The Alaska BAR RAG

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Inside:

Court adopts new rule for Bar members

Alaska Supreme Court Adopts Trial Period for Voluntary Bar Association Member CLE

Effective September 2, 1999, the Alaska Supreme Court has approved a Voluntary Continuing Legal Education Rule (VCLE) which suggests minimum recommended hours of approved Continuing Legal Education (CLE) attendance by all active Alaska Bar members. Members are encouraged to complete at least 12 hours of CLE per calendar year, including one hour of ethics.

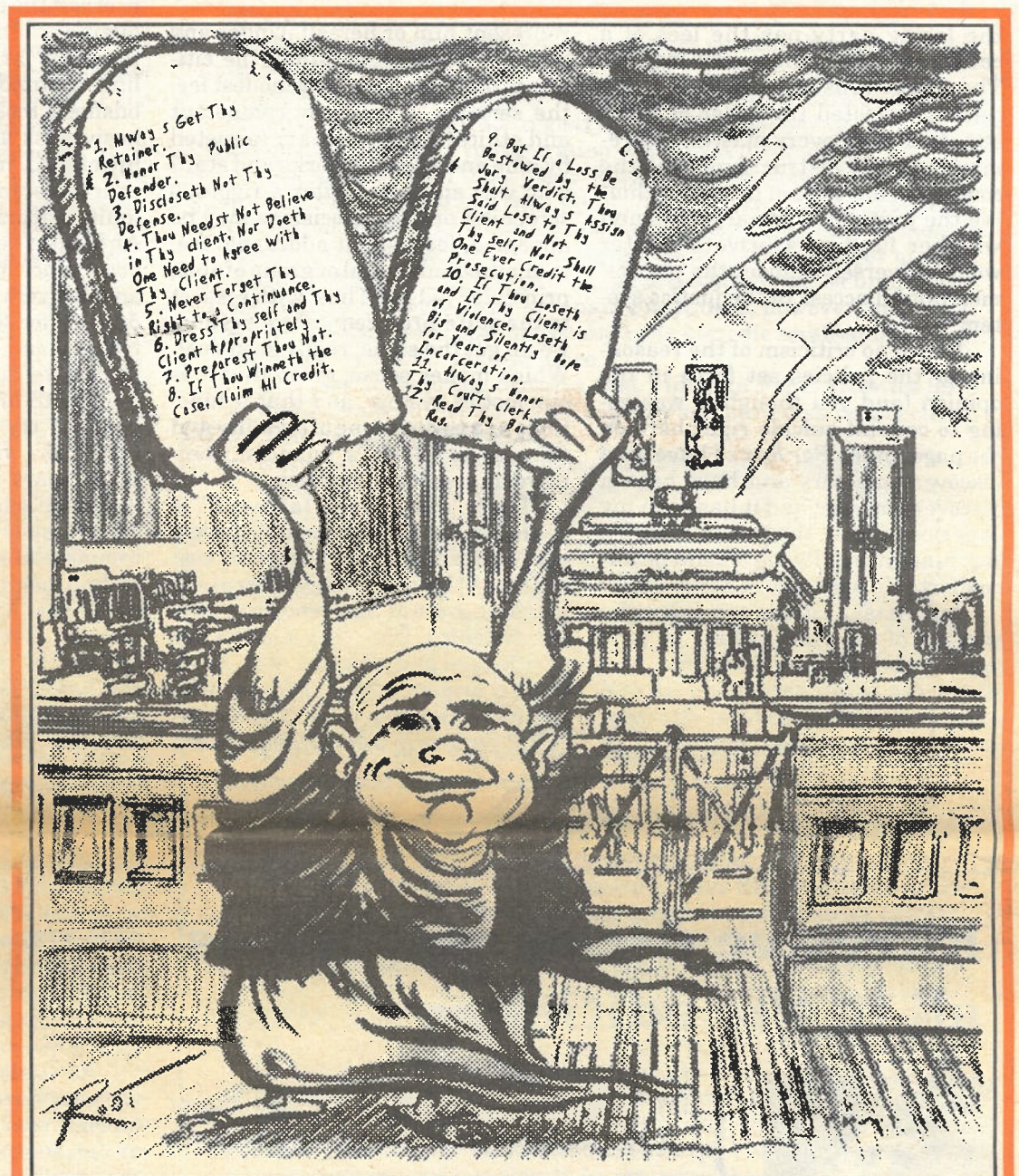
SEE FULL TEXT AND DETAILS PAGES 12-13

This Rule takes an innovative approach to CLE by providing incentives for completing the minimum recommended hours of CLE. Incentives include:

- a reduction in Bar dues (to be determined annually by the Board of Governors);
- inclusion in a published listing of Alaska Bar members who have completed the minimum recommended hours of approved CLE;
- eligibility to participate in the Bar's Lawyer Referral Service;
- non-compliance may be taken into account in any Bar disciplinary matter involving Alaska Rule of Professional Conduct 1.1 dealing with competency.

Alaska is the first state to adopt a CLE rule that includes incentives for compliance. Currently one-half of all Alaska Bar members attend at least one Alaska Bar Association CLE seminar each year.

For more information on the VCLE rule, contact: Barbara Armstrong, CLE Director, 907-272-7469/fax: 907-272-2932, e-mail: armstrongb@alaskabar.org



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New digital information product launched

Four years ago, when the Law Offices of James B. Gottstein wrapped up 15 years of litigation in the Alaska Mental Health Trust project, the computer programming project team he assembled for the case formed the foundation of a new enterprise.

Touch N' Go Systems was born, marketing a software product called "the desktop in-and-out board," scalable across large networks. Like its name describes, the software puts a staff locator on everyone's desktop. Wholly produced in Alaska, Touch N' Go has been favorably reviewed in such publications as *PC Magazine*, and has been a steady-seller and has distribution agreements with Blumberg Excelsior, Lawex, HR Direct, and Guildsoft Ink in the U.K.

From this software development company, Gottstein also moved into the exploration of Internet-based communications that has grown to one of the most successful legal resource websites in the country.

And this month, Gottstein launched a new digital information product: a compilation of Alaska legal information on CD-ROM — a kind of reverse application from the website he's built since 1995. All the Alaska legal information carried in the legal resource center is on the CD, along with "live" links to other web resources. The CD can be deployed across a network for viewing from multiple workstations simultaneously, selling for $100 (and $50 for updates.)

The depth and full content of Gottstein's Alaska Legal Resource Center website at www.touchngo.com isn't readily apparent from its home page. But within the site are 37,000 documents, primarily Alaska Court of Appeals and Supreme Court cases back to 1991; the full Alaska State Statutes; the Administrative Code; and Alaska court rules. Gottstein and his team of web designers and programmers over the years also have compiled an extensive, annotated digest and series of links to law-related sites all over the web, a feature that *Law Practice Management* columnist G. Burgess Allison has called "excellent" among legal portal sites that are proliferating on the web.

Gottstein chuckles when asked how the voluminous website evolved. "When we were developing the software project (the desktop in-and-out board), I knew that companies were heading in the direction of distribution on the web. The court system had a BBS (electronic bulletin board system) and was posting cases. That was terrific, but it was old technology," he said. "A BBS limits access to one user at a time, plus the user might have to

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President's Column

Don't apologize, find solutions

☐ Kirsten Tinglum

A recent Alaska Supreme Court opinion, *Peter v. The Progressive Corporation* (1999 WL 652464, August 29, 1999) prompts me to articulate a concern about the future of Alaska's justice system. *Peter* involves the appeal of an order that the losing party pay the fees of a court-appointed discovery master. The Court (Justice Carpeneti dissenting) vacated the order of reference to the discovery master, and remanded with instructions that the court consider certain factors, including the parties' financial status and whether funding a private master would adversely impact the parties' meaningful access to the justice system.

I have no criticism of the reasoning or the policies set forth in the opinion (and you thought I was going to commit suicide right here on the pages of the *Bar Rag*). I have used discovery masters and have been a discovery master, and it has been my experience that the system works. But fundamentally, we should be uncomfortable with it and here's why.

Any Alaska citizen can enlist the services of the court system by paying a relatively low filing fee. The citizen can either negotiate with and purchase the services of an attorney, qualify to have counsel appointed, or represent him or herself. Under any scenario of representation, the citizen-litigant obtains, for a modest fee, the services of a highly competent and ethical decision maker (assisted by able and efficient clerks and staff) who was appointed after a rigorous screening process. Decisions may be appealed, for a slight additional fee, to another individual or group of able, principled judges. Thus, with respect to the state-provided justice system, we all get the same, really good deal. Which makes sense, given that it is our justice system, and that it functions as a cornerstone of stability and fairness in Alaska's financial, commercial and social matters.

That "same deal fairness" is eroded by the appointment of discovery masters. Discovery masters cost Alaska litigants money. Discovery masters are not subjected to rigorous screening. Discovery masters can be effective and efficient. But do we want a system where litigants who pay more can buy more efficient results? Or where some litigants have to pay more than others to achieve the same result?

What is the big deal, you say? Philosophically, there might be a problem; but as a practical matter, discovery masters are rarely used and are usually greeted with a sigh of relief by litigants. My concern, and the gist of this column, is that the use of discovery masters is but one symptom of a bigger problem—that as our society leans more heavily on our court system to deal with its problems (families in crisis, children in crisis, the effects on employees and business transactions as corporations get larger and more "bottom-line"oriented, greater personal and business mobility destroying the cohesiveness and stability of communities)—it mistakenly blames the court system and lawyers for the (quite natural) increase in demand. And (as the mistaken reasoning goes), since it is the fault of the courts and lawyers that there is so much demand for services, then we can control demand by starving the system.

Where do I see signs of starvation? With luck, it takes two to three years to try an "ordinary" superior court case, and an additional two to three years for an appeal. Without luck, that can stretch to six or more years. Issues of widespread financial, commercial and social concern wait in line behind scores of individual property disputes between ex-spouses. Overburdened courts push citizens to use "alternative dispute resolution" (*see* Civil Rule 100). ADR can be a valuable tool in some situations but, like the discovery master, it is "purchased justice." Those with the money can buy a quicker resolution than those without. And those who use ADR, either out of luck or desperation, get a different brand of justice than those who use the "same deal" system of justice.

No end is in sight for the delay. A beleaguered representative of the court system, introducing an effort to reduce appellate delay, started his presentation with the caveat that lawyers would have to "manage expectations," leading this listener to conclude that significant reduction in delay is impossible under the current budget and political climate.

But what is REALLY troubling is that we all buy into this cycle of despair and self-flagellation. The courts blame lawyers. Lawyers blame the court system. I do not overstate our own complicity in "system bashing." The *Peter* opinion (somewhat gleefully, it seems) quotes examples of lawyers being "out of control," where it was necessary to provide "day care for counsel who, like small children, cannot get along and require adult supervision." And, when explaining the delays of litigation to clients, who among practicing lawyers has not rolled his or her eyes, lamenting the inefficiency of the court system?

I do not suggest that lawyers are never guilty of excessive zealousness (or panic in the face of excessive zealousness), or that the court system could not be more efficient. I am not suggesting that we stop being self-critical. I am not suggesting that more money from the legislature would make everything better. I am suggesting that our system is lean, not fat; and that we may be at the point where additional "innovations" start to undermine the fundamental fairness of our system. At that point,

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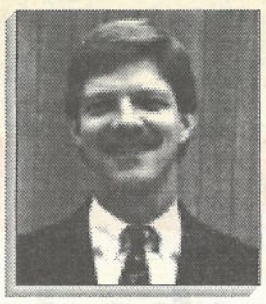
Editor's Column

Effective use of case law is all in the editing

☐ Peter Maassen



Just because the titans of the computer-research industry are continually plying the *Bar Rag* editor with free web-site tours and software upgrades in hopes of getting free advertising space in your newspaper doesn't mean that said editor is anxious to do everybody else's computerized legal research for them, said editor resenting, in fact, the midnight telephone calls asking that he quick run a little key-word search on the *Bar Rag* account seeing as how the law library is closed and the brief is due tomorrow. *You can do it yourselves, readers.*

The thing to remember is this (and I say it only because I know, through anecdotal evidence, that judges never read this column): Relevance doesn't matter. Unless you're looking for a contact lens on the floor at Chilkoot Charlie's, the phrase "on all fours" is highly overrated. Put aside your headnotes and your hoary principles — what matters is that your case law be judiciously edited. If you're dexterous enough with your ellipses and your brackets, the law will say anything you want it to say.

Consider, for example, the proposition that the moon is made of green cheese. *See Schonfeld v. Raftery*, 271 F.Supp. 128, 132 (S.D.N.Y. 1967) ("We are compelled to agree with plaintiff's statement in its affidavit that . . . 'the moon is made of green cheese'") (quoting prior order). Even the pragmatic Judge Richard Posner has gone so far as to concede that "[t]he moon may be made of green cheese after all." *U.S. v. Nagib*, 44 F.3d 619, 625 (7th Cir. 1995) (dissenting opinion). In the D.C. Circuit, in fact, you can "prove that the moon is made of green cheese by asserting it several times in quick succession." *Carolina Power & Light Co. v. F.E.R.C.*, 860 F.2d 1097, 1100 (1988); *see also Madison Gas & Electric Co. v. Public Service Commission*, 441 N.W.2d 311, 319 (Wis.App. 1989) (dissenting opinion) (*quoting Carolina Power*, *supra*). You can try this at home. *Accord, E.I. duPont de Nemours & Co. v. Robinson*, 923 S.W.2d 549, 558 (Tex. 1995) ("the world is flat, . . . the moon is made of green cheese, [and] the Earth is the center of the solar system").

