The Light Side

Mountain moosing, roaming Montana, Sports Briefs, Windows 95, & Letters to the Editor

- **ALSC at Risk?**
- **Two views of tort action**
- **Death and your files**
- **People, people, people**

$2.00

The Alaska BAR RAG

VOLUME 19, NO. 5 — *Dignitas, semper dignitas* — SEPTEMBER-OCTOBER, 1995

CLE survey gets lawyers' opinions and suggestions

By Dave Ingram, CLE Chair and Barbara Armstrong

How do Alaska Bar Association members feel about Bar-sponsored CLE? According to a survey done last winter, most members feel that the programs meet their needs, some would like to see lower registration fees, and those outside Anchorage would like to have more live programs conducted in their areas of the state.

Surveys were sent to all active members (2,229) in Alaska, and 619 members responded - a whopping 27% response rate as compared to the usually minimal response rate to most direct mail surveys. Members who responded received a 10% discount on their next seminar registration or purchase of CLE materials, which seemed to be a great incentive to return the survey in the self-addressed envelope provided.

Questions covered such areas as frequency of attendance at CLEs, factors in deciding whether or not to attend a CLE, appropriateness of subject matter, usefulness of materials, effectiveness of speakers, scheduling, locations, and cost of programs. Overall, members agreed that CLE programs are generally affordable and meet their needs. When a program does not meet their needs, it is usually because the instructional level is either too basic or too advanced.

Scheduling conflicts, loss of billable hours, and travel costs were the main reasons cited for NOT attending CLEs. The cost of the programs was not an overriding prohibitive factor.

Regarding time and location, the survey confirmed what we have believed for some time: that half-day programs conducted at a downtown Anchorage hotel toward the end of the work week best serve the needs of most members in Anchorage. Course evaluations routinely indicate that half-days are the best format. A majority of those who responded preferred half-day programs conducted on Fridays at a downtown hotel. This approach allows those attending to take care of some business during the day, ensures adequate parking, and allows for better logistical support for the Bar staff. We will continue to encourage sections to schedule their programs

continued on page 5

Women under-represented in Martindale-Hubbell

By Pamela Cravez

Dear Ms. Zobel:

I am pleased to inform you that you have been awarded the Martindale-Hubbell Law Directory's highest accolade: an AV rating. This is as a result of an extensive, confidential review conducted among the legal profession in your community.

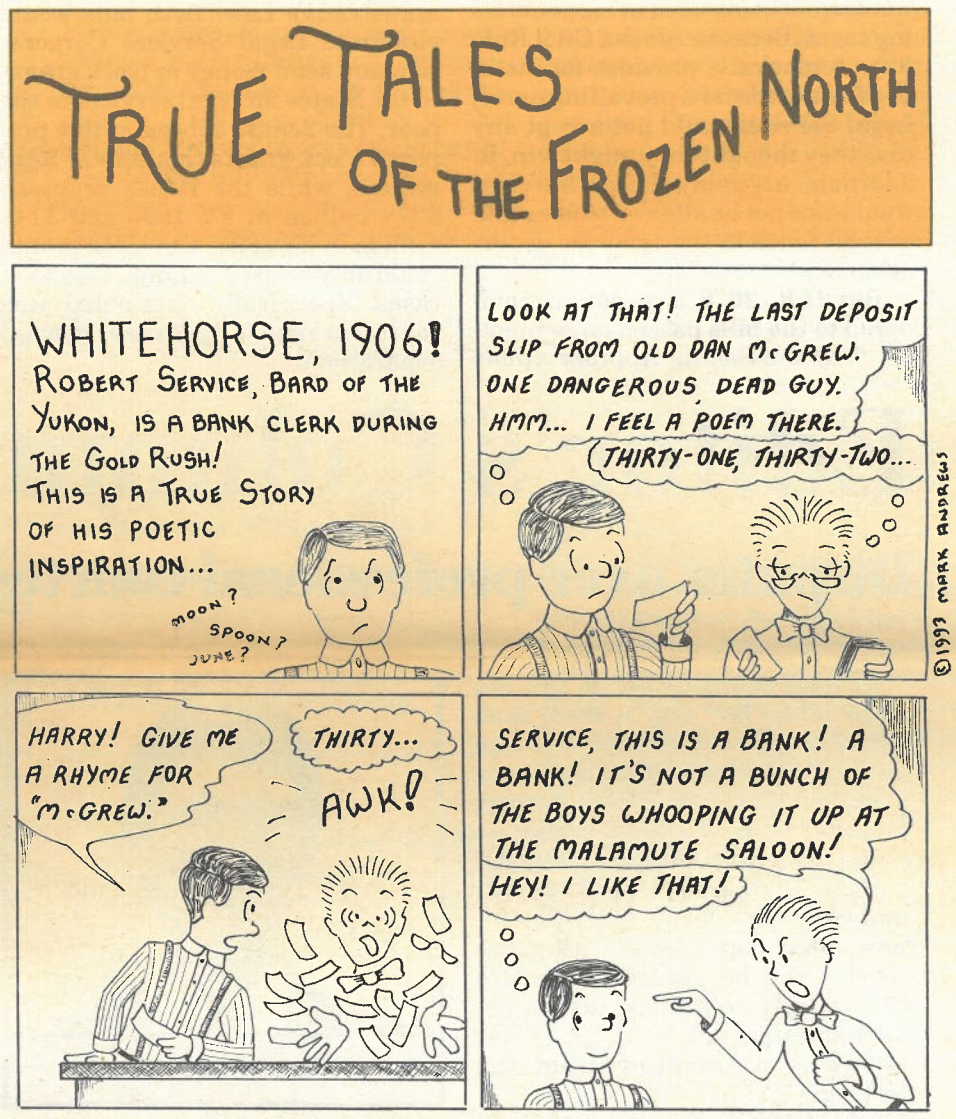
Your AV rating is important because it is a public confirmation of the status you have achieved as a highly respected, ethical member of the Bar. It signifies that your legal abilities are of the very highest standards and that your professional ethics and conduct are above question ....

Patricia Zobel, a partner in what is now DeLisio Moran Geraghty & Zobel, received this letter from Martindale-Hubbell in February 1993 making her one of the few Alaska women lawyers ever listed with an AV rating.

Although there are nearly 500 women practicing law in Alaska—more than 20 percent of the entire Alaska bar—Zobel is the only woman among 115 AV rated lawyers in the 1995 Martindale-Hubbell.

She is, however, not the only woman in Alaska to be AV rated. Anchorage Superior Court Judge Dana Fabe, AV rated in 1988 while she headed the Public Defender Agency, was listed in the 1989 edition. That rating disappeared when Fabe took the bench four months later, since Martindale-Hubbell makes it a policy not to rate judges. Susan Burke, Susan Wright Mason and Sandra Saville will join Zobel with AV ratings in the 1996 edition of Martindale-Hubbell.

continued on page 20



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

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

President's Column

Alaska Legal Services may disappear

By the time you read this, Alaska Legal Services as we've known it since 1967 may have disappeared. Last year, ALSC received $1,769,000 in federal funds. This year, under H.R. 2076, ALSC would only receive $517,855, more than a two thirds cut. This is partially a result of H.R. 2076's incidental deletion of two critical provisions which helped Alaska in previous years to receive a fairer appropriation — Native American legal services funding and a cost of services calculation which helped build in the extra costs of providing legal services to remote Alaska locations.

H.R. 2076 also prohibits federal funds from being used in fee generating cases. Because Alaska Civil Rule 82 automatically provides for attorney fee awards for a prevailing party, Legal Services could not accept any case they thought they might win. In addition, arguably Legal Services would also not be allowed to use state or local funds in the same fee generating cases.

But H.R. 2076 is generous compared to the bills passed on September 7 by the Senate Appropriations

Diane F. Vallentine

Subcommittee and the House Subcommittee on Commercial and Administrative Law. Both bills would eliminate Legal Services Corporation and send money in block grants to the States for legal services to the poor. The Senate subcommittee proposed block grants this year of $210 million, while the House proposed $278 million in FY 1996 and $141 million in FY 1997. The block grants could only be used to fund 12 types of cases. Specifically eliminated was representation in divorces or marital separations.

Senator Inouye pointed out in floor debate that based on the federal-Indian "government to government" relationship the money for legal services for Indians should not be passed through the states. Senator Stevens has proposed an amendment on the floor to allow states which have a significant number of Native American households to receive 140 percent of the amount of funding those states otherwise would receive. This would specifically help ALSC.

The final result of all this maneuvering is yet to be seen, but even under the best scenario the proposed decline of ALSC will have a significant impact on the Bar. Alaska's poverty population for purposes of eligibility for ALSC services is 66,558, or over 10 percent of the population. One can expect that in the future over 10 percent of the persons seeking legal services from attorneys will be unable to pay.

Currently, over 50 percent of the Bar participates in the Pro Bono program. This closes approximately 500 cases per year. However, 4,000 to 5,000 divorce cases are currently being handled by ALSC. These would be left uncovered under all current federal proposals, and the Pro Bono program would be swamped by that many cases. In addition, under the current Pro Bono program an attorney who accepts a case may withdraw and return the case to ALSC, but with ALSC attorneys unable to do divorce cases, that could not happen. ALSC would also not be able to furnish malpractice coverage for Pro Bono divorce cases, since they would not be able to pay for such coverage.

The Bench and the Bar will eventually be faced with the problems we had before ALSC came into existence — how to cover the 5,000 divorce cases which would need to be filed but not be covered by ALSC. Eventually, mandatory Pro Bono would become a possibility, as it has in New York and other states with low Bar participation in Pro Bono programs. Volunteers alone will never be enough. While Congress seems to think that access to legal services should be covered by the nation's Bars donating free services, the same demands are not made by society upon doctors, architects or accountants.

There is little we in the Bar can do to turn the tide in this matter except to support Senator Stevens in his attempts to get an even break for ALSC, and to urge Senator Murkowski and Representative Young to do likewise. Whatever we can individually do to mitigate the damage to the legal system by this new turn of events, we need to do, and soon.

Editor's Column

Disputes over professional courtesy resolved

To some members of the bar, the editor of the *Bar Rag* is more than just an unapproachable colossus who favors all with his random emissions of wisdom and professional insight. To some, he is the final arbiter in matters of professional courtesy and protocol. He therefore finds himself inundated with requests that he resolve minor disputes of the pet peeve variety, and he generally resolves them, wisely and fairly, just to get the requesters off his back. What follows is a sampling from the mailbag.

Dear Editor:

I've been getting a lot of letters from other attorneys lately that end with the notation "Dictated but not read." What is the meaning of this? What is the proper response?

—Reading but not Understanding

Dear RBNU:

"Dictated but not read" means that the lawyer (1) is too busy to read everything that goes out over his or her signature, (2) wants you to know that, and (3) is putting you on notice that anything in the letter that you find nonsensical, offensive, or unprofessional is somebody else's fault. The proper response is to return the letter with the notation, "Read but not taken seriously," which is what the writer is hoping for.

•

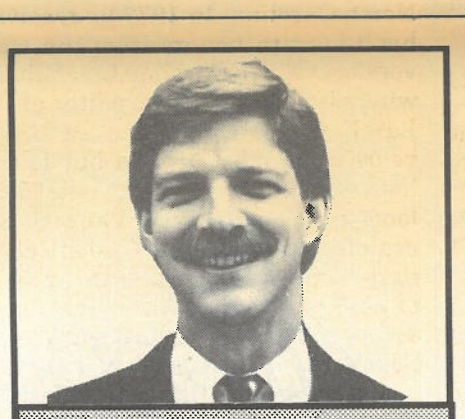
Dear Editor:

My paralegal will not let an affidavit go out of the office unless it concludes with "Further your affiant sayeth naught." I tell her that the phrase, though hoary, has no legal significance, and that the affiant's signature more succinctly makes the point that the affidavit is at an end. Who's right?

— Ms. Modernity

Dear MM:

Nobody wins. No one but Jethro



Peter Maassen

Bodine should be made to swear to the word "naught," but a document without some closing fillip just looks too short, to the point, and -- in a word — unlawyerly. The modern trend therefore adopts a closing phrase which blends plain English with a nod to the classicists: "I have nothing else to say except *tua mater*" (Latin for "Your momma").

•

Dear Editor:

I'm in constant communication these days with an attorney who has his secretary place all his calls. I pick up the telephone to hear a mellifluous, "Will you please hold for Mr. Jones?" and being the knee-jerkily polite doormat that I am, I say "sure" and she's gone before I have a chance to consider my options. Jones never keeps me waiting long, but still his implicit message offends me: that the time he saves not waiting for me to answer is more valuable than the time I lose waiting for him to answer. Should I make a big deal out of this?

— Holding the Phone

Dear HTP:

No. Making a big deal out of it would only demonstrate that you, too, are a small person. Instead, enter the number for the Brasilia 7-11 in your speed-dial function and, in the few seconds after the secretary's introductory fanfare, hit the "forward" button. Unless Jones knows how to say "Big Gulp" in Portuguese, he'll soon realize that he's wasting his time and start dealing with you by fax.

•

Dear Editor:

Whenever I approach a judge on the sidewalk downtown, I say "Hello, Judge." A friend of mine told me recently that this is improperly informal, and that I should say "Hello, Judge Brown," which to me sounds overly stilted. What do you think?

— Judge Not

Dear JN:

Given the relative informality of Alaska's legal community, "Judge" by itself is sufficient to satisfy most etiquette mavens, while giving you cover for the fact that when facing a judge you can't even remember your own name without notes. The one exception to this rule comes into play if a litigation adversary is within earshot, in which case you should call the judge by his or her first name and ask after the spouse and children.

•

Dear Editor:

When writing to a judge on a matter of utmost confidence, is it more correct to say "just between me and Your Honor" or "Your Honor, just between you and I?"

— Confidential Communicant

Dear CC:

Neither suggestion is acceptable, since both indicate an improper *ex parte* contact (from the Latin, meaning "at a cocktail party given by my first wife"). See Rule 3.5 of the Alaska Rules of Professional Conduct. Ethical rules aside, it's just plain impolite to exclude people from conversations in which you know they'd be interested. What you should say, therefore, is "Just between Your Honor and I and Attorney Smith."

•

Dear Editor:

Shouldn't that be "Just among Your Honor, Attorney Smith, and me?"

— Grammar Guru

Dear GG:

Don't be a pedant. It's unseemly.

The Alaska BAR RAG

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

President: Diane Vallentine
President Elect: Elizabeth Kerttula
Vice President: David H. Bundy
Secretary: Ethel Staton, Public Member
Treasurer: J. John Franich, Jr.
Members:
Ray R. Brown
Joseph Faulhaber, Public Member
Dennis L. McCarty
Barbara Miklos, Public Member
Venable Vermont, Jr.
Philip R. Volland
Daniel E. Winfree
Executive Director:
Deborah O'Regan
Editor in Chief: Peter J. Maassen
Editor Emeritus: Harry Branson
Contributing Writers:
Dan Branch
Drew Peterson
Mary K. Hughes
William Satterberg
Scott Brandt-Erichsen
Walt Arden
Michael J. Schneider
Daniel Patrick O'Tierney
Steven T. O'Hara
Thomas J. Yerbich
Joyce Weaver Johnson
Sally J. Suddock, Managing Editor
Contributing Cartoonist
Mark Andrews
Design & Production:
The Alaska Group
Advertising Agent:
Linda Brown
507 E. St., Suite 204
Anchorage, Alaska 99501
(907) 272-7500 • Fax 279-1037

Letters from the Bar

Malpractice Insurance

I sometimes do not think our problems need to take this public of a form.

My experience is that the engagement letter is a very good method to protect yourself as a professional. Clients who pay regularly are much more realistic as to the results.

Lawyers should be allowed to withdraw without the necessity of getting the court's approval. Sometimes, new facts appear during discovery and the client and lawyer are at odds over their significance. Sometimes the client owes the lawyer large fees and insists the lawyer continue until the end of the trial. If the lawyer could easily withdraw, it would not allow the seed of discontentment to begin to build, although you will have one mad client on your hands.

There is going to be no instant fix to the problem of malpractice. Lawyers are humans first and human error has been here since Adam.

—Paul J. Nangle

Dear Judge Woodward

The following English lesson was sent to the judge Aug. 22, 1995.

Enclosed please find a copy of the final decree in the Nelson case which you recently signed. Please note the little black dots over the "e" in the word "judgement". The findings have similar markings.

Those little black dots were not on the paperwork I submitted. As a result, I can only conclude that one of two things happened:

1. Someone in the courthouse has a highly trained fly with an intestinal problem and a particular dislike for "e's". How else could such a little creature be so accurate in depositing those little "doo-doos" all over my paperwork?

2. Alternatively, of course, is the possibility that someone in your office is a wannabe English teacher with a compulsion to correct perceived errors. (At least, thank God, this person didn't use a red pencil or put a grade on my paperwork!) Unfortunately, this self-styled protector of proper spelling needs to brush up on his or her English studies.

As you can see from the attached, the word "judgement" can be spelled either "judgment" or "judgement". I prefer the latter. Having successfully obtained a Minor (which shouldn't be spelled with an "e" unless one is really digging) in English, as well as having written professionally (FROM THE ARENA, Anchorage Daily News, 1988-1992), I believe I am entitled to have such preference.

I'll send over a flyswatter if a fly is the problem. You'll have to handle the matter if my second possible scenario is.

—Wayne Anthony Ross

P.S. I ran this letter through my computer's Spell Check. My computer agrees with me.

Navigating the newly charted waters of *CHI* and AS 21.89.100

By Ken Gutsch

The Alaska Supreme Court recently issued an opinion concerning the rights and obligations of an insurer that wishes to reserve its rights to deny coverage, while still defending its insured. The Alaska Legislature responded with new legislation clarifying the insurer's rights and obligations. This article will discuss the significance of those developments in the law.

In the past, insurers often defended an insured against a claim while reserving rights if there were any doubts as to coverage. However, the Alaska Supreme Court's recent decision in *CHI of Alaska v. Employers Insurance Corp.*, 844 P.2d 1113 (Alaska 1993), made the insurer's decision to reserve rights more complicated. In *CHI*, a divided Alaska Supreme Court held that whenever an insurance company reserves its right to disclaim coverage, the insured has the unilateral right to select independent counsel. *Id.* at 1121. This right is limited only by the insured's implied covenant of good faith and fair dealing, which requires that the insured select an attorney who is reasonably competent, based on his experience and training, to conduct the defense. *Id.*

The Background of CHI

CHI arose out of a seaman's accident aboard a vessel owned by Oceanic Research Services, Inc. (ORS) on the North Slope. The seaman, Tom Collins, suffered a knee injury after stepping into an open hatchway. ORS, the owner of the boat, believed it was insured against the loss by a $500,000 marine indemnity policy that it had purchased through CHI of Alaska, Inc. (CHI). That policy, however, actually had a stated bodily injury limit of only $100,000. Collins sued ORS. ORS then confessed judgment to Collins in the amount of $1.6 million in exchange for Collins' covenant to execute on the confessed judgment only to the extent that ORS could recover against CHI.

As part of the agreement between ORS and Collins, ORS sued CHI, and alleged that CHI was negligent and breached its contract to procure $500,000 in insurance for ORS. ORS also claimed that CHI had *intentionally* misrepresented that the policy coverage was $500,000.

CHI tendered the defense of the suit to its insurer, Employers ReInsurance Corp. Employers agreed to defend CHI, but reserved its rights to disclaim coverage with respect to ORS' claim of CHI's intentional misconduct based on an exclusion in the policy. At the same time, Employers assigned Hughes, Thorsness, Gantz, Powell & Brundin ("HTGP&B") to defend CHI in ORS's lawsuit.

CHI objected on the basis that the reservation of rights created a conflict of interest, and demanded the right to select independent counsel at Employer's expense. CHI selected its own attorney, Brett von Gemmingen, to defend it. Employers offered to pay von Gemmingen to defend that portion of the lawsuit pertaining to the intentional misconduct claim, while retaining HTGP&B to act as co-counsel for CHI with responsibility for the defense of all claims. CHI declined and then filed a declaratory action in state court seeking a ruling that it had an absolute right to select independent counsel because of Employer's reservation of rights. The Superior court ruled in favor of Employer's, and CHI appealed. Meanwhile, HTGP&B and von Gemmingen

continued on page 12

In Memoriam

Joseph Davis ("Joe") Johnson, statewide litigation attorney for the Alaska Legal Services Corporation, died on August 29, 1995, from sudden heart failure induced by a severe asthmatic attack. He was 43. Following a funeral in his hometown of Franklin, North Carolina, a memorial service was held at Kincaid Park Chalet in Anchorage on September 5. Many of Joe's friends remembered him at the service for his contagious enthusiasm, his ready laughter, his intelligence, his integrity, and the sense of adventure that brought him to Alaska eight short years ago.

