shall receive the next consecutive number on the exhibit list. Only original proposed exhibits shall receive an exhibit identification sticker. Parties shall not place stickers on copies of proposed exhibits.

C. **Admission.** Exhibits properly marked for identification may be admitted into evidence upon the motion of a party, or upon the court's own motion. After an identified exhibit is received by the court, the clerk shall mark the exhibit "admitted" in a manner prescribed by the Administrative Director. When an exhibit is admitted into evidence, the fact of its admission shall be noted immediately on the exhibit list. The form of the exhibit list shall also be prescribed by the Administrative Director.

D. **Final Check.** Prior to final argument or submission of the case without argument, the court shall require counsel and those parties not represented by counsel to examine all proposed, identified, or admitted exhibits. Upon a proper motion or the court's own motion, the court may order additional exhibits marked for identification and/or admitted into evidence. Identified exhibits which have not been offered for admission shall be returned to the appropriate party forthwith, unless otherwise ordered by the court.

E. **Administrative Bulletin.** The Administrative Director shall establish standards and procedures by appropriate bulletin consistent with these rules governing the marking, handling, storage, safekeeping, and disposal of all exhibits coming into the court's custody. Unless otherwise ordered by the court, such standards and procedures are controlling.

Criminal Rule ____
Exhibits

A. Proposed exhibits shall be marked for identification at trial unless otherwise ordered by the court. Exhibits marked for identification will be filed with the clerk of court.

B. Exhibits properly marked for identification may be admitted into evidence upon the motion of a party, or upon the court's own motion. After an identified exhibit is received by the court, the clerk shall mark the exhibit "admitted," in a manner and form prescribed by the Administrative Director.

C. All exhibits marked for identification shall be listed on an exhibit list provided by the court. When an identified exhibit is admitted into evidence, the fact of its admission shall be noted immediately on the exhibit list. The form of the exhibit list shall be prescribed by the Administrative Director.

D. Prior to final argument or submission of the case without argument, the court shall require counsel and those parties not represented by counsel to examine all proposed, identified, or admitted exhibits. Upon a proper motion or the court's own motion, the court may order additional exhibits marked for identification and/or admitted into evidence. Identified exhibits which have not been offered for admission shall be returned to the appropriate party forthwith, unless otherwise ordered by the court.

E. The Administrative Director shall establish standards and procedures by appropriate bulletin consistent with these rules governing the marking, handling, storage, safekeeping, and disposal of all exhibits coming into the court's custody. Unless otherwise ordered by the court, such standards and procedures are controlling.

PROPOSED AUDIO/ AUDIO-VISUAL DEPOSITION RULE

This proposed rule would allow an attorney who was interested in taping a deposition to operate the audio or audio-visual eqiupment and under certain conditions also swear the witnesses. (If this rule were adopted, several other rules would need to change to allow it to be implemented. A discussion of those rules changes follows the proposed taping depositions rule.) This rule would allow audio or audio-visual depositions to be taken under all the same circumstances at present extended to stenographic depositions. An attorney authorized by law to administer oaths could swear witnesses as well as operate the machinery or direct someone else to do the latter act. All other kinds of depositions would still require an independent officer to be present to do the oath swearing as well as make the recording of the testimony.

Note *that the present Civil Rule 32(a)(3)(F) would continue to make video-tape depositions the only kind of deposition that may be used for any purpose at a trial or hearing without any other additional justification than the court's finding that the witnesses' testimony was preserved on video-tape. This rule would not apply to audio-taped depositions.*

Proposed Rule for
Audio and Audio-Visual Depositions

Rule 30.1 AUDIO AND AUDIO-VISUAL DEPOSITIONS

(a) Authorization of Audio-Visual Depositions.

(1) Any deposition upon oral examination may be recorded by audio or audio-visual means without a stenographic record. Any party may make at his own expense a simultaneous stenographic or audio record of the deposition. Upon his request and at his own expense, any party is entitled to an audio or audio-visual copy of the audio-visual recording.

(2) The audio or audio-visual recording is an official record of the deposition. A transcript prepared in accordance with Rule 30(c) is also an official record of the deposition.

(3) On motion the court, for good cause, may order the party taking, or who took, a deposition by audio or audio-visual recording to furnish, at his expense, a transcript of the deposition.

(b) Use. An audio or audio-visual deposition may be used for any purpose and under any circumstances in which a stenographic deposition may be used.

(c) Notice. The notice for taking an audio or audio-visual deposition and the subpoena for attendance at that deposition must state that the deposition will be recorded by audio or audio-visual means.

(d) Procedure. The following procedure must be observed in recording an audio or audio-visual deposition:

(1) The deposition must begin with an oral statement which includes:

(A) the operator's name and business address;

(B) the name and business address of the operator's employer;

(C) the date, time, and place of the deposition;

(D) the caption of the case;

(E) the name of the witness;

(F) the party on whose behalf the deposition is being taken; and

(G) any stipulations by the parties.

(2) Counsel shall identify themselves on the recording.

(3) The oath must be administered to the witness on the recording.

(4) If the length of the deposition requires the use of more than one recording unit, the end of each unit and the beginning of each succeeding unit must be announced on the recording.

(5) At the conclusion of a deposition, a statement must be made on the recording that the deposition is concluded. A statement may be made on the recording setting forth any stipulations made by counsel concerning the custody of the recording and exhibits or other pertinent matters.

(6) Audio depositions must be indexed by a brief written log notation of the recorder counter number at the beginning of each examination whether direct, cross, redirect, etc. The log must be attached to the tape.

(7) Audio-visual depositions must be indexed by a time generator or other method specified.

(8) An objection must be made as in the case of stenographic depositions.

(9) If the court issues an editing order, the original audio or audio-visual recording must not be altered.

(10) Unless otherwise stipulated by the parties, the original audio or audio-visual recording of a deposition, any copy edited pursuant to an order of the court, and exhibits must be filed forthwith with the clerk of the court.

(e) Costs. The reasonable expense of recording, editing, and using an audio or audio-visual deposition may be taxed as costs.

(f) Standards. The Administrative Director may establish standards for audio or audio-visual equipment and guidelines for taking and using audio or audio-visual depositions. Incompatible audio or audio-visual recordings must be conformed to the standards at the expense of the proponent. Conformed recordings may be used as originals.