Would the Alaska Supreme Court follow this smattering of diverse authority? Perhaps, though it is generally hesitant to meddle with the interplanetary system. *See, e.g., West v. Municipality of Anchorage*, 754 P.2d 1120, 1125 n. 1 (Alaska 1988) (finding no merit in contention that "the [trial] court improperly refused to instruct the jury that . . . the sun must slow down or stop").

An easier sell in Alaska, given our overburdened courts, may be requiring your adversary to meet you at the ping-pong table, a form of ADR that this column has endorsed before. No less an authority than the U.S. Supreme Court requires that "every borderline case must inevitably culminate in a perpetual game of . . . ping-pong until this Court intervenes." *Christianson v. Cold Industries Operating Corp.*, 108 S.Ct. 2166, 2179 (1988). *See also N.L.R.B. v. Wyman-Gordon Co.*, 89 S.Ct. 1426, 1320 n. 6 (1960) ("that we convert judicial review of agency action into a ping-pong game . . . is not seriously contestable"); *Nitram, Inc. v. Cretan Life*, 599 F.2d 1359, 1373 (5th Cir. 1979) ("To enforce their respective rights under the [Carriage of Goods by Sea] Act, litigants must engage in [a] ping-pong game"). In Florida, ping-pong has a use in pretrial procedure as well: "[A] corporate party could frustrate the opposing party's discovery by simply playing 'ping-pong' with him." *Plantation-Simon, Inc. v. Bahloul*, 596 So.2d 1159, 1160 (Fla.App. 1992).

I've won a dozen cases at the ping-pong table. Your case, too, can succeed with judicious editing of the case law. *Trust me on this, readers.* Pay no attention to those findings of the Third Circuit, *e.g.* "Maassen lied to get his job," and "There is no doubt that Maassen behaved reprehensibly," *Burke v. Maassen*, 904 F.2d 178, 180, 183 (1990). Don't you know *dicta* when you see it?

The Alaska BAR RAG

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Bar Letters

How long to opinion?

Recently the Alaska Court System sent out notices seeking comments to assist a committee formed to determine how the Alaska appellate courts can remedy a large backlog of undecided eases.

It is not practical to offer suggestions to reduce systemic procedural problems without more information on how the court works. For instance, assume that a case has been submitted on the briefs with no request for oral argument. What steps occur after briefing is completed and before the case is taken up in conference? How frequently are conferences held? How many cases are considered at each conference? Are conferences not scheduled to accommodate justices' vacations and, if so, how frequently does this happen and are there alternatives? Does requesting oral argument have any effect on the amount of time necessary to obtain a decision and how does it affect the other concerns raised above? What does assignment consist of? Since assignment appears to be done before oral argument or conference, it presumably cannot mean that a particular justice is assigned to write the opinion because the justices cannot know who will be in the majority.

To be fair, the court's web site offers more information than was previously available to the general public, including the status of each case. An analysis of all the Supreme Court cases listed on June 11, 1999 showed that there were 478 open cases as of that date. Of these, 14 were stayed, 23 were cases in which an opinion had been issued but the case remained open for possible requests for rehearing and one had a rehearing pending. That leaves 440 open active cases awaiting decision. Of those, 119 were in the briefing stage, 55 were awaiting the trial court record, 5 were awaiting the trial court transcript, 11 were listed as "filing pending," 2 were petition pending and 2 were petition response pending.

This means 246 cases were awaiting decision on that day in which the parties had done everything they could do and were waiting for the court to take some action, whether that be consider the case, schedule oral argument or issue a decision. These 246 cases broke down as follows: 79 with a draft circulating, 93 ripe for decision, 4 awaiting assignment, 24 awaiting conference, 24 awaiting argument and 22 petitions ready for decision.

It has been my observation that the Supreme Court issues an average of perhaps three decisions per week. This means that it will take approximately half a year just for the Court to resolve the cases in which it currently has drafts circulating. With that kind of a backlog, it is inevitable that the other cases will languish. For instance, in the four weeks since this analysis was first done only five of the 24 cases listed at that time as awaiting conference have been upgraded to a higher status —approximately one per week. Of the four cases listed as awaiting assignment, three have been upgraded to awaiting argument or conference and one was mysteriously downgraded to the briefing stage.

It would be interesting to know how this compares with courts from states with a similar number of trial court filings per year. It would also be interesting to know the average amount of time it takes for an appeal to go from the date of the actual filing of the last printed brief to a decision. The Chief Justice in his State of the Judiciary speech stated that the Court had reduced the average time for decision from something like 360 days to 345. I was not taking notes and I do not have the actual figures he used, but I recall thinking that the statistic was clearly skewed because it made it sound like the average case takes less than a year to go from filing an appeal to receiving a published decision, and I know of no non-expedited case in which that has happened. Nobody can fault the Court for the time it takes to get to the briefing stage, or the endless automatic extensions sought by parties during the briefing stage, or even refiling necessary to correct violations of the appellate rules. Thus the relevant statistic would be the time from filing the last printed brief to reaching an opinion. I do not believe the Chief Justice shared that statistic in his speech.

If anybody has answers to the questions I raised, I would be interested in seeing them printed in the *Bar Rag*. The data regarding status of current cases are available on the internet. Because the manner of collating these data may be seen as a criticism of the Court, I regretfully wish to remain anonymous.

— *Sophocles*

Disabilities Comment

I write in response to the article "U.S. Supreme Court issues significant ADA decisions" in the July-August 1999 *Bar Rag*. In addition to the employment cases discussed in the article, the Supreme Court last June issued *L.C. v Olmstead*, 1999 WL 407380 (U.S.), holding that unnecessary institutionalization is a form of discrimination prohibited by the Americans with Disabilities Act.

The decision affirmed in part an 11th Circuit ruling that the state of Georgia violated the ADA by confining L.C. and E.W., two women with developmental disabilities and psychiatric impairments, in an institution rather than serving them in community-based programs, which their doctors agreed was appropriate.

In a 6-3 opinion by Justice Ginsberg, the court held that unjustified isolation is properly regarded as discrimination based on disability. This conclusion was based on two rationales. First, institutional placement of persons who can handle and benefit from community settings perpetuates unwarranted assumptions that persons so isolated are incapable or unworthy of participating in community life. Second, confinement in an institution severely diminishes the everyday life activities of individuals, including family relations, social contracts, work options, economic independence, educational advancement, and cultural enrichment.

However, the Court qualified its holding in several respects. It acknowledged that states can rely on the "reasonable assessments" of its own professionals in determining whether an individual meets the eligibility requirements for participation in community programs. Further, a State only has to provide reasonable modifications to avoid discrimination; it does not have to provide modifications that entail a fundamental alteration of its services and programs. For example, if a State could demonstrate that it had a "comprehensive, effectively working plan for placing qualified persons with mental disabilities in less restrictive settings, and a waiting list that moved at a reasonable pace not controlled by the State's endeavors to keep its institutions fully populated," it could avoid liability under the ADA.

The decision upheld the Department of Justice's regulations which mandate that a state must administer its programs in the most integrated setting appropriate to the needs of individuals with disabilities.

—*Cynthia Drinkwater*

Don't apologize, find solutions

Continued from page 2

we must stop being apologists and start advocating to the public and the legislature to ensure that we maintain the most effective, most fair justice system that we can afford.

If we choose to ignore the danger signs and stay locked in a cycle of self-blame, the system will begin to devolve, as I fear it has begun already, to ease the pressure. Those who can afford it will have an opportunity to buy a different (possibly better) kind of justice. Those who can't afford it will wait for the regular deal. Those who cannot afford to wait will compromise under the duress of delay. It is here that we, as lawyers and participants in the system, must be proactive. We, more than anyone else in our state, can understand and predict what will happen when we move away, consciously or unconsciously, from the "same deal' to "different deals for different prices."

You think I exaggerate. But—a slight digression—look at what happened to Legal Services. Congress starved it. Now it is up to lawyers and charitable organizations to pick up the slack. On the one hand, we absolutely should (and we do) reach into our own pockets to support justice. But on the other hand, when did we consciously decide that "justice for all" should be paid for by charitable donations? When did justice become a "problem" or a "mess" that only concerns lawyers? (it's THEIR system, let THEM take care of it ...)

As I stated in my last column, what people think of us should never be our primary individual or collective concern. However, when hostile, uninformed and unchecked criticism starts to slowly and subtly starve essential democratic institutions, then we must respond with something other than guilty silence and political paralysis.

It may be premature to take to the streets with hand-painted signs. However, we must be aware. We must be thoughtful and accurate when we have reason to criticize one another. Public lawyers, private lawyers and judges must view ourselves as a community, and not as isolated cogs in a system that none of us can control or direct.

We need to stop apologizing for situations we did not create, but are straining to resolve. And we need to talk about solutions and about where the money should come from. And why.

Classified Advertising

The United Way campaign begins:

Are you doing your part to make your town a better community to call home?

BY JOAN NOCKELS

So here I am, sitting at home on one of the last beautiful summer weekends in Anchorage, trying to figure out how to get lawyers to reach into their bank accounts and give to the United Way. I review the list of charitable organizations that are a part of the United Way of Anchorage:

Abused Women's Aid in Crisis (AWAIC), Access Alaska, Alaska Baptist Family Services, Alaska Health Fair, Alaska Women's Resources Center, Alaska Youth and Parent Foundation, Alaskan AIDS Assistance Foundation, American Cancer Society, American Diabetes Association, American Heart Association, American Lung Association, Anchorage Armed Services YMCA, Anchorage Center for Families, Anchorage Community YMCA, Anchorage Literacy Project, Anchorage Neighborhood Health Center, Anchorage Youth Court, Bean's Cafe, Big Brothers/Big Sisters of Anchorage, Boy Scouts of America, Boys and Girls Club of Greater Anchorage, Camp Fire Boys and Girls, Catholic Social Services, Center for Drug Problems, Challenge Alaska, Child Care Connection, Inc., Chugiak Children Services, Covenant House Alaska, Crisis Pregnancy Center, Elmendorf Youth Services, Food Bank of Alaska, Fort Richardson Youth Services, Foster Grandparents/Senior Companions, Girl Scouts Susitna Council, Hospice of Anchorage, Kids' Corps, Inc., Lutheran Social Services of Alaska, Mabel T. Caverly Senior Center, Planned Parenthood of Alaska, Program for Infants and Children, Salvation Army, Southcentral Counseling Center, Southcentral Foundation, Standing Together Against Rape, Victims for Justice, and Volunteers of America of Alaska

I read this list and I wonder how my town of Anchorage could flourish without these United Way member agencies. Maybe if Anchorage lawyers read this list, they will wonder the same as me and decide it is worth opening their wallets or, even better, their bank accounts to direct withdrawals in the name of United Way. Maybe lawyers from other Alaska towns will review the organizations that are a part of the United Way community in their own town and think and do the same.

I wonder if that is enough. You see, I read this list and I see the community these organizations serve. I see a woman living with an abuser and wondering how to get her children and herself away from him. Maybe she makes a phone call to AWAIC and someone is there to help her. I see children smiling, laughing, and making friends irrespective of race, religion, and culture, and I am grateful to organizations like the Boys and Girls Club that gave them this opportunity. I see an elderly woman who was a teacher in earlier days — and picture one in my own life, my dear aunt — who as a Foster Grandparent travels by bus to the hospital to tutor children being treated for leukemia. I see people getting diagnoses at health fairs; diagnoses that would not be occurring absent this opportunity. I see community leaders joining to promote an anti-smoking campaign. I see a physically-challenged person who did not know he could ski learning that he can. I see a new American striving to learn English and do better for herself. I see people needing comfort, a kind word, and loving hand getting just what they require.

WHILE I MAY NOT REQUIRE THESE SERVICES AT THIS TIME IN MY LIFE, I REQUIRE A COMMUNITY THAT DOES NOT FORGET THOSE WHO DO NEED ASSISTANCE FROM TIME TO TIME.

While I may not require these services at this time in my life, I require a community that does not forget those who do need assistance from time to time. I would hate to live in a town where people forget, turn their eyes, and harden their hearts. I am certain other lawyers believe the same, I sit here thinking as beautiful weekend skies cast through my windows.

WHEN YOU GIVE TO UNITED WAY YOU ARE PART OF A COMMUNITY-WIDE EFFORT TO MAKE LIFE BETTER FOR ALL.

Maybe the reason lawyers have not been generous to United Way in the past is that they have not heard of this organization and do not know what United Way does to make Anchorage, and other towns like it, a better place to call home. That must be the answer, because I know lawyers, unlike their image, are kind and generous people.

So let me tell you about United Way or, at least, the United Way of Anchorage. United Way is a unique community partnership that brings together people and resources of the Municipality of Anchorage to address community-wide issues, even as those issues address just one person. So, for example, when a woman calls United Way asking how to leave an abuser, United Way refers her to one United Way agency for housing, another to provide counseling for she and her children, yet another for job training, and yet one more to find affordable day care.

United Way works in the community to monitor needs, identify gaps, and track program results. A team of 180 volunteers from the community, with the assistance of the United Way staff, identify community needs, review programs and budgets of funded agencies, and follow through to ensure the effective delivery of services funded. Ninety-nine percent of dollars raised in Alaska stay in Alaska, with only eight percent going to pay administrative and fundraising expenses at the United Way. When your favorite charitable organization tries to raise funds on its own, their overhead is much higher; it is most likely their preference to only apply for a grant from United Way than expend their own dollars and efforts to bring in an ever lower return. If you are not sure this is the case, call them and ask.