Joe was raised in Georgia and North Carolina. In 1977 he received his J.D. with honors from the University of North Carolina Law School, where he had served as editor of the Law Review. He practiced law for ten years in North Carolina but fell in love with Alaska through visits to his long-time friend, lawyer Vance Sanders of Juneau. In 1987, Joe left a partnership in the Franklin law firm of Jones, Key, Melvin & Patton to accept a position with Alaska Legal Services.

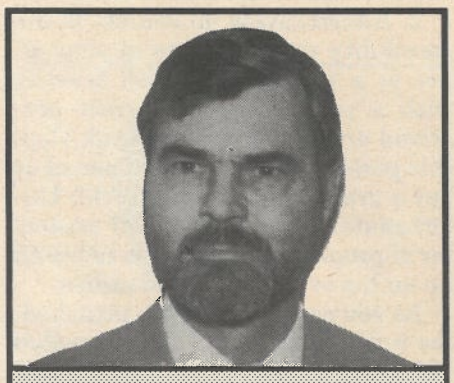
Joe enthusiastically took up skiing, mountain-biking, backpacking, kayaking, fishing, and other wilderness pursuits, finding joy in everything he did. He was also a dedicated runner, an unfailingly smiling face on Anchorage's bike trails during the noon hour. Six years ago he married Anne Marie Holen of Homer and Anchorage. He and Anne Marie were working on their cabin near Homer at the time of his death.

Joe's work for Alaska Legal Services was devoted primarily to protecting Native land claims, tribal self-governance, and the subsistence-based economies that support most Native villages in Alaska. His work on the issue of subsistence hunting of sea otters led to the creation of the Alaska Sea Otter Commission. A highlight of his career was his support for the Chilkat Indian Village's efforts to recover priceless artifacts taken from the Whale House in Klukwan. At Joe's memorial service, Klukwan representatives recalled his friendship and his devotion to their cause, and they sang songs in his memory.

Joe had many friends among his professional colleagues in the law. They miss him sorely.

Bankruptcy Briefs

Delinquent taxpayers



Thomas Yerbich

Bankruptcy frequently involves an individual taxpayer who, for one reason or another, has failed to file returns or pay taxes, or a combination of the two (failure to file usually, but not always, also involves a failure to pay). Of the two, failure to file returns timely causes the most significant grief. Borrowing money from the government by failing to pay taxes can be extremely expensive, particularly when one fails to submit the loan application (file the return).

One of the major differences is that a tax deficiency based on a simple failure to pay taxes may nevertheless be discharged in either a chapter 7, 11 or 13; however, tax deficiencies from a failure to file a return are not discharged in a chapter 7 or 11, but may be discharged in a chapter 13 (even if not paid in full). [BC §§ 523(a) (1) (B); 1328(a)] In addition, until the return is filed by the taxpayer, the clock does not start winding down of the limitation period for assessment. Also, although one may not be sent to "debtor's prison" for failure to pay taxes, one may be incarcerated for failure to file a return. There are, however, other "downsides" to a failure to file a timely return. It is these to which this article is addressed.

In addition to interest on the underpayment under IRC § 6601, IRC § 6651 provides separate penalties for failure to file and failure to pay. The failure to file penalty is 5 percent of the tax due for each month or fraction of a month that the return is late (determined with regard to any extension granted), up to a maximum of 25 percent. [IRC § 6651(a) (1)] The failure to pay penalty is 0.5 percent of the tax due for each month or fraction of a month that the payment is late (determined with regard to any extension granted), also to a maximum of 25 percent. [IRC § 6651(a) (2)] The failure to pay penalty increases to l percent per month after a "10-day" notice is given. [IRC § 6651(d)] In both instances, the penalty is determined on the net tax due (no tax due, no penalty assessed). [IRC § 6651(b)] In those months in which both the failure to file and failure to file penalties apply, the failure to file penalty is reduced by the amount of the failure to pay penalty. [IRC § 6651(c) (1)]

Thus, it is apparent that a failure to file a timely return is the costlier of the two. Also, the shorter the period of delinquency, the higher the additional cost relative to the tax due ("APR" is higher for a one-year than a two-year "loan"). The following examples illustrate the effect of § 6651. In each example assume a taxpayer has a tax liability of $10,000, no reasonable cause exists, underpayment interest rate is 9 percent and no "10-day" demand given. [*See* Treas.Reg. § 301.6651-1(f)]

Example 1. Taxpayer files the return and pays the tax 3 months late: additional cost $1,727 [interest - $227; failure to file penalty - $1,350; failure to pay penalty - $150]

Example 2. Taxpayer files the return timely and pays the tax 3 months late: additional cost $377 [interest - $227; failure pay penalty - $150]

Example 3. Taxpayer files the return and pays the tax 6 months late: additional cost $2,954 [interest - $454; file penalty - $2,200; failure to pay penalty - $300]

Example 4. Taxpayer files the return timely and pays the tax 6 months late: additional cost $754 [interest - $454; failure to pay penalty $300].

Example 5. Taxpayer files the return and pays the tax 2 years late: additional cost $5,302 [interest - $1,902; failure to file penalty - $2,200; failure to pay penalty $1,200].

Example 6. Taxpayer files the return timely and pays the tax 2 years late: additional cost $3,102 [interest - $1,902; failure to pay penalty - $1,200]

What about the taxpayer who has a refund coming? In that case, since no tax is due there is no underpayment interest under § 6601 or failure to file or pay penalties under § 6651(a).

However, in that case another "penalty" may apply: if one waits too long one may just involuntarily contribute to reduction of the federal deficit.

In general, a claim for refund or credit must be filed within 2 years of the date the tax was paid or within 3 years from the date the return was filed, whichever is later, unless no return is filed, then within 2 years of the date the tax is paid. [IRC § 6511(a)] Where taxes are prepaid, *e.g.*, withholding or estimated tax payments made during the tax year or prior year overpayment claimed as a credit for the succeeding year, the payment is deemed made on the 15th day of the fourth month following the close of the tax year. [IRC §§ 6513(b) (1), (d)].

Unfortunately, contrary to first blush, filing an untimely return does not "trigger" a new 3-year period to file for a refund. A return itself serves as a claim for refund at the election of the taxpayer. [Treas.Reg. § 301.6402-3(a) (5). Form 1040 specifically provides for electing to have an overpayment either refunded or credited to estimated taxes for the next tax year.] Only if the untimely return claiming a refund (or electing to apply to subsequent year's estimated tax liability) is filed within 2 years of the date the tax is paid is a refund or credit allowed. [*Miller v. United States,* 38 F3d 473 (CA9 1994); *see also* Rev.Rul. 78-343, 1978-2 CB 326; Rev.Rul. 76-511, 1976-2 CB 428] Thus, for an individual on a calendar tax year, if the return claiming the refund is not filed within 2 years of the original due date (April 15), any refund or credit is barred.

As the facts in *Miller* illustrate (and the author has seen occur), § 6511 can not only bar a refund but also result in a tax deficiency that otherwise might have been satisfied. For example, assume a taxpayer failed to file returns, or obtain extensions, for the years 1985 through 1992. In December 1993, just prior to filing bankruptcy, all returns are filed and in each return the taxpayer elects to apply any overpayment to the succeeding year's estimated tax liability. The returns, as filed, show: 1985 - $500 overpayment; 1986 $100 overpayment; 1987 - no overpayment or underpayment; 1988 $700 overpayment; 1989 - $100 overpayment; 1990 - $1,000 overpayment; 1991 - $750 overpayment; and 1992 - $500 overpayment. According to the returns and actual payments made, this client has, in the aggregate, overpaid and has a tax refund due of $500, which of course debtor schedules and claims as exempt under BC § 522(d)(5). Wrong! The debtor has no refund coming; indeed, despite having paid $500 more in taxes than was owed during the 8-year period, has a tax deficiency of $2,100, plus interest and the § 6651 failure to file and pay penalties!

(1) The 1985 credit is disallowed, resulting in a 1986 tax deficiency of $400; (2) with no credit from 1986, 1987 tax deficiency is $100; (3) 1988, having no credit from 1987, has no tax deficiency, but the credit ($700) is disallowed; (4) with no credit from 1988, 1989 tax deficiency is $600; (4) even without the $100 credit from 1989, 1990 has no tax deficiency, but the credit ($900) is disallowed; (5) with no credit from 1990, 1991 tax deficiency is $250; and (6) with no credit from 1991, 1992 tax deficiency is $750. Total deficiency: $2,100, plus interest and 6651 penalties. To add insult to injury, in a chapter 7 or 11 the entirety of the tax liability, except penalties for tax years 1986, 1987 and 1989, will be nondischargeable as the returns were filed within 2 years of the petition date. [BC §§ 523(a) (1) (B)) (ii), (a) (7) (B)].

Continued procrastination in filing can also have post- petition effects. Filing bankruptcy does not excuse a debtor from the requirements of filing tax returns timely. IRC § 6658(a)(2) "abates" the failure to pay penalty under 6651(a)(2) where the penalty relates to a tax accruing pre-petition and the due date or date for making the addition occurs post-petition. However, § 6658(a) (2) does not abate the failure to file penalty, nor does it abate any penalty for failure to pay a tax accruing post-petition. To illustrate, assume a taxpayer/debtor has obtained an extension to file until October 15, files the petition on October 1 and files the return on April 15 of the following year. The taxpayer is subject to the § 6651(a) (1) failure to file penalty (25 percent), but not the § 6651(a) (2) failure to pay penalty. The irony is that § 6658(a) (2) has not, in reality, significantly benefitted the taxpayer. Because the § 6651(a) (1) penalty, which otherwise would have been reduced by the amount of the § 6651(a) (2) penalty under § 6651(c) (2), is no longer reduced, the increased failure to file penalty offsets the abated failure to pay penalty during the initial 5 months (or fraction thereof) that the return is delinquent.

The problem is exacerbated by the fact that although the taxpayer may not otherwise have taxable income, *e.g.*, a NOL carryforward, the alternative minimum tax provisions [IRC §§ 55-591 may come into play when significant tax preference items are involved, thereby resulting in assessment of a tax.

Because the bankruptcy estate of an individual succeeds to certain tax attributes of the debtor, *e.g.*, NOL, charitable contribution carryforward, capital loss carryforward, and PAL, [IRC § 1398(g)] that can affect the taxable income of the bankruptcy estate, the failure to file prepetition returns affects returns to be filed on behalf of the estate. If the returns for prior years have not been filed, determination of these tax attributes is impossible, which may also result in penalties being incurred by the bankruptcy estate because the trustee or debtor in possession can not timely file returns. [For an illustration of abatement of § 6651 penalties by an estate for reasonable cause *see In re Molnick's, Inc.,* 75 AFTR2d 95-1954 (Bkrtcy.CD.Cal. 1995)]

The two most frequently heard "excuses" for not filing are: (1) "I had a refund coming and did not think I had to file"; or (2) "I owed taxes but did not have the money to pay and did not want to let the IRS know I owed money because then they would grab my wages." Failing to file, even when money is not available to pay the tax due, simply compounds the problem - in fact, as illustrated by the foregoing, it can grow in geometric proportions. The best advice a taxpayer can receive is, no matter what, FILE TAX RETURNS TIMELY.

The Bar Rag welcomes articles from its readers

CLE survey

continued from page 1

that way whenever possible.

Several members commented that implementation of mandatory CLE would increase participation. Other members requested more advance notice of CLEs and improvement in the quality of videotapes for viewing either individually or at a video replay site.

We have already tried to respond to out of town members' concerns by editing videotapes for more "viewability." As a pilot project, several CLE videotapes were edited this summer. The response from members was very positive and every member who contacted us asked that we continue the editing.

The Board of Governors at its August meeting approved the expenditure of funds to edit every video of a live program. This will cost about $450 per program and may result in a slight increase for video tape replays.

Several out of Anchorage members noted the cost of travel to a CLE in Anchorage; we currently offer a 50% registration fee discount to any member who travels via commercial carrier to a CLE. The CLE Committee at its annual September 29 meeting will also be discussing the possibility of a greater discount for commercial travel, and a discount for commuters outside of Anchorage.

There were a number of comments on cost of CLEs. The Bar tries very hard to keep the costs of CLE to a minimum. Our CLE registration fees are comparable to many other jurisdictions, and in some cases, our fees are substantially lower.

In 1994 the average cost of presenting a live CLE was $3,000. The Bar presented 36 live CLEs in 1994, primarily in Anchorage, but with some live programs in Juneau and Fairbanks as well. The average cost of a CLE includes direct expenses, that is, room rental, refreshments, audio visual equipment rental, brochure printing (done in-house by the Bar), mailing, course materials photocopying and binding (also usually done in-house to keep costs down), faculty meetings and teleconferences to prepare for the program, and speaker expenses. No overhead or indirect cost is charged to a CLE budget; all staff time and indirect costs for the CLE program are charged separately.

Speaker expenses include honorarium and travel. However, our CLE Policies & Guidelines normally prohibit payment of honorarium to Alaska Bar members, and we try to avoid or minimize honorarium costs at all times. Travel costs for faculty are paid for by the Bar, but again we try to minimize those costs by requesting faculty to fly on a supersaver ticket or asking if the speaker's firm or organization can assist with any travel costs.

Many Bar members commented in the survey on the "good job" the Bar CLE staff was doing. We appreciate those pats on the back. We will continue to try to provide our members with quality CLE at a reasonable cost, but we realize there is always room for improvement. At the September 29 Annual CLE Committee Meeting, we will be looking at the survey and considering the recommendations members have made. If you have any other specific topics you would like to bring the CLE Committee's attention, please write or fax Dave Ingram, CLE Chair or Barbara Armstrong, CLE Director, at the Bar office, 907-272-2932.

Thanks for your response to the survey, and we look forward to keeping in touch with you all.

CLE COMMITTEE

The CLE Committee is made up of 15 members appointed by the President of the Board of Governors, and includes one judicial member (recommended by the Chief Justice), and two Young Lawyer representatives. Geographic representation is a goal of the Committee. If you have CLE questions, call CLE Director Barbara Armstrong at 907-272-7469 or the CLE Committee member in your area.

First Judicial District
Brian Hanson, Sitka, 747-3257
Dave Ingram, Chair, Juneau, 789-6160
Mark Sokkappa, Juneau, Young Lawyer Rep., 463-4125
Trevor Stephens, Ketchikan, 225-6128

Third Judicial District
Allan Beiswenger, Soldotna, 262-9164
Cheryl Brooking, Anchorage, Young Lawyer Rep., 276-1592
Ray Brown, Anchorage, 277-5400
Judge Dana Fabe, Judicial Representative, 264-0408
Joe Loescher, Anchorage, 274-7522
Holly Montague, Palmer, 745-9678
Aleen Smith, Anchorage, 272-1500
Jim Stanley, Anchorage, 276-4979

Combined Second & Fourth Judicial Districts
Gail Ballou, Fairbanks, 456-6632
Paul Eaglin, Fairbanks, 474-7259
Gary Foster, Fairbanks, 458-8083

Committee forms to revise local federal criminal rules

The United States District Court for the District of Alaska has established a committee to revise its local criminal rules. Over the coming weeks, the committee will meet and make recommendations to the District Court of Alaska for revisions to the existing rules and for adoption of new rules. The committee welcomes *written* comments from all persons with suggestions for changes to the rules.

Comments should be sent before October 15, 1995 to U.S. Magistrate Judge John D. Roberts, Chairperson of the Committee, at 222 West 7th Avenue, Box 46, Anchorage, Alaska 99513-7563.

Death and the sole practitioner:

You cannot take your case files with you

BY ROBERT W. MARTIN, JR.

Lawyers spend a great deal of their time planning for the deaths of their clients and making sure that their clients' "affairs" will be in order. Wills, living trusts and buy/sell agreements are the tools of the trade for most general practitioners and business lawyers and especially for sole practitioners. Although perhaps more and more attorneys are proving false the old adage about lawyers having wills for everyone but themselves, empirical evidence clearly suggests that sole practitioners very often forget about their obligations to their clients that continue despite the death of the sole practitioner.

For those of you who thought you might finally be rid of those clients as well as the oversight of the State Ethics Committee when you die, consider the following statement in American Bar Association *Formal Opinion* 92-369 (December 7, 1992): " ...Sanctioning of lawyers who had inadequately prepared to protect their clients in the event of their death would tend to dissuade future acts by other lawyers, and it would help to restore public confidence in the Bar." You can ponder what the ABA or any other Bar organizations could possibly do to you after your death, but take solace from the fact that footnote 7 to that opinion states "...Obviously, sanctions would have no deterrent effect on deceased lawyers. The ABA has either a sense of humor, or a "zero tolerance" policy; you be the judge.

Leaving all the kidding aside, this is a serious issue. When an attorney dies, his or her family will be grief-stricken, and if that attorney is a sole practitioner, the family may be deprived of its source of income. This is especially so if the death is unexpected, and the attorney is engaged in the active practice of law at the time of his or her death. The family will be justifiably concerned about its personal well-being and, perhaps, feel no loyalty or obligation to the deceased attorney's clients. Many of us can relate to this from personal experience. There will be an immediate reaction among the non-lawyer members of the family to clean out the office and, perhaps, dispose of many files that may be of great importance to that attorney's clients. It is unquestionably one of the major responsibilities of a sole practitioner to provide for the well being of his or her clients upon that attorneys death—including the proper care and transfer of client files.

The problem is, as the ABA quite forthrightly admits, there is no specific rule of ethics on this particular issue. Moreover, once the attorney is dead and has failed to take action to protect clients, there is obviously nothing that the Bar ethics panels can do to discipline that lawyer. There may, however, be civil liability for the estate of the attorney in that circumstance, and if pleas of professionalism and professional responsibility do not prevail to make you take action, such civil liability potential should be considered.

What Should You Do In Order To Protect Clients In The Event Of Your Death Or Disability?

The answer is quite clear; you need to have a pre-existing arrangement with another attorney who can step in and take certain immediate actions to protect the interests of your client. As the ABA states in *Formal Opinion* 92-369:

> ...although there is no specifically applicable requirement of the Rules of Ethics, it is fairly to be inferred from the pertinent rules that lawyers should make arrangements for their client files to be maintained in the event of their own death. Such a plan should, at a minimum, include the designation of another lawyer who would have the authority to look over the sole practitioner's files and make determinations as to which files needed immediate attention, and provide for notification to the sole practitioner's clients of their lawyer's death.

In an accompanying footnote, the ABA addresses another important aspect of the whole problem - client confidentiality:

> Although the designation of another lawyer to assume responsibility for a deceased lawyer's client files would seem to raise issues of client confidentiality, in that a lawyer outside the lawyer-client relationship would have access to confidential client information, it is reasonable to read Rule 1.6 as authorizing such disclosure. Model Rule of Professional Conduct 1.6(a) ("a lawyer shall not reveal information relating to representation of a client... except for disclosures that are implied authorized in order to carry out the representation"). Reasonable clients would likely not object to, but rather approve of, efforts to insure that their interests are safeguarded. *Id at n.8.*

When one thinks about it, this issue is not dissimilar from the issue that is raised when a sole practitioner retires, becomes ill or has personal problems. *See* e.g. *Committee on Legal Ethics of West Virginia State Bar v Smith*, 194 S.E. 2nd 665

continued on page 16

Local lawyer elected to national position

The National Lesbian and Gay Law Association (NLGLA) has elected a local Anchorage attorney to be its national co-chair for 1995-96. Allison Mendel, a partner in the law firm of Mendel & Huntington, will share the chairmanship with Jay Novick, a prosecuting attorney from Miami, Florida.

The NLGLA is the only national bar association for lesbian, gay, bisexual and transgender lawyers and legal workers, and holds affiliate status in the ABA House of Delegates. With a national membership of• some four hundred lawyers, the Association's most well-known activity is the biannual Lavender Law conference, which provides continuing legal education on a whole range of topics of interest to lesbian, gay, bisexual and transgender lawyers, as well as to those who serve gay and lesbian clients. The next conference is scheduled to be held in October 1996, in New Orleans.

In addition to hosting the conference, the Association submits amicus briefs in cases of interest to its constituents, provides a source of networks and referrals for members, promotes judicial education and judicial selection, and pursues a host of other projects of interest to its members. Currently, NLGLA is submitting an amicus brief to the Alaska Supreme Court in *Tumeo v. University of Alaska,* the pending case involving health benefits for unmarried partners of University employees.