PROPOSED RULES CHANGES NECESSARY TO ACCOMMODATE PROPOSED AUDIO OR AUDIO-VISUAL DEPOSITION RULE.

Civil Rule 28(d) would be modified to allow an exception to the disqualification for interest rule in the case of audio or audio-visual depositions. The rationale allowing such changes is that the recording machinery itself becomes the unbiased reporter.

Civil Rule 30(b)(4) would be amended to allow audio or audio-visual depositions taking under all the

[continued on page 28]

Comprehensive Federal Computer Crime Legislation Needed

In a report released today, the American Bar Association's Criminal Justice Section describes computer crime as "a problem of substantial, and growing, significance" and concludes that "comprehensive federal computer crime legislation is long overdue."

The report found that "the annual losses sustained by American business and government organizations as a result of computer crime are, by any measure, huge." The conclusions are based on the results of a nationwide survey of a broad range of private industry and federal, state and local government agencies on the incidence, significance and impact of computer crime. The report was prepared by a special computer crime task force chaired by Joseph B. Tompkins, Jr.

Noting the tremendous proliferation of computers and computer users in recent years, the report says: "This proliferation of machines and knowledgeable users, along with recent concrete examples of the damage that can be caused by one person with one personal computer, provide disturbing and undeniable evidence that the scope and significance of computer crime, and its potentially devastating effects, are broad and deep."

The report's findings support the ABA's 1979 recommendation calling for adoption of federal computer crime legislation. The report adds that the need for such legislation "is even more acute today."

The survey results reveal that a large portion of the population fails to recognize various forms of computer abuse and misuse as illegal and improper and that management in private industry and government agencies may be underestimating the magnitude of the problem.

"The existence of a federal criminal statute specifically directed at computer-related illegal activity and a few well-publicized prosecutions under such a statute," the report suggests, "should dispel any lingering perception that computer abuse is a 'game' that one may engage in freely without fear of prosecution or concern for the damage that may result."

The report also predicted that federal legislation would have a number of other positive effects on law enforcement. The survey revealed a great deal of uncertainty about whether computer crime is a "crime" and whether it can be successfully prosecuted. This, the report said, has had an inhibiting effect on law enforcement. A specific statute, the report added, should encourage private citizens to report, and law enforcement authorities to pursue, the incidents of computer crime.

The report said a federal law would also "make the sanctions (imposed) for committing computer crime more rational and more consistent with the seriousness of the crime." At present, the report said, "There are arguably no penalties that apply to certain types of computer abuse which nevertheless have the potential for great harm," while other types of computer crime are "subject to greatly varying penalties."

The report also warns that with the government's increased reliance on computers, manipulation or destruction of those systems could have a devastating impact on both public and private industries.

The report cites a number of examples that illustrate the increased vulnerability that comes with extensive use of computers in defense and national security work, by the Federal Reserve and financial institutions, by medical and health facilities, by other government institutions and in connection with various benefit programs.

"Existing federal criminal statutes are simply not adequate, in their coverage or their sanctions, to deal with the government's increased exposure to computer crime," the report states.

Copies of the report are available for $5 from the American Bar Association Section of Criminal Justice, 1800 M Street, N.W., Washington, D.C. 20036, (202) 331-2260.

Rules on Exhibits and Election Depositions . . .

[continued from page 27]

same circumstances that stenographic is now allowed without a court order.

Civil Rule 30(c) would be amended to allow any officer authorized by the laws of this state to administer oaths to do so at an audio or audio-visual deposition. It would also provide that the swearing officer or someone directed by the swearing officer may operate the recording machinery.

Civil Rule 30(e) would be amended to show that it does not apply to audio or audio-visual depositions.

Civil Rule 30(f) would be amended to require that the same procedures for handling the filing of depositions and exhibits be followed in all cases, but would delete the certification requirement for audio or audio-visual depositions because the recordings speak for themselves.

Proposed Civil Rule 28(d)

(d) Disqualification for Interest. No deposition shall be taken before a person who is a relative or employee or attorney or counsel of any of the parties, or is a relative or employee of such attorney or counsel, or is financially interested in the action, *except that in the case of an audio or audio-visual deposition an attorney involved in the case may also operate or direct the operation of the recording machinery.*

Proposed Civil Rule 30(b)(4)

(4) The court may upon motion order the testimony at a deposition be recorded by other than stenographic *audio or audio-visual* means, in which event the order shall designate the manner of recording, preserving, and filing the deposition, and may include other provisions to assure that the recorded testimony will be accurate and trustworthy. If the order is made, a party may nevertheless arrange to have a stenographic transcription made at his own expense.

Proposed Civil Rule 30(c)

(c) Examination and Cross-Examination: Record on Examination; Oath; Objections. Examination and cross-examination of witnesses may proceed as permitted at the trial under the *Rules of Evidence.* The officer before whom the deposition is to be taken shall put the witness on oath and shall personally, or by someone acting under his direction and in his presence, record the testimony of the witness. *For an audio or audio-visual deposition, any officer authorized by the laws of this state to administer oaths shall swear the witness. The recording machinery may be operated by such officer, or someone acting under his direction and in his presence, even where such officer is also an attorney in the case.* The testimony shall be taken stenographically or recorded by *audio or audio-visual means, or* any other means ordered in accordance with subdivision (b)(4) of this rule. *A party may arrange at his own expense to have any portion of the record typewritten.*

All objections made at the time of the examination to the qualifications of the officer taking the deposition, or to the manner of taking it, or to the evidence presented, or to the conduct of any party, and any other objection to the proceedings, shall be noted by the officer upon the deposition. Evidence objected to shall be taken subject to the objections. In lieu of participating in the oral examination, parties may serve written questions in a sealed envelope on the party taking the deposition and he shall transmit them to the officer, who shall propound them to the witness and record the answers verbatim.

Proposed Civil Rule 30(e)

(e) Submisison to Witness; Changes; Signing. When *a stenographic deposition is taken and* the testimony is fully transcribed the deposition shall be submitted to the witness for examination and shall be read to or by him, unless such examination and reading are waived by the witness and by the parties. Any changes in form or substance which the witness desires to make shall be entered upon the deposition by the officer with a statement of the reasons given by the witness for making them. The deposition shall then be signed by the witness, unless the parties by stipulation waive the signing or the witness is ill or cannot be found or refuses to sign. If the deposition is not signed by the witness within 30 days of its submission to him, the officer shall sign it and state on the record the fact of the waiver or of the illness or absence of the witness or the fact of the refusal to sign together with the reason, if any, given therefor; and the deposition may then be used as fully as though signed unless on a motion to suppress under Rule 32(d)(4) the court holds that the reasons given for the refusal to sign require rejection of the deposition in whole or in part.