When you give to United Way you are part of a community-wide effort to make life better for all. You make Anchorage or your whatever Alaska town you call home a better place to live, not only for the one in three persons who will use United Way's services, but for *yourself as well.*

You make a difference. And who does not want to do that?

So, now that the United Way Campaign for 1999 has begun, it is time to open up that bank account. To make a difference and contribute your hard-earned, tax-deductible donation, call United Way today at 263-2000. If the practice of law has been generous to you, be generous to the United Way. And, if you are a relatively new lawyer, like myself, give what you can and knock on the door of your partner-in-charge or supervising attorney and ask him or her to not only do the same, but to start a United Way campaign at the workplace. While charity begins at home, there is no reason it cannot prosper in the legal office.

Practice notes:

'MDA' firms challenge bars; labor postings

By now you've most likely heard the catchphrase, "multi-disciplinary practice" (MDP) and wondered what it meant. Like most developments today, it is a complex concept. It seems that the more we become technologically advanced or specialized, the more complicated life is.

WHAT IS IT?

Multi-disciplinary practice is a broad label that primarily is used to describe the increasing competition in the practice of law brought about by large accounting firms. I equate it to the unauthorized practice of law by accountants and other business professionals who increasingly seek to represent their clients in legal matters ranging from tax assessment appeals to preparation of estate planning documents. When most general practice or solo or smalls learn of it, they are justifiably outraged.

You may not know it, but two of the largest law firms in the world are accounting firms. Accounting firms are hiring lawyers and buying up practices at an unprecedented level. They have followed a model utilized in Europe to dominate not only the accounting and business consulting marketplace, but now are placing legal services under their umbrella. You may think "that is Europe and not the United States," but it can happen here and is in fact happening.

SHARING FEES WITH NONLAWYERS

There is another facet of multi-disciplinary practice which most lawyers either do not understand or, if they do, support. That is where a lawyer is freed of the restrictions of sharing fees with non lawyers by partnering with other professionals such as insurance and financial planners and obtaining the fees from those sources for the lawyers.

Not surprisingly, the General Practice Solo and Small Firm Practice Section (GPS-SF) of the American Bar Association (ABA) supports the later and is studying the former. There is a misperception out there that the General Practice Solo and Small Firm Practice Section supports multi-disciplinary practice overall. That is not the case.

LEARN ABOUT IT

The American Bar Association has appointed a task force to study the entire issue and is planned to issue its report in conjunction with the annual meeting in August to be held in Atlanta. There is a website devoted to this issue which can be found at www.abanet.org/cpr/multicom.html. You will find the Commission's preliminary report, issued in January of 1999, and the final recommendations issued this June.

Ultimately this issue will be addressed and regulated on a state-by-state basis. This issue, quite possibly, will change the practice of law as we know it.

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FEDERAL AND STATE POSTINGS

Apparently, investigations and fines of service industries for failure to post labor law notices is increasing. In the span of two weeks, I noticed an article in a national magazine, received a question from another lawyer about what is required to be posted and received a solicitation from a company seeking to sell the requisite postings for approximately $100. I don't know about your office, but our office does not have a time clock in the traditional sense where these postings are normally displayed. We do have a bulletin board in our kitchen which we use to place vacation schedules, a calendar, etc. I am sure most offices have something similar somewhere.

In this ever-changing and complex world we live in, it is difficult to keep up with the changes in those areas of law which we don't routinely practice. If it is difficult for lawyers to keep up with this information, imagine how problematic it is for your clients. Perhaps this is an opportunity for you to further endear yourself to your client base by providing them with useful practical information about this somewhat obscure topic.

The U.S. Department of Labor and individual states require you to post several notices for the benefit of your employees. This can include the posting of Fair Employment, Unemployment Compensation, Minimum Wage, Workers Compensation, Minor Labor Law, Equal Pay, or Public Accommodation Act summaries, for example. Chances are you or your clients do not have all of these posted.

Federal rules require that you display labor law postings in locations where your employees can reasonably view them at each of your businesses or facilities. Many of these postings are also required to be provided to job applicants as well as regular employees. They must be up to date for such diverse things as the Minimum Wage Act to the Family Medical Leave Act. Postings required by federal law include Equal Employment Opportunity, Child Labor Laws, Job Safety and Health Protection, Employee Polygraph Protection Act, Americans with Disabilities Act and, if your company has at least 15 employees, the Family Medical Leave Act. Federal postings can be obtained from the U.S. Department of Labor. Check their website located at www.dol.gov or call 202/219-8211.

PENALTIES

Failure to make the required postings, may result in a $1,000 per posting violation fine. You could also subject yourself to additional audits or investigations for other labor law violations that you may not even be aware existed. You may also expose yourself to labor troubles from aggrieved employees claiming that they either were unaware of their rights or, if they are in some way disgruntled, may exploit the situation.

If you do not have these postings, you should act now before you find yourself or a client answering to a Department of Labor inspector.

—Keith McLennan
American Bar Association,
Multi-Disciplinary Task Force &
GPS-SF Practice Section

Divorce and discharge

☐ Thomas Yerbich

Bankruptcy as a vehicle to transfer the assets of one business to another entity is becoming increasing popular. This transfer may be either through a confirmed chapter 11 plan or a free and clear sale under BC § 363(f). The question often arises as to the effect this transfer has on strict product liability claims for products manufactured by the seller before the transfer. These claims fall within three categories: (1) existing known claims; (2) existing unknown claims (injury has occurred, but no claim yet made); and (3) future claims (no injury has yet occurred). The rights and remedies of the injured party differ depending on the category of the claimant.

The first category is the easiest to analyze. The existing, known claimant will be a participant in the bankruptcy proceeding. The rights and remedies of that claimant against both the seller and buyer will be determined in the bankruptcy proceedings and any further claims of the claimant extinguished under the doctrine of *res judicata*. In short, a claimant with notice of the bankruptcy proceedings must either participate in those proceedings or forever hold his/her peace. Attempting to bypass the system will invariably be fatal to the claimant's rights and should not even be considered.

The third category is likewise fairly easy to address. Disregarding the cases that have established remedies for future potential claimants and gone to extraordinary lengths to identify and give notice to those claimants (*e.g.*, the asbestos and breast implant cases), it seems clear § 363(f) can not be used to cut off the rights of those whose claims have not yet come into existence. [*Zerand-Bernal Group, Inc. v. Cox*, 23 F3d 159 (CA7 1994); *The Ninth Avenue Remedial Group v. Allis-Chalmers Corp.*, 195 BR 716 (ND Ind. 1996)]

The second category, however, presents a different picture. In those cases, the claimant may retain rights against either or both the seller and the buyer.

AGAINST THE DEBTOR/ SELLER

In most cases, the seller disposes of all its assets and ceases business operations. Confirmation of a chapter 11 plan does not discharge a nonindividual debtor if (1) the plan provides for the liquidation of all or substantially all the property of the estate and (2) the debtor does not engage in business after consummation of the plan. [BC § 1141(d)(3)] Accordingly, in those situations, there is no discharge and proceeding against the debtor/seller is not precluded by BC § 524. Of course, since the debtor has no assets, unless the debtor had insurance covering the loss, this is an "empty pocket" remedy. [One might also look for a direct action statute, *e.g.* Cal.Ins.Code § 11580, applicable to all insurance policies issued to an insured in California.]

Even if the debtor were discharged, it is possible to bring an action against the debtor and its carrier, naming the debtor as a "nominal party." Discharge of a debtor does not affect the liability of any other entity on the obligation. [BC § 524(e)] Thus, an action brought against the debtor as a nominal party in order to obtain recovery from the debtor's carrier does not violate the discharge injunction of § 524(a)(2) (it is necessary to establish liability of the insured before the indemnification obligations of a carrier can be enforced). [*In re Beeny*, 142 BR 360 (BAP9 1992)]

THE RIGHTS AND REMEDIES OF THE INJURED PARTY DIFFER DEPENDING ON THE CATEGORY OF THE CLAIMANT.

Consequently, whether or not the liability of the debtor was discharged, to the extent that there was insurance coverage for the injury, the injured party may recover from the debtor either directly or as a nominal party.

SUCCESSOR LIABILITY

At the outset, I must acknowledge that successor liability after a bankruptcy free and clear sale is considerably less than clear. In fact, one might quite properly characterize the state of the case law on the subject as having all the clarity of a prism in a fog.

Section 363(f) authorizes sale of property free and clear of any *interest in the property* held by another entity if certain conditions exist. (1) Applicable nonbankruptcy law permits a free and clear sale of the property; (2) holder of the interest consents; (3) interest is a lien and the price at which the property is to be sold is greater than the aggregate value of all liens on it; (4) interest is in *bona fide* dispute; or (5) holder could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of the interest.

The question is whether this provision empowers a bankruptcy court to terminate successor liability under state law. In my opinion it does not. It is axiomatic that a tort claimant who has not reduced his claim to judgment has no *interest* in any property of the tortfeasor. If the claimant has no interest in the property being sold, how can it be extinguished? This is the result suggested by *Zerand-Bernal Group, Inc. v. Cox, supra*. While it is true that *Zerand-Bernal* is *dictum*, it is certainly consistent with the "plain meaning" interpretation the U.S. Supreme Court has adopted in interpreting the Bankruptcy Code.

Those cases giving a broad interpretation of § 363(f) do so on two main arguments: (1) fear successor liability will discourage potential buyers; and (2) successor liability frustrates the bankruptcy scheme by allowing some unsecured creditors to recover without regard to the priority order of the Bankruptcy Code. [*See, e.g., Forde v. Kee-Lox Mfg. Co.*, 437 FSupp 631 (WD NY 1977), *aff'd* on other grounds, 584 F2d 4 (CA2 1978); *In re White Motor Credit Corp.*, 75 BR 944 (ND Ohio 1987) *In re All American of Ashburn, Inc.*, 56 BR 186(ND Ga 1986); In re New England Fish Co., 19 BR 323 (WD Wash 1982]. Both may be valid public policy considerations in favor of terminating successor liability in a bankruptcy proceeding. But that is not the question. The question is: Did Congress intend in enacting § 363(f) to terminate successor liability under state law? There is no indication in either the legislative history or the language of the statute to support to such a broad interpretation of § 363(f). Moreover, the history of judicial termination of interests in property, firmly rooted in both common (quiet title) and admiralty (sale of vessels) law, extends only to interests in the property being sold. Whether a lien, encumbrance, title, possessory, nonpossessory, legal or equitable, it is nonetheless an interest in the property, not merely a claim against the holder of the interest in the property. It seems to this author that had Congress intended to expand the historical scope of free and clear sales, it would have used language that spoke to something more than "any interest in such property."

State law specifically recognizes successor liability in asset acquisitions under certain circumstances and does not permit a free and clear sale if those circumstances exist. In general, a buyer of another entity's assets does not assume the seller's liabilities unless: (1) buyer expressly assumes those liabilities; (2) transaction constitutes a merger or consolidation; (3) buyer is a mere extension of seller; or (4) transaction amounts to a fraudulent or collusive attempt to avoid seller's liabilities. Several states have adopted a hybrid exception to the general rule precluding implied successor liability, known as "product-line" liability: (1) virtual destruction of tort remedies against seller as a consequence of the acquisition; (2) buyer's continued manufacture of same product line under same name; (3) buyer's continued use of seller's corporate name or identity, and trading on seller's good will; and (4) buyer's representations to the public that it is an on-going enterprise. [*See, e.g., Ray v. Alad Corp.*, 136 Cal.Rptr. 574, 560 P.2d 3 (Cal. 1977)] Therefore, ' 363(f)(1), by its very language, is indicative of an intent not to override state successor liability law.

Paragraphs 363(f)(2) and (3) are patently inapplicable (there is no consent and the "interest" is not a lien). For the interest to be in dispute [§ 363(f)(4)], the trustee must take the position that there is no interest and, thus, if there is no interest, it can not extinguished. Besides, if the claim is unknown, how does one establish the existence of a *bona fide* dispute? While on its face § 363(f)(5) appears to be of some assistance, it is of no help given the fact it is patently impossible to determine the amount it would take to satisfy an unknown claim.

Reading § 363(f) in conjunction with §§ 363(g) (dower/curtesy) and (h) (co-owners) gives the impression that Congress did not intend the reach of § 363(f) to extend to interests other than interests that actually attached to the property being sold. Interests in property are determined by reference to state law. [*Butner v. United States*, 440 US 48 (1979)]

Taken together, these compel the conclusion that § 363(f) simply does not empower a bankruptcy court to terminate claims other than those that are in the nature of interests in the property under state law. In short, a free and clear sale under the Bankruptcy Code does not preclude successor liability.

Assuming, *arguendo*, a bankruptcy court could extinguish successor liability claims, there is yet another chink in the armor of the successor seeking to escape liability: notice. "An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." [*Mullane v. Central Hanover Bank & Trust Co.*, 339 US 306 (1950)] If the notice given was inadequate, the "interest" of the unknown claimant can not be terminated under § 363(f). [*In re Savage Industries, Inc.*, 43 F3d 714 (CA1 1994)] On the other hand, if the existing but unknown claimant receives notice, the claimant is given an opportunity to participate in the bankruptcy proceedings and is essentially in the same position as the known claimant who is scheduled in the case. It may not be necessary, however, for claimants to receive actual notice. Notice by publication, if such notice were in fact given, could be adequate. [FRBP 2002(l); *see, e.g., In re Chemetron Corp.*, 72 F3d 341 (CA3 1995) (notice by publication in *Wall Street Journal* and *New York Times*, supplemented by publication in local newspapers).

KBA Korner

By W. Clark Stump

This article and hopefully many articles to come are intended to inform the Alaska Bar Association members of the Ketchikan Bar Association activities, along with the Alaska Bar Association 2001 Convention scheduled for Ketchikan.