Getting Together

Paralegalism and ADR

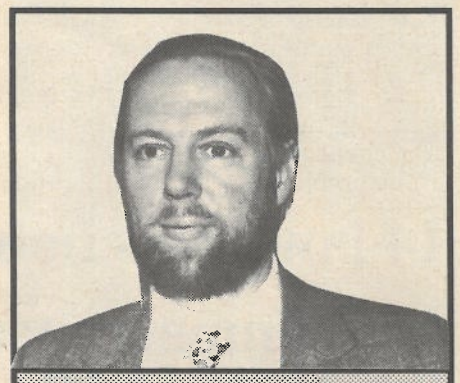
Have you noticed that newly trained paralegals are getting jobs these days before the young lawyers?

The slump in the Alaska legal market after the end of the bulk of the oil spill litigation hit both segments of the legal market hard. Paralegals and associate attorneys in substantial numbers were both looking for work after the major spill trials ended. Individuals from both segments of the legal industry left the field, or relocated outside of Alaska.

But recently an interesting phenomenon has been occurring. Paralegals are finding full time work again, with good employers. Yet many good attorneys are still finding nothing but part time contract legal work. What is happening here, anyway?

Twenty five years ago, when I began practicing law, no one had ever heard of the word "paralegal." To be sure, there were many individuals who were performing jobs which today would be called paralegal work, but they went under different names. They were called legal secretaries or legal clerks or perhaps legal investigators. They were exclusively trained on the job in how to perform their legal duties. No special schools existed to teach them

Today, there are over 200 schools in the United States approved by the American Bar Association Committee on Paralegal Education, together with a myriad of non-ABA approved schools turning out paralegals. Increasingly law firms of all kinds and sizes - from the largest firms in the country to sole practitioners, from private firms to corporate legal departments to government offices — are recognizing the value, efficiency, and cost-effectiveness of paralegals. Paralegals are less expensive, more stable, and generally enjoy their work better than do associate lawyers.



Drew Peterson

As those of you who read this column know, I believe that a consciousness shift is engulfing the globe. People all over the world, in all different disciplines, are starting to look at the world differently. This new consciousness is breaking out in fields as diverse as the wellness movement in medicine, quantum physics, re-engineering of the corporate world, method acting, and chaos theory in mathematics.

In the legal world I have pointed to the alternate dispute resolution (ADR) movement as leading the way. I have recently come to realize, however, that the paralegalism movement led the way long before most of us had even heard of ADR. My current hope is that ADR will progress as far in the next 20 years as paralegalism has in the past 20.

What are the parallels between these two separate fields of (paralegalism and ADR) that are changing the practice of law? There are many, including the following:

• Both paralegalism and ADR emphasize a team or collaborative approach to resolving client problems, rather than relying on individual champions for a client's cause, as was previously the pattern in the legal profession.

• A major impetus for both the paralegalism and ADR movements was the escalation of legal costs to clients. Many clients simply cannot afford traditional legal services. The use of paralegals and ADR have been seen as cost effective alternatives.

• The use of both paralegals and ADR methods have been shown to be profitable to law firms. Clients satisfaction levels have been high with both, and client satisfaction is the life-blood of any firm. As profit centers, paralegals have consistently been found to be as or more profitable than young associates. They are also easier to manage, without rapid turnover or squabbling on the partnership ladder. Similarly, many larger firms are now adding ADR departments in response to increasing client demand for such services and their profitability.

• Both began as unregulated fields, but regulation and certification are becoming more widespread. The paralegalism movement has recently passed a milestone, as the National Federation of Paralegal Associations has changed its position on certification and is in the process of introducing its own voluntary certification exam. The Academy of Family Mediators is also proposing voluntary certification of mediators, while many states are now regulating ADR neutrals in one manner or another.

• Both fields have exploded in recent years. The field of paralegalism has been projected by the United States Department of Labor, Bureau of labor Statistics to be one of the five fastest growing occupations in the U.S. Labor market between the years 1988 and 2000 (along with radiologic technicians and data processing equipment repairers) The Academy of Family Mediators and the Society of Professionals in Dispute resolution have been two of the fastest growing professional organizations in the world over the past 10 years.

After 25 years of development, the paralegalism movement has become a mature and well recognized force in the legal community. Paralegals have become a regular and valued part of our lives in the legal profession.

I predict that even more exciting things are in store for the legal field in the next 25 years. ADR, especially in its more collaborative forms such as mediation, will not only become as much a part of the legal profession by then as paralegals are now, but will actually transform the practice of law. Through ADR, the legal profession will become gentler and kinder, at the same time that it will become more efficient and effective in resolving client disputes.

1995 CLE Calendar

#88 September 19 2.5 cles	Mandatory Ethics for Bar Applicants	Hotel Captain Cook Anchorage
#88 September 20 2.5 cles	Mandatory Ethics for Bar Applicants (NV)	Centennial Hall Juneau
#18 Postponed til '96	Alternate Dispute Resolution	Hotel Captain Cook Anchorage
#39 September 27 2.75 cles	Making Legal Technology Work For You	Hotel Captain Cook Anchorage
#43 September 28-9 10.0 cles	Masters of the Courtroom (NV)	Las Vegas
#46 October 2-4 17.25 cles	Criminal Justice Management (NV)	Anchorage, Police Academy
#88 October 6 2.5 cles	Mandatory Ethics for Bar Applicants (NV)	Westmark Hotel Fairbanks
#10 October 18 6.25 cles	8th Annual AK Native Law Conference	Hilton Hotel Anchorage
#48 October 26 cles TBA	Off the Record - Juneau (NV)	Juneau Centennial Hall
#13 October 31 2.75 cles	Child Support Guidelines LIVE in Fairbanks (NV)	Princess Hotel Fairbanks
#44 November 3 cles TBA	Fast Track CLE	Hotel Captain Cook Anchorage
#31 November 9 cles TBA	Fraudulent Conveyances	Hotel Captain Cook Anchorage
#35 November 30 cles TBA	Affordable Housing	Hotel Captain Cook Anchorage
#19 December 1 cles TBA	Off the Record (NV)	Hotel Captain Cook Anchorage
#45 December 12 cles TBA	Settlement Conferences	Hotel Captain Cook Anchorage

Lawyers in Sports Briefs

The softball squad from LeGros, Buchanan & Paul, in only their first season of competition in the Anchorage Lawyer League, took home this year's championship trophy with a 5-4 victory over the Court Avengers. With an impressive string of victories late in the year, the team's momentum soared going into the playoffs. They needed all the momentum they could get in their first playoff encounter against Eschbacher's Lawbreakers. Down six runs early in the game, LeGros' Karen Warne led off the seventh inning with a base hit and the run was on. LeGros scored five runs in the last two innings to take the game. Led by Laura Farley and Val Hankins, LeGros' come-from-behind victories over U.S. Probation and Gorton & Oberly put them into the championship game.

Once there, however, they found taking the trophy home was not going to be easy. Stacked with a potent offense, Softball Commissioner Jeff Moeller's team, the Court Avengers, jumped to an early lead against LeGros, but timely hitting and defense, LeGros' savior all season, came to their rescue again. LeGros chipped away at the Avengers' lead while shutting down their offense. A dramatic two-run homer late in the game gave the title to LeGros. With most of the squad returning for another season, this team from LeGros may need to enlarge their trophy case.

--Karen Warne

Sharyn Campbell disbarred; John McGee placed on interim suspension

The Alaska Supreme Court on June 15, 1995 ordered Anchorage attorney Sharyn Campbell disbarred. The discipline followed Campbell's 1992 federal conviction for credit union fraud. The fraud occurred in 1986, when Campbell obtained a loan commitment and funds after submitting a false application to the Alaska Teamsters Federal Credit Union, which she served as legal counsel. After Campbell's conviction the Supreme Court placed her on interim suspension pending the outcome of appeals, which were unsuccessful. She remained suspended until disbarred. A stipulation between Campbell and Bar Counsel, approved by the Supreme Court, provides that the disbarment is effective as of February 14, 1992, when the interim suspension order was issued. Campbell will be eligible to apply for reinstatement to practice law five years from that date.

• • •

The Alaska Supreme Court on July 26, 1995 issued an order placing former Anchorage attorney John F. McGee on interim suspension. The court approved a stipulation between McGee and Bar Counsel in which McGee acknowledged that he had abandoned his practice and had misappropriated client funds. McGee will remain on interim suspension pending further investigation by Bar Counsel and disciplinary proceedings to determine a permanent sanction.

John M. Talley Reinstated

In the reinstatement matter involving John M. Talley, May 26, 1995

IT IS ORDERED: The petition for reinstatement is GRANTED. John M. Talley is reinstated to the active practice of law subject to a 2-year probation under the following conditions:

1. The probation shall begin only when Mr. Talley begins the practice of law;
2. It shall include close supervision by a member of the Alaska Bar who is approved for this supervisory role by the Disciplinary Board;
3. Mr. Talley is prohibited from engaging in any sole practice of law during the probation;
4. During the probation, he shall participate in at least 20 hours of CLE that is approved by the Alaska Bar Association.

Entered by direction of the court at Anchorage on May 26, 1995. Effective date June 30, 1995.

--ABA File No. 1994R001; Supreme Court NO. S-4420

NOTICE OF PROPOSED AVAILABILITY OF COMPETITIVE GRANT FUNDS

Under an Appropriation Bill passed by the U.S. House of Representatives, Legal Service Corporation (LSC) grants would only be made on an competitive basis for 1996. The Senate has not yet acted and, until final Congressional action late this Fall, the amount of funds available and the date of terms of their availability will not be known.

LCS is providing anticipatory notice of the possible availability of competitive grant funds to provide civil legal services to eligible clients during calendar year 1996. If competition goes forward, LSC expects that a Request for Proposal will be available on or about September 15, 1995. For information contact:

ADDRESS: Legal Services Corporation,
Office of Program Services/Competitive Grants
750 First Street, N.E., 11th Floor
Washington, D.C. 20002-4250
PHONE: (202) 336-8900
FAX; (202) 336-8959
INTERNET: URL: http://www.lsc.gov/
HANDSNET: HN3555
LSC BBS: (202) 336-8950

14 law firms honored for campaign leadership

United Way of Anchorage has honored 14 law firms for leadership roles in the 1994-95 United Way Campaign. The honor roll included: Atkinson, Conway & Gagnon; Bankston & McCollum, P.C.; Bogle & Gates; Eide & Miller; Foley & Foley; Hoge & Lekisch Hughes, Thorsness, Gantz Powell & Brundin; McNall & Associates; Partnow Sharrock & Tindall; Perkins Cole; Preston Gates & Ellis; Routh & Crabtree; Stone, Waller, Jenicek, Brown & Gibbs; Young, Sanders & Feldman

The Anchorage legal community has donated more than $200,000 to United Way campaigns since 1990. At least 19 attorneys serve on United Way boards and serve on United Way boards and several participate in the United way campaign cabinet and volunteer agency review process.

PROPOSED AMENDMENTS TO BAR RULE 12 RELATING TO THE APPOINTMENT, SELECTION, AND ASSIGNMENT OF AREA DIVISION MEMBERS

Publication approved by the Board on 8-25-95
Member comments requested.

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] *Court under the procedure set out in this rule*. One Area Division will be established in each area defined in Rule 9(d). 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] *four* year term, with each term to commence July 1 and expire on June 30th of the [THIRD] *fourth* 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.

By May 15 of each year, the Board will send the Court lists of proposed Area Division members meeting these qualifications together with their resumes in the following categories: I) members of the Bar with ten years or more of active practice; 2) members of the Bar with less than ten years of active practice; and, 3) non-attorney members. The Court will appoint the members of the Area Discipline Divisions from these lists.

• • •

(d) Failure to Perform.

The [PRESIDENT] Court has the power to remove an Area Division member for good cause. The [PRESIDENT] Court 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.

• • •

(e) Assignment of Hearing Committee Members.

The Director will select and assign members of an Area Division to a Hearing Committee of not less than two attorney members, one of whom will have 10 years or more of active practice and the other less than 10 years of active practice, and one public member. In addition, the Director will appoint an attorney member with 10 years or more of active practice as chair of the Hearing Committee.

• • •

(k) Procedure for Selection and Assignment of Area Division Members by the Director.

The Director will select and assign Area Division, Members as required by this rule from a roster of the members appointed by the Court. If a member is declines to serve an assignment, the Director shall select the next member in order and place the declining member in line for the next assignment. The Director may request that the Court delete a member from the roster if that member declines assignments on two consecutive occasions.

NEWS FROM THE BAR

At the Board of Governors meeting on August 24 &, 25, 1995, the Board of Governors took the following action:

• Held a planning session and set goals for the upcoming year;

• Adopted a stipulation for disbarment;

• Approved four reciprocity applicants for admission;

• Voted to publish an amendment to Bar Rule 5 to reflect the admissions requirement that an applicant has read the Rules of Professional Conduct;

• Approved a Rule 43 Waiver to allow Jody Davis to work at ALSC for up to two years;

• Reviewed the law clerk study rule and asked the director to write to the supreme court that they had no objections to the status quo;

• Approved a stipulation for public censure;

• Approved a stipulation for a six month suspension, with six months suspended, on the condition that if the respondent attorney engaged in any neglect of client interests, that the six month suspension would be imposed;

• Reviewed the minority applicant tutoring program and, due to lack of participation, voted to suspend the program, and write to the tutors who had volunteered, thanking them and asking if they would participate in the regular tutoring program;

• Heard a presentation by the Executive Director on the status of the data software conversion;

• Adopted standards for CLE programs;

• Suggested that section chairs and local bar presidents be invited back to future Board of Governors meetings;

• Accepted reciprocal discipline for Stephen Cramer, based on discipline imposed in Washington;

• Approved a stipulation for a private reprimand;

• Voted to send proposed amendments to Bar Rule 33.3 on the unauthorized practice of law to the supreme court, along with drafts and comments received;

• Approved the status change requests of Jayne Marsh Gilbert and James Morgan to transfer from inactive to active status;

• Asked that Bar Foundation president Mary Hughes be invited to the next Board meeting;

• Approved the minutes of the May Board of Governors meeting;

• Voted to publish Bar Rule 12, relating to the appointment of hearing panel members, in the Bar Rag.

• Voted to send Rules 40 (d) &, (e), relating to fee arbitrations, to the supreme court;

• Reviewed the ABA retirement plan and took no action;

• Reviewed a request for support to attend a conference and asked the Executive Director to write denying the request, that it was not in the budget;

• Reviewed the office policy regarding what could be included in Bar Association mailings at no charge and agreed to continue limiting inclusions to mailings from the court or its committees or task forces;

• Discussed the advisory vote from the annual business meeting regarding a reduction in bar dues for members who devote more than 400 hours annually to pro bono work, and sent this issue to the Pro Bono Service Committee;

• Voted to publish an amendment to Article III of the Bylaws relating to compliance with *Keller v. State Bar of California,* relating to objections to expenditures of bar dues;

• Met with John Hoffer, chair of the Tax Law Section, and clarified the board's policy on representing the view of the section or the bar, and directed that a letter be sent to all Section chairs;

• Directed that the malpractice insurance disclosure rule be on the October agenda.

Proposed new section 5 to article III of the bylaws of the Alaska Bar Association relating to compliance with

Keller v State Bar of California

Approved for Publication at August 24-24, 1995 Board Meeting

Section 5. Dues Expenditure Policy; Objection(s) to Expenditure(s).

(a) Board Policy Concerning Expenditure of Dues.

It is the general policy of the Board to restrict the disbursement of dues to expenditures necessarily or reasonably incurred for the purpose of regulating the legal profession in Alaska or improving the quality of legal services available to the people of Alaska. These expenditures are considered "chargeable" within the meaning of *Keller v. State Bar of California,* 496 U.S. 1, 110 L.Ed.2d 1, 110 S.Ct. 2228 (1990). To the extent that any member objects to the disbursement of dues for reason that the member believes the expenditure to be "nonchargeable", the member must file an objection as provided in subparagraphs (d) and (e).

However, the Board, upon a vote of three quarters of the members of the full Board, may approve the disbursement of dues for expenditures which are considered 'nonchargeable" within the meaning of *Keller v. State Bar of California.* If the Board disburses funds for "nonchargeable" expenditures, notice of the expenditure(s) shall be given in the official publication of the Bar and a member may request, in writing to the Executive Director, an appropriate dues refund within sixty (60) days of such notice. The dues refund, which shall be determined by the Board, shall be limited to that pro-rata amount of a member's dues reasonably related to any costs actually incurred with regard to the "nonchargeable" activity. To the extent that any member objects to the determination of the amount of the expenditure, the member must proceed under subparagraph (e).

(b) Publication of Annual Budget.

Following approval by the Board, the annual budget of the Bar shall be published in the official publication of the Bar, and shall otherwise be distributed to ensure notice to all dues-paying members. In addition, copies of the approved annual budget shall be available to members upon request.

(c) Information in Dues Notices.

Dues notices sent to members shall reference: (1) the publication of the annual budget of the Bar in the official publication of the Bar and advise members that they may obtain a copy of the budget upon request, and (2) that members may review the approved minutes of the Board at the Bar office and obtain a copy of the approved minutes upon request.

(d) Time for Filing Objection(s).

A member's objection to the expenditure of dues by the Board must be received by the Executive Director or postmarked within sixty (60) days of the publication of the Board action in the official publication of the Bar.

(e) Arbitration of Objection(s) to Expenditure(s).

Upon receipt of a timely objection to an expenditure, the President of the Board shall appoint a hearing master to consider the objection, utilizing the procedures provided in Bar Rule 7. All objections to expenditure(s) shall be consolidated in a single proceeding, where possible. The Bar shall have the burden of proving by a preponderance of the evidence that the expenditure(s) objected to are "chargeable."

In addition, the President shall direct the Executive Director to determine the amount of the expenditure(s) reasonably in dispute involving the objecting member(s) and shall order that amount to be held in an interest-bearing escrow account pending final determination by the Board, or if appealed, by the Alaska Supreme Court.

If the hearing master determines that an objection to an expenditure has been frivolously made, the hearing master may assess costs associated with the proceeding against the member(s) filing the frivolous objection(s).

NOTICE

The Bankruptcy Reform Act of 1994 (Pub. Law 103-394), mandates the increase in compensation for a chapter 7 trustee and requires the development of a method for raising the funds sufficient to cover the increase. The Committee on the Administration of the Bankruptcy System proposed and the Judicial Conference of the United States agreed to increase the fee payable at the commencement of a chapter 7 case from $160 to $175 to cover the compensation increase. In addition, a $15 fee will be payable to the Clerk at the time a case is converted from a chapter 12 or 13 case to a chapter 7 case.

The increases will take place on October 22, 1995, and will apply to chapter 7 cases filed on or after that date and to cases converted to chapter 7 on or after that date, regardless of when they were originally filed. Any questions can be directed to Wayne W. Wolfe, Clerk of Court, at United States Bankruptcy Court, District of Alaska, 605 West Fourth Avenue, Suite 138, Anchorage, AK 99501-2296.

HI-TECH IN THE LAW OFFICE

Are you ready for Windows 95?

By: Joseph L. Kashi, MS JD

Well, it's been about a month since Windows 95 shipped and we were treated to the phenomenal spectacle of people lining up at midnight to buy the first, not entirely debugged, version of a personal computer operating system. The software product launch of the century has been promoted more heavily than toothpaste and sliced bread, and probably sold more product on August 24, 1995 than any other consumer product, except maybe Big Macs.

Once the hype is over, though, the question remains: "Are you ready for Windows 95?"

Although the gist of this column may sound anti-Windows 95, I don't actually feel that way. Windows 95 in some ways is a significant improvement upon windows 3.1 but there are many hidden costs and potential problems of which you should be aware before installing Windows 95 on every computer in your office. Test this new operating system carefully on a single computer before making a premature, sweeping implementation across your entire office.

Many computer retailers and system integrators would have you believe that purchasing this product is no-brainer and that, of course, you should have it right away. There are some vested interests behind these predictions, though. Reading the computer reseller press, it's clear that computer resellers anticipate that Windows 95 will fuel the computer sales boom of the decade, leading to perhaps $10 billion in new hardware sales. System integrators look forward to the delicious and expensive complexity of integrating Windows 95 into a business office, as opposed to a consumer's home computer.

What are the likely costs of upgrading?