Proposed Civil Rule 30(f)

(f) Certification and Filing by Officer; Exhibits; Copies; Notice of Filing.

(1) *When a stenographic deposition is taken* the officer shall certify on the deposition that the witness was duly sworn by him and that the deposition is a true record of the testimony given by the witness. *In all depositions* he shall then securely seal the deposition in an envelope endorsed with the title of the action and marked "Deposition of [here insert name of witness]" and shall promptly file it with the court in which the action is pending or send it by registered or certified mail to the clerk thereof for filing.

Documents and things produced for inspection during the examination of the witness, shall, upon the request of a party, be marked for identification and annexed to and returned with the deposition, and may be inspected and copied by any party, except that (A) the person producing the materials may substitute copies to be marked for identification, if he affords to all parties fair opportunity to verify the copies by comparison with the originals, and (B) if the person producing the materials requests their return, the officer shall mark them, give each party an opportunity to inspect and copy them, and return them to the person producing them, and the materials may then be used in the same manner as if annexed to and returned with the deposition. Any party may move for an order that the original be annexed to and returned with the deposition to the court, pending final disposition of the case.

(2) Upon payment of reasonable charges therefor, the officer shall furnish a copy of the deposition to any party or to the deponent.

(3) The party taking the deposition shall give prompt notice of its filing to all other parties.

ABA Section of Antitrust Law Introduces Three New Publications

CHICAGO, May 7—Criminal antitrust litigation, limiting the purchase of goods, and exclusive distributorships are the topics of three recent publications of the American Bar Association Section of Antitrust Law.

Criminal Antitrust Litigation Manual is the first single volume to focus entirely on the procedures and substantive issues raised in federal criminal antitrust litigation. The authors have prepared the manual for use by criminal antitrust litigators for either the prosecution or defense.

Specific topics discussed include: arraignment and pleas, representation by counsel, plea bargaining, pre-trial preparation, the trial itself, post-trial motions, sentence and judgment, and appeal. Each area includes sub-topics that explain the procedures in depth.

The 655-page manual is available for $55.00 plus $2.00 for handling from The American Bar Association, Order Fulfillment Department, 1155 East 60th Street, Chicago, Illinois 60637.

Vertical Restrictions Upon Buyers Limiting Purchases of Goods from Others is part of a new monograph series published by the Section of Antitrust Law. This monograph deals with vertical restrictions that limit a purchaser's freedom to buy from firms that compete with the seller.

The monograph divides the vertical restrictions into the following categories: Tie-ins, an arrangement whereby the purchase of one product is conditioned upon the purchase from the seller of a second product; package licensing, in which a licensor combines more than one patent or copyrighted product under an indivisible "package" license; and full line forcing, a requirement that purchasers agree to purchase the seller's full line of products.

This 98-page monograph is available for $10.00 plus $2.00 for handling from The American Bar Association, Order Fulfillment Department, 1155 East 60th Street, Chicago, Illinois 60637.

The third new publication, *Refusal to Deal and Exclusive Distributorships*, is the complement to *Vertical Restrictions Upon Buyers Limiting Purchases of Goods from Others.*

Nothing related to the distribution of goods and services in our economy has provoked more antitrust litigation than refusal to deal. This monograph describes the variety of refusals to deal, explains why they exist, and explores how they have been and might be treated under the antitrust laws and related legislation.

This 64-page monograph is available for $10.00 plus $2.00 for handling from The American Bar Association, Order Fulfillment Department, 1155 East 60th Street, Chicago, Illinois 60637.

Note to Reviewers: *Review copies are available for all three publications, upon request, from* **Joe Weintraub,** *Publication Planning, American Bar Association, 1155 East 60th Street, Chicago, Illinois 60637 or telephone (312) 947-3573.*

Shorthand Reporters Election

The Alaska Shorthand Reporters Association recently elected officers for the 1983–1984 year. Officers elected include: Plesah Wilson, President; Barbara Rossi, Vice-President; Janice Kniesmeyer, Secretary and Susan J. Muth, Treasurer.

The ASRA is designed to promote and support free-lance and official reporters whose primary means of court reporting is through shorthand, either machine or pen writing.

How to Take a Deposition: An Expose

by Judge Jerry Buchmeyer

Oh, sure.

They tell you How To Do It. In speeches, and articles, and seminars, and learned treatises, etc. And, they tell you again and again: How to Take a Deposition.

Just start with the name and address of the witness. Cover personal history (marriage, family, service record, employment). Then find out how the accident occurred and what injuries were sustained. Ask about prior injuries and any criminal record. Simple. Very simple.

But do they ever tell you What May Happen during the deposition? Of course not! So et cetera will—by filing this Yawning Gap in continuing legal education with examples from *"I Solemnly Swear"* by Jerry von Sternberg (Carlton Press 1978)[1] Jerry, who has been in court reporting[2] for over 35 years, gleaned these quotes—each one actually happened during a deposition—from 238,410,000½ words[3] he has transcribed during his career.

Please State Your Name for the Record

Many think that witnesses have names only so lawyers will have a simple, fail-safe question to begin the deposition[4] But do not be nonplussed when Strange Things happen:

Q. Would you tell me your name?
A. Yes.

Q. Do you have a middle name?
A. No, I lost it.

Q. Tell me your name, please.
A. Capital R and capital C Singleton. Now, some people say I am Rosie, and some say Rocea, and some says one thing and then another, but that is all my mother told me.
Q. Your name is what?
A. U.S. Dooley.
Q. What does the 'U' and 'S' stand for?
A. Well, sir, Captain, it is a long story.
Q. I see. All right[5]

Jerry von Sternberg also adds this gem: After the witness was sworn, "the lawyer asked him his name, which he promptly refused to give. The witness gave a rather lengthy deposition, answering all other questions asked, but steadfastly refused to reveal his name"—even though his name was on the subpoena, everyone knew his name, and the transcribed deposition showed his name as the man being duly sworn.

Are You Married?