KBA is proud to host the convention, and we are now coordinating our plans for this occasion with Alaska Bar Association staff and Bruce Weyhrauch. We assure the members of the Alaska Bar Association that this will be an experience you will not want to miss. The last time KBA hosted a convention was in 1977!

On the lighter side, it is with profound regret that our Flotilla Captain, Geoff Currall, has just managed to sink (bad choice of words) another fortune in his on-going battle with the family boat. Seems his boat has taken a professional stand against him. This from a man who at one time when he first arrived in Alaska, and tied his boat to a dock, and later found out the tide had dropped ... but the boat hadn't. His response ... I thought the tide only went out in the middle of the bay! Could be why the boat is not user friendly!

Transportation Coordinator, Will Woodell, finally gave in to modern technology after fighting a losing battle with his vehicle. Seems like he took heed only after experiencing problems with the rear window falling out while transporting some exchange students, along with other mechanical difficulties. The vehicle was pronounced dead on arrival at the service station.

For those interested, KBA still meets each morning at nine a.m. at the Cape Fox hotel for coffee and exchange of stories. No business please! We welcome one and all.

Chuck Cloudy and Clark Stump, President and Historian of the KBA, have completed an account of the KBA history. Seems like the first attorney to invade Ketchikan was in 1897.

TRIVIA: Of the 41 attorneys/judges currently active in Ketchikan, six were born here. Chuck Cloudy, W. Clark Stump, John Peterson, Loren Stanton, Trevor Stephens and Randy Ruaro.

Dick Whittaker, KBA Poet Laureate, is taking a sabbatical from law for awhile; though he won't be absolutely precise. He does advise, however, that he will have a sample poem to be printed in future KBA KORNER articles for the *Bar Rag*. Something for the hopefuls to set their sight on for the poetry contest KBA is sponsoring during the 2001 ABA convention in Ketchikan.

The KBA is happy to congratulate Kevin Miller on his appointment to the District Court judgeship in Ketchikan. I'm certain Governor Knowles had a difficult time deciding on the two nominees presented by the Judicial Council, namely Kevin and Mary Treiber. We wish him well on the bench.

For those of you who previously practiced in Ketchikan, and will be attending the 2001 convention, we are having a reunion. More the reason to attend.

Some of the activities which are scheduled for the convention are the marathon run, poetry contest, dinner-cruise to the Misty Fjord area, and fishing during a portion of your trip here. We welcome any and all suggestions as to other activities the membership is interested in.

Finally, Cliff Smith, our perpetual Secretary/Treasurer, has again successfully defended his 564th impeachment proceedings. Appears some KBA members want an accounting, and the majority are afraid to know!

Pro bono asylum project gains ground

By Robin Bronen

Hundreds of immigrants who fled the civil wars raging in El Salvador and Guatemala during the 1980s now reside in Alaska awaiting the outcome of their political asylum applications. In response to their urgent legal needs, the Immigration & Refugee Services Program (IRSP) created the Pro Bono Asylum Project. The project was jump-started last March when the Alaska Bar Association sponsored a free CLE for attorneys willing to provide *pro bono* legal assistance. These *pro bono* lawyers are providing assistance to asylum seekers who have been waiting 10 years for the Immigration & Naturalization Service (INS) to adjudicate their asylum claims. Twenty-five attorneys, three interpreters, and three clinical psychologists are working with the Pro Bono Asylum Project. The Project is partly funded by an IOLTA a grant from the Alaska Bar Foundation.

During the 1980s hundreds of thousands Central Americans fled in search of a safe place to live, free from the horrors they suffered in their home country. The INS denied political asylum to over 98% of these people and a class action lawsuit followed. A subsequent settlement in 1991 allowed over 200,000 refugees nationwide to resubmit their application for political asylum. However, these political asylum applications have still not been processed.

In November 1997, Congress passed the Nicaraguan Adjustment and Central American Relief Act (NACARA) to provide a one-time opportunity for these immigrants to finally resolve their immigration status and attain legal residency in the United States. Recently, in May 1999, the INS promulgated the interim regulations and published the application that Salvadorans and Guatemalans must use to apply for residency, so the long struggle to find safety and peace may be finally coming to an end.

A majority of the immigrants affected by NACARA reside on Kodiak Island. In August eight of the *pro bono* attorneys, two interpreters, a clinical psychologist and the director of the Immigration & Refugee Services Program traveled to Kodiak to provide counseling and legal services to these immigrants. For the immigrant community on Kodiak Island the arrival of so many people who care abut these lives was an unimaginable gift. As one client said, "no one has ever been concerned about my life and how I survived the war."

In addition to the volunteer attorneys, the work of a volunteer clinical psychologist, Dr. Karen Ferguson, and a UAA Spanish language professor, Dr. Francisco Miranda, is essential to the success of the project. They are working together to assess the mental health needs of the Salvadoran community and determine whether the clients suffer from post-traumatic stress disorder, a necessary part of the NACARA application. Today, many of the NACARA applicants still suffer from nightmares, and fear returning to their homeland where death squads roamed the villages.

NACARA applications will be submitted to the INS within the next month. The director anticipates that an INS asylum officer from San Francisco will travel to Alaska sometime next year to interview the NACARA applicants. Applicants will know whether their applications have been approved at the time of their interviews.

The staff of the Immigration & Refugee Services Program wants to extend its deep appreciation to the following attorneys, interpreters, and psychologists who are making a tremendous difference in the lives of their clients.

James Aprea; Mary Ellen Ashton; Dr. Ann Collier; Joan Connors; Bret Cook; Glen Cravez; Fred Dewey; Cindy Drinkwater; Robert Ely; Dr. Karen Ferguson; Dr. Frank Gonzales; Ken Gutsch; Leslie Hiebert; Jim Kentch; Brant McGee; Dr. Francisco Miranda; Nikole Nelson; Heather O'Brien; Randall Patterson; Jim Parker; Chet Randall; Dan Rodgers; William Saupe; Leonard Steinberg; Antoinette Tadolini; Maria Elena Walsh Thomas Wang; Sandra Wicks; Sonia Vasconi.

If anyone is interested in providing *pro bono* services to these immigrants, please contact the Immigration & Refugee Services program at 276-5590. The program is working with approximately 150 NACARA applicants and desperately needs assistance.

BEYOND BORDERS • NOV. 6

MULTICULTURAL DANCE PERFORMANCE AND ART EXHIBIT TO SUPPORT THE CATHOLIC SOCIAL SERVICES IMMIGRATION & REFUGEE SERVICES PROGRAM.

NOVEMBER 6, 1999 AT 7:00 P.M.
AT WENDY WILLIAMSON/UAA.
FOR MORE INFORMATION CALL 279-7719

Conflict triage — appropppriate and inappropriate cases for mediation

□ Drew Peterson

The paradox of mediation continues to be the fact that those individuals who need mediation the most are the ones that are least willing to give it a try. The paradox is caused by the heightened emotions that accompany a protracted dispute, and our human instinctive reaction to stand up and fight.

The paradox of mediation is sometimes aggravated by the bar and bench. There are still a number of our brethren who simply do not understand mediation. Luckily, this happens less and less these days as attorneys are becoming better educated about appropriate dispute resolution (ADR) methods. Problems remain, however, due to the number of lawyers who are still not sufficiently aware of the most appropriate and inappropriate circumstances for the use of ADR alternatives to court.

THE PARADOX OF MEDIATION IS SOMETIMES AGGRAVATED BY THE BAR AND BENCH.

CONFLICTS APPROPRIATE FOR MEDIATION

The following types of cases are those which have been found to be particularly appropriate to the use of mediation procedures. Some such cases are appropriate to the use of arbitration procedures as well, which will be noted when applicable.

1. Conflicts where the parties have a need to maintain a relationship in the future.

These are the classic examples of cases which are appropriate for a mediation type procedure. An example would be family members who are going to continue to have interactions no matter how they feel about each other. Another example would be business people in a small town or in a business which involves a relatively small business community.

2. Disputes between parties who would like to maintain a relationship in the future. Examples here would be people who have been friendly in the past or disputants who admire each other for some reason apart from their current conflict. Mediation procedures are much more likely to retain the ability of such parties to foster a future relationship.

3. Disputes involving an unsettled area of the law or where the law is unclear. The classic example here would be a dispute involving complex technology and high stakes, where there is a real fear that the courts would not correctly understand the issues. In such a case another option would be to utilize an arbitrator with technical experience instead of a judge to decide the matter. Another example would be a close issue of law with high stakes to both sides, and where a motion for summary judgment could go either way. A mediated resolution would reduce the risk of loss, while requiring a measure of compromise.

4. Disputes where privacy is important An example would be a dispute between same sex partners who have not gone public with their sexual preferences. Or any dispute involving salacious allegations. Privacy concerns can also be dealt with through an arbitration procedure.

5. Cases where time is an important element. A classic example here would be an ongoing construction project where things could be stalled until the dispute is resolved. There are numerous other examples of disputes where time is important. We all know the saying that "justice delayed is justice denied." Arbitration procedures are also generally faster than court: however mediation, when successful and initiated early in the dispute, is usually the fastest way of reaching resolution.

6. Disputes where we want to minimize costs. Virtually any case we can think of is an example here. Arbitration also can reduce costs on occasion, but is sometimes even more expensive than court in that it utilizes a paid neutral rather than a publicly paid judge. Successful early mediation is demonstrably the least expensive dispute resolution method on an overall statistical basis, but of course there is no guarantee that a voluntary mediation process will succeed.

CASES THAT ARE INAPPROPRIATE FOR MEDIATION

The following cases are inappropriate for mediation methods. Indeed, in some instances, you could be exposing your clients to serious harm and yourself to potential malpractice exposure, by utilizing such methods. In contrast arbitration, as a rights-based dispute resolution method, could still be appropriate to the resolution of such matters.

1. Cases where you are trying to establish the truth or falsity of a matter. Mediation (and other methods of collaborative problem solving for that matter of which mediation is only one) inherently involves a measure of compromise on issues of truth and falsity. It is not so much that truth is unimportant as a recognition that there can be different truths in a situation, and that all the different perceptions of the parties can have the ring of truth to them.

In many cases, the ultimate truth is of little significance to the proper resolution to the matter. Thus in family disputes, short of criminal behavior, who did what to who is much less important than the overall needs of the family and the future abilities of the various parties to meet those needs. There are many different areas of the law where what actually occurred is of less significance than the respective impressions of the disputants as to what happened, and finding a way for future dealings.

In many other cases, however, truth or falsity is essential to resolution. The classic case is a criminal matter, where the criminal act either occurred or it did not. There is no room for compromise on such issues. (Except, I suppose, for plea bargains, but that is another story.)

2. Cases whore you want to establish a legal precedent. The classic example of an inappropriate case for mediation, in this area is the Rosa Parks case. Had her case gone to mediation the inevitable result would have been an agreement that she sit in the middle of the bus and promise not to tell anyone. Such a resolution, while perhaps easing her sore feet, would have done absolutely nothing to forward the cause of civil rights in the country. Resolutions reached in mediation (and generally in arbitration as well) are private, and have no precedential value beyond their value to the specific parties to the dispute.

3. Cases where one side is unwilling to negotiate. It takes two to tango, and it takes two or more willing participants to engage in a collaborative problem solving method such as mediation. While the point is obvious, the primary skill for mediators, attorneys judges and others facing the predicament of unwilling parties is to recognize that the unwillingness is often only on the surface. Numerous studies have demonstrated that procedures such as that contained under Alaska Civil Rule 100 for requiring parties to attend an initial orientation session are almost as successful in reaching full resolution as those where the parties came voluntarily in the first place.

IT IS INCUMBENT ON COMPETENT PRACTITIONERS IN THE BAR TO UNDERSTAND THE DIFFERENCES BETWEEN ADR METHODS AND STYLES . . .

4. Disputes where one party is absent or incompetent. A more difficult situation arises where one party is absent or incompetent Sometimes mediation with incompetent parties can be negotiated successfully with the assistance of a guardian *ad litem*, especially when the party is able to express his or own needs. Absent parties preclude mediation procedures involving those parties.

5. Disputes involving a serious crime. The final category of cases inappropriate for mediation is also the category most controversial, from a variety of perspectives. The traditional view that there should be no mediation involving crimes has been belied recently by the number of successful programs involving victim-offender mediation, circle sentencing (which involves some mediation-like procedures), and the like. Such programs differ from most mediation procedures, however, in that the issues being mediated are not the crimes, themselves, but other issues between the parties. For example, in the victim-offender mediation context, restitution is the primary legal issue being resolved. A greater purpose often recognized for such mediations is an attempt at transformative communications between parties, to bring real accountability to criminal offenders and provide some closure for the victims of crimes.

Similarly in the area of domestic violence, it is increasingly being recognized that while violence itself is not a negotiable issue in any dispute resolution process, that there are other important issues between abusers and their victims which may be resolvable through a mediation process, as long as adequate safeguards are in place. Even abused women programs and shelter programs around the country are now participating in mediation protocols allowing mediation exclusively by caucus, or with a woman's advocate participating in the process, to resolve other issues legitimately in dispute between parties and not well resolved in court.

In summary, it is incumbent on competent practitioners in the bar to understand the differences between ADR methods and styles and specifically to understand those types and kinds of issues which are or are not appropriate to attempted resolution through mediation and other methods of collaborative dispute resolution. Such an understanding is not only necessary to the optimal representation of clients, but may actually be required to protect lawyers from malpractice exposure for allowing the inappropriate use ADR.