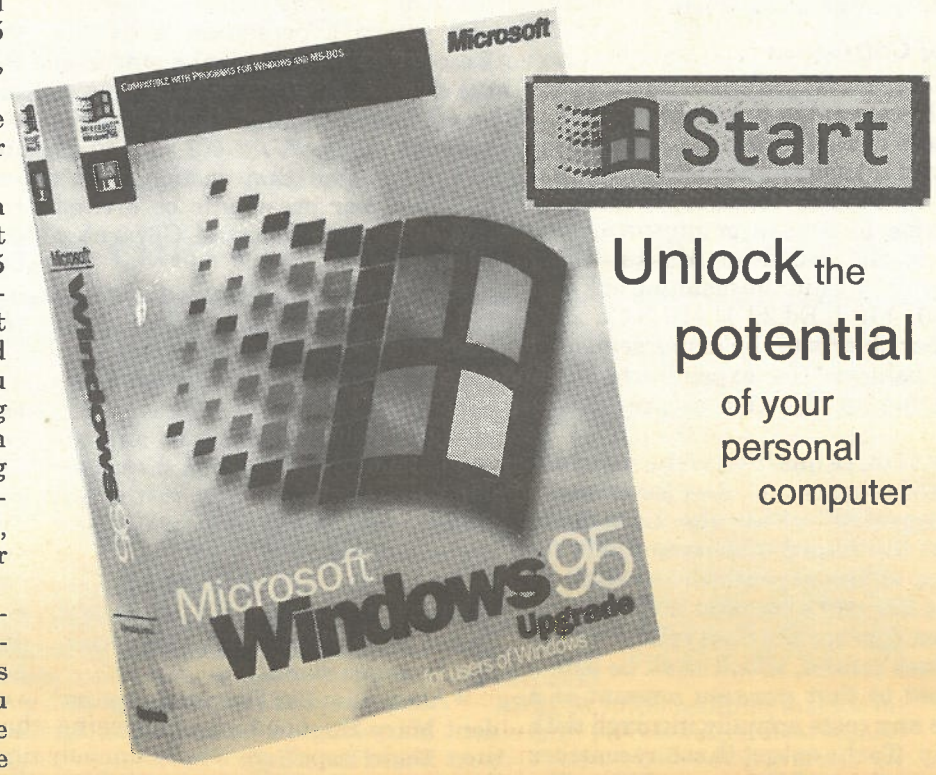
In the first instance, it should be clear that windows 95 is a very demanding operating system. Although the product physically can run with only 4 megabytes RAM on an old 386 SX-20 computer, you'll become caffeine addicted from all of the coffee breaks you take while waiting for that system to do anything.

Based on my experiences with both beta versions and the final release, as confirmed by widespread press reports, Windows 95 requires a minimum of 486-66 system with 12 megabytes RAM and at least 80 free megabytes of hard disk space in order to load the entire system and run it efficiently. Plan on 16 megabytes RAM for optimum performance. Owning a Pentium doesn't hurt, either.

Realistically, all 386 computers will be inadequate for Windows 95. Most of your older 486s with 150 to 250 megabyte hard disks, 8 megabytes of RAM and 486-33 or slower CPUs just won't run Windows 95 satisfactorily.

As a practical matter, you are better off replacing a 386 or slow 486 system with a 90 megahertz or faster Pentium and 16 megabytes RAM. The cost of partially upgrading an older system is so close to that of a new, faster computer that a major upgrade often doesn't make economic sense. This is particularly true where your system board uses the older 30 pin SIMM memory rather than the new 72 pin SIMM memory that's been widely used since mid-1994.

If you're simply low on RAM memory and your system board has enough empty memory slots, then you should be able to increase RAM for about $50 per megabyte. You'll find a useful speed improvement



moving from 8 megabytes RAM to 16 megabytes RAM in almost any 486 system. Upgrading your hard disk to a 540 MB system should cost about $250 or so for the hardware plus any third party installation fees. Remember to carefully back up your hard disk. After installing the new, large hard disk, restore your backup to the new drive and then run the upgrade version of Windows 95. If you need to do much more than these basic upgrades, it's more cost-effective to buy a new computer.

Thus, for our first upgrade cost, those of you unlucky enough to have less capable older systems should plan on buying a new mid-speed Pentium system with 16 megabytes RAM and a big, fast enhanced IDE hard disk. You'll need it to run this $90 shrink-wrapped program with dispatch.

There are some other costs. In the first instance, windows 95 won't work properly with existing Windows 3.1 anti-virus programs, disk maintenance programs or utilities like Norton Utilities. Plan on buying new programs specific to Windows 95. You will need to be particularly careful about any disk utilities, because older versions may corrupt the hard disk data. $150 to $200 should take care of your anti-virus, disk utility and general utility program updates.

One of the major advantages claimed for Windows 95 is the so-called "Plug and Play" automatic recognition of the hardware installed in your computer. If your new system already comes with Windows 95 preinstalled, then you'll probably not even care about hardware installation issues. However, if you are attempting to install Windows 95 on an older system, Plug and Play may not work if your system BIOS does not support these features or if your expansion cards are not Plug and Play compatible. At a minimum, you might need to obtain a BIOS upgrade, whose installation is probably beyond the ability of the casual user. You should check with your dealer or system manufacturer about your computer's Plug and Play capabilities.

The major advantage claimed for Windows 95 is that its 32 bit operating system runs programs faster and allows you to run several programs at once. Running several programs simultaneously is called multi-tasking. OS/2, a direct competitor to Windows 95 in the 32 bit operating system market, multi-tasks DOS and Windows programs quite efficiently in an 8 to 16 megabyte computer. Unfortunately, the Windows 95 memory management design compromise reduces its multi-tasking efficiency with existing programs.

Multi-tasking will be significantly more effective with Windows 95 if you use only 32 bit Windows 95 application programs. If you are already using MicroSoft Office, you will find some advantages in buying the Windows 95 version. By all reports, it has some nice new features and multi-tasks more effectively than the current Windows 3.1 version of Office. Plan on spending about $300 for the Windows 95 office upgrade when all components become available in a true Windows 95 version.

Suppose you are on a network?

This can be a problem. One of the major claims of Windows 95 is that it automatically detects the hardware in your computer system and sets it self up properly, and generally it does. Plug and play network installation works smoothly and well if you are using a few well-known brands of network cards. There are many other good, less expensive, commonly used network cards. Unfortunately, Windows 95 doesn't always recognize such network cards properly or set itself up correctly, in my experience. If that occurs, you'll have a bit of a mess on your hands.

At a minimum, you'll need to call a system integrator to help you straighten out this problem whose solution is not entirely obvious. More likely, you'll need to reinstall Windows 95. However, the Windows 95 upgrade installs on top of Windows 3.1 and DOS and you may have difficulty uninstalling Windows 95 and reverting to DOS/Windows 3.1 in the event of incompatibilities.

The Windows 95 interface is rather different than existing Windows 3.1. Some claim it is more intuitive, but that's a matter of taste. What's clear, however, is that you'll have to spend a fair bit of time and money retraining your staff to this new interface. Plan on a few hours of lost productivity, at a minimum, for each employee, and for whoever must teach the employee the new program.

Plan on another hour and a half or so to install each copy of Windows 95 that installs without problem. Plan on a lot more if something goes wrong. Larger network offices can install Windows 95 from the network, substantially reducing total installation and configuration time while promoting substantial conformity across the office. Network installation, though, should be done by an experienced person. Your third party costs will vary with the number of workstations involved, but it will be significant.

Backward Compatibility

Windows 95 is software compatible with most DOS and Windows 3.1 programs, although there are potential problems, at least initially. WordPerfect 6.x, and Novell's Perfect Office, used by a large percentage of law firms, have a problem when used with Windows 95 that can cause the system to crash, including a general protection fault when adding to the supplemental spelling dictionary. Be initially cautious about using long file names with existing 16 bit programs. There are reports that long file names may cause system crashes and data corruption.

Actually, Windows 95 no longer displays the dreaded GPF message. GPFs have been renamed out of existence to something less intimidating.

If your office uses WordPerfect for Windows, you have essentially two choices: Either switch to Microsoft Word or wait until a Windows 95 version of WordPerfect ships. The cost in either event will be significant. WordPerfect for Windows/Perfect Office is on MicroSoft's list of partially incompatible programs.

There may be other, more subtle application program problems. Many networked Windows 3.1 programs intended for Novell networks write directly to the Windows 3.1 network drivers. For that reason, some such programs may work only under true Windows 3.1 and not even with the highly compatible windows 3.1 code contained within OS/2 Warp. Potentially incompatible networked programs include some network backup programs and some imaging programs. At a minimum, you'll need to first test any networked Windows 3.1 programs on a single Windows 95 workstation to be sure of network compatibility. New network drivers from the application program vendor may help solve this problem.

Aesthetics

There is no question that Windows 95 looks a lot better than Windows 3.1. It is clearly a more visually

continued on page 19

Juris Prudence

Congress set to rewire communications landscape

After last session's unsuccessful attempt, it appears that Congressional legislation deregulating the nation's $1 trillion communications industry will land on the President's desk this year. The U.S. House and Senate each passed a landmark bill before the August recess to overhaul the 1934-vintage laws governing the telephone, cable and broadcasting industries. No small feat, particularly amidst the intense lobbying.

At this writing, House and Senate conferees are expected to reconcile differences in their respective bills and come up with a compromise package of reforms. At stake is the blueprint for the future of the communications industry; one in which many historical, command and control regulatory barriers to broadband competition will come tumbling down.

The challenge for Washington lawmakers is to craft a balanced deregulatory scheme that reconfigures the monopoly playing field for near-term competitive entry and long-term market discipline. No small order.

Advances in technology (such as digitization and broadband capacity) have been inevitably driving the provision of telecommunications services in a competitive direction for some time now. Declining costs have been an ongoing trend of the industry. Since the antitrust divestiture of AT&T in 1984, long distance telephone competition has proven to be a robust success. New and innovative services have appeared and price competition has been fierce. But this is only the tip of the telecom market iceberg that is coming to shore.

Daniel Patrick O'Tierney

Broader competition in the telecom industry is currently restricted by overlapping layers of federal, state and local statutes and regulations, as well as by judicial oversight in the wake of the AT&T breakup. Congressional legislation would break the logjam and eliminate numerous barriers that currently preclude local telephone companies, long distance carriers, and cable and broadcast TV companies from offering similar services and competing for one another's customers. Proponents anticipate an explosion of new investment, services and products in a modern land rush to compete.

Anticipation of the economic impact of Congressional deregulation is partly driving the multi-billion dollar wave of mergers, acquisitions and alliances rippling through the industry at large, most recently in the celebrated Disney purchase of the Capital Cities/ABC. AT&T previously purchased McCaw Cellular. In Alaska, AT&T's acquisition of Alascom received final regulatory approval last August to close that deal. Most of the regional Bell operating companies (Rbocs) have joint ventured with movie studios to develop interactive TV programming for transmission over phone wires, or wireless cable.

On the wireless front, personal communications systems (PCS) are touted as the next generation of wireless technology which will compete with digital cellular and coaxial cable for data transmission in local area networks, as well as voice communications. Eager bidders spent $7 billion in the first round of the Federal Communication Commission's auction of PCS spectrum. Successful bidder Sprint and its cable partners (TCI, Cox and Comcast) plan to offer a 'triple play' package of wired and wireless telephony services along with traditional cable TV across the country. Another nationwide PCS alliance consists of Baby Bells Nynex, Bell Atlantic, US West, and Pacific Telesis spin-off, Airtouch. GCl successfully bid for a PCS license in the Alaska market.

Under either the Senate bill (S 652) or the House bill (H 1555), the historical model of regulated monopoly will be replaced by an open market in which hitherto distinct services and isolated providers will converge. The Rbocs would be unharnessed to enter the $70 billion long distance market (and offer video services) upon some showing that their respective local monopoly networks have been opened up to competitive entry. Conversely, long distance carriers, as well as cable companies, would gain authority to offer telephone service in the $90 billion dollar local exchange. The rates of most cable companies would be deregulated.

Further, the anticipated compromise legislation would allow major broadcasting corporations to significantly increase their ownership concentration in the television market. Similarly, cross ownership restrictions on the number of news media outlets (newspaper, radio and TV) controlled by a single company in one market would be relaxed.

Of course, there are differing opinions about the full impact of such changes. Compromise legislation could get snarled in partisan bickering over budget issues. Long distance carriers, the perceived losers under the current bills, could snafu the process. The Democratic President has hinted at a possible veto.

But changes in outdated communications law are inevitable and necessary. As a result, consumers can expect an increase in options to meet their needs for transmitting and receiving any combination of innovative voice, video and data services. Prices for some formerly regulated services may increase while others will decrease, but overall there should be a net reduction in cost to users in a dynamic market.

Providers of telecom services are gearing up to offer customers one-stop shopping. The long distance market will probably be the first to experience an increase of competitive entrants. Meanwhile, the authority of state regulatory bodies to govern local rates would diminish as a result of federal legislative preemption.

The challenge for Washington lawmakers is to craft a balanced deregulatory scheme that reconfigures the monopoly playing field for near-term competitive entry and long-term market discipline.

The communications marketplace is expanding to global dimensions, even without the Internet phenomenon. Just as U.S. companies seek alliances to build out a national network to offer a medley of services, the race is on to forge a global footprint. British Telecom (BT) and AT&T presently lead the charge. BT already owns 20 percent of MCI; France Telecom and Deutsche Telkom recently agreed to purchase 20 percent of Sprint.

1998 is the deadline set by the European Union for opening up its telecom market to competitive entry. American cable and telecom companies are already investing and jointly operating in places as diverse as England, Singapore, Mexico, Chile and Eastern Europe. Information technology and telecommunications are explosive areas of entrepreneurial activity and economic growth. Indeed, telecommunications, like politics, is local - as in a wired, global village.

Reprinted with permission of Alaska Business Monthly .

A plain-English technology guide for lawyers and other legal professionals

To assist lawyers and other legal professionals with the rapidly changing area of technology, a new resource guide — *Becoming Computer-Literate* — has been prepared by the American Bar Association Law Practice Management Section (LPMS) Written in non-techie language, the book includes a short glossary that explains and defines computer terminology in a clear, straightforward manner.

Becoming Computer-Literate: A Plain-English Guide for Lawyers and Other Legal Professionals, by Carol Woodbury, provides guidance on the following topics:

- 10 Reasons to Become Computer-Literate
- Rules of the Computer Marketplace
- Parts of a Desktop Computer
- Getting the Most From Your PC Dollar
- Operating Systems
- What's in a Computer File?
- Publications to Check Out Before You Buy
- Automating a Substantive Area of Your Practice
- CD-ROMs
- Low-End Networking
- Online Services
- Questions Everyone Asks at Some Point
- Getting Used to Handling Electronic Information

1995, 138 pages, PC: 5110342; $39.95 (regular); $32.95 (LPM member)

To order, write to the American Bar Association, Publication Orders, P.O. Box 10892, Chicago, Ill. 60610-0892; call 312/988-5522; or email orders to: abasvcctr@attmail.com

In addition, the LPM Section has available the following books on technology: *WordPerfect in One Hour for Lawyers; WordPerfect Shortcuts for Lawyers; The Computer Glossary; Telephone and Peripheral Systems for Lawyers; Fast Forms with Macros; and The Lawyer's Guide to the Internet.*

The Law Practice Management Section is one of the ABA's largest sections, with approximately 20,000 members nationwide. The Section provides education, publications and leadership opportunities in law office and personal management.

As the largest publisher within the ABA. LPMS has over 80 titles in print. The Section also publishes several interest group newsletters, sponsors over 20 education programs annually, and publishes a magazine eight times a year. In addition, the LPM Section sponsors the annual TECHSHOW™.

For membership information call 312/988-5619, or check out the "Law Practice Management Publications Catalog" on the ABA's Web site: http://www.abanet.org/.

American lawyers say computers are increasingly becoming their expert partners

A recent survey on automation in smaller law firms is now available from the American Bar Association's Legal Technology Resource Center.

In the survey of nearly 2,000 smaller firms and 2,000 individual lawyers, 87 percent reported that they now use a personal computer at work and that they are poised to broaden their communications capabilities through electronic mail, online services, CD-ROM technology and computerized legal research.

According to the survey, computer usage has increased four percent since 1994 and nearly 30 percent since results were first tabulated in 1990. In 1995, eighty-seven percent reported using a PC (or terminal), compared to eighty-four percent in 1994 and fifty-nine percent in 1990.

The 1995 *Survey of Automation in Smaller Law Firms* was conducted in January and February 1995 by the Legal Technology Resource Center, with the support of MCI Corporation, Microsoft Corporation, Shepard's/McGraw-Hill, Thomson Professional Publishing, West Publishing and Xerox Corporation.

To obtain a copy of the "Survey of Automation in Smaller Law Firms," call 312/988-5522 or email orders to: abasvcctr@attmail.com. Cost for the survey is $125.00 for ABA members and $250.00 for non-members.

Editor's Note: Complete results of the survey are available to the media free of charge. For interim reports or to request a full survey report, contact Christine Ward at 312/988-6148 or by email cvward@attmail.com.

Solid Foundations

IOLTA revenue and expense comparison

During the latter part of August, as a result of accumulating financial information for the Alaska Bar Foundation's 1994 Annual Report, a financial comparison of 1993, 1994 and August 1995 IOLTA revenues and expenses seemed appropriate. In September, as the Congressional budget axe lowers itself on Legal Services Corporation, the comparison becomes imperative.

In 1993, Alaska IOLTA Program interest revenues fell dramatically to approximately $164,000. Administrative expenses during 1993 were $32,000. The result was reduced IOLTA funding of Alaska programs. As is reported in the 1994 Annual

Mary Hughes

Report, Alaska IOLTA Program interest revenues increased to almost $204,000 in 1994. The increase was attributable to increased IOLTA membership and higher interest rates. Administrative expenses in 1994 were $30,000 although $4,000 was saved on the publication and distribution of the annual report and bank fees were $2,000 lower principally as a result of the National Bank of Alaska waiving its IOLTA bank service fee in mid-1994. However, increases in summer staff and Alaska Bar Association accounting services costs resulted in total expenses similar to those accrued in 1993.

However, continued fiscal management is beginning to pay off. As of August 1995, bank fees are $6, 474--annualized that's less than $10,000/year! An overwhelming "thank you" to National Bank of Alaska, Bank of America, Denali State Bank and First Bank for waiving the IOLTA bank service fees. And the summer staff expenses totaled less than $1,000! Coupled with annualized revenues of almost $260,000, the Trustees were able to increase the amount of IOLTA grants in 1995. The Alaska Pro Bono Program, Anchorage Youth Court, Catholic Social Services, and Casa's for Children were recipients.

With interest revenues recovering and expenses at an all-time low, the Trustees anticipate increased dollars for IOLTA grant recipients in 1996. The continuing support of the members of the Alaska Bar Association is appreciated by all Alaskans who utilize the programs supported by IOLTA funds. Given the precarious position nationally of funding for legal services, the Trustees are very thankful for the dedication of the members of the Alaska Bar Association and are optimistic that IOLTA funding will continue to fill an ever growing need.

Navigating the newly charted waters of *CHI* and AS 21.89.100

continued from page 3

continued to jointly defend ORS in the underlying suit.

The Right to Independent Counsel

In addressing whether *CHI* had a right to independent counsel, the supreme court first noted that when an insurer agrees to defend, but reserves its rights, three potential conflicts of interest arise between the insurer and the insured:

> First, if the insurer knows that it can later assert noncoverage, or it thinks that the loss which it is defending will not be covered under the policy, it may only go through the motion of defending: "It may offer only a **token defense**... [I]t may not be motivated to achieve the lowest possible settlement or in other ways treat the interests of the insured as its own." *Id.* at 289. **Second**, if there are several theories of recovery, at least one of which is not covered under the policy, the insurer might conduct a defense in such a manner as to make the likelihood of a plaintiff's verdict greater under the **uninsured theory**. *Id.* **Third**, the insurer might gain access to **confidential or privileged information** in the process of the defense which it might later use to its advantage in litigation concerning coverage. *Id.* at 291.
>
> *Id.* at 1116. (Emphasis added.)

However, the supreme court made clear that the insurer's and insured's conflicting interests do not necessarily mean that appointed counsel and the insured have conflicting interests. The court held that conflicts of interest could be minimized or even avoided by treating the insured as the client:

> If appointed counsel makes it clear at the outset of his engagement that he is going to be involved only in the defense of the liability claim, not in coverage issues, and that his client is the insured, not the insurer, conflicts should be rare.

Id. Thus, an attorney appointed by the insurer to defend an insured can avoid a conflict of interest by treating the insured as the attorney's client.