Q. What was your wife's name?
A. Her last name, you mean?
Q. Yes.
A. What is the name of that meat company on Harrisburg?
Q. That was her name?
A. I can't think.
Q. You mean you have forgotten your wife's name?
A. I mean her father's name.
Q. I'm asking for her first name, Mr. Caspar, given name. Bessie, Mildred?
A. Good darn—
Q. You mean you can't remember what your wife's first name was?
A. I'm a son of a gun.
Mr. Jennings: Tell us what you called her.
The Witness: I just called her Sweetheart or Baby.

Q. Is that the only wife you ever had?
A. The only wife I ever married.

Q. Separated or divorced?
A. Separated and divorced, too.

Q. Is Kelly Hector married?
A. Yes, sir, she's married, but I don't think to her husband.

Q. Are you married now, Mr. Stillman?
A. No, sir.
Q. Have you ever been married?
A. No, sir.
Q. Have you ever been married to Margaret Ruth Stillman?
A. This is my personal life, sir, and I don't feel that it has any bearing whatsoever on this.
Q. As a matter of fact, you have been married four times, haven't you?
A. Yes, sir, that's me[6]

Tell Me About Your Family

Q. And is one man the father of all of your children?
A. Well, I'm pretty sure one man is the father of the twins.

Q. Has your son ever received a prior injury?
A. Well, when he was three he fell and broke his arm, that's all. Oh, yes, when he was two he got plowed under by a tractor and we didn't find him for twenty minutes.

Q. And isn't it true, Sarah, that your husband has been playing around with other women?
A. Oh, yes sir.
Q. Isn't it true that this has caused you untold heartache and anguish?
A. It don't bother me none.

Q. You say you have had three children. Who was the father of your children?
A. Well, our pastor is the father of the little one.
Q. Who is the father of the others?
A. Well, our assistant pastor is the father of the next one.
Q. Who is the father of the oldest one?
A. Well, sir, I don't rightly knows. You see, that one I had before I was saved.

Were You in the Military Service?

Q. Have you ever been in the service?
A. Yes, sir. I went in '40 and came out in less than ninety days. I was too old for what they wanted, they said.
Q. Were you given some sort of a medical discharge?
A. No. I was given an unconditional release. I didn't have enough teeth, they said.
Q. I see. You were just getting too old, huh?
A. I told them I thought I was there to fight them, not bite them.

Q. How far did you get in the service? It was in the Army, wasn't it?
A. Yes, sir, the Army.
Q. How far did you get?
A. Over to the South Pacific.

Q. Were you in the military service?
A. Yes sir.
Q. What branch of the service were you in?
A. Armed forces.

Q. Were you in the Army?
A. No, sir, I didn't go.
Q. Why?
A. Well, when I was ready to leave they said, "Well, everything is over," and I say, "Okay." So I didn't go.

What About Your Job?

Q. What do you do for a living?
A. I help my brother.
Q. What does your brother do?
A. Nothing.

Q. You say you went to Galveston in 1920, yet the first job you told me about was in 1946. What did you do between 1920 and 1946?
A. Well, I didn't go to work as soon as I got there.

Q. Why did you leave there?
A. Well, I caught myself getting a better job.

Q. What happened to your job at the Forum?
A. At the Forum Cafeteria? I got mad and quit.
Q. What did you get mad about?
A. A fry cook spit in a pan of grease to see if it was hot enough to fry fish.
Q. Was it your pan of grease?
A. No, sir, it wasn't my pan of grease, but it was my fellow man that ate in the cafeteria.

Q. Have you done any work at all since this accident happen?
A. No sir.
Q. You haven't even gone out and fed the chickens, you have never milked a cow?
A. Never milked a cow, but I have fed baby chickens, just a little old quart can, sprinkle some out for them, or something like that. Yes sir.
Q. You couldn't feed a big chicken, though, could you?
A. I couldn't carry enough for a bunch of big chickens.
Q. What else have you done, now, the past year or so since this accident happened, other than feed the baby chickens?
A. The biggest thing was to lay around, lay down and rest. (I guess when the baby chickens grew into big chickens they just starved to death.)

The Problem: everyone tells you How to Take a Deposition, but no one warns you What May Happen during the deposition. **The Solution:** *et cetera* challenges this Abysmal Void in legal education with examples—which actually took place during depositions—from Jerry von Sternberg's *"I Solemnly Swear"* (Carlton Press 1978)[7] Last time, we covered the witness' name and address and personal history (marriage, family, service record, employment). So, the deposition continues with ...

Have You Ever Been in Trouble with the Law?

Q. Have you ever been in trouble with the law?
A. Never have.
Q. Have you ever been arrested?
A. Yes, I have been arrested.
Q. When was that?
A. Oh, I have been arrested several times, I don't know when it was.
Q. Well, wouldn't you call that being in trouble with the law?
A. No, sir. **That was trouble with myself.**

Q. Have you ever spent any time in jail?
A. Only the time they arrested me.

Q. Have you ever had any trouble with the law?
A. Not for no reckless driving or speeding or anything like that.
Q. Have you ever been in the penitentiary?
A. I have.
Q. What have you been in the penitentiary for?
A. For murder.

Q. How many times have you been in?
A. Oh, I have been in lots of times, but I didn't stay no time. That jail, it belongs to me.

Q. What trouble have you had with the law?
A. I have been arrested twice, but I never had no trouble.
Q. What were they for?
A. One for shooting craps and the other for shooting a guy.
Q. Did you kill somebody?
A. He died afterwards, but I didn't kill him on the spot.

Q. What were yuou charged with?
A. I think I was charged with **melancholy mischief.**
Q. Malicious mischief.
A. Malicious mischief.

Q. What were you charged with?
A. **Drinking** while intoxicated[8]

How Did the Accident Happen?

Q. Can you tell me in your own words what happened as you were heading to collect the money and you were coming on Memorial Drive?
A. I have been trying to figure that out ever since it happened, Mister.
Q. In other words, you were just coming down Memorial Drive—
A. And the next news I know, it was Sunday.

Q. How come your car laid down 167 feet of skid marks?
A. Well, that is how far I slid.

Q. And when did you first realize that there was an accident about to occur?
A. Well, when he hit me I knew there was an accident.
Q. Do you know who hit who?
A. I'd say we probably collided about the same time.