Court enjoins Immigration from seizing vehicles in Alaska

United States District Judge Thomas S. Zilly of the United States District Court for the Western District of Washington has certified a class action and granted a preliminary injunction in a case that affects Alaska residents whose vehicles were seized by the United States Immigration & Naturalization Service ("INS") at an time between June 10, 1989 and the present.

The lawsuit, brought by the law firm of Gibbs & Pauw in Seattle, Washington, alleged that INS had seized vehicles, and the owners had subsequently forfeited them, in violation of the Due Process Clause of the Constitution and the Fourth and Eighth Amendments. In an Order dated July 21, 1999, Judge Zilly ordered the INS to institute new procedures whenever it seizes vehicles. Among other things, INS is now required to notify the owners of sized vehicles of (1) the law under which the vehicle was sized; (2) the facts that INS relied on when seizing the vehicle; and (3) the evidence that INS has to support its seizure of the vehicle. INS is also now required to give a written explanation when it orders a vehicle forfeited.

The lawsuit affects residents of INS's Western region, which includes Alaska, Arizona, California, Hawaii, portions of Idaho, Oregon, Nevada, Washington, the Territory of Guam, and commonwealth of the Northern Mariana Islands.

THE PUBLIC LAWS

Tax limitation initiative now circulating

☐ Scott Brandt-Erichsen

The practitioners of direct legislation are at it again. This year, among the initiative petitions which may be winding their way through communities, appearing at state fairs, or other large public gatherings is a proposal for property tax and assessment relief.

Patterned loosely after California's Proposition 13, which froze tax assessments as of the purchase date, the initiative would amend AS 29.45.110, AS 29.45.090(a) and AS 29.45.100. The substantive effect of the changes would restrict property tax assessments and limit total mill levies.

With respect to assessments, current provisions call for all property to be assessed at its full and true value as of January 1. The amendments would fix the assessed value as of the date of purchase, restricting increases in subsequent years to the rate of inflation or 2% whichever is less. Property which is sold or improved could be reassessed at the new full and true value, but if the property remains under the same ownership the assessed value would be subject to only very limited increases.

The amendments would fix the assessed value as of the date of purchase, restricting increases in subsequent years to the rate of inflation or 2% whichever is less.

The amendment would change the tax limitation in AS 29.45.090(a) reducing the current limit of 3% of the assessed value to 1%. Thus, the maximum mill rate in a municipality would be reduced from 30 mills to 10 mills.

Finally, the initiative would amend AS 29.45.100 to apply the 10-mill rate limit to taxes levied in order to pay bonds issued on or after January 1, 2001. Currently, the 30-mill limit is waived with respect to taxes levied to pay or secure payment of bonds. This waiver would be eliminated, prospectively, under the proposal.

At first blush, this is the sort of proposal which, due to its visceral appeal to the pocketbook, is likely to gather significant public interest and therefore could stand a reasonable chance of garnering sufficient signatures for placement on the ballot.

However, where the demand for municipal services or public improvements financed by bonds remains at or near current levels, the initiative could create severe problems. Numerous municipalities currently rely on property taxes in excess of 10 mills to fund operating budget expenses, not to mention meeting bonded indebtedness requirements. Along with many other persons involved in providing local government services, I will watch with interest as this petition makes its way through the process.

Deadline coming for 2000-2001 Fellows Program

The Judicial Fellows Program seeks outstanding individuals who are interested in the administration of justice and would like to spend a year working within the federal judiciary.

Fellows spend one calendar year, normally September through August, in Washington, D.C. at the Supreme Courts, of the United States, the Federal Judicial Center, the Administrative Office of the United States Courts, or the United States Sentencing Commission working on various projects concerning the federal court system and judicial administration.

Candidates must be familiar with the judicial system, have *at least* one postgraduate degree and two or more years of professional experience with a record of high achievement. Multi-disciplinary training and experience is desirable; academic backgrounds of former Fellows include political science, public and business administration, economics, the behavioral sciences, systems analysis, journalism and law. Application deadline: November 5, 1999. For information about the program and application process, please write to: Vanessa M. Yarnall, Administrative director, Judicial Fellows Program, Supreme Court of the United States, Washington, D.C. 20543, (202) 478-3415.

NAME CHANGE REFLECTS CHANGES IN LEGAL PROFESSION

After many years of wrestling with its name and what was in a name, in March 1999, the National Association of Legal Secretaries voted to change its name to "NALS," with the tag-line "the association for legal professionals." This name change allows the association to market itself to a more diverse market and take advantage of the changes in the legal profession. Many of our members, as well as our our prospective member base, are no longer "legal secretaries" and very few programs are available for "legal secretaries." The decision was made to be inclusive rather than exclusive, and the members present at the Leadership Conference in Tulsa, Oklahoma, in March overwhelmingly voted in favor of the name change to NALS. More information is available on the NALS website at www.nals.org.

The ALSA Board has proposed a name change to "NALS of Anchorage" . . . the association for legal professionals, to be voted on at the September 9, 1999 membership meeting.

In addition, following the September 9 meeting, Supplement 1 to the ALSA Handbook will be unveiled and available for purchase. It has been three years since the Second Edition was published, and we are very excited about making this update available to the legal community. With publication of Supplement, the Handbook (with the supplement) will be available for purchase on CD-Rom for the first time. The only reason we aren't releasing the information now is that, assuming the name change passes (which I do), we will use it as our introduction to the community as NALS of Anchorage. We are also making the CD-Rom version available to our members at no cost with the purchase of a supplement.

We have a fabulous board this year and are looking forward to a great year!

• *Jana Vander*brink, President, Legal Secretary with Pletcher, Weinig, et al.

• *Yvonne B. Robinson*, Certified Professional Legal Secretary, President-elect, Legal Assistant with Clapp, Peterson & Stowers, LLC.

• *Annette Brown*, Secretary, Legal Assistant with Sisson & Knutson, PC.

• *Christine Breton*, Accredited Legal Secretary, Treasurer, Legal Secretary with State of Alaska, Special Litigation Section.

• *Alice Moore*, Certified Professional Legal Secretary, Functional Director-Handbook, Legal Secretary with Robertson, Monagle & Eastaugh, PC.

• *Sherry Lucus*, Functional Director-Education, Legal Secretary with Bankston & McCollum, PC.

• *Deborah Silver*, Certified Professional Legal Secretary, Functional Director-Certification, Legal Secretary with Middleton & Timme, PC.

In addition to the board, we have volunteers who are hard at work on our many programs for 1999-2000, including scholarship, education, and programs for our meetings.

Another exciting event upcoming for our local association is hosting the NALS Region 7 Year 2000 Meeting in Anchorage in July 2000 at the Hawthorne Suites. NALS members from all across the nation will travel to Anchorage to experience the education and hospitality we have to offer.

Region 7 consists of Alaska, Washington, Oregon, Montana, Wyoming and Idaho, but we have had interest from members living far beyond the confines of the states comprising Region 7. Nancy Blackwell is chairing the committee and is also our local webmaster. Information on this event, along with numerous others, can be found on our website at www.aklsa.org.

ALSA is a chapter of NALS, the association for legal professionals dedicated to enhancing the competencies and contributions of members in the legal services profession.

—Yvonne B. Robinson, PLS

The Voluntary CLE Rule (VCLE)

The VCLE Rule provides for minimum recommended hours for CLE as suggested by the Alaska Supreme Court.

Effective Date: September 2, 1999

FULL TEXT OF THE RULE

IN THE SUPREME COURT OF THE STATE OF ALASKA
ORDER NO. 1366

Adopting Alaska Bar Rule 65 concerning continuing legal education.

IT IS ORDERED that the Alaska Bar Rules are amended to include new Rule 65, which provides:

RULE 65. Continuing Legal Education

(a) In order to promote competence and professionalism in members of the Association, the Alaska Supreme Court and the Association encourage all members to engage in Continuing Legal Education (CLE). This rule is intended to set minimum standards for Continuing Legal Education.

(b) Every active member of the Alaska Bar Association should complete at least 12 credit hours of approved CLE, including 1 credit hour of ethics CLE, each year. An active Bar member may carry forward from the previous reporting period a maximum of 12 credits. To be carried forward, the credit hours must have been earned during the calendar year immediately preceding the current reporting period.

Commentary.—The Alaska Supreme Court and the Association are convinced that CLE contributes to lawyer competence and benefits the public and the profession by assuring that attorneys remain current regarding the law, the obligations and standards of the profession, and the management of their practices. But the Supreme Court is not convinced that a mandatory rule is necessary and believes that a CLE program can become successful by using incentives to encourage voluntary participation in CLE rather than sanctions to penalize non-compliance with a mandatory rule. Accordingly, the Supreme Court and the Association have adopted this rule as a three-year pilot project. At the end of this pilot project, the Supreme Court will assess the project's results, including recommendations and statistics provided by the Association, and will determine whether a sanction-based mandatory CLE program is necessary.

(c) At the end of each year, each member will certify on a form, prescribed by the CLE Director and distributed with the invoice for bar dues, the member's approved CLE hours earned during the preceding year. The CLE Director will supervise the CLE program and perform the duties and responsibilities contained in these rules.

(d) Members who comply with this rule by completing the minimum recommended hours of approved CLE provided in section (b) of this rule will receive a reduction in their bar dues, in an amount to be determined each year by the Board. Only members who complete the minimum recommended hours of approved CLE are eligible to participate in the Alaska Bar Association's Lawyer Referral Service. If a member does not comply with this rule by completing the minimum recommended hours of approved CLE, that fact may be taken into account in any Bar disciplinary matter relating to the requirements of Alaska Rule of Professional Conduct 1.1. The Association shall publish annually, and make available to members of the public, a list of attorneys who have complied with this rule's minimum recommended hours of approved CLE. The Association may devise other incentives to encourage compliance with this rule.

Commentary.—This rule contemplates a modest reduction in bar dues, to be determined annually at the Board's discretion, that will serve as an incentive for members who have voluntarily complied with the CLE standard; the reduction is not intended as reimbursement for CLE costs actually incurred by members.

(e) A member may file a written request for an extension of time for compliance with this rule. A request for extension shall be reviewed and determined by the CLE Director. A member who is granted an extension and completes the minimum CLE requirements after the end of the reporting period is not entitled to the discount on bar dues.

(f) The CLE requirement of this rule may be met either by attending approved courses or completing any other continuing legal education activity approved for credit under these rules. The following activities may be considered for credit when they meet the conditions set forth in this rule:

(1) preparing for and teaching approved CLE courses; credit will be granted for up to two hours of preparation time for every one hour of time spent teaching;

(2) studying audio or video tapes or technology-delivered approved CLE courses;

(3) writing published legal texts or articles in law reviews or specialized professional journals;

(4) attendance at substantive Section or Inn of Court meetings;

(5) participation as a faculty member in Youth Court;

(6) attendance at approved in-house continuing legal education courses;

(7) attendance at approved continuing judicial education courses;

(8) attendance at approved continuing legal education courses.

(g) The CLE director shall approve or disapprove all education activities for credit. CLE activities sponsored by the Association are deemed approved. Forms for approval may be submitted electronically.

(1) An entity or association must apply to the Board for accreditation as a CLE provider. Accreditation shall constitute prior approval of CLE courses offered by the provider, subject to amendment, suspension, or revocation of such accreditation by the Board.

(2) The Board shall establish by regulation the procedures, minimum standards, and any fees for accreditation of providers, in-house continuing legal education courses, and publication of legal texts or journal articles, and for revocation of accreditation when necessary.

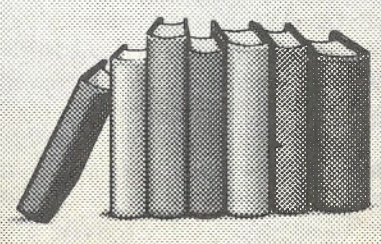
(h) This rule will be effective September 2, 1999. The reporting period will be the calendar year, from January 1st to December 31st, and the first calendar year to be reported will be the year 2000. Any CLE credits earned from September 2, 1999 to December 31, 1999 may be held over and applied to the reporting period for the year 2000.

DATED: September 2, 1999
EFFECTIVE DATE: September 2, 1999

VCLE RULE IS A PILOT PROJECT

This Rule is a three-year pilot project. Members are encouraged to report any CLE completed, even if it is less than the minimum recommmended hours. A tabulation of CLE completed by each member will be used by the Supreme Court to determine whether a mandatory CLE program is necessary.

RESOURCES AVAILABLE TO YOU



The Alaska Bar Association has a CLE library of video and audio tapes and course materials. All the materials are approved for CLE credit and will fulfill the requirements of this VCLE rule. A CLE Library Catalog will be sent to all active Bar members this fall.

FOR MORE INFORMATION...

E-Mail Us... alaskabar@alaskabar.org
Visit our website at www.alaskabar.org

Call Us.... 907-272-7469

Fax Us... 907-272-2932

Write Us... PO Box 100279
Anchorage, AK
99510-0279

Barbara Armstrong, CLE Director, and Rachel Batres, CLE Coordinator, are available to answer your questions about the new VCLE rule.

THE RULE AT A GLANCE

1. You are encouraged to complete **12 hours of CLE, including 1 hour of ethics,** per calendar year. A CLE hour is based on 60 minutes of instruction time.

2. **Voluntary Compliance with this VCLE Rule** -- Voluntary compliance makes you eligible for:
   - a reduction in Bar dues (to be determined annually by the Board of Governors);
   - inclusion in a published listing of Alaska Bar members who have completed the minimum recommended hours of approved CLE;
   - participation in the Bar's Lawyer Referral Service;
   - Compliance may be taken into account in any Bar disciplinary matter related to ARPC 1.1.