However, the supreme court felt that the *potential* conflicts of interest between the insurer and the insured might influence the appointed counsel's judgment in three ways: the insurer might offer a **token defense,** the insurer might **steer** the litigation towards an uninsured theory of recovery, and/or the insurer might become **privy to confidential** or **privileged information** which may later be used to undermine a coverage defense.

In light of those potential conflicts, the *CHI* court held that the insured has an absolute right to select independent counsel where the insurer reserves its rights to later raise policy or coverage defenses. *Id.* at 1118, 1119.

The Two-Counsel Scheme did not Satisfy CHI's Right to Independent Counsel

The supreme court in *CHI* further made clear that the two counsel scheme which had been in effect, whereby HTGP&B and von Gemmingen jointly defended CHI, did not satisfy CHI's right to independent counsel because the appointed counsel would still have access to information about the insured which could be used against the insured in the subsequent coverage litigation, and the appointed counsel could still steer the results to judgment under an uninsured theory of recovery or, at the very least, achieve through witness selection, interrogation, and discovery, a *Id,* at 1119.

The *CHI* court acknowledged that the insured could re-litigate the coverage issue in subsequent proceedings, but felt that testifying under oath in the main proceeding could freeze in the witnesses' minds one version of the facts, leaving very little latitude in the subsequent proceedings to mold the evidence bearing upon coverage. *Id.* at 1120. Thus, the two-counsel scheme was rejected.

The Insured Has a Unilateral Right to Select Counsel

Most notably, the supreme court clarified that the insured has a *unilateral* right to select independent counsel, without any approval from the insurer - despite the insurer's express right of approval under the insurance contract. *Id.* at 1120. However, the *CHI* court cautioned that the insured's unilateral right to select independent counsel was limited by the insured's implied covenant of good faith and fair dealing:

> In our view, the covenant of good faith and fair dealing in this context requires that the insured select an attorney who is, by experience and training, reasonably thought to be competent to conduct the defense of the insured. Such a result, in our view, fairly balances the interest of the insured — being defended by competent counsel of undivided loyalty — with the interests of the insurer — having the defense of the insured conducted by competent counsel. The insurer is only required to pay the reasonable cost of the defense.

Id. at 1121. This language is significant because it recognizes that an insured has an equal duty of good faith and fair dealing. In his law review article, **"One Client, One Defense: Revisiting CHI with the Alaska Rules of Professional Conduct"**, *Alaska Law Review,* June 1994, Earl Sutherland argues that the supreme court's concerns about the conflict of interest arising from the insurer's reservation of rights are unfounded because of two levels of protection of the insured.

Mr. Sutherland noted that an attorney has an ethical obligation of undivided loyalty to the insured he is assigned to represent and that misconduct by the appointed counsel could seriously prejudice the insurer's rights. If an attorney does not give his client undivided loyalty, it could result in a waiver or estoppel of the insurer's otherwise valid policy or coverage defenses, or even result in bad faith or punitive damages against the insurer. *Alaska Law Review*, June 1994 at 1125, 1126.

Thus, Sutherland avers that the ethical and bad faith liability limitations provided sufficient protection against the potential "token defense", "steerage", and "leakage" conflicts identified in *CHI*. Arguably, a third level of protection is available to the insured in the form of a negligence action against the assigned counsel if that counsel's negligence compromises the insured's insurance rights (negligent interference with prospective economic advantage,)

The Legislature's response to CHI

The Alaska Legislature responded to the *CHI* opinion with new legislation which, for the most part, clarifies the rights and obligations of the insurer in the reservation of rights context. AS 21.89.100(a).

AS 21.89.100(a) reaffirms that the insurer must provide independent counsel to the insured where a conflict of interest arises, unless the insured waives the right to independent counsel in writing. AS 21.89.100(a), Further, subsection (a) allows an insurance policy to provide a method of selecting independent counsel if the provision complies with AS 21.89.100. *Id.*

Subsection (b) arguably limits the scope of what constitutes a conflict of interest. Subsection (b) provides that for purposes of subsection (a), a claim of punitive damages; a claim of damages in excess of the policy limits: and claims or facts for which the insured denies coverage do not constitute a conflict of interest. AS 21.89.100(b).

However, subsection (c) reaffirms that the insurer must nevertheless provide independent counsel to the insurer as provided under subsection (a) "if the insurer reserves the insurer's rights on an issue for which coverage is denied." AS 21.89.100(c). Thus, arguably the subsections of (a) and (c) conflict with subsection (b). AS 21.89.100 has only been effective since July 1, 1995. Therefore the courts have yet to construe and harmonize those first three subsections.

Subsection (d) is more straightforward and defines a minimum level of "competence for counsel selected by an insured, as well as the attorney-fee rates that the insurer is obligated to pay. AS 21.89.100(d) provides as follows:

> If the insured selects independent counsel at the insurer's expense, the insurer may require that the independent counsel have at least four **years of experience** in civil litigation, including defense experience **in the general subject area** at issue in the civil action, and malpractice insurance. Unless otherwise provided in the insurance policy, the obligation of the insurer to pay **the fee charged** by the independent counsel **is limited to the rate** that is actually paid by the insurer to an attorney in the ordinary course of business in defense of a **similar civil action** in which the claim arose or is being defended. A dispute between the insurer and the insured regarding attorney's fees that is not resolved by the insurance policy or this section **shall be resolved by arbitration** under AS 09.43.
>
> AS 21.89.100(d) (Emphasis added).

Subsection (e) clarifies the amount of information that the insurer is entitled to obtain from independent counsel selected by the insured. AS 21.89.100(e) entitles the insurer to obtain all information which is relevant to the civil action, except for privileged information.

> If the insured selects independent counsel at the insurer's expense, the independent counsel and the insured shall consult with the insurer on all matters relating to the civil action and shall disclose to the insurer in a timely manner **all information relevant to the civil action,** except information that is privileged and relevant to disputed coverage. A claim of privilege is subject to review in the appropriate court. Information disclosed by the independent counsel or the insured does not waive another party's right to assert privilege.

AS 21.89.100(e) (Emphasis added).

Subsection (f) spells out the language of informed consent that the insurer must obtain from the insured to effect a waiver of the insured's right to select independent counsel. Subsection (f) provides a written statement which the insured must sign indicating 1) that the insured has been fully informed of his right to select independent counsel at the expense of the insurer; 2) that the insured acknowledges the conflicts of interest that may arise between an insurer and insured, and 3) that the insured authorizes the insurer to select a defense counsel to defend the insured in the lawsuit. AS 21.89.100(f). Subsection (f) provides express language which should be referenced and used whenever obtaining a waiver from the insured.

Finally, subsection (g) preserves the right of the insurer to engage its own counsel to participate in all aspects of the civil action against the insured. Subsection (g) further requires that counsel for the insurer and the insured fully exchange information consistent with the ethical and legal obligations to the insured and the insured's duty to cooperate under the terms of the insurance policy. AS 21.89.100(g).

Conclusion

In enacting AS 21.89.100, the legislature attempted to clarify the insurer's rights and obligations when reserving rights and to assist counsel in navigating the newly charted waters created by the *CHI* decision. However, there appear to be some ambiguities in the new legislation.

In particular, subsection (b) explicitly provides that no conflict of interest exists where there are claims or facts for which the insurer denies coverage. In contradistinction, subsection (c) requires that the insurer provide independent counsel to the insured if the insurer reserves rights on an issue for which coverage is denied, not withstanding subsection (b). This issue may be the grist for future disputes and awaits judicial guidance .

AS 21.89.100 should be carefully analyzed by all counsel involved in a reservation of rights context - just as carefully as the *CHI* opinion. For the most part, AS 21.89.100 clarifies the insurer's rights and obligations and should assist counsel in navigating through reservations of rights situations.

Tales from the Interior

Mountain Moosing (& dogged to the end)

William Satterberg

Hunting season generally finds me trying to locate a new part of the State in which to hunt. Although there are always the old standbys, like the great Chena Hot Springs "take a number" road hunt, one of the delights about hunting in Alaska still is the ability to go out into a remote part of the world, where there are only a few crazed hunters.

Last year, I decided to go hunting with my friend and accountant, Rockne Wilson, who for several years had extolled to me the virtues of "mountain hunting."

Figuring that Rockne being an accountant was like myself as a lawyer, in terrible shape, and boring to boot, I quickly accepted Rockne's offer.

As matters turned out, Rockne was an infantry officer in Vietnam, who currently enjoys three days a week running and lifting ponderous weights at the local athletic club. When we got to our hunting destination, he announced to me, innocently enough, "Would you like to take a short walk?" He then pointed to a rocky pinnacle located up what appeared to be a short distance on the side of a mountain. I forgot the general rule of mountain hiking which is that the distance to the obj ective increases logarithmically in inverse proportion to your physical conditioning. In my case, what appeared to be a quarter of a mile walk was, in reality, a 50-mile marathon.

When we finally reached our viewpoint, Rockne asked how I enjoyed the view. I told him that the swirling stars were beautiful. The only problem was that it was the middle of the day, and Rockne apparently wasn't seeing stars like me.

We had brought an all terrain vehicle, affectionately known as an "Argo" with us. Rockne swore by this particular machine. An 8-wheel drive contraption, the Argo is reputed to be able to cross swamps, lakes, rivers, and mountain ranges in a single bound. It is driven by a two cylinder Kohler engine (obviously no relationship to the other Fairbanks accountant) and is configured in such a way that when you break a shear pin, you only need to unload the entire rear carrying tub in order to replace the part.

Rockne and I scoped out a particularly nice region, consisting of a very remote valley, for signs of our elusive quarry, the bull mountain moose. Nothing showed. Ultimately, Rockne announced that he was going to take a short walk to get a better look at the area and promptly disappeared through the trees.

Rockne reappeared in 2 hours, announcing that he had spied a moose hiding out in a thicket of spruce.

"Why don't we go over there and take a look at him?," he asked.

"Why don't we stay here and enjoy the hunting trip, instead?," I responded.

Rockne promised, "If we go, I'll let you ride in the Argo."

Perhaps it was the high altitude because that seemed to be acceptable.

After approximately one-half hour, we located a spot where Rockne said we should be able to see our moose. "How far is it from here?," I asked. "About one-half mile," Rockne responded.

I was later to learn that Rockne's concept of distance is always "one-half mile." In point of fact, that one-half mile will never be shorter than one-half mile, but can sometimes stretch into double digit mile figures.

Perhaps the one-half mile distance wouldn't have been that bad, except it was one-half mile straight down a hillside, more appropriately be described as a cliff. As an incentive to the descent, Rockne promised me that if we shot the moose, he would walk back up and come down with the Argo to pick me up. In short, I wouldn't have to walk back. That seemed reasonable. I forgot that he expected me to butcher the moose single-handed.

As we approached our quarry, we began to become more stealthy. The tumbles in the tundra, broken sticks, and swear words remarkably ceased.

Eventually, we arrived at a point where the moose actually began to look like a moose. Previously, it had been a small dark speck on a hillside similar to buildings viewed from 30,000 feet in a jet aircraft.

Rockne proudly carried a forked stick which he had cut earlier in the day, with two positions for shooting. The lowest position he termed his "sitting position" and the upper position was his standing position. He announced that the stick was his "windage stick."

Throughout this approach, the moose remained in its thicket of trees, obviously smitten by the beauty of his new girl friend, who slept blissfully nearby.

We were now faced with another dilemma: Traditionally, a spooked moose will run uphill, and we set up our shots in the uphill direction. Someone still had to cause the moose to poke its head out into the open without running off in a panic, adrenalin all a-flow.

I began to break sticks to attract the moose's attention, without making him think that humans were in the area. Broken sticks would sound much more like another moose coming to party, as opposed to someone hollering like a madman.

The action had its predicted effect. The moose poked its upper head and neck out from the thicket, peering at us much the same way as does my mongrel dog when I come home at night. This was a cagey moose, alright. He wisely kept the bulk of his body hidden well behind the trees. He had a nice set of antlers. I mused to myself just how pretty they would look mounted on my living room wall. It was time to do battle.

Rockne turned to me and whispered, "Take the shot."

I responded, "No, Rockne, you do it."

"No, you do it," he insisted.

This "you do it, no you do it," exchange lasted for over one minute.

Meanwhile, the moose continued to peer at us, undoubtedly wondering just what the heck all the arguing was about. Because our moose had his girlfriend hanging around, it was unlikely that he would take off in the very near future, especially if he thought that we were competing paramours, which is probably what we smelled like by that time of day.

In point of fact, both Rockne and I had previously realized that whoever took the first shot most likely would not hit the moose because it was still hiding in the trees. Instead, the first shot would flush him from the trees. The person who had the opportunity to take the second shot would thereby claim the honors.

Finally acknowledging that Rockne had actually located the moose, I reasoned as a gentleman hunter that it probably should really be his opportunity to take the second, telling shot. I dialed my scope up to the highest power. The moose grew from what appeared to be an ant into something the size of a pubescent prairie dog. I was Rambo. I allowed for windage, elevation, and my predictable trigger jerk. Eventually, after calculating where the round most likely would go, I closed my eyes as usual and yanked the trigger. The gun fired, surprising all of us.

Almost every hunter recognizes that, no matter how large the weapon, there is a magical quality about shooting when one is targeting a large game animal. Both the recoil and the noise simply cease to exist. True to form, in this particular case, I neither felt the recoil, nor heard the gun.

What I did see was the moose's right antler snap off and tumble end over end through the trees. At the same time, the moose, sans one antler, back flipped into the thicket. It became quite quiet.

I remarked to Rockne that I had once learned from a seasoned hunter that when one hits the antler on a moose, the moose generally gets knocked out for a period of time and then comes to with Excedrin Headache Number 21. Since Rockne had the second shot, I suggested that he get with the program.

It was still some distance down the hill to the thicket. It seemed only logical that Rockne should cover the remaining distance.

After a second or two of thought, Rockne announced, "I'll tell you what. I'll hightail it in there and blast him. You stay here and cover me. If he runs out of the thicket, shoot over my head and get him."

With that, Rockne bounded off through the thick tundra down the hill, crossed a little creek, and disappeared into the trees about the same time that I began to hear what was unmistakably a bull moose in the thicket calling for a fight. This caused me a certain degree of apprehension recognizing that Rockne was in the same place as this one-antlered moose who obviously was in a terrible mood, had a headache, and still packed a very mean left hook. I was relieved when, in a matter of seconds, I heard a rifle shot. Rockne yelled that he had shot the moose. A minute later, I heard another rifle shot, whereupon Rockne yelled that he had shot the moose again.

As it later turned out, Rockne had shot the moose from 12 feet away. When Rockne had arrived, the moose was standing on wobbly legs, shaking its head, and apparently wondering just who he was.

True to his promise, Rockne proceeded to climb the hill in order to retrieve the Argo, leaving me to wrestle with the huge animal in an attempt to gut it prior to Rockne' s arrival.

Ordinarily, one of the first things which a hunter does after shooting a moose is to roll it onto its back. The horns are designed to work very well as a prop, creating a three-point affair, with a triangle formed between the two horns and the rump. Laying on its back in that manner, the animal is then easily cut open and skinned.

In this particular case, unfortunately, my friend did not have one of his antlers attached. He was decidedly lopsided. Despite this, I initially was able to turn his upper half onto his back. The lower half still remained twisted to the side. Little did I realize the tremendous torque which a 1,500-pound moose can exert when it is missing one antler. At just about the point when the moose was ready to be opened up, he kicked over onto his other side. In the process, his rear leg caught me flat on the behind, throwing me into the tundra. Try as I might, I never was able to right Bullwinkle again. I began skinning him where he lay on his side, waiting for Rockne's return.

Eventually, Rockne arrived with the Argo utilizing a trail which will probably never be duplicated. We diligently worked for four and one-half hours, skinning and gutting the moose, loading it into the game tub of the rig. By the time we left the site of the kill, it was 8:30 p.m. Darkness was rapidly descending into the valley, and it was cold and windy. The end was in sight —almost.

As we drove up the hill, Rockne casually remarked, "I just hope we don't break a shear pin."

Now, there is a fundamental rule about luck. One should never test one's luck, and don't ever mention your worst possible fear. Another thing people do not understand is that equipment truly does have a sense of hearing.

Before I could shut Rockne up, it became obvious that the Argo overheard his comment. We promptly ground to a halt on the side of the hill, in the darkness. The rig was overgrossed, being full of hunters, equipment, and with several hundred pounds of dressed-out moose. A shear pin had broken. The entire Argo would have to be emptied.

In addition to the darkness, we were now also faced with frigid, 30-degree temperatures on the side of a mountain, a wind of 20 miles per hour, and the foresight not to have brought any survival equipment such as sleeping bags, or even a good set of matches. (The matches we did have had been used up lighting cigars while celebrating the kill.)

History has taught us that this type of circumstance generally creates the incentive to work ambitiously, which is what we did. In less than 20 minutes, the shear pin was changed, and the Argo was reloaded. We then gingerly picked our way out of the ravine onto the top of the mountain, where the wind velocity was even higher.

We arrived at our main campsite at approximately 11:00 p.m. Following a rapid breakdown of the camp, we motored back to the highway where we loaded our equipment and wasted no time in returning to Fairbanks.

Fatigued and wounded beyond repair, kicked soundly in the butt by a dead moose, I staggered into my house at 2:30 in the morning, relieved to be home at last. I thought my troubles were over at that point, and was looking forward to taking a nice hot bath and falling deep into sleep.

That's when one of my dogs smelled the moose on me, and tried to bite me on the leg—the same dog that always lets everyone else into the house unannounced.

Bar People

Lauri Adams, formerly with the A.G.'s office, is now with the Office of the Solicitor, Dept. of the Interior, in Anchorage...**Mark Andrews**, formerly with the Fairbanks North Star Borough is now with the Legal Department of the Tanana Chiefs Conference...**James Barkeley** is now an assistant U.S. Attorney in Anchorage...**James Blair** has relocated to Parachute, CO...**Arona Blachman** has relocated from Anchorage to Ft. Lauderdale, FL.

Aleen Smith is now associated with DeLisio, Moran, et.al...**Karin Bagn** has relocated from Anchorage to Nederland, CO...The Law Offices of **Marcus R. Clapp** in Fairbanks has opened an Anchorage office in partnership with **Matthew K. Peterson** and **Craig F. Stowers**. The name of the firm is Clapp, Peterson and Stowers. Peterson was a partner at Hughes, Thorsness, et.al. and Stowers was a partner at Atkinson, Conway & Gagnon...**Sherry Clark** is now a magistrate in Kotzebue...**Delaney, Wiles, Hayes, Reitman & Brubaker** has changed its name to Delaney, Wiles, Hayes, Gerety & Ellis...**Jay Durych**, formerly with Koval & Featherly, is now with the Law Office of Dan Coffey...**John Eberhart** has relocated from Sydney, Australia to Fairbanks.

Rhonda Fehlen is now a research & writing specialist with the Office of the Federal Public Defender...**Victor Carlson** is now an assistant public defender in Bethel...**Brett Gibson** has joined the law office of Wm. T. Ford. ...**Ken Gutsch**, formerly with Hughes Thorsness, et.al., is now with the firm of Richmond & Quinn...**J. Michael Gray**, is now with the D.A.'s office in Kodiak...**Darrel Garner**, is now with the Office of Public Advocacy in Anchorage.

Sharon Gleason, formerly with Rice, Volland, Gleason and Taylor, has opened the Law Office of Sharon L. Gleason...**Dan Hensley**, has become a member of the firm of Rice, Volland & Taylor...**Pamela Hartnell**, is no longer with the A.G.'s office in Fairbanks...**Sheri Hazeltine**, has left the Tanana Chiefs Conference and has relocated to Juneau...**Richard Johannsen**, writes that he has a two year assignment in Guyana, South America, where he will be a consular officer for the U.S. Dept. of State at the American Embassy in Georgetown...**Paul Lisankie**, formerly with the AK Dept. of Labor, is now associated with the Law Office of Trena Heikes...**Diane O'Gorman**, has relocated to Eden, NY...**Rebecca Pauli**, formerly with the Anchorage Municipal Attorney's Office, is now with Kemppel, Huffman & Ginder.

Raymond Plummer, formerly with Delaney, Wiles, et.al., has opened his own law practice in Anchorage...**Kenneth Robertson & David Edgren**, have formed the firm of Robertson & Edgren...**Roger Rom**, has transferred from the D.A.'s office in Kodiak to the Anchorage office...**Retta Randall**, formerly with the Federal Defender's office, is now with the U.S. Attorney's office in Anchorage...**Marcia Howell Rom**, formerly with the Kodiak ALSC office, is now with the ALSC office in Anchorage.