Q. Do you know of any witness to the accident?
A. Well, none excepting the ones that saw it.

Q. What happened then?
A. The last thing I remember I see a car up in the air, and I knew I was being turned. I blacked out for a little bit.
Q. There was a collision, is that right?
A. That's right. I heard somebody groaning, and I knew it was me.

Q. How fast were you going at the time of the accident?
A. Oh, I was only going after some olives.

This, to Jerry von Sternberg—"is the most amazing response I have ever reported. What a fertile field for mental research her mind must be. I told James Kronzer, the lawyer who took this deposition, that he should have followed through on his questioning and ascertained the type of olives that she was going after, because the chances were that she would have been traveling different speeds for different types of olives?

Were You Drinking At the Time?

Q. Were you sober?
A. Well, how could I be drunk if I'm sick?
Q. Well, some people are sick and drunk at the same time.
A. Well I'll be damned.

Q. Do you drink?
A. I drink, but I'm not a heavy drunkard.

Q. How do you know they hadn't been drinking?
A. I could smell it.

Q. How often do you get intoxicated?
A. I don't ever get drunk. Just very seldom.
Q. You are sure about that?
A. Yes, sir. I'm a good boy in that way, don't fool with no drink, don't toxicate.

Q. Now, you have done quite a bit of drinking in your life, haven't you?
A. Yes, sir.
Q. In fact, you have been drinking this morning, haven't you?
A. Yes, sir, I have had a little.
Q. What have you had to drink this morning?
A. Beer, two.
Q. You mean to tell me, as red-faced as you are, and as glassy-eyed as you

[continued on page 30]

How to Take a Deposition . . .

[continued from page 29]

are, that you have had only two bottles of beer?

A. No, sir. I didn't say nothing about bottles. **Cases, man, cases.**

What Injuries Did You Have?

Q. When you got to the hospital they took twelve stitches in your head?

A. They didn't take anything, they put twelve in.

Q. What part of your lover back is it that hurts you?

A. It is about an inch below the belt line. It just aching, feel like it is numb and dead, just like a knife sticking me.

Q. What part of your legs bother you?

A. Just from the hips down.

Q. Doctor in layman's terms, where was the fracture?

A. That would be the basal scella turnica extending anteriorly into the squamosa over the posterior aspect of the anterior cranial fossa.

Q. Describe for me the pain you had down around your waistline.

A. Well, actually I can't describe it to you, but I could to a woman.

Q. Well, describe it to me as you would to a woman, even though I might not understand.

A. It just hurt.

Q. Are you a fortunate crap-shooter?

A. It is not luck, I got an angle. I tell you the truth about it, the thing that hit me the worst about this is it bummed up my crap-shooting hand. I always shoot left-handed, to sort of, you know, get them off guard. They think, if they put English on it, they do it with their right hand, do you know what I mean?[10]

What About Your Prior Medical Problems?

Q. When was the last time before the accident you had to go to a doctor for any reason?

A. The reason I went to the doctor was my wife told me that every few years it's a good idea to get a check-up. The doctors have to live, and I don't want to be cheap about it.

Q. Do you have a family doctor?

A. Yes, sir. Dr. Alexander Gol. He is a specialist.

Q. What is his specialty?

A. He's a neurotic.

Q. What kind of treatment did he give you?

A. Insolent treatment.

Q. Your feet started swelling?

A. Yes, sir. Both of them swelled right up to my waistline.

Q. Do you know what kind of a doctor he is?

A. He's a specialist doctor, that's all I know.

Q. Well, what does he specialize in?

A. Medicine, I imagine.

Q. What did the doctor tell you about your condition?

A. He said I had worked up a bad case of lazy.

Despite my warnings about What May Happen During a Deposition, there are—no doubt—some of you who think therer is a Simple Answer: just take control, explain to the witness what a "deposition" is, then proceed firmly and with simple questions, always maintaining control.

Although this self-deception is rather foolish, it may actually help by calming you for the deposition. But don't relax too much because—as shown by these further examples from Jerry von Sternberg's *"I Solemnly Swear"* (Carlton Press 1978)[11]—**You Should Be Particularly Careful Out There.**

What's It All About?

Q. Mr. Martin, do you understand that the answers that you give to my questions today are being written down by the court reporter, who will make a transcription of your testimony and it can be introduced as evidence in the trial of your lawsuit, do you understand that?

A. Well, I'm not sure, but I thought he was doing something like that.

Q. Have you talked to your lawyer about this deposition today?

A. Mr. Cox, shall I tell him?

Mr. Cox: Sure, go ahead and tell him.

A. Yes.

Q. And what did he tell you?

A. Mr. Cox, shall I tell him?

Mr. Cox: Sure, go ahead and tell him.

A. He told me there was some smart son of a bitch down here trying to make you lie, but you tell him the truth, anyhow.[12]

Are You Ready?

Q. Am I talking loud enough to where you can hear all of my questions distinctly and clearly?

A. Yes, sir. I don't know how good I can talk, I left my teeth at home, in a glass of water.

Q. Well, gum it out good and loud.

Jerry von Sternberg recalls the incident of a witness who, some years ago, testified before a House Committee in Washington: "He started out testifying at a normal rate of speed and, at the same time eyeing the machine reporter at his side, gradually gained momentum, until he became red in the face and was gasping for breath. At this point, he turned to the reporter and said, "Would you please mind writing a little slower. I can't keep up with you."

Write It All Down

Q. What did you do for Bullard?

A. I was shipping clerk. *You put it all down.* I worked two jobs, I worked at every club and private home in Houston. That is my business. *Put it down.* You don't have to ask me, I am telling you.

Q. Do you remember what time you started bartending and working private parties?

A. No. I was bartending when I first come to this country, and I have worked all over Houston, in every club in Houston, and I know everybody. *Write it all down,* I am telling you everything.

Q. Just between you and me and the lamppost, don't you feel that you can do better with any job when you are sober than you can when you have had a few drinks?

A. Don't take that down.

Q. You can't tell him not to take it down, Mr. Fields.

A. Don't take that down.

Q. You see, my point is, you can't put on the record what you want on the record.

A. Please don't, do not put that down.

Q. Mr. Fields, your talking to Mr. von Sternberg is only going to result in his putting down in the paper what you say to him, because he is required by his oath as a court reporter to take down everything that goes on once a deposition starts.

A. *What am I supposed to do?*

Have You Even Eaten Clay?