3. **What Qualifies for CLE Credit**: Following are examples of ways to earn your recommended CLE credit hours:
   - attendance at approved CLE seminars
   - attendance at approved continuing judical education seminars
   - attendance at approved in-house CLEs
   - attendance at substantive Section or Inn of Court meetings
   - preparing for and teaching approved CLE courses
   - participating as a faculty member in Youth Court
   - studying audio or videotapes or technology-delivered approved CLE courses
   - writing published legal texts or articles in law reviews or specialized professional journals

4. **Reporting Period**: January 1, 2000 - December 31, 2000 You will report your CLE credits on a form provided by the Alaska Bar Association. This form will be sent out with your annual Bar dues notice in November of each year. **Your first reporting deadline will be February 2001 – the same deadline as your Bar dues payment.** The form will ask you to list:
   - the date of the CLE activity,
   - the provider,
   - the title and topic
   - the number of CLE credits
   - the type of activity (live seminar, videotape, audiotape, section meeting, etc.)

5. **Banking Period**: Any CLE credits completed between September 2, 1999 through December 31, 1999 may be "banked." You can apply your banked credits toward the 12 credit hours recommended for 2000.

6. **Who Are "Approved" CLE Providers?** Approved providers include state bar and local bar associations, any American Bar Association accredited law school, American Inns of Courts & Affiliates, government agencies, and any organization with a CLE Director or CLE staff holding membership in the Association for Continuing Legal Education (ACLEA). Any organization may apply to the Alaska Bar CLE Director for approved provider status.

AMERICAN BAR ASSOCIATION GENERAL PRACTICE SOLO AND SMALL FIRM SECTION ANNUAL LEADERSHIP CONFERENCE

October 8 - 9, 1999 Cleveland, Ohio

AGENDA

Friday, October 8

1:30-2:00 p.m. *Introduction and Overview*
Keith B. McLennan, Chair, ABA GPSSFS GP Link Committee

2:00-5:00 p.m. *Multidisciplinary Practice: Choosing Your Next Partner—Will It Be a Lawyer?*
Gary T. Johnson, Theodore Mann, Jr., Richard Miller, Sherwin P. Simmons *[Get Sherwin's title from Redbook; need others from Melanie; get time frame.]*

This session explores the biggest challenge to face lawyers going into the next century: who will be in practice with you? This distinguished panel from across the country presents the issues of lawyers and non-lawyer professionals joining forces to provide services to clients. Will this help clients receive more for their money or are lawyers just losing a turf war?

Saturday, October 9

8:30-10:00 a.m. *Fearless Public Speaking for Bar Leaders*
Dana M. Kachurchak, Presentation Dynamics, Inc.
Mark R. Siwik, Senior Claims Counsel, Risk International Services

As a bar leader, you'll inevitably be required to do some public speaking. Find out how to enhance your presentation and presence to effectively deliver your message.

10:10-11:00 a.m. *Effective Interaction with Professional Bar Staff*
Barry Simpson, Executive Director, Pensylvania Bar Association.

Have you ever wondered what parameters you are under when dealing with professional bar staff? Find out how your relationship with professional bar staff can make your tenure as a volunteer bar leader not only easier, but pleasant.

11:00-11:50 a.m. *Bar Associations and Websites - Bees on Honey or Oil and Water?*
William R. Friedman, Director of Law Office Management Program, Alleghany County Bar Association

It seems as though everyone has a web page. Don't be a guinea pig: find out from those who have already experimented to determine whether a Section web page is for you. Learn how to get your bar to set it up, what it should contain and how it will make you a more effective and efficient bar leader.

12:00 noon-1:00 p.m. *Lunch and The Best of the Best - Programs That You Can Use to Assist General, Solo and Small Firm Practitioners*

Identify which heralded programs will work well at your bar association and obtain the formula for easy implementation.

Articles Welcome: Guidelines

- ▲ Ideal manuscript length: No more than 5 double-spaced pages, non-justified.
- ▲ E-mail and .txt: Use variable-width text with NO carriage returns (except between paragraphs).
- ▲ E-mail attachments & disks: Use 8.3 descriptive filenames (such as author's name). May be in Word Perfect or Word.
- ▲ Fax: 14-point type preferred, followed by hard copy or disk.
- ▲ Photos: B&W and color photos encouraged. Faxed photos are unacceptable. If on disk, save photo in .tif format.
- ▲ Editors reserve the option to edit copy for length, clarity, taste and libel.
- ▲ Deadlines: Friday closest to Feb. 20, April 20, June 20, Aug. 20, Oct. 20, Dec. 20.

NEWS FROM THE BAR

Board of Governors takes the following actions

At the meeting of the Board of Governors of the Alaska Bar Association on August 19 & 20, 1999, the Board took the following actions:

• Decided that the proposed Referendum on MCLE is moot due to the proposed voluntary CLE rule (with incentives) which has been proposed by the Supreme Court; The Board discussed the proposed rule with Justice Fabe and put their suggestions in a letter to the Court along with comments which had been received from members.

• Completed the character investigation on an applicant from the February 1999 Bar Exam and voted to admit the applicant.

• Voted to publish a proposed amendment to Bar Rule 5 which would allow for conditional admission.

• Voted to publish an amendment to the Bylaws changing the date of Section Elections.

• Voted to publish a proposed amendment to Bar Rule 5, which would revise the Oath of Attorney to a shorter, plain-English form.

• Rejected a stipulation for discipline as providing for insufficient consequences.

• Decided not to fund KTOO's proposal to videotape Supreme Court oral arguments.

• Approved formation of a Public Interest Law Section.

• Endorsed Joe Kashi's proposal to do a study on the impact of technology on lawyers, and to include the survey in a Bar mailing.

• Approved payment of $5,000 to Trustee Counsel in a matter.

• Approved payment of $3,510 to Trustee Counsel in a matter.

• Approved payment in two Lawyers' Fund for Client Protection matters.

• Denied an applicant's appeal from the February 1999 Bar Exam

• Heard from representatives from the Lt. Governor's Electronic Signature Task Force.

• Heard three proposals from Law Schools to publish the *Alaska Law Review* (Duke Law School, Northwestern School of Law at Lewis & Clark College, and Seattle University School of Law) and decided to renew the contract with Duke to publish the Review.

• Approved a Bylaw change to allow the Board to determine the timing of the annual meeting, and to allow public Board members to vote at the annual meeting.

• Approved 5 reciprocity applicants pending the receipt of the FBI fingerprint card report.

• Approved Rule 43.1 (Staff Judge Advocate) waivers.

• Reviewed a draft of a proposed mission statement for the Bar Association and decided to put this on the October agenda.

• Stated that they were not interested in participating in commercial tie-ins with vendors.

• Approved the May minutes with minor corrections.

Washington state adopts reciprocity rule

The State of Washington has adopted a reciprocity rule. It provides that lawyers from other states will be admitted in Washington under procedures and conditions that, in the judgment of the Washington Supreme Court, are substantially similar to the procedures and conditions under which the other state allows the admission of Washington lawyers to their states.

The rule will likely be effective at the end of September. The Washington State Bar anticipates that their program will be up and running, with application forms, November 1.

For further information, contact the Washington State Bar at (206) 727-8200 or www.wsba.org.

Following is the text of the Rule.

PROPOSED AMENDMENT
ADMISSION TO PRACTICE RULES (APR)
RULE 17 Admission of Lawyers Licensed in other States or Territories of the United States or the District of Columbia to Practice Law in Washington

(new rule)

(a) **Purpose.** This rule prescribes the procedure, conditions and limitations for admission of lawyers from other states or territories of the United States or the District of Columbia, except as provided in rule 3. Lawyers from other states or territories or the District of Columbia will be admitted in Washington pursuant to this rule under procedures and conditions that, in the judgment of the Washington State Supreme Court, are substantially similar to the procedures and conditions under which the other licensing state or territory or the District of Columbia allows the admission of licensed Washington lawyers to their states

(b) **Qualifications.** Before a lawyer licensed to practice law in another state or territory of the United States or the District of Columbia qualifies for admission to the practice of law in the State of Washington, the lawyer must:

(1) Present satisfactory proof of both admission to the practice of law together with current good standing, in another state or territory of the United States or the District of Columbia, and active legal experience as a lawyer or counselor at law at the time of the application;

(2) Possess the good moral character and fitness requisite for a member of the Bar of the State of Washington;

(3) Execute under oath and file with the Bar Association two copies of an application in such form as may be required by the Board of Governors; and

(4) File with the application a certificate from the authority in such other state or territory or the District of Columbia having final jurisdiction over professional discipline, certifying as to the applicant's admission to practice, and the date thereof, and as to the good standing of such lawyer or counselor at law or the equivalent; and

(5) Provide with the application such other evidence of the applicant's educational and professional qualifications, good moral character and fitness and compliance with the requirements of this rule as the Board of Governors may require; and

(6) Establish to the satisfaction of the Board of Governors that the state or territory or the District of Columbia that licensed the lawyer applicant allows the admission of licensed Washington lawyers under terms and conditions substantially similar to those set forth in these rules, provided that if the state or territory or the District of Columbia that licensed the lawyer applicant requires Washington lawyers to complete or meet other conditions or requirements, the applicant must meet a substantially similar requirement for admission in Washington; and

(7) Pay upon the filing of the application the fee established for such admission which shall be at least equal to that required pursuant to rule 3(d)(2) to be paid by an lawyer applicant to take the bar examination.

(c) **Procedure.**

(1) The Board of Governors shall approve or disapprove applications for admission of lawyers admitted to the practice of law in other states or territories of the United States or the District of Columbia. The Board may require additional proof of any facts stated in the application. In the event of the failure or refusal of the applicant to furnish any information or proof, or to answer any inquiry of the Board pertinent to the pending application, the Board may deny the application. Upon approval of the application by the Board of Governors, the Board shall recommend to the Supreme Court the admission of the applicant for the purposes herein stated. The Supreme Court may enter an order admitting to practice those applicants it deems qualified, conditioned upon such applicant:

(i) Taking and filing with the Clerk of the Supreme Court the Oath of Attorney pursuant to rule 5; and

(ii) Paying to the Bar Association its membership fee for the current year in the maximum amount required of active members; and

(iii) Filing with the Bar Association in writing his or her address in the State of Washington, together with a statement that the applicant has read the Rules of Professional Conduct and Rules for Lawyer Discipline, is familiar with their contents and agrees to abide by them.

(2) Upon the entry of an order of admission, the filing of the required materials and payment of the membership fee, the applicant shall be admitted to the practice of law in the State of Washington as specified by this rule.

Proposed Bylaw Amendment on timing of section elections

The following proposed amendment to the Bylaws, Article VII, Section 3(b), would change the deadline for Section Elections from June 30 to September 30 of each year. Please send comments to Deborah O'Regan or Barbara Armstrong at the Bar office, P.O. Box 100279, Anchorage, AK 99510 or

e-mail oregand@alaskabar.org or armstrongb@alaskabar.org.

VII. Section 3(b) Section Executive Committees. Each section shall be administered by an executive committee of at least five members elected from the section's attorney membership to serve staggered three year terms. The executive committee shall annually elect, by *September* [JUNE] 30, a chair, and may elect such other officers as it deems advisable from the membership of the executive committee. Each executive committee shall meet at such times and places as may be designated by the chair of the section. All executive committees shall file with the Board such reports as from time to time shall be requested by the President or the Board. A written annual report shall be delivered to the Board at least thirty (30) days before the annual business meeting.

NEWS FROM THE BAR

Board of Governors invites comments

The Board of Governors invites member comments concerning the following proposals to amend Alaska Bar Rule 5.

The first amendment to Bar Rule 5(1) would add a new section (d) to provide for conditional admission to the practice of law in exceptional cases involving character and fitness problems identified in Rule 2(1)(d). The proposal would permit the Board and the applicant to enter into a memorandum of agreement which would specify the terms and conditions under which the applicant could practice law in Alaska. The Supreme Court would review and enter an appropriate order under Rule 5(3). A memorandum of agreement would be most commonly used in cases where an applicant has a drug or alcohol problem which is amenable to professional treatment and where the applicant's practice could be supervised by a member of the Bar.

The second amendment to Bar Rule 5(3) would revised the current oath of admission to a shorter, plain-English form.

Please send comments to: Executive Director, Alaska Bar Association, PO Box 100279, Anchorage, AK 99510 or e-mail to alaskabar@alaskabar.org by October 8, 1999.

BAR RULE 5

PROPOSED AMENDMENT PROVIDING FOR CONDITIONAL ADMISSION TO THE PRACTICE OF LAW

(Additions italicized; deletions bracketed and capitalized)

Rule 5. Requirements for Admission to the Practice of Law.

Section 1.

(a) To be admitted to the practice of law in Alaska, an applicant must
(1) pass the bar examination prescribed pursuant to Rule 4;
(2) pass the Multistate Professional Responsibility Examination;
(3) be found by the Board to meet the standard of character and fitness, as required pursuant to Rule 2(1)(d);
(4) be determined by the Board to be eligible in all other respects;
(5) pay prorated active membership dues for the balance of the year in which he or she is admitted, computed from the first day of admission;
(6) attend a presentation on attorney ethics as prescribed by the Board prior to taking the oath prescribed in Section 3 of this rule;
(7) file an affidavit as required by Bar Rule 64 stating that the applicant has read and is familiar with the Alaska Rules of Professional Conduct; and
(8) take the oath prescribed in Section 3 of this rule.