Gail Schubert and Glen Price are now with Foster Pepper & Shefelman, which has opened an Anchorage office. The firm of Rubini & Reeves has become Of Counsel to the Foster Pepper & Shefelman...The partnership of Stump & Stump dissolved. **W. Clark Stump** will continue practicing as a sole proprietor using the law firm name of Stump & Stump and **Deborah Parsons** will continue as an employee of that firm. **C. Keith Stump** will continue practicing separately as a sole proprietor...**Vivian Senungetuk**, has relocated to Fayetteville, NY...**Jim Douglas, Jeffrey Sauer and Jeffery Troutt** are now with Baxter, Bruce, Brand & Douglas in Juneau...**Nan Thompson**, is now an APUC commissioner.

Patricia Vecera, is now with Gruenstein, Hickey & Stewart...**Teresa Stankis Williams**, formerly Borough Attorney in Ketchikan, is now with the City of Glenwood Springs, CO...**David Dierdorff**, has retired from his position as Revisor of Statutes with the Legislative Affairs Agency, and has relocated to Hillsboro, OR...**Lanning Trueb**, formerly with LeGros, Buchanan & Paul, is now a partner with LeDoux & LeDoux...**James Nordale**, formerly of Soldotna, writes that he is permanently (?) leaving Alaska and does not expect to be engaged in the practice of law anymore. He and his wife are moving to the Seattle area in the hope that the climate will be clement enough so that the Sam McGee remedy for chill will not be required...**John McConnaughy**, has moved back to Anchorage from Bethel.

The law firm of Hagans, Moran, Ahearn & Webb has been dissolved. **Liam Moran** of the firm, and **Jim Sarafin,** formerly with Wohlforth, Argetsinger, et.al., have formed the firm of Moran & Sarafin...**Teresa Hillhouse**, is with the Municipality of Anchorage's Dept. of Law...**Brian Easton**, has left private practice and has rejoined the P.D. Agency in Kenai...**Dan Branch**, has moved from Ketchikan to Juneau to continue working for the A.G.'s Human Services Section...**Scott Brandt-Erichsen**, has left the Anchorage Municipal Attorney's office and will be the Borough Attorney for the Ketchikan Gateway Borough... **Dorothy Awes Haaland**, ('46) is now in Bothell, WA...**Jeffrey Gould**, formerly with the Law Office of Wm. Azar, is now with Guess & Rudd...**Francine Calhoon**, has relocated from Anchorage to Santa Rosa, CA.

Beginning October 20, 1995, **Michael Stark** will be taking an eight month sabbatical from the Attorney General's Office in Juneau, where he has worked for more than 21 years. Michael, who has served as lead counsel to the Alaska Department of Corrections for the last 15 1/2 years, is looking forward to spending more time with his family as well as getting some house projects done.

Lynda A. Limon, formerly with Mendel and Huntington, has opened her own office at 628 K Street, 279-2889.

William M. Walker and Donna P. Walker have formed Walker & Walker, P.C. in Anchorage, focusing on municipal law...**Tim Middleton** is closing his law practice and is now an administrative hearing officer for the Municipality of Anchorage.

Robin Jager Gabbert, formerly an international tax advisor with Arthur Andersen & Co. in Amsterdam, has accepted a position with the firm of Shutts & Bowen, a Miami based law firm with offices in Amsterdam and London. The Amsterdam office specialized in the areas of international commercial, corporate, and tax law.

Vini E. Samuel was recently elected as the vice president of the Law Student Division of the American Bar Association at its national convention in Chicago. Alaska will now have two people holding national office with the ABA: Donna Willard with the Board of Governors and Vini Samuel with the "Baby Bar." Ms. Samuel will be a second year law student at Seattle University this fall. She is from Juneau. Her term as vice president will begin in 1996.

Tim Jannott, associate with Stepovich, Kennelly & Stepovich, Is a volunteer on the Anchorage historic mural which is being painted on the Simpson Building behind city hall. During his free time, Tim is assisting the artist, Bob Patterson, in painting the history of Anchorage on the 4,800 square foot wall.

Gov. Tony Knowles appointed **Suzanne Lombardi,** of Anchorage, an attorney with Faulkner, Banfield, Doogan & Holmes, to the Alaska State Medical Board in August. Ms. Lombardi previously worked as an assistant district attorney in the domestic violence and sexual assault unit. She is vice-chair of Standing Together Against Rape and serves on the executive committee of the Alaska Native Justice Center.

Juneau attorney named life member of National Uniform Law Conference

Arthur H. Peterson, an attorney with Dillion & Findley, P.C. in Juneau, has been elected as a life member of the National Conference of Commissioners on Uniform State Laws (NCCUSL), the first Alaskan to be so honored. As commissioner to the Conference since 1975, Peterson served as a regulations attorney for the state of Alaska until his retirement in the early 1990s.

Founded in 1892, NCCUSL is an organization of more than 300 lawyers from across the nation, who are appointed to develop uniform legislation and promote its enactment by the states. It is the only national organization created for the betterment of state law. The conference has drafted model laws in areas such as marriage and divorce, probate, state administrative procedures, rules of evidence and other fields.

Financed by dues from member states, the conference has drafted many uniform acts, many of them widely enacted. Among its works are the Uniform Commercial Code, the Uniform Interstate Family Support Act, and the Uniform Unincorporated Nonprofit Association Act.

Over the years, Peterson has served as a chairman of a drafting committee and helped draft numerous acts, including the model State Administrative Procedures Act, the Putative and Unknown Fathers Act, the Criminal History Records Act, and the Uniform Adoption Act, which

Arthur H. Peterson

was approved by the conference last year. He is a member of the conference's study committee on family law.

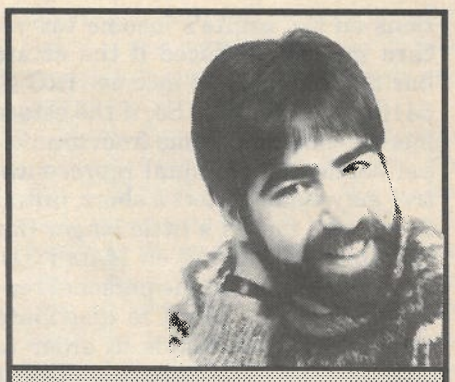
Life members are elected to the conference only after they have served as a commissioner for a least 20 years. Other Alaskan commissioners are Deborah E. Behr of Juneau, W. Grant Callow and L.S. Jerry Kurtz, Jr., of Anchorage, and Justice Jay A. Rabinowitz of Fairbanks. Tamara B. Cook of Juneau serves as an associate member. Commissioners receive no compensation for their work on the conference.

Family Law

Alaska child support law changes

Recently the Alaska Supreme Court approved changes in the state's child support laws, which are also known as Alaska Civil Rule 90.3. This article identifies some of these changes, set forth in Supreme Court Order number 1192, which are effective as of July 15, 1995.

One change will affect families where the obligor, the parent who pays support, earns over $60,000.00 in adjusted annual income per year. Previously, the court would not normally consider the amount of adjusted annual income a parent receives over $60,000.00 in calculating child support. The new rules provide that the court will cap the adjusted annual income of an obligor parent at $72,000.00. As a result, parents who receive future child support awards will normally be able to include a percentage of up to $72,000.00



Steve Pradell

of the obligor's adjusted annual income, and child support awards will increase in applicable cases.

Another important change recognizes an unfortunate reality which occurs all too often after "shared" custody is ordered. Shared custody for child support purposes occurs if both parents have visitation at least 30 percent of the time. In the past, obligors who were given a reduction in child support due to their award of shared custody have neglected to exercise visitation provided by the court. They have paid less support and neglected to visit their children as ordered by the court. This has been unfair to the parents who collect support, because they are supporting the children for the time when the other parent was supposed to be exercising visitation. The new rule provides that failure to exercise sufficient physical custody to qualify for the shared physical custody child support deduction is grounds for a parent to ask the court to modify a child support order. It may be wise for clients to keep a journal of actual visitation to determine whether a modification is warranted.

A third change concerns health care expenses. The new law provides that the court must first consider whether the children are eligible for health benefits through insurance or the Indian Health Service before ordering parents to provide health care coverage. The court must then equally divide the cost of insurance between both parents unless there is good cause not to do so. An obligor parent can decrease child support by his or her portion that is paid for court ordered health insurance. Uncovered health care expenses up to $5,000.00 will normally be equally allocated between the parents, and those in excess of $5,000.00 will be allocated based upon the parties' relative financial circumstances when the expense occurs. Within 30 days of the receipt of a bill or other verifying statement, a parent must reimburse the other parent for his or her share of the uncovered expenses. This new change will resolve problems created by past divorce or dissolution decrees where the issue of uncovered medical expenses was overlooked, and reduce the need for additional litigation.

Finally, the rules have changed regarding obligors who are custodial parents of children from prior relationships. Child support calculations are normally made as a percentage of an obligor parent's adjusted annual income. In the past, obligors could deduct from gross income child support and alimony payments paid in support of other children to determine their adjusted annual income. A new rule change allows parents who have custody of children from other relationships to claim a deduction for the support of these children in calculating their adjusted annual income. Thus, parents who must support prior children who live with them may now pay less support for children from later relationships.

Anchorage sole practitioner is secretary-elect

Donna C. Willard-Jones, a sole practitioner became secretary-elect of the American Bar Association Aug. 9. She is the first person from Alaska to serve as an officer of the ABA, the largest voluntary professional association in the world.

Willard-Jones will serve one year as secretary-elect before beginning a 3-year term as Secretary. As secretary, Willard-Jones will keep official records of meetings of the ABA governing bodies, nominations of officers of the association, and official association records and notices. She will be an *ex officio* member of the House of Delegates and Board of Governors.

Willard-Jones has just completed a 3-year term as a member of the ABA Board, representing the states of Alaska, Oregon, Montana and Washington. She also has served as the Alaska State Delegate to the House of Delegates, and has served on numerous board and house committees. She is a past chair of the ABA Standing Committee on Unauthorized Practice of Law and a past member of the Standing Committee on Bar Activities and Services. She has been a member of the sections of Litigation, Tort and insurance Practice and Real Property, Probate and Trust Law, and of the Young Lawyers Division. She is a Fellow of The American Bar Foundation.

Willard-Jones has practiced law in Alaska since 1970. She is a past chair of the Federal Advisory Group for Implementation of the Civil Justice Reform Act of 1990, a past member of the executive council of the National Conference of Bar Presidents, and a past president of the National Conference of Bar Foundations and of the Western States Bar Conference.

She has served on the Alaska Supreme Court Special Committee on Contempt, and was a lawyer representative to the Ninth Circuit Judicial Conference. She served as chair of the Bankruptcy Judge Merit Screening Committee in 1979. In the Alaska Bar Association, she is a past president and has served in numerous other leadership positions, prompting the Board of Governors to present her with its Distinguished Service Award in 1991.

Willard-Jones is a member of the American Judicature Society and of the American Trial Lawyers Association, and a past member of the Board of Alaska Legal Services Corp. She is a member of the American Arbitration Association and serves on its Anchorage Advisory Council and its Alaska Commercial Arbitration Panel. She speaks at seminars and continuing legal education programs for a variety of professional organizations.

Also, Willard-Jones is a past member and chair or vice chair of the Anchorage Port Commission, the Alaska State Officers Compensation Commission, the Anchorage Transportation Commission and the Alaska Code Revision Commission. She served on the board of Alaska Indian Arts, Inc., and is a Chilkat Dancer of Alaska.

Anchorage Legal Secretaries Assoc., Inc. announces '95-'96 officers

Anchorage Legal Secretaries Association, Inc. announces the election and appointment of its 1995-1996 officers. Elected were Yvonne B. Robinson, certified professional legal secretary, of Jermain, Dunnagan & Owens, president; Shirley J. Kelly, accredited legal secretary, of Jermain, Dunnagan & Owens, vice president; Susan B. Lutz, of Russell, Tesche & Wagg, recording secretary; and Jana Vanderbrink, of Pletcher, Weinig, Moser & Merriner - treasurer.

Appointed were Alice Moore, certified professional legal secretary, of Robertson, Monagle & Eastaugh, parliamentarian; and Heather S. Kegley, of DeLisio Moran Geraghty & Zobel, corresponding secretary. The installing marshall was ALSA's 1994-1995 Boss of the Year, Randall G. Simpson of Jermain, Dunnagan & Owens, P.C.

Estate Planning Corner

Selecting an estate's tax year

When a client dies, his estate as a new taxpayer may elect any taxable year that is desirable, as long as it ends on the last day of a calendar month and is not longer than 12 months (IRC §§ 6012(a) (3) & 441). If a fiscal tax year (i.e., a tax year ending other than on December 31) is elected, the estate's personal representative must keep adequate records relating to that year or a calendar tax year may be presumed (See IRC § 441(g)).

One reason to elect a fiscal tax year is to postpone as long as possible the date of filing the income tax return and paying the tax. For example, if a client dies in October of 1995 and a calendar tax year is elected, his estate's income for the balance of 1995 would be reportable on April 15, 1996 (IRC § 6072(a)). By contrast, if the personal representative elects a fiscal tax year ending on September 30, the income for October, November and December of 1995 would not be reportable until January 15, 1997, a deferral of nine months (*Id.*).

Steven T. O'Hara

On the other hand, consider that an estate is entitled to an exemption of $600 for each of its tax years, including a short, initial fiscal year (IRC § 642(b)). So, in order to maximize the number of exemptions available to the estate, the personal representative may want to elect a short, initial fiscal year ending, for example, on January 31 (which would mean the estate would have to file an income tax return by May 15, 1996).

Consider also that expense deductions on the estate's income tax return must be reduced if the estate has any tax-exempt income (IRC §§ 641(b) & 265(a) (1)). So, if the estate has tax-exempt income from municipal bonds, the personal representative may want to elect a short, initial fiscal year that is a little longer (for example, one ending on March 31). During this period, the personal representative may want to distribute or dispose of the bonds in order to help the estate use a greater amount of deductible expenses on its income tax returns in subsequent tax years.

Another reason for electing a fiscal year is to cause the estate's tax year to end after the close of the beneficiaries' tax years and thus obtain tax deferral. For example, if the estate has a fiscal tax year ending January 31 and the beneficiaries have calendar tax years, a distribution taxable to the beneficiaries made in February of 1996 would not be taxable to the beneficiaries in 1996. The distribution would not be taxable to them until 1997, and the beneficiaries would not have to report the tax on the distribution until April 15, 1998, because the distribution relates to income for a tax year of the estate ending within the beneficiaries' 1997 tax years (IRC §§ 662 (c) & 6072 (a)).

This area of planning also points out a difference between estates and revocable living trusts. Although an estate may have a fiscal tax year, a trust generally must have a calendar tax year (IRC § 645 (a)).

Judges, federal defender selected

Justice Allen T. Compton will be the new Chief Justice of the Alaska Supreme Court, starting in October.

Judge James K. Singleton will be the new Chief Judge of the U.S. District Court for the District of Alaska, effective in January.

Richard Curtner will be the new federal public defender in Alaska.

You cannot take the files

continued from page 6

(W.Va.1973). Indeed, the Florida Bar issued an opinion in the context of a terminally ill attorney which stated:

> "After diligent attempt is made to contact all clients whose files he holds, a lawyer anticipating termination of his practice by death should dispose of all files according to his clients' instructions. The files of those clients who do not respond should be individually reviewed by the lawyer and destroyed only if no important papers belonging to the clients are in the file. Important documents, should be indexed and placed in storage or turned over to any lawyer who assumes control of his active files. " *The Florida Bar Professional Ethics Committee, Opinion* 81-8(undated).

Other states have also taken a proactive approach on this issue. *Illinois Supreme Court Rule 776* provides for a court-appointed receiver when "...a lawyer.....is unable to discharge his responsibility to his clients due to disability, disappearance or death, and.....no partner, associate, executor or other responsible party capable of conducting that lawyer's affairs is known to exist..."

The Professional Ethics Commission of *The Maine Board of Overseers of The Bar* in *Opinion* 143 (7/26/94), just a little over a year ago specifically stated that solo practitioners in Maine have a responsibility to make "advance arrangements for the event of disability of death" to keep client files secure, and cited ABA *Opinion* 92-369. See also Legal Ethics Committee of *The Oregon State Bar Opinion* 1991-129 (July 1991) where it is suggested that a sole practitioner may even designate a non-lawyer who could then contact the presiding judge of the particular circuit in Oregon for further assistance and the possible appointment of an attorney in particular circumstances. *See also ABA Model Rules for Lawyer Disciplinary Enforcement* (1989) at Rule 28. Finally, for an excellent discussion of this issue of the responsibility that lawyers have to protect their clients in the event of the lawyer's death or disability, *see ABA/BNA Lawyers Manual on Professional Conduct* 1001:163-166

Conclusion

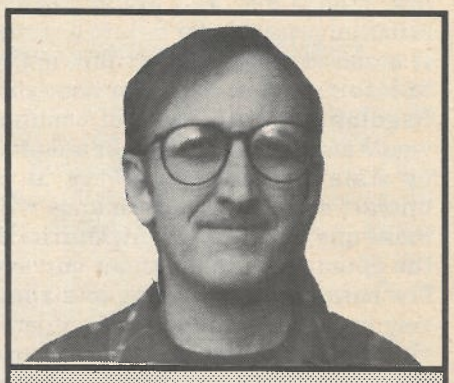
This is not a highly technical issue, nor one that requires much more than the exercise of common sense and, most importantly, professionalism. For those who are diligent about appropriately and timely addressing the needs of their clients during their practice and bemoan the direction in which the practice of law seems to be heading, you need to think about your legacy and your professional reputation after your death. Failure to plan for the inevitable will have great consequence concerning how the public views lawyers, and will detract from the professionalism that we all strive for during our professional lives.

Bar Counsel Footnote: Alaska Bar Rule 31 provides for the appointment of trustee counsel for the practice of a deceased or unavailable Alaska sole practitioner by the Superior Court of the appropriate judicial district. Trustee counsel has the powers of a personal representative concerning the lawyer's practice and is primarily charged with the responsibility of giving notice to the lawyer's clients and assisting in the transfer of the client files. Even though this process is available in Alaska, I agree wholeheartedly with Mr. Martin's recommendation that sole practitioners have their own plan in place to protect their clients' interests.

An assistant risk manager for Attorneys Protection Society, Missoula, Montana. The author is a former special assistant United States Attorney and former assistant professor of law at Florida State University School of Law. Most recently he was a partner in a Montpelier, Vermont law firm, and prior to that was a sole practitioner in Massachusetts.

Eclectic Blues

Working in Juneau, vacationing in Montana



Dan Branch

Like most Alaskans, I have taken every opportunity available to poke fun at our capital city. Now, fate has placed me on the shores of Gastineau Channel. Oddly enough, the place is growing on me, and I want to pass on some information about the capital to folks living in the rest of Alaska.

I moved to Juneau at the beginning of August, bringing the rain with me. For several days nature's gentle mists doused the capital city with different concentrations of moisture. One day she really rained, sluicing down the slick glass sides of the government building and onto tourists determined to get their money's worth out of their cruise ship package.

Rain and the clouds look different against the steep hills that crowd downtown Juneau. Ketchikan weather hits you hard and moves up the narrows toward Wrangell. Here the clouds drape themselves over mountaintops and drizzle away their contents over several days. From my friend's place on North Douglas, the lowlife clouds make Juneau look like a place for Beowolf to battle Grendel.

The folks in this town are pretty decent as a whole. Contrary to bush legend, they don't appear to eat their young. Only a few drive real fancy cars. The downtown has more bars than espresso shops. The other day I even watched a couple of bar patrons howl like wolves. No one stopped them, even though it frightened the tourists.

The Juneau economy feeds on the same tourism food chain as Ketchikan and Sitka. Every day cruise ships disgorge a few thousand confused-looking visitors to wander the downtown tee-shirt shops. Most find their way back to their boats, clutching plastic-bagged curios close to their chests. I'd complain, but tourism has become a fact of life in Southeast Alaska. You might as well curse the sky when it rains. It's better therapy to fly south to some hot place and ask the locals where they keep their public bathrooms. I know this because my family took a road trip on the Montana plains this summer. To get there we had to cross Western Montana where the Rocky Mountains block one's view of the sky.