Q. Now, did you ever tell anybody anywhere that you have eaten sacks full of clay? How would a doctor get that opinion?

A. I don't know. I have ate clay all right, enough, but I haven't told anybody I eat sacks full of clay.

Q. What kind of clay do you eat?

A. They call it a clay dirt.

Q. Is it pretty good?

A. Oh, it has a nice taste to it; it's a kind of a slick, not gritty. Sort of a whing (sic).

Q. How do you prepare it?

A. Put it in and cook it.

Q. And then eat earth: you don't put anything on it, salt, pepper?

A. Well, I remember eating a little salt on it but I never did—I didn't eat that much.

Q. Do you have it two or three times a week, or how frequently?

A. Oh, maybe twice, sometimes once a week.

Q. Where do you get the best clay to eat?

A. Oh, that was down in East Texas, don't have it down here.

Q. They don't have good clay in Dallas?

A. No, I haven't never dug any down here.

Q. Anybody else eat some?

A. In East Texas they did.

Q. Everybody had some?

A. Not everybody, but you know, a few people eat dirt.

Q. What did you eat it out of?

A. I put it in a pan in the oven.

Q. Do you always cook it or sometimes just east it the way it comes out of the ground?

A. Cook it. They say it's better when you cook it.

Q. How long did you leave it on?

A. Oh, just let it get real hot through and through.[13]

Hey! Let's Be Particularly Careful Out There

Q. Now, I show you what has been marked Plaintiff's Exhibit No. 25. Would you please identify that, sir?

A. Yes, sir.

Q. What is that?

A. Plaintiff's Exhibit 25.

Q. Did you have any appreciable amount of money with you, at that time?

A. Whatever money I had, I appreciated.

Q. Are you sure this is the man who stole your car last Thursday?

A. Well, I was. Now, after cross-examination, I'm not sure I ever owned a car.

Q. You say that she shot her husband at close range. Were there any powder marks on him?

A. Sure, that's why she shot him.

Q. Mrs. Taylor, did you have pet names for Herb?

A. Honey was my one name for him for years, until he stopped calling me that.

Q. Did you ever call him an s.o.b.?

A. Not that I can recall.

Q. Did you ever call him a big bastard?

A. *I love those names, I like them.*

Q. Did you or did you not?

A. No, I didn't.

Q. First you said no, now you don't remember. Now, which one is it?

A. I'm going to take I don't remember, because then I can play safe.

Q. Mrs. Patterson, I believe that's all I'm going to ask of you.

A. That's nice of you.

Finally, an attorney, questioning a very difficult witness about his income and getting a little weary with evasive answers, was met with this response: *"I bet I give more money to the church than you do."*—X

(Reprinted from Dallas Bar Headnotes, Et Cetera)

[1]Jerry von Sternberg's very humorous book ("I Solemnly Swear ...") is dedicated to the Houston Bar Association and U.S. District Judge Carl O. Bue, Jr. with this passage: "... that the testimony I am about to give is the truth, the whole truth, and nothing but the truth (unless I can come up with something better) so **help** me, God."

[2]A court reporter, of course, is one who records the questioning attorney, the witness, and the opposing counsel all talking at the same time.

[3]The half-word, according to Jerry, occurred when one of his witnesses started to say "notwithstanding," but only got out the "notwith."

[4]Addresses are not as reliable, Jerry's book gives these examples: "Q. Where do you live? A. I moved." ... "Q. Is that a permanent address? A. No sir, it's a house."

[5]Several years ago Steve Philbin and I were taking depositions of some corporate employees. When I cleverly began with "What's your name, please," the witness responded **"Napoleon Bonaparte** Wilson." Ever since I have regretted—this was obviously a Once-in-a-Lifetime opportunity—not saying immediately, and with just the right flourish: **"No Further Questions."**

[6]Other marriage examples: "Q. Who did you marry at that time? A. My wife." ... "Q. How long has your mother been a widow? A. Well, I guess ever since my father passed away." ... "Q. Are you separated from your husband at this time? A. Yes, he's out of town."

[7]Jerry von Sternberg, who is a federal court reporter in Houston, has been "word chasing" for over 35 years. He observes: "There is probably no occupation ... that lends a better insight into the mysteries of the human mind than word chasing, commonly referred to as court reporting. Or, as I prefer to call it, recording for posterity **the mumbled mutterings of morons."**

[8]Other law/trouble examples: "Q. Have you ever been arrested? A. Well, I have never been arrested for anything worthwhile." ... "Q. Have you ever been convicted of a felony? A. Yes, sir. Q. What was that? A. Burglarly in the night." ... "Q. What did your wife have you picked up and arrested for? A. She is in a change of life now." ... "Q. Have you ever had any trouble with the police, where you have been charged with anything, indicted for anything, or tried for anything? **A. Lord Jesus, no."**

[9]Other accident examples: "Q. What did they charge you with? A. Negative driving." ... "Q. Was there only one eye witness to it? A. Yes, sir, **at the present time there was only one eye witness."** ... "Q. Which way does West Gray run? In which direction does that run? A. Both directions." ... "A. But when I got the ticket it wasn't for following too close, it was in connection with an accident, collision with an accident."

[10]Other medical examples: "Q. What were your complaints at the time you arrived at the hospital? A. I didn't have any complaints because I didn't feel much like complaining." ... "Q. What disease did you contract while in the service? **A. Romantic fever."** ... "Q. Are you laboring under any disability or physical infirmity? A. No, I'm not doing anything now." ... "Q. What did the doctor do fo ryou after the accident? A. He stuck his finger up my rectum and said everything was all right." ... "Q. What does Dr. Thompson do for you? How does he treat you? A. He treats me nice."

[11]Jerry von Sternberg (723 Main St., Suite 916, Houston, TX 77002), who has been a court reporter for over 35 years (much of that time with U.S. District Judge Cal O. Bue, Jr.) explains his description of court reporting—"recording for posterity the mumbled mutterings of morons"—with this example:

Q. You stated a while ago that the car was right on you when you realized you were going to be hit. What did you mean by being right on you?

A. Well, I just glanced at right—I glanced—I was watching him more than I was—I think I must have been—I can't—it happened—but I glanced over here, and when I glanced out there, there was a car.

[12]Obviously the attorney should have begun this deposition with a different question—perhaps even this classic which Jerry reported: "I swore the witness and, after he sat down, without even asking his name, the attorney asked the following question: Q. How long have you been pimping at the Bristol Hotel?