(b) Within 60 days after completion of the requirements stated in subparagraphs (a)(1), (2) and (6) of Section 1 of this Rule, an applicant must file with the Alaska Bar Association the forms provided by the Board, formally accepting membership in the Association and admission to the practice of law in Alaska.

(c) The Board may conduct a character investigation of an applicant, or may continue such an investigation, after the applicant has been permitted to take, or has passed, the examination prescribed by the Board pursuant to Rule 4. The fact that the Board has permitted the applicant to take the examination, and has given the applicant notice that he or she has passed the examination, shall not thereafter preclude the Board from denying the admission of the applicant on the grounds of character and fitness as set forth in Rule 2(1)(d).

(d) The Board may recommend to the Court that an applicant be conditionally admitted to the practice of law in Alaska in exceptional cases involving matters of character and fitness to practice law as set forth in Rule 2(1)(d) upon such terms and conditions as are specified in a memorandum of agreement entered into between the Board and the applicant.

Section 2. An applicant who fails to comply with the provisions of Section 1 of this Rule shall not be eligible for certification to the Supreme Court for admission and shall be deemed to have abandoned the application.

Section 3. Upon receiving certification of the eligibility of an applicant the Supreme Court may enter an order admitting the applicant as an attorney at law in all the courts of the state and to membership in the Alaska Bar Association *or may enter an order conditionally admitting the applicant as an attorney at law in all the courts of the state and to membership in the Alaska Bar Association subject to the applicant's compliance with a memorandum of agreement entered into between the Board and the applicant.* Each applicant ordered admitted *or conditionally admitted* to the practice of law shall take the following oath before any state or federal judicial officer:

I do *swear or* affirm:

I will support the Constitution of the United States and the Constitution of the State of Alaska;

I will adhere to the Rules of Professional Conduct in my dealings with clients, judicial officers, attorneys, and all other persons;

[I WILL MAINTAIN THE RESPECT DUE TO COURTS OF JUSTICE AND JUDICIAL OFFICERS;

I WILL NOT COUNSEL OR MAINTAIN ANY PROCEEDINGS WHICH SHALL APPEAR TO ME TO BE TAKEN IN BAD FAITH OR ANY DEFENSE EXCEPT SUCH AS I BELIEVE TO BE HONESTLY DEBATABLE UNDER THE LAW OF THE LAND;

I WILL EMPLOY FOR THE PURPOSE OF MAINTAINING THE CAUSES CONFIDED TO ME SUCH MEANS ONLY AS ARE CONSISTENT WITH TRUTH AND HONOR, AND WILL NEVER SEEK TO MISLEAD THE JUDGE OR JURY BY AN ARTIFICE OR FALSE STATEMENT OF FACT OR LAW;

I WILL MAINTAIN THE CONFIDENCE AND PRESERVE INVIOLATE THE SECRETS OF MY CLIENT, AND WILL ACCEPT NO COMPENSATION IN CONNECTION WITH MY CLIENT'S BUSINESS EXCEPT FROM MY CLIENT OR WITH MY CLIENT'S KNOWLEDGE OR APPROVAL;

I WILL BE CANDID, FAIR, AND COURTEOUS BEFORE THE COURT AND WITH OTHER ATTORNEYS, AND ADVANCE NO FACT PREJUDICIAL TO THE HONOR OR REPUTATION OF A PARTY OR WITNESS, UNLESS REQUIRED BY THE JUSTICE OF THE CAUSE WITH WHICH I AM CHARGED;]

I will [STRIVE TO] uphold the honor and [TO MAINTAIN THE] dignity of the *legal* profession;

And *I will strive* to improve *both* [NOT ONLY] the law *and* [BUT] the administration of justice.

A certificate of admission shall thereupon be issued to the applicant by the clerk of the court.

ATTORNEY DISCIPLINE

PROSECUTOR ADMONISHED FOR COURTROOM INTIMIDATION TACTICS

Attorney X, a prosecutor, appeared in court to arraign several criminal defendants. Before the hearing, according to the defendants, the prosecutor's hands were formed in the shape of a gun to "shoot" at them. A defense lawyer noticed the conduct and talked to Attorney X about it; the attorney stopped. The defendants said they were insulted and intimidated. The prosecutor admitted having "steepled" fingers while going through the files and identifying each defendant to the charges. The attorney conceded that the conduct was reckless and immature.

Bar Counsel found a violation of Alaska Rule of Professional Conduct 4.4, which prohibits conduct by a lawyer that has no substantial purpose but to embarrass, delay or burden another. The attorney's conduct undermined respect for the criminal justice process among the defendants but otherwise did not cause any serious disruption to a legal proceeding. The lawyer had no prior disciplinary record.

With the consent of an Area Discipline Division Member, as required in Alaska Bar Rule 22(d), Bar Counsel imposed on Attorney X a written private admonition. The attorney accepted this discipline and the Bar closed its file.

LAWYER ADMONISHED FOR COURTHOUSE OBSCENITIES

Attorney X represented a parent in a child in need of aid proceeding. The lawyer attended a prehearing conference with his client, the assistant attorney general assigned to the case, and the guardian ad litem. At the hearing, Attorney X became upset with what he perceived as the lack of merit in the state's position, the state's lack of preparation or its attempts to postpone proceedings to the disadvantage of his client. Attorney X raised his voice and advised the AG and the GAL that if proceedings against his client continued he would "ream them new a--h----." The AG and GAL were disturbed by Attorney X's anger, aggressive physical postures and obscenity so they left the hearing. Attorney X followed them into the hall, continuing to speak loudly and disturbing court workers.

Bar Counsel found a violation of Alaska Rule of Professional Conduct 4.4, which prohibits conduct by a lawyer that has no substantial purpose but to embarrass, delay or burden another. The attorney's conduct disrupted a legal proceeding but there was no serious or prolonged injury to his client or to the administration of justice. The lawyer had no prior disciplinary record and this appeared to be an isolated incident.

With the consent of an Area Discipline Division Member, as required in Alaska Bar Rule 22(d), Bar Counsel imposed on Attorney X a written private admonition. The attorney accepted this discipline and the Bar closed its file.

Satterberg's 10 plus 2 free extra commandments for the novice criminal defense attorney

☐ William Satterberg

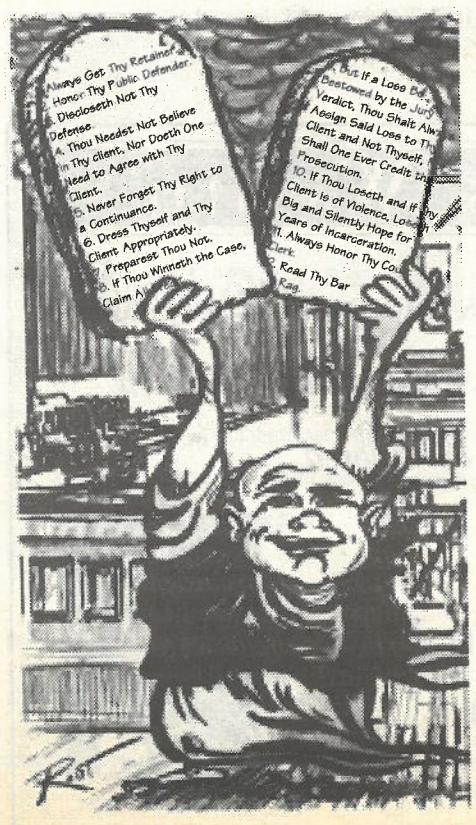
As lawyers, I believe we often tend to deceive ourselves. Not on material items, necessarily, but on the little things. For example, although I prefer to think of myself as a Mel Gibson look-alike, the mirror tells me I tend more to be a Danny DeVito clone. (Tim Dooley agrees with the mirror.) And where I prefer to think of my legal acumen as the "Perry Mason of the North," the more common description of me that I often overhear is "My Cousin Vinny." (Don Logan agrees with that.) So why am I writing this missive?

Just recently, I looked in the mirror again. To my surprise, I did not see either Mel Gibson or Perry Mason. What I did see was a somewhat wizened, middle-aged barrister. Maybe not as old as Judge Hanson, but approaching that precipice, nonetheless.

Several years ago, I asked a close friend why he had built a monstrous office building in Washington, D.C. His answer was surprisingly candid. It wasn't for the money. Nor was it for the challenge. Rather, it was for his ego. To the same degree that the Pharaohs built the Sphinx, the Incas built their ruins, and the Greeks built their collossal Rhodes, he confided to me that he had built the office complex that bore the brass plaque on the exterior proclaiming him as the owner/builder to create his immortality. In short, he had built a monument to himself—one that would outlast his lifetime, absent a fire. I realized that he had a point.

Others, in their quest for greatness, have excelled in the arts and humanities. Some have pursued immortality in science and academics. Still others have sought to make their mark in athletics and entertainment. As for me, I write *Bar Rag* articles.

Someday, somewhere, travelers from a distant galaxy may comb through the remnants of what was once the planet earth. In their excavations, I am confident that they will find a stack of yellowed *Bar Rag* articles, tucked securely in a time capsule wisely buried by the Tanana Valley Bar Association at a growing archaeological site in South Fairbanks. Undoubtedly, our intergalactic visitors will eventually decipher our hieroglyphics, probably using a beaten, old Guess & Rudd Apple computer as their Rosetta Stone. And when they finally do succeed in their task, and shockingly realize that we had domesticated their fellow, distantly-related iguanas, they will also find *Satterberg's Ten Plus Two Free Extra Commandments for the Novice Criminal Defense Attorney*. When that eventually happens, not only will I be famous throughout America, but I will also be known throughout the Universe! (Eat your hearts out again, Anchorage.) So here you have them - written on a disc, not a tablet:



1 *Always Get Thy Retainer.* For we are taught, fellow counsel, that the client's desire to pay is directly affected by case outcome and conditions of release.

2 *Honor Thy Public Defender.* For we are taught, fellow counsel, that, if our client does not adhere to the First Commandment, thou shalt refer said client without delay to the Public Defender.

3 *Discloseth Not Thy Defense.* For we are taught, fellow counsel, that the occasionally wise Supreme Court has ruled in a short opinion that it is good to maintain thine own confidences. Fear not when the D.A. cries out "sandbag." Respondeth thou, "Yea, *State v. Summerville*, 948 P.2d 469 (Alaska 1997)."

4 *Thou Needst Not Believe in Thy Client, Nor Doth One Need to Agree with Thy Client.* For we are taught, fellow counsel, that "two beers" shalt return a breath alcohol reading from zero to infinity on the evil Intoximeter.

5 *Never Forget Thy Right to a Continuance.* For we are taught, fellow counsel, that the law of physics which states that matter cannot occupy two different places at once shall also apply to three district court judges on Friday with twenty trials set to commence on Monday.

6 *Dress Thyself and Thy Client Appropriately.* For we are taught, fellow counsel, that torn blue work shirts, stained sweatpants, smelly tennis shoes and holy socks are not pleasing to the eyes of the court. So, too, should one strive to dress ones client similarly.

7 *Preparest Thou Not.* For we are taught, fellow counsel, that the jury abhors an unprepared counsel and thus sometimes bestows pity upon thy helpless client. Ask thou loudly at calendar call to all those gathered, "Is my client here?"

8 *If Thou Winneth the Case, Claim All Credit.* For we are taught, fellow counsel, that victories are few and far between and that it is good for thy wallet and thine ego to claim all credit.

9 *But If a Loss Be Bestowed by the Jury's Verdict, Thou Shalt Always Assign Said Loss to Thy Client and Not Thyself, Nor Shall One Ever Credit the Prosecution.* For we are taught, fellow counsel, that only clients shall ever lose the case, which is right and just, since thy client shall correspondingly blame thyself, regardless.

10 *If Thou Loseth and If Thy Client is of Violence, Loseth Big and Silently Hope for Years of Incarceration.* For we are taught, fellow counsel, that some clients can get really mad at thy counsel.

11 *Always Honor Thy Court Clerk.* For we are taught, fellow counsel, that the court clerk can be thy best friend or thy worst enemy.

12 *Always Read Thy Bar Rag Articles.* For we are taught, fellow counsel, that stream of consciousness writing often amuses even district court judges.

Mediation program available at the Alaska State Commission For Human Rights

Mediated settlements can be a creative opportunity to tailor an agreement to meet the specific needs of the individual parties and can include monetary as well as nonmonetary relief.

BY MARY SOUTHARD

Do you have a client who is a party to a discrimination complaint filed with the Alaska State Commission For Human Rights? If so, the agency's mediation program may be able to help your client reach a voluntary settlement without an investigation.

The commission enforces the Alaska Human Rights Law, *AS 18.80.010 et seq.*, which makes it unlawful to discriminate in employment, public accommodation, housing, financing and state and political subdivision practices because of race, religion, color, national origin, sex, physical/mental disability, and in some instances because of age, marital status, changes in marital status, pregnancy and parenthood.

The commission conducts investigations of complaints alleging violations of this law. Its investigators interview witnesses, review relevant documents and make written determinations as to whether there is substantial evidence to support the discrimination claim.

Starting in 1998, the commission began offering free, in-person mediation at its Anchorage office as an alternative to investigation. As a result of interest in mediation from those outside the Anchorage area, the commission is now expanding its program to offer telephone mediation as well to those parties who are willing to pay for the cost of the telephone call.