Western Montana is a confused place these days. Any place with trees and topographical relief is now a battleground for movie stars, new age believers, and militia men. They had no time to notice three pale-looking Alaskans drifting through their lives in a rental car. We didn't care because we were heading to the real Montana where people still earn a livelihood from half-section, dry land farms. They call it Big Sky Country because there are no pesky trees or mountains to block the view.

My grandparents homesteaded a wheat ranch on the Montana plains eighty years ago. Grandmother managed to hold onto the place after her husband died in 1923. Grandma was a tough little thing. She's gone too but her heirs are drawn back to the ranch every few years. It's like a steelhead migration without the sex or violence.

You can see Square Butte from the ranch house. It's the flattened off hill Charlie Russell featured in a painting called, "When God Owned The Land." Cattle had full run of the Square Butte Bench then. Now it's all wheat and barley. I remember as a kid watching electrical storms rising over the butte on late summer afternoons.

On the way out from Great Falls I told our six-year-old about the thunderstorms. They came in the hottest part of the day when you were praying for something to knock down the dust. The sky over Square Butte would darken, then you smelled ozone—the smell of summer rain. Lightning came next. We counted the seconds between flash and the roar of thunder. Then came the rain. The storms never lasted long. An hour after they passed the roads would be bone dry.

It did rain at the ranch during our visit, but to our disappointment there were no thunderstorms. Instead a hard, Southeast Alaska-type rain fell, turning the road from Geraldine into gumbo. It must have been raining like that all summer, for the fields were spring green and the mosquitoes were thick around the ranch house.

On Sunday we went to church in Geraldine. After mass the congregation stood out on the front steps to talk about the weather and work out how we fit into the picture. After a bit we walked over to the park for a picnic lunch. On the way we walked past a friendly looking dog which was sporting a friendly looking bandanna. "Hi guy," I offered, before he chased me down the street , jabbing at me with his nasty choppers. One bite landed on the back of my pant legs. Fortunately I was wearing my Carharts at the time, so this bandito cur didn't break the skin. Once again a pair of Carhart Logger Jeans saved an Alaskan's life.

Our six-year-old was disappointed when we left the ranch without seeing one thunderstorm. I asked her to understand that nature likes to mix things up every once in awhile. We should learn to enjoy the surprises that please us and to accept the ones that do not. It's not bad advice for this summer of change.

The Public Laws

Juvenile crime strategies

In my last column I described the current limitations on the system for addressing offenses by minors. I did not offer tangible suggestions for solutions. This article is intended to discuss some of the strategies being examined by policymakers in Anchorage. Generally there are two main strategies used in communities across the country: 1) remove the means for juveniles to commit offenses, or 2) remove the motivation for juveniles to commit offenses. Nearly every program proposed to address juvenile crime fits into one or both of these categories.

Scott Brandt-Erichsen

The means element may be addressed by either getting the juveniles off the streets or by removing access to the "tools of the trade." Removal from the streets may be through curfews and through providing alternate activities to occupy young minds. Removing access to "tools of the trade" may include limiting the opportunities for disposing of stolen goods, limiting availability of weapons, or limiting availability or drugs and alcohol. These have proven to be difficult issues to address for both minors and adults.

The motivation element may be addressed through either the carrot or the stick. The carrot approach focuses on giving the juveniles something better to do, such as youth sports programs and community activities for youth. The stick approach focuses on the penalties imposed for the behavior, and seeks to motivate desirable conduct by making the consequences or fear of consequences sufficient to entice the juveniles to choose the desired behavior.

At this writing, Anchorage is considering two specific measures aimed at juvenile crime, and the Municipality of Anchorage, in conjunction with the State of Alaska, Department of Health and Human Services, is working on a pilot project to reduce juvenile crime and recidivism. The specific ordinances that are proposed target drive-by shootings and curfew violations. The pilot program seeks to provide a forum for resolution of many of those types of offenses committed by juveniles which currently do not receive significant attention from the current system.

The ordinance regarding drive-by shootings would impose requirements on the operator of a vehicle from which shots are fired to stop and render aid, and would impose criminal penalties for failure to do so. It is similar to provisions that apply to leaving the scene of an accident. Regulation of this type of conduct would more appropriately be adopted by state statute as a felony. It is unclear whether the ordinance will make any significant contribution to the options available under current law based upon an aiding and abetting theory. It would, however, provide a specific standard of conduct. While it may not be the miracle salve for recent rashes of shootings from vehicles, it has potential for a positive impact with little downside. This ordinance uses the stick approach to attack the motivation of individuals to engage in this sort of conduct. To some extent it may also limit the "tools of the trade" by dissuading persons from participating as a driver.

The ordinance expanding the curfew provisions in Anchorage carries with it potential penalties for parents and operators of businesses where a minor may be in violation of curfew hours. If enforced, this ordinance could have a significant impact in reducing the opportunity for anti-social conduct by juveniles or inflicted upon juveniles. Here, however, the devil is in the details. The difficulties lie primarily in the mechanics of enforcement. If widespread curfew enforcement merely routes large numbers of juveniles into a system which does not have the capacity to process the cases, or which does not have the capability to impose tangible penalties or remedies, then the ordinance may be of limited utility. (One example of a problem area is the lack of DHHS capacity to detain juveniles for minor offenses and the lack of authority for anyone other than DHHS to do so.) This proposal addresses the means for juveniles to engage in anti-social conduct by limiting access to the streets.

The pilot project seeks to expand the utilization of the Anchorage Youth Court and community service opportunities to increase the attention to certain offenses committed by youth. The offenses included are minor offenses, such as curfew violations, which would otherwise not receive significant attention from the existing juvenile justice system. It incorporates peer review and judgment, and utilizes reformatory strategies containing elements of mediation and community service in an effort to motivate the juvenile to choose appropriate conduct. Cases are tried and adjudicated by youths, and sentences may include some financial penalties and some community work service. While it is untried on the scale proposed by the pilot project, there are high hopes for success of the program.

The ability to pursue the pilot project has been dependent upon the cooperative efforts of municipal assembly members, the Anchorage Police Department, the State DHHS, and community groups. In the absence of the volunteer citizen efforts and donations, the pilot project could not take place.

If this type of effort is successful, a more permanent program following the same pattern should be examined. There are two things standing in the way of such a permanent program. The first is the exclusivity of jurisdiction under AS 47.10.010 which prevents communities in Alaska from addressing all except a very limited number of violations committed by juveniles. The second is the lack of funds for operating such a program.

Local communities could control their own destiny, or at least have the power to attempt to control their youth, to a much greater extent if AS 47.10.010 were amended to permit municipalities to exercise a juvenile intake function for a wide variety of minor offenses. This would allow communities to enforce their own ordinances rather than relying solely on the state to address localized problems.

Funding is always a problem, particularly in view of the fiscal gap projections on the state level. Despite the lack of existing revenues, there are indications that funding may be available in local communities for this type of program. Whether through a special tax or a service area, the level of public concern indicates that, at least in Anchorage, juvenile crime is an issue upon which people are willing to put their money where their mouth is. Using Anchorage as an example, a .5 mil tax ($50 per 100,000 in assessed valuation) through a service area running from Birchwood to McHugh Creek would raise about $5 million per year, an amount in excess of the entire statewide budget for juvenile intake for 1995. For comparison purposes, the pilot project is looking at a relatively shoestring budget of under $500,000 per year to process over 1,000 cases.

What is apparent is that there is something that can be done, and that elected officials in Anchorage are actively working on creative solutions to the public concern about juvenile crime and violence. If the trial initiative in Anchorage appears to produce the desired results, the only remaining question will be whether the citizens have the will to pursue, and find, effective solutions.

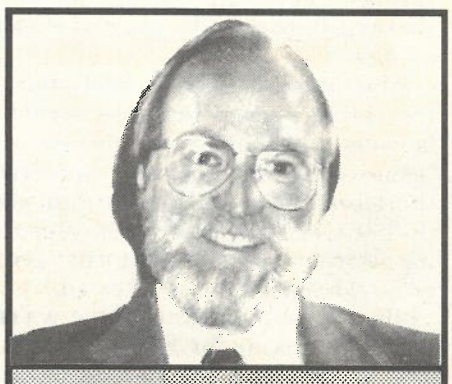
Wanted

Articles, documents, journals and photos concerning Alaska's legal history.

Please contact Deborah O'Regan,
Executive Director, Alaska Bar Assoc.
510 L Street, Suite 602,
Anchorage, AK 99501
(907) 272-7469

Torts

A review of the 1995 legislative session



Michael Schneider

I. Bills That Passed.

HB115: Damages & Attorney's Fees for Unpaid Wages.

This bill changes the remedial provisions of Alaska's Wage and Hour Act. The new law allows settlements to be approved by the Department of Labor in addition to the court. Private settlements are still banned. Settlements under the new bill may include less-than-full liquidated damages.

Under the bill, an Alaskan employer, for the first time, can assert that he was acting in "good faith" and thus escape liquidated damages if he can prove his position by "clear and convincing" evidence.

The bill reverses prior law, precluding a prevailing employer from receiving an award of attorney's fees. A prevailing employer may now receive attorney's fees and various scenarios would allow the court to limit the attorney's fee award that would otherwise be received by a prevailing employee.

HB201: Prisoner Litigation and Appeals.

HB201, introduced at the request of the Governor, sailed through both houses and took effect July 1, 1995. The claimed purpose of the bill is to eliminate frivolous prisoner litigation. Unfortunately, it does far more than that. It requires prisoners to prepare complex paperwork before they are eligible for a filing fee exemption in lawsuits filed against the state. These exemption requirements alone are so complicated a prisoner will need a lawyer just to prepare the paperwork to get his or her case into court, an impossible task for a non-English speaker.

The bill also drastically restricts prisoners' rights to court-appointed lawyers for post-appeal proceedings—very bad news if Alaska adopts a death penalty. It eliminates almost all post- appeal challenges to convictions. Bad news for prisoners with lousy appellate lawyers. Fatal news if Alaska adopts a death penalty.

Finally, the bill eliminates a person's right to appeal his or her felony sentence if it is for two years or less incarceration. Alaskans have a right to a direct appeal to the Alaska Supreme Court if they lose custody of their china in a divorce case. They cannot appeal to the Alaska Court of Appeals if they are unjustly sentenced to two years in a prison. Go figure.

HB237: Workers' Compensation Amendments.

On the workers' compensation side, this bill pecks away at the few rights injured workers have left. As to third-party claims, the bill purports to grant immunity to workplace safety inspectors where the injured claimant is an "employee" of an employer who arranged the inspection through an insurance carrier, trade association, adjusting service, etc. *See* Section 11 as embodied in the new AS 23.32.63.

Section 3 of the bill (AS 23.30.017) purports to immunize third-party design professionals from claims brought by injured workers. While there are some fairly broad exceptions, one can assume that an employee in a construction setting will have a more difficult time asserting third-party claims if those claims are directed to acts and omissions of design professionals.

SB53: Omnibus Insurance Reform.

SB53 contains several provisions regarding the selection of independent counsel. Proposed AS 21.89.100 provides that a policy of insurance may provide a method for selecting independent counsel. The proposed section also provides that an insured may waive the right to independent counsel in writing and the contents of the waiver are set forth in the proposed statute. The section further states that a claim of punitive damages, a claim in excess of the policy limits, or a denial of coverage does not create a conflict of interest sufficient to trigger an insured's right to independent counsel.

Additional sections of the bill state that independent counsel must have at least four years of civil litigation experience, including defense experience in the general subject area at issue in the civil litigation, and malpractice insurance. Independent counsels fees are limited to the amount that an insurer would pay to an attorney in the ordinary course of business in defense of a similar civil action in the community in which the action arose. Any fee disputes are resolved by arbitration under AS 09.43 *et seq.* Finally, the section requires independent counsel to cooperate fully with the insurer in exchanging information, except that which is relevant to the coverage dispute and also allows insurance-appointed counsel to participate fully in all aspects of the civil action.

See related article by Ken Gutsch in this issue.

II. Pending Bills.

HB158: Omnibus Tort Deform Bill.

This bill is before Senate Judiciary, chaired by Senator Robin Taylor. As of this writing, hearings have been held in Anchorage and Sitka. Hearings in Nome and Fairbanks are scheduled. The bill was amended during the House floor debate, but still contains, among other things, the following provisions:

- Demands that fault be allocated to *non-parties,* including employers, bankrupt parties, and other legally inaccessible parties.
- Contains Draconian Rule 82 provision.
- Eight-year statute of repose. No exemption for minority. Hazardous substances and defective products are exempted.
- Cap on non-economic damages at $300,000 or $500,000, depending on the extent of injury.
- Cap on punitive damages at $300,000 or three times compensatory damages.
- Standard of proof for punitive damages is raised.
- Half of punitive-damage award goes to the state.
- *Jackson v. Powers* overruled.

In the House, the bill consumed seven days of debate. As far as anyone can remember, a record.

HB158 is clearly intended to do away with what little is left of the civil justice system. Its adoption is, however, much less than a foregone conclusion. Members of the Senate Judiciary Committee that should receive your input are Robin Taylor, Chair; Lyda Green, Vice Chair; and Senators Miller, Ellis and Adams.

SB95: Underinsured Motorist Coverage/Tumbleson Revisited.

Two competing federal district court cases (*Colonial v. Tumbleson*/Singleton and *Kvasnikoff v. Allstate*/Holland) have raised interesting questions about whether or not underinsured motorist coverage is truly "excess" coverage. With amendments crafted by the Senate Judiciary Committee, chaired by Senator Taylor, SB95 would clarify ambiguities in the current statutory scheme and make clear the legislature's intention during its 1990 session to make this coverage truly "excess coverage" that stacks, without reduction, upon other amounts recovered or recoverable by an injured party. At this writing, the bill remains in Senate Judiciary. Its next referral is to Senate Finance.

NOTE: This article was largely plagiarized from a similar effort in the June 1995 edition of The Alaska Trial Lawyer. Contributors were Kenneth Legacki (HB115), Christine Schleuss (HB201), Mike Schneider (HB237), Brett von Gemmingen (SB53), Debra Gravo (HB158), and John Dittman (SB95).

Windows 95

continued from page 10

pleasant product. Of course, you're concerned not only with the aesthetics, but with getting business done. And the most important aspect of any business software is whether it is reliable and predictable.

Reliability and Stability

Windows 95 is more stable than Windows 3.1, which had a tendency to crash or lock up. The tolerance of business users for any instability has always surprised me because so much of my own computer experience has been in the Novell Netware environment where stability is king and software runs for years without failure. Windows 3.1 never had that stability, but somehow we all tolerated it and worked well within those limitations. Windows 95 improves substantially upon the stability of Windows 3.1, but still has some stability problems. Those arise because Windows 95 is actually a transitional product that has not fully shed its DOS heritage. Whenever you start Windows 95, you are actually starting it on top of an underlying base of DOS 7.0, most of whose memory below 640K is unprotected. OS/2 Warp and Windows NT are both stable and reliable.

Microsoft apparently recognizes these stability concerns. It positions Windows 95 as a transitional product on the road to Windows NT, which although immature and demanding as a desktop operating system, is very reliable indeed.

Conclusions

You probably think by now that I am violently anti-Windows 95. That is not true. It is a distinct improvement over Windows 3.1 and clearly will be a significant standard someday. At the same time, it is appropriate to recognize that the cost of upgrading to Windows 95 is not merely the cost of buying a $90 box of shrinkwrapped software. Most users will require significant hardware and software upgrades. By the time you install Windows 95 on an older system and find that it is acting too slow, it's too late. There sometimes is no easy way to go back to DOS/Windows 3.1. At least in the short term, some program hardware and software conflicts should be expected.

Realistically, people considering an upgrade to Windows 95 should wait until sometime in 1996. By then, it will be loaded on most new computer systems which, in any event, will be sufficiently powerful to run the software effectively. Utility, antivirus and applications programs specific to Windows 95 will be more broadly available. By then, some of the inevitable bugs and installation problems in the first shipping versions of this operating system and of the applications intended for it should be ironed out.

If your office is using DOS/Windows 3.1 and it does the job reliably and effectively for you, then there is no immediate, compelling reason to upgrade. Delayed adoption, coupled with careful staff training, planning for stress-free implementation, and testing for compatibility with existing hardware and programs should reduce the likely turmoil of adopting this new operating system.

Women under-represented in Martindale-Hubbell

continued from page 1

"That's still not enough in my opinion," says John Agel, Martindale-Hubbell's vice president in charge of ratings. Martindale does not keep statistics on how many women are AV rated in Alaska or in the nation, Agel says. But, he admits, percentage-wise women have not been as well rated as men. Across the board there are fewer women rated AV, Agel says.

Called the "King Kong" of legal listings, Martindale-Hubbell has been rating attorneys for over 100 years. The ratings AV, BV and CV are based on the recommendations of lawyers and judges who practice in the same jurisdiction. There are two parts to the rating, the V, which represents "very high" professional responsibility and ethics, and the A, B, and C, which are legal ability ratings. A is considered "from very high to preeminent," B is "from high to very high," and C is "from fair to high."

A lawyer must be rated in both categories to have the rating follow his or her name in the listing. Many lawyers, particularly those who practice in the public sector, have no ratings after their names since few people know their work.

"It is very anonymous," Zobel says of Martindale's rating system. An attorney or judge may receive a list of 30 people to be rated. It may be lawyers all with last names beginning with T, U, V, or W, Zobel says. "I might know five people on the list."

"I periodically get these ratings sheets and sometimes it's people I know and sometimes it's not," says Leroy Barker, an AV-rated partner in the Anchorage office of Robertson, Monagle and Eastaugh. There is not much explanation of the different ratings. They aren't like the judicial surveys, Barker adds, you just check off a box.

Martindale-Hubbell's Agel admits the rating system tends to exclude lawyers who have more narrow or "esoteric" practices and who are therefore not as well known among the bar. Corporate lawyers, prosecuting attorneys, assistant attorney generals are among those affected.

"In a place like Anchorage we're probably looking for 10 to 15 people who recommend the person be an AV," Agel says. Sometimes the company conducts a more in-depth survey, sending questionnaires on just one person rather than a list of people. It varies, according to Agel.

He adds that ratings are not weighted according to the rank or status of the person filling out the questionnaire. In the past, only judges and AV and BV rated attorneys received surveys. But that is no longer the practice. Now, it doesn't matter whether the rater is AV, BV, CV or unrated. "You're lawyers, we respect your opinion."

Judges' opinions are also not given any added weight, Agel says. (Only one state—New Jersey—refuses to allow judges to rate attorneys. Most other states find the rating process sufficiently anonymous to be permissible, says Marla Greenstein, executive director of the Alaska Commission on Judicial Conduct. Greenstein adds the question has never officially come up in Alaska.)

The handful of women with AV ratings in Alaska may be indicative of a more pervasive problem. Nationally, 18 percent of rated attorneys are AV. In Alaska, that figure is probably less than 10 percent, Agel says.

"When I see that I take a hard look. Hey, what's wrong? Why do you have so many Bs and so few As?" says Agel. "Is it because you don't want to give? That's what it's got to be."

There can be a tendency for lawyers who do not have an A rating not to recommend other lawyers for the rating. This keeps the number of AV rated lawyers artificially low.

Zobel learned about the rating process from her partner, Stephen DeLisio. If one partner in a firm has an AV rating the entire firm is AV rated. When the AV-rated DeLisio planned to retire, his firm did not want to lose their AV rating. Zobel and another male partner in the firm contacted Martindale-Hubbell asking for a review of their individual ratings.

Zobel received a form asking for a list of attorneys and other professionals who knew her work. She gave them a list of 10 to 15 attorneys.

"I did not go out and campaign for it," Zobel says. She did mention to some of the attorneys that they may be getting a rating sheet and asked them to fill it out.

"If I hadn't gotten an AV rating would I be jumping up and down and screaming? I don't think so," Zobel says. "Okay, I would work a little harder. It's something I am proud of, but it's [not] something I would call the end-all, be-all of my practice. Certainly not the pinnacle that I was striving for."

Although Zobel doesn't feel the AV means much to local clients who know her work, she has seen it affect people she works with out of state.

"Sometimes supervisors will look at it, more than people [with whom] I have an ongoing relationship ... and I guess that is important to them if they want to figure out if [they] have the right person."

The Gender Equality Task Force is looking at the issue of Martindale-Hubbell's rating process in the context of gender equity in attorney salaries, partnerships,and how professionals are viewed by their peers.

Barker, who has been AV-rated since the 1970s, also sees little benefit to his practice from the AV rating. "Most referrals come from other clients or attorneys you work with," Barker says. "It doesn't come from someone just picking up Martindale. I probably haven't used Martindale in 10 years to pick a lawyer."