[13]In case you're wondering what you would do if this were your client, penetrating cross-examination by the witness' attorney established that this was not "some sort of religious faith or something," that "it's just more of a habit with breeding women, you know, with child," and that the witness "brought a little [East Texas] clay with me [to Dallas], but I haven't eaten any since." (This marvelous deposition excerpt about "some exotic East Texas culinary habits" was contributed by Joe D. Floyd.)

[14]Robert H. Renneker contributes a "deposition stopper" related by Carol Tyna, a Dallas reporter: "The witness, a man who apparently was having trouble hearing the questions, apologized to all the parties in the room for asking that the questions be repeated, explaining that he was having trouble hearing because his fallopian tubes were stopped up."

Notice to Bar

Revised Pre-Trial Order
for Criminal Misdemeanors
in the Anchorage District Court

Effective April 16, 1984

SUMMARY OF CHANGES

1. **Trial Date Assignment at Arraignment.** Calendar call will be eliminated. However, all calendar calls which are currently scheduled will be heard as scheduled. In order to obtain a trial date which is compatible with your calendar, it would be advantageous to attend the arraignment. Attorneys will be called first at 9:00 a.m.

2. **Mandatory Appearance of Defendant at Trial Call.** Changes of plea must occur before or on the trial date. No changes of plea will be scheduled for a date after the trial date.

3. Motions due 40 days from arraignment.

Pre-Trial Order—Criminal Misdemeanor

This order applies to all misdemeanor prosecution in the Anchorage district court which are filed after April 16, 1984.

Arraignment and Representation by Lawyer

1. The defendant shall tell the judge at arraignment whether the defendant wants to be represented by a lawyer in the case before the court.

2. **Public Defender:**

(a) If the defendant wants to have a lawyer appointed at state expense, the defendant shall provide financial information to the court immediately in the manner directed by the judge.

(b) If the Office of Public Defender (or other law firm) is appointed to represent the defendant, the defendant shall contact the Public Defender or other law firm, in person, WITHIN TWO WORKING DAYS OF THE APPOINTMENT. A warrant for the defendant's arrest will be issued if contact is not made within two working days.

3. **Retained (Hired) Lawyers:**

(a) If the defendant tells the judge at arraignment of the defendant's intention to hire a lawyer, the judge will schedule a representation hearing for the defendant which will be held within fifteen (15) days following arraignment.

(b) At the representation hearing, the defendant shall appear with a lawyer or a written appearance form from a lawyer, or the defendant shall tell the judge that the defendant wants to apply to have a lawyer at state expense, or the defendant shall tell the judge that the defendant has chosen to proceed without a lawyer.

(c) If the defendant hires a lawyer and the lawyer files an entry of appearance within ten (10) days of the arraignment, the defendant and the defendant's lawyer will not be required to attend the representation hearing.

4. **Self-Representation (No Lawyer):**

A defendant who tells the judge of the defendant's intention to represent himself or herself without a lawyer **will not** be given a continuance of the defendant's trial date on the basis of the defendant's subsequent decision to seek the help of a lawyer.

Discovery

1. At arraignment (or, if the defendant is in custody at the time of arraignment, on the first business day thereafter), the prosecuting attorney shall make available for inspection all information and material within the prosecutor's possession and control which the prosecutor is required to disclose by Criminal Rule 16(b)(1), (b)(2) and (b)(3).

The prosecutor shall disclose any materials received after that date promptly without the necessity of a defense request or further order of this court.

2. In not less than ten (10) days prior to trial defense counsel shall disclose to the prosecuting attorney and make available for inspection and copying, any reports or statements of experts made in connection with the case, including results of physical or mental examinations and of scientific tests, experiments or comparisons which are intended by the defendant to be used at trial, and give notice of any intent to present a defense of alibi, insanity, or lack of capacity.

Defense counsel shall disclose any such materials or information received after that date promptly without the necessity of a request or further order of this court.

3. Upon a showing of good cause, the disclosure required by this order may be restricted, deferred or denied pursuant to Criminal Rule 16(d)(4) and (d)(6).

Motions

1. All pre-trial motions must be filed within 40 days of arraignment date and must comply with Rule 77 of the Alaska Rules of Civil Procedure. Opposing motions will be due 7 days after service of the initial motion.

Notice of hearing, pursuant to Rule 77(d) must be filed by parties desiring oral argument. The notice of hearing must contain the following:

Pending trial date.

Number of witnesses, if any, to be called by requesting party.

Subject to constitutional limitations, failure to raise any pre-trial error or issue by filing appropriate motions within forty (40) days of the arraignment will constitute a waiver of such error or issue unless the party concerned, despite the exercise of reasonable diligence, does not possess the information necessary to raise it.

Trial Call and Trial

1. Trial call will occur each afternoon at 2:30 p.m. the last working day prior to trial. **The initial trial call is a mandatory court appearance for all counsel and defendants. Counsel are required to attend trial calls for all trailing cases. Assignment of trial judge or changes of plea will occur at that time.**

2. Trial will begin promptly at 8:30 a.m. on the assigned trial day and continue until 1:30 p.m.

Change of Plea Hearings

1. All change of plea hearings may be scheduled telephonically prior to trial call by calling District Court Calendaring (264-0462). No telephone requests for change of plea hearings will be accepted after 3:00 p.m. on the day before trial call.

2. Change of Plea hearings requested at trial call will be accommodated by the trial call judge or change of plea judges at 3:00 p.m. each afternoon.

3. Change of Plea hearings **will not** be accommodated on the morning of trial. Litigants will be required to return for a regularly scheduled change of plea at 3:00 p.m. on a future date.

4. The Court will not be bound by any plea agreement announced after the close of trial call.

Compliance and Attendance

1. No attorney shall represent the defendant at any proceeding without filing, immediately after being retained, an entry of appearance with the court and serving a copy upon the prosecution (Criminal Rule 50).

2. The defendant shall be present at each stage of the proceeding. Failure of the defendant to appear at trial call and trial will result in the issuance of a warrant for the defendant's arrest. Failure to appear by an attorney who has filed an appearance will result in the issuance of an order to show cause.

BOTH THE PROSECUTOR AND THE DEFENDANT OR DEFENSE COUNSEL ARE HEREBY ORDERED TO COMPLY WITH THE TERMS OF THE FOREGOING UNLESS SPECIFICALLY OTHERWISE DIRECTED OR BE PREPARED TO SHOW CAUSE WHY APPROPRIATE SANCTIONS SHOULD NOT BE IMPOSED.

All time periods referred to in this order are computed by calendar days unless otherwise indicated.

Done this 2 day of April, at Anchorage, Alaska.

Elaine Andrews
Assistant Presiding District Court Judge

Opinion of the Month: Court of Appeals

File No. 7553
MEMORANDUM OPINION AND JUDGMENT*
[No. 618—June 20, 1984]

PHILLIP J. WICKHAM,
Appellant,
v.
STATE OF ALASKA,
Appellee

Appeal from the Superior Court of the State of Alaska, Third Judicial District, Fairbanks, Warren W. Taylor, Judge.

Appearances: Dick L. Madson, Cowper & Madson, Fairbanks, for Appellant. Cynthia M. Hora, Assistant Attorney General, Office of Special Prosecutions and Appeals, Anchorage, and Norman C. Gorsuch, Attorney General, Juneau, for Appellee.

Before: Bryner, Chief Judge, Coats and Singleton, Judges.

BRYNER, Chief Judge.

After a jury trial, Phillip J. Wickham was convicted of driving while intoxicated (DWI) and driving while his license was suspended (DWLS). At the time of sentencing, the state argued that Wickham had perjured himself during his trial. District Court Judge Stephen Cline specifically found that Wickham's trial testimony had been false. Judge Cline indicated that, in imposing sentence, he would consider Wickham's willingness to perjure himself. Wickham subsequently appealed his misdemeanor convictions, but not his sentences.[1]

Wickham was later indicted for two counts of perjury based on the testimony that he gave at his misdemeanor trial. He moved to dismiss the perjury charges on double jeopardy grounds, arguing that Judge Cline had already punished him for perjury in imposing the DWI and DWLS sentences. Superior Court Judge Warren W. Taylor denied Wickham's motion. Wickham then entered a no contest plea to the perjury charges, reserving the right to appeal.[2] On appeal, Wickham renews his claim that further prosecution for perjury is barred by double jeopardy because Judge Cline considered Wickham's perjury in imposing the misdemeanor sentences. Wickham further argues that the perjury prosecution is barred by the collateral estoppel doctrine. We affirm.

In sentencing a defendant for a crime, the sentencing judge may rely on his belief that the defendant committed perjury. However, perjury may be considered by the sentencing court only to the extent that it reflects upon the defendant's potential for rehabilitation. The sentence actually imposed must be for the offense charged, and it must not be used as punishment for the perjury. *See United States v. Grayson*, 438 U.S. 41, 52–54, 98 S.Ct. 2610, 2617 (1978); *Strachan v. State*, 615 P.2d 611, 613 (Alaska 1980); *Pyrdol v. State*, 617 P.2d 513, 515 (Alaska 1980); *Fox v. State*, 569 P.2d 1335, 1338 (Alaska 1977).

In this case, Wickham contends that Judge Cline improperly increased his DWI and DWLS sentences for the specific purpose of punishing Wickham for testifying falsely. We think that Jude Cline's sentencing remarks concerning Wickham's perjury are somewhat ambiguous, particularly Judge Cline's statement: "I do intend to enhance the sentence because of Mr. Wickham's decision to . . . perjure himself."[3] We believe it is a close question whether Judge Cline adequately explained the manner in which the perceived perjury related to the misdemeanor sentences that were ultimately imposed. *See Strachan v. State*, 615 P.2d at 614. However, even assuming it was clear that Judge Cline improperly sought to punish Wickham directly for perjury, we do not think that the subsequent perjury prosecution would be barred by double jeopardy.

Because the district court had no lawful authority to punish Wickham for his apparent perjured trial testimony, any attempt by Judge Cline to use the DWI and DWLS sentences for this purpose would have been improper and could not have implicated Wickham's double jeopardy right to protection from further prosecution or punishment for perjury. *See, e.g., United States v. Wise*, 603 F.2d 1101, 1104–06 (4th Cir. 1979). *Accord United states v. Von Moos*, 660 F.2d 748, 749 (9th Cir. 1981). If Judge Cline's consideration of the perjured testimony at sentencing was improper, Wickham would at most have been entitled to resentencing on the DWI and DWLS convictions.[4] We hold that Wickham's double jeopardy claim is without merit.

We further reject Wickham's claim that the perjury prosecution is barred by the doctrine of collateral estoppel. That doctrine applies only when the accused seeks to prevent relitigation of an issue previously decided in his favor. *Ashe v. Swenson*, 397 U.S. 436, 443, 90 S. Ct. 1189, 1194 (1970); *United States v. Arias*, 575 F.2d 253, 256 (9th Cir. 1978). Since Judge Cline's findings with respect to perjury were favorable to the state, and not to Wickham, Wickham could not assert collateral estoppel as a bar to prosecution.

The judgement is AFFIRMED.

*Entered pursuant to Appellate Rule 214 and Guidelines for Publication of Court of Appeals Decisions (Court of Appeals Order No. 3)

[1]We affirmed Wickham's misdemeanor convictions on appeal. *See* Wickham v. State, MO&J No. 93 (Alaska App., March 25, 1982).

[2]Wickham reserved the right to appeal following entry of his no contest plea pursuant to Cooksey v. State, 524 P.2d 1251, 1255–56 (Alaska 1974).

[3]We also note that the prosecution requested that Judge Cline, in his sentencing remarks, inform Wickham that a specific portion of the sentence was being imposed for the offense and that the balance of the sentence was for Wickham's perjury. On the other hand, however, in imposing sentence, Judge Cline simply indicated that Wickham's perjury was one factor that he took into account in deciding that Wickham was a worst offender.

[4]Wickham did not seek appellate review of the sentences he received for DWI and DWLS, and he apparently has not sought relief directly from the district court. Since the issue is not raised, we express no view concerning the appropriateness of Wickham's sentence on the misdemeanor charges.

FOURTH ANNUAL

Anchorage Bar Association Picnic

Snider Park, Wasilla
Sunday, July 29

Train Departs
10:00 AM

Train Returns
6:00 PM

(One stop at Birchwood)

• FREE FOOD •

• FREE TRANSPORTATION •

• FREE WINE AND BEER •

• 0, 5, 10K FOOT RACES •