Networking, says Barker, is much more important than Martindale.

Zobel doesn't see the ratings process as particularly gender biased. The male partner in her firm who also asked for a reevaluation of his rating did not get the AV.

"It's not a gender issue as [much] as have you done what you need to do to get it. I had no problem but then I have a supportive group that I work with," she says.

Sandra Saville agrees women attorneys are not the only ones under-represented in Martindale-Hubbell, but she adds, there is definitely a gender problem.

The rating system "hits so disparately against women that it is obvious that there is something wrong with the system," Saville says. "Women tend to be clustered in the types of law practice which are generally not given a high value by some members of the bar," she said. "[Women] tend not to have high numbers in high profile litigation type practices."

"I also find that when lawyers [both men and women] rate women lawyers that the traits they would generally find strong in a man, such as being aggressive or tenacious or self confident, they will sometimes look at as a negative trait in a woman."

A particular problem women face is the lack of mentoring, Saville says. "If you don't have a mentor that is AV that is also a real problem." What is needed, Saville says, is more AV-rated women lawyers to show women the ropes.

Zobel encourages other women to take an active role in the rating process. "Take a chance and do it," she says. "There's nothing to lose. If you do not get an AV it does not count against you."

Agel, too, tells women who want their rating to be improved to contact Martindale-Hubbell. "If they write us a letter we will respond to it," he says.

The Alaska Gender Equality Task Force will be presenting more information on this issue in the near future. To get on the Task Force mailing list or to get involved, call Pam Cravez at 243-5010.

For more information call Martindale-Hubbell at 800-526-4902 or write, P.O. Box 1001, Summit, NJ 07902

The author represents the Joint State-Federal Gender Equality Task Force.

U.S. Court Rules

New local rules take effect in U.S. District Court

On July 17, 1995, new local rules went into effect for the United States District Court for the District of Alaska. The last substantial revision in the rules took place in 1981. The new rules represent a major revision of their predecessor and are the product of approximately a decade of labor by the court's Advisory Committee on the Local Rules. A number of prominent attorneys and judges have served on the Advisory Committee, and numerous others have aided in the revision effort. Among those who served on the committee are Judge Andrew Kleinfeld, who chaired the committee until his elevation to the Ninth Circuit Court of Appeals; his successor, Collin Middleton; Hal Brown; Gary Zipkin; United States District Judge James Singleton (judicial Liaison); and Timothy Terrell (Reporter) . Others who contributed their time, effort and considerable talents include Alaska Superior Court Judge Ralph Beistline; United States Attorney Robert Bundy; Millard Ingraham; and Sue Ellen Tatter.

The new rules are meant to supplement the Federal Rules of Civil Procedure. Wherever possible, the new rules have been designed to be consistent with practice in Alaska State courts and the Alaska Rules of Civil Procedure in order to avoid confusion among parties and attorneys who litigate in both systems. Only in those instances where the District Court is limited by conflicting Federal authority, statutes, or the Federal Rules of Civil Procedure, has this policy not been followed.

Major discovery changes

The new revision contains some of its most significant changes in local practice in the area of discovery. New Local Rule 26.2, for example, *requires* early disclosure of the factual basis of claims or defenses, witnesses' names, addresses and telephone numbers, written statements, documents, other physical evidence, insurance agreements, and damage computations. In addition, this rule requires disclosure of expert witnesses and a complete statement of their opinions, along with the basis and reasons for their opinions, including underlying data and reports. Initial and Pre-Trial Disclosures must be accompanied by the signature of the attorney or party certifying that person's belief that based upon reasonable inquiry the disclosure is complete and correct at the time it is made.

LR 26.2 further provides that every discovery request, response or objection made by a party represented by an attorney must be signed by at least one attorney of record. The signature of the attorney constitutes a certification that the request, response, or objection is warranted by existing law or a good faith argument for its extension, modification or reversal; that it is not designed to harass or cause unnecessary delay or needlessly increase the cost of litigation; and that it is not unduly expensive or burdensome. Where a certification is made in violation of the rule, the court may impose financial sanctions on the party or attorney making the certification. Detailed provision is made for other sanctions for failure to make disclosures or cooperate in discovery in LR 37.1.

Other innovations in the rules include: a rule permitting participation in civil proceedings by telephone with the court's permission (LR 7.2); a rule allowing the videotaping of depositions (LR 30.3); and a rule based upon the state rule for alternate dispute resolution and mediation (LR 53.2).

The new rules are maintained and available for inspection in the Federal and State law libraries and in the offices of the Clerk of Court for the United States District Court in Fairbanks, Juneau, Ketchikan and Nome. Copies may be ordered from the publisher - Book Publishing Company, 201 Westlake Avenue North, Seattle, Washington 98109. (Tel. No. 1-800-537-7881)

IOLTA Overview

Alaska's IOLTA program was established by the Alaska Supreme Court on November 20, 1986, through the adoption of amendments to DR 9-102. The program became operational in March 1987. On July 15, 1989, it became "opt out," requiring each attorney to file a Notice of Election. Funds from the Alaska Bar Foundation's IOLTA program have been designated solely for the following purposes:

1. **The Provisioning Of Legal Services To The Economically Disadvantaged.**
   The Alaska Bar Foundation is committed to improving access to legal services. IOLTA support is given to projects and organizations which provide legal services to persons or groups who find it difficult to obtain such services. Particular consideration is given to projects and organizations which assist the legal needs of the economically and socially disadvantaged.

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

Participating Banks

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

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

IOLTA Grant Recipients

The Alaska Pro Bono Program

The Alaska Pro Bono Program (APBP) involves private and public sector attorneys in the delivery of free legal services to Alaskans. It is jointly sponsored by the Alaska Legal Services Corporation and the Alaska Bar Association.

In 1994, a $130,000 grant was provided from IOLTA funds for several purposes. In addition to providing the economically disadvantaged with free legal representation, the APBP offers the following services to the community statewide: free monthly *pro se* classes which provide information and assistance concerning uncontested divorces, uncontested custody, and support orders for unmarried parents; Chapter 7 bankruptcy classes; advice-only question and answer clinics called Tuesday Night Bar; a special landlord/tenant law *pro se* and advice-only educational clinic; assistance in the area of wills, estate planning, housing, and consumer matters through the Elderlaw project for low-income clients over sixty years of age; and appointments for low-income *pro se* plaintiffs filing U.S. District Court civil cases.

Anchorage Youth Court

Anchorage Youth Court (AYC) is a non-profit organization which supports an alternative preadjudicatory system for Anchorage youth. Through this program, juveniles accused of breaking the law are allowed to submit their case to the AYC and to be represented and judged by their peers. Those convicted within this system are required to perform community service instead of receiving a criminal record. This allows the youth to atone for the wrongdoing without damaging his/her future and lessens the traffic of juvenile cases in our courts.

This program also benefits the students in junior and senior high schools who are trained in many facets of the legal system and receive hands-on trial experience as attorneys, judges, bailiffs, clerks, and jurors.

In 1994, $5,000 in IOLTA funds were donated to AYC to help maintain its operation and expand its services to more students.

CASA's For Children

In an effort to improve advocacy services for abused and neglected children, the CASA's for Children program trains volunteer community members who are assigned to represent the best interest of a child in court. The CASA provides the judge with carefully researched information on the child's background and needs in order to help the court make a sound decision about the child's future.

In 1994, $1,500 in IOLTA funds were provided for the training of CASA volunteers and for emergency and direct services by CASA volunteers.

IOLTA Law Firms

John W. Abbott
Law Office of Louis E. Agi
Alaska Legal Services Corportion
Alaska Native Law Consulting
Daniel W. Allan
Law Offices of Lynn M. Allingham
Law Office of Ella A. Anagick
Artus & Choquette, P.C.
Ashburn & Mason
Ashton & Dewey
Atkinson, Conway & Gagnon, Inc.
Law Office of Karin Bagn, Ph.D.
Law Office of Ronald L. Baird
Baker, Brattain, & Huguelet
Law Office of C. R. Baldwin
Law Office of Joyce Bamberger
Bankston & McCollum, P.C.
Barker & Hellén
Barokas & Martin
Batchelor, Brinkman & Pearson, P.C.
Baxter, Bruce & Brand
Margaret W. Berck
Birch, Horton, Bittner & Cherot
Arona S. Blachman
Bledsoe & Knutson, P.C.
Bliss & Wilkins
Richard L. Block
Bogle & Gates
Law Offices of William J. Bonner
Edgar Paul Boyko and Associates
Law Office of Gregg B. Breisford
Carol A. Brenckle
Law Office of Teresa Foster Brimner
Robert C. Brink
Law Office of Helene M. Antel Brooks
Woody Brooks
Law Office of Gayle J. Brown
Burr, Pease & Kurtz, P.C.
Law Offices of Rex L. Butler
Jeri D. Byers
Call, Barrett & Burbank
William B. Carey
Law Office of Victor D. Carlson
Law Office of Linda M. Cerro
Swan T. Ching
Charles W. Coe
Bonnie J. Coghlan
Cohen & Associates
Law Office of Kathryn M. Coleman
Cook, Schuhmann & Groseclose, Inc.
Craig A. Cook
Gregory F. Cook
Copeland, Landye, Bennett & Wolf
Marshall K. Coryell
Kenneth L. Covell
Glenn E. Cravez
Law Offices of Robert Crowther
Law Office of Dennis P. Cummings
Ronald E. Cummings
Law Offices of Ralph B. Cushman
Davis & Goerig, P.C.
Davis Wright Tremaine
Law Office of Jill K. Dean
Delaney, Wiles, Hayes, Reitman & Brubaker, P.C.
DeLisio Moran Geraghty & Zobel, P.C.
Law Offices of Dan E. Dennis
Dillon & Findley, P.C.
Law Office of Vincent M. DiNapoli
Dittman & Kell, P.C.
Loren Domke, P.C.
Downes, MacDonald & Levengood, P.C.
Richard L. Eckert
Eide & Miller, P.C.
Richard D. Ellmers
Ely & Havelock
William D. English
Deitra L. Ennis
Virginia M. Espenshade
Law Office of Charles G. Evans
Farleigh & Shamburek
Faulkner, Banfield, Doogan & Holmes, P.C.
Thomas E. Fenton
James E. Fisher
Foley & Foley, P.C.
Law Office of Maryann E. Foley
D. Kenneth Ford
William T. Ford
Carl C. Frasure, II
Friedman & Bros.
Friedman, Rubin, & White
Peter A. Galbraith
Leslie S. Gara
Garretson & Esch
Giannini & Associates, P.C.
Gilmore & Doherty

Thomas S. Gingras
Gissberg Law Office
James E. Gorton & Associates
Law Offices of James B. Gottstein
Stewart A. Grant
David E. Grashin
Gray, Cole & Razo, P.C.
Brian Mark Gray
Stephen E. Greer
Marc Grober
Gruenberg & Clover
Gruenstein, Hickey & Stewart
Guess & Rudd
Patrick J. Gullufsen
Carmen L. Gutierrez
Donna M. Habermann
Law Office of Stan Hafferman
Hagans, Moran, Ahearn & Webb
J. Glen Harper
Law Offices of Richard L. Harren, P.C.
Kathleen M. Harrington
Hedland, Fleischer, Friedman, Brennan & Cooke, P.C.
Michael P. Heiser
Heller Ehrman White & McAuliffe
Andrew M. Hemenway
Hintze & Wright
Law Offices of John L. Hoffer, Jr.
Hofstad & Lewis
Law Offices of Lee Holen
Michael W. Holman
Law Offices of Alan J. Hooper
James C. Hornaday
Houston & Henderson
Kay L. Howard
Hughes, Thorsness, Gantz, Powell & Brundin
William H. Ingaldson
Kenneth P. Jacobus
Jamin, Ebell, Bolger & Gentry
Thom F. Janidlo
Karen L. Jennings, Attorney at Law
Jermain, Dunnagan & Owens, P.C.
Law Office of Robert John
Law Office of J. Mitchell Joyner
Michael Jungreis
Kalamarides & Associates
William W. Kantola
John S. Kaufman
Michael J. Keenan
Kemppel, Huffman and Ginder, P.C.
Law Office of Elizabeth P. Kennedy
Amrit Kaur Khalsa
G. Rodney Kleedehn
Law Office of Byron B. Kollenborn
Koval & Featherly, P.C.
Robert W. Landau, Attorney at Law
Lane Powell Spears Lubersky
Larson, Timbers & Van Winkle, Inc.
LeDoux & LeDoux
Karl F. Lehr
Erik J. LeRoy
Leutwyler, Brion & Associates
Kenneth P. Leyba
Lynch, Wright & Blum, P.C.
Dick L. Madson
David D. Mallet
Maloney & Haggart
Mark C. Manning
Martin, Bischoff, Templeton, Langslet & Hoffman
Matthews & Zahare
J. Jeffrey Mayhook
Law Office of Stephen A. McAlpine
Law Offices of James Wyant McGowan
Stephen F. McKee
McNall & Associates, P.C.
Mendel & Huntington
Law Offices of Douglas K. Mertz
Law Offices of Dennis M. Mestas, P.C.
Richard J. Mietz
Law Office of Melinda D. Miles
Ronald W. Miller
Molloy & Landry
John M. Murtagh
Phil N. Nash, Attorney at Law
Thomas G. Nave
Raymond A. Nesbett
Richard P. Newman
Niewohner & Wright, P.C.
Robert S. Noreen
Olmstead & Conheady
Law Office of Paul E. Olson
Jan S. Ostrovsky
Owens & Turner, P.C.
Shelley K. Owens
Law Office of William C. Pace

Herbert M. Pearce
Pearson & Hanson
Perkins Coie
A. Lee Petersen
Frederick P. Pettyjohn
Michele J. W. Pfundt
Stephen R. Porter
Keenan Powell
Steven Pradell
Preston Gates & Ellis
Law Office of Chris Provost
V. Fate Putman
Colleen A. Ray
Law Office of Patrick J. Reilly
Rice, Volland & Gleason, P.C.
Law Office of Julian C. Rice
Law Office of John Rich
Robertson, Monagle & Eastaugh, P.C.
Rose & Figura, P.C.
Law Offices of Patrick G. Ross
Stuart G. Ross
Royce & Brain
Ruddy, Bradley & Kolkhorst
Law Offices of Sandra K. Saville
Law Offices of Gordon F. Schadt
Schendel & Callahan
Ernest M. Schlereth
Schleuss & McComas
Law Offices of Michael J. Schneider
Martha C. Shaddy
R. W. (Dick) Shaffer
Law Office of R. Brock Shamberg
Wevley William Shea
Law Offices of Alan G. Sherry
Aleen M. Smith
Julie A. Smith
Law Office of Michael R. Smith
Steven D. Smith, P.C.
P. Marcos Sokkappa
Sonosky, Chambers, Sachse, Miller, Munson & Clocksin
Jon Sportsman
Paul D. Stockler
Law Offices of Dana Robert Stoker
Robert E. Stoller
Stump & Stump
R. N. Sutliff
Law Offices of Sue Ellen Tatter
Taylor & Hanlon, P.C.
Robin A. Taylor
Janet K. Tempel
Valerie M. Therrien, P.C.
Linda S. Thomas
Colette G. Thompson
G. Nanette Thompson
Michael A. Thompson
Law Office of S. Brent Thompson
Tucker S. Thompson
Richard S. Thwaites, Jr.
Harold W. Tobey
Law Offices of Frederick Torrisi
Fred W. Triem, Attorney at Law
Julia Tucker
Warren A. Tucker
Charles E. Tulin & Associates
Law Office of Cesar O. Velasquez
Law Offices of Vincent P. Vitale
Frank J. Vondersaar
Wade & DeYoung, P.C.
Wadsworth & Associates
Paul W. Waggoner
Wagstaff, Pope & Katcher
Walker Oldham
Law Offices of David T. Walker
Karl L. Walter, Jr.
Walther & Flanigan
Daniel C. Wayne
W. David Weed
Daniel W. Westerburg
Dennis A. Wheeler
Vanessa H. White
Wickersham & Associates
Law Offices of Donna C. Willard
Richard J. Willoughby
Law Office of Charles Winegarden
Winfree & Hompesch, P.C.
Tonja Woelber
Wohlforth, Argetsinger, Johnson & Brecht, P.C.
Brett M. Wood
Law Offices of Steve K. Yoshida, P.C.
Young, Sanders & Feldman
Law Office of Clarke L. Young
Michael J. Zelensky
Ziegler, Cloudy, Peterson, Woodell & Seaver
Elizabeth A. Ziegler

Alaska Bar Foundation

1994 Annual Report

PRESIDENT'S REPORT

The Alaska Bar Foundation's revenue increased in 1994. Higher interest rates and waiver of bank fees by Bank of America, National Bank of Alaska, Denali State Bank and First Bank dramatically improved the revenues obtained from the IOLTA (Interest on Lawyer's Trust Accounts) program. However, the declination in 1993 revenues, as well as timing differences, forced an IOLTA grant distribution of only $136,500. The Alaska Pro Bono Program, Anchorage Youth Court, and CASA's for Children were grant recipients. Additionally the Foundation provided funding of $900 to the state championship high school mock trial team to pay the travel expenses of one of its members (who was economically disadvantaged) to go to the national competition.

The Trustees continue to be thankful for the support of the members of the Alaska Bar Association and hope to continue support of programs important to Alaskans.

Mary K. Hughes

IOLTA GRANT PROCEDURES

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

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

ALASKA BAR FOUNDATION TRUSTEES

WINSTON S. BURBANK

JOHN M. CONWAY

MARY K. HUGHES

WILLIAM B. ROZELL

SANDRA K. SAVILLE

FINANCIAL STATEMENTS

ALASKA BAR FOUNDATION

Financial Position as of December 31, 1994

ASSETS:			
CASH AND INVESTMENTS:			
Operating Account	12,343		
Investments	47,761		
Ready Assets	10,929		
TOTAL		71,033	
ACCOUNTS RECEIVABLE:			
Interest	948		
Alaska Bar Association	3,888		
TOTAL		4,836	
FIXED ASSETS:			
Donated Property (Art)	4,500		
TOTAL		4,500	
TOTAL ASSETS:			80,369
LIABILITIES AND FUND BALANCE:			
LIABILITIES:			
Accounts Payable	148		
TOTAL		148	
FUND BALANCE:			
George F. Boney Endowment	5,000		
Justice Dimond Endowment	3,600		
Wendell P. Kay Endowment	490		
Scholarship Fund	(6,000)		
Undesignated Capital	62,289		
Gain/Loss	14,842		
TOTAL		80,221	
TOTAL LIABILITIES AND FUND BALANCE:			80,369

ALASKA BAR FOUNDATION

Income Summary for the Twelve-Month Period Ending December 31, 1994

INCOME:			
Donations	17,567		
Interest	1,992		
TOTAL INCOME:		19,559	
EXPENSES:			
General Projects	00		
Grants	00		
Board Meetings	00		
Gender Equality	388		
Alaska Legal Net	525		
Accounting Services	1,795		
Supplies and Miscellaneous	1,669		
990 Information Return	340		
TOTAL EXPENSES:		4,717	
NET GAIN (LOSS):			14,842

FINANCIAL STATEMENTS

ALASKA BAR FOUNDATION IOLTA PROGRAM

Financial Position as of December 31, 1994

ASSETS:			
CASH AND INVESTMENTS		177,088	
TOTAL ASSETS:			177,088
LIABILITIES AND CAPITAL:			
CURRENT LIABILITIES:			
Accounts Payable	593		
Payroll Taxes Payable	00		
TOTAL		593	
CAPITAL:			
Funded Capital	300		
YTD Gain (Loss)	(22,640)		
Fund Balance	153,555		
TOTAL:		176,495	
TOTAL LIABILITIES AND CAPITAL:			177,088

ALASKA BAR FOUNDATION IOLTA PROGRAM

Income Summary for the Twelve-Month Period Ending December 31, 1994

INCOME:				
IOLTA Interest	199,426			
Interest on Investments	4,315			
Miscellaneous	953			
TOTAL INCOME:			204,694	
EXPENSES:				
IOLTA GRANTS:				
Alaska Pro Bono Program	132,500			
Anchorage Youth Court	2,500			
Casa's for Children	750			
West High Mock Trial Team	900			
Catholic Social Services	15,000			
TOTAL		151,650		
Administration:				
Staff Expense	3,636			
Bank Fees	15,614			
Accounting Services	8,372			
Annual Report	1,717			
Miscellaneous	1,065			
TOTAL		30,404		
TOTAL EXPENSES:			182,054	
INCREASE (DECREASE):				22,640