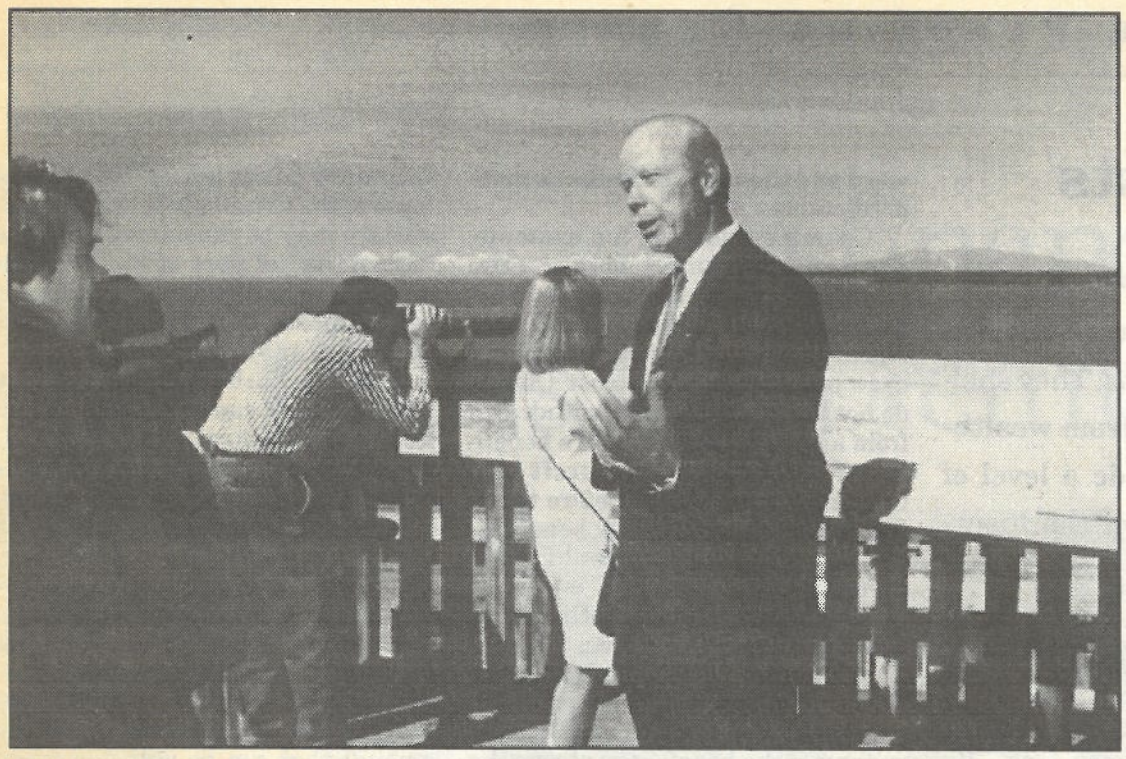
The mediation program is completely voluntary; a mediation is held only if both parties agree to it. If one party declines to mediate or if the mediation does not result in a settlement, the complaint will be investigated by the Commission.

Mediation allows parties an opportunity to reach a mutually acceptable settlement which results in the dismissal of the discrimination complaint. Parties discuss their individual perspectives regarding the circumstances in the complaint, propose possible solutions and work with the mediator to seek a resolution agreeable to both parties. If any public policy issues arise during the mediation, such issues must be addressed in the settlement. Mediations can be accomplished through a joint session where the parties discuss settlement proposals with each other and/or can be reached through private caucuses where each party meets separately with the mediator to explore settlement options. Each party may bring one additional person to the mediation; it can be an attorney, family member, friend, or other support person. Unrepresented parties are informed that they may consult with an attorney prior to signing any proposed settlement agreement.

An additional advantage to mediation is that it can be scheduled quickly, as soon as both parties have agreed to participate in the mediation conference. It may also improve communication between parties who have an ongoing relationship, such as employees and employers or landlords and tenants.

Mediations are not fact-finding conferences; the goal is to try to resolve the complaint. All discussions during the mediation conference are confidential to encourage good faith negotiations and successful settlements. If a mediation does not result in a settlement, information from the mediation is protected from disclosure to Commission investigators. All persons who attend the mediation —whether a party, attorney, support person or mediator — must sign a confidentiality agreement to keep such discussions confidential.

Mediated settlements can be a creative opportunity to tailor an agreement to meet the specific needs of the individual parties and can include monetary as well as nonmonetary relief. For more information on the program, contact mediator Mary Southard, Alaska State Commission for Human Rights, 274-4692, extension 253.



Anchorage Mayor Rick Mystrom talks about the new interpretive mural at Resolution Park with a KTVA reporter. The mural and two telescopes were donated to the Municipality by the law firm of Preston Gates & Ellis.

Preston Gates & Ellis makes donation to the city

Contribution celebrates 20th anniversary of Anchorage office

In honor of its 20th anniversary in Anchorage, the law firm of Preston Gates & Ellis LLP has donated to the Municipality of Anchorage two telescopes and an interpretive sign describing the surrounding area of Cook Inlet. The interpretive sign and telescopes are located near the Captain Cook statue in Resolution Park.

In a special unveiling ceremony held at the park on August 18, Mayor Rick Mystrom accepted the gift for the city. He, along with Anchorage Chamber Chairman Ralph Samuels, Anchoraage Convention & Visitors Bureau Communications Director Joy Maples, and Preston Gates partners David Tang and John Messenger, spoke briefly.

"We are obviously pleased to accept this gift," said the Mayor. "The telescopes provide viewers a splendid opportunity to view the Cook Inlet horizon from downtown Anchorage," he noted.

Samuels said the interpretive sign will be especially helpful to visitors and school children and is the only such viewing platform in the downtown area.

Tang noted the firm was celebrating its 20th year Anchorage milestone with clients and colleagues. "We are happy to present this gift to the Municipality of Anchorage. It is intended to reflect our heartfelt appreciation to all of our Alaska clients that we have worked with over the years."

"Our law firm is proud to have been a part of the Anchorage community for more than 20 years," Messenger emphasized. "We wanted to contribute something to the people of this city that was fun and that would help residents and visitors alike appreciate what a great place we live in."

Commissioners from the Parks and Beautification Department along with Preston Gates attorneys and staff and many onlookers attended the ceremony.

Preston Gates & Ellis LLP is an entrepreneurial full-service law firm that has established itself as one of the fastest growing firms in the country. Preston has assisted the Anchorage and other Alaska communities in connection with capital projects as bond counsel since territorial days. Preston also represented the State of Alaska in the *Exxon Valdez* oil spill litigation and several oil and gas taxation matters. Since the opening of its office in Anchorage, Preston has assisted the State of Alaska in the collection of more than $3 billion for the citizens of Alaska. Nearly 350 Preston Gates attorneys practice in 11 offices on the Westcoast, in Washington D.C.; and in Hong Kong.

— Press Release

Friends of the firm gather for anniversary reception in August.

PUBLIC NOTICE

APPOINTMENT OF PART-TIME MAGISTRATE JUDGE

The Judicial Conference of the United States has authorized the appointment of a part-time United States magistrate judge for the District of Alaska at Ketchikan, Alaska. This position is currently vacant.

The duties of the position are demanding and wide-ranging: (1) conduct of most preliminary proceedings in criminal cases; (2) trial and disposition of misdemeanor cases; (3) conduct of various pretrial matters and, evidentiary proceedings on delegation from the judges of the district court; and (4) trial and disposition of civil cases upon consent of the litigants. The basic jurisdiction of the United States magistrate judge is specified in 28 U.S.C. § 636.

To be qualified for appointment, an applicant must:

(1) Be, and have been for at least five years, a member in good standing of the bar of the highest court of a state, the District of Columbia, the Commonwealth of Puerto Rico, or the Virgin Islands of the United States, and have been engaged in the active practice of law for a period of at least five (5) years (with some substitutes authorized);

(2) Be competent to perform all the duties of the office; be of good moral character; be emotionally stable and mature; be committed to equal justice under the law; be in good health; be patient and courteous; and be capable of deliberation and decisiveness;

(3) Be less than seventy years old; and

(4) Not be related to a judge of the district court.

A merit selection panel composed of attorneys and other members of the community will review all applicants and recommend to the judges of the district court in confidence the five persons whom the panel considers best qualified. The court will make the appointment, following an FBI file check and an IRS tax check of the appointee. An affirmative effort will be made to give due consideration to all qualified candidates, including women and members of minority groups. The current annual salary of the position is ***$3,167.00***. **The term of office is four (4) years.**

Application forms and more information on the magistrate judge position may be obtained from the clerk of the district court:

Michael D. Hall, Clerk of Court
United States District Court
222 West 7th Avenue - No. 4
Anchorage, Alaska 99513-7564

or the chairman of the selection panel:

The Honorable John D. Roberts
United States District Court
222 West 7th Avenue - No. 46
Anchorage, Alaska 99513

Applications must be submitted only by potential nominees personally, and must be received by October 15, 1999.

All applications will be kept confidential, unless the applicant consents to disclosure, and all applications will be examined only by members of the merit selection panel and the judges of the district court. The panel's deliberations will remain confidential.

THE DISTRICT COURT IS AN EQUAL OPPORTUNITY EMPLOYER

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Life insurance trusts

Part II ☐ Steven T. O'Hara

Irrevocable life insurance trusts serve at least two important functions. They shelter life insurance proceeds from wealth-transfer taxes, and they provide a level of certainty over the ownership of the insurance policy and its proceeds.

The last issue of this column described the gift-tax aspects of irrevocable life insurance trusts. In brief, to qualify transfers to an irrevocable life insurance trust for the gift-tax annual exclusion, the trust can be either a Crummey trust or a Section 2503(c) trust.

From a trust-law standpoint, there are two categories of irrevocable life insurance trusts. One category is where the trust is a one-pot trust for more than one current beneficiary, such as a trust for the client's spouse and descendants. The other category is where there is one trust instrument, but the trust instrument contains a separate trust for each current beneficiary.

An advantage of the one-pot trust is it more closely approximates the family treasury; if one beneficiary has a health need, all resources are available to satisfy that need. With separate trusts for each beneficiary, the assets of a trust are generally not available to anyone but the current beneficiary of that trust.

An advantage of the separate-trust approach is that each trust can be tailored to qualify for the gift-tax annual exclusion as a Section 2503(c) trust or as a Crummey trust. By contrast, a one-pot trust for more than one beneficiary can be a Crummey trust, but not a Section 2503(c) trust.

It may be the case that the client does not need to qualify transfers to the irrevocable life insurance trust for the gift-tax annual exclusion. The client may have a practice of making annual exclusion gifts directly to the beneficiary or beneficiaries each year. Here there would be no reason for the trust or trusts to qualify for the gift-tax annual exclusion, since the client already uses the annual exclusion to shelter direct gifts.

For this writer, it is a happy occasion when an irrevocable life insurance trust can be designed without Crummey powers or the requirements of a Section 2503(c) trust. Without those tax provisions, the trust instrument is more straightforward and the tax ramifications more predictable.

Crummey powers, for example, are cumbersome. Under the Crummey power, the trustee is required to notify each applicable beneficiary of his or her right to withdraw property from the trust. Clients do not like property to be withdrawn from a trust on the whim of a beneficiary; but here, with a draft of a Crummey trust placed before them, the clients must read how beneficiaries can make a withdrawal for any or no reason.

As cumbersome as the Crummey power is to read and discuss with clients, this problem is nothing compared to the tax aspects. For example, what are the income tax consequences if the beneficiary allows the Crummey power to lapse? The best that can be said is there is no definitive answer. The trust might be treated as a separate tax entity or, by reason of the lapse of the Crummey power, the beneficiary might be treated as the owner of the trust and taxed under the grantor-trust rules (IRC Sec. 678). A third possibility is the client who created the trust might be taxed as the owner of the trust (IRC Sec. 677(a)(3) and *see* 678(b)).

As another example, what are the gift, estate and generation-skipping tax consequences *to the beneficiary* who allows the Crummey power to lapse? The answer depends on the type of Crummey power. Suppose the trust has $10,000 in assets. Suppose the Crummey power allows the beneficiary to withdraw the $10,000 within 30 days. After 30 days, the Crummey power lapses. Here on the lapse of the Crummey power the beneficiary may be considered to be the "transferor" of part of the trust for gift, estate and generation-skipping tax purposes (*See* Treas. Reg. Sec. 26.2652-1(a)(5)(Example 5)).

On the other hand, if the beneficiary's Crummey power is limited to the greater of $5,000 or five-percent of the trust property, then the beneficiary will generally *not* be considered the transferor of any of the trust property (*Id.*, IRC Sec. 2041(b)(2) and 2514(e)). In other words, the wealth-transfer tax system contains, in effect, a safe harbor for certain lapses of Crummey powers (as well as other so-called general powers of appointment). If the amount that can be withdrawn under the Crummey power does not exceed the greater of $5,000 or five-percent of the trust property, the lapse of the Crummey power is generally not a taxable event for the beneficiary. This rule is the reason why many Crummey trusts limit the beneficiary's Crummey power to $5,000 per year, for example, even though the gift-tax annual exclusion is currently $10,000.

As yet another example of the esoteric nature of Crummey powers, suppose a client funds a one-pot insurance trust for his spouse, children and grandchildren, giving each a Crummey power. Suppose the client wants to shelter the future proceeds of the life insurance (owned by the trust) from the 55% generation-skipping tax. Can the client at this time allocate part of his $1,000,000 GST exemption to the trust as shelter from the generation-skipping tax? The answer again depends on the type of Crummey power.

On this issue the regulations provide, in general, that the client can make an effective allocation of his GST exemption to this type of trust if his spouse's Crummey power satisfies two conditions. First, the spouse's Crummey power must be limited to the greater of $5,000 or five-percent of the trust property. Second, the spouse's Crummey power must last no longer than 60 days after the transfer to the trust to which the power relates (Treas. Reg. Sec. 26.2632-1(c)(2)(ii)(B)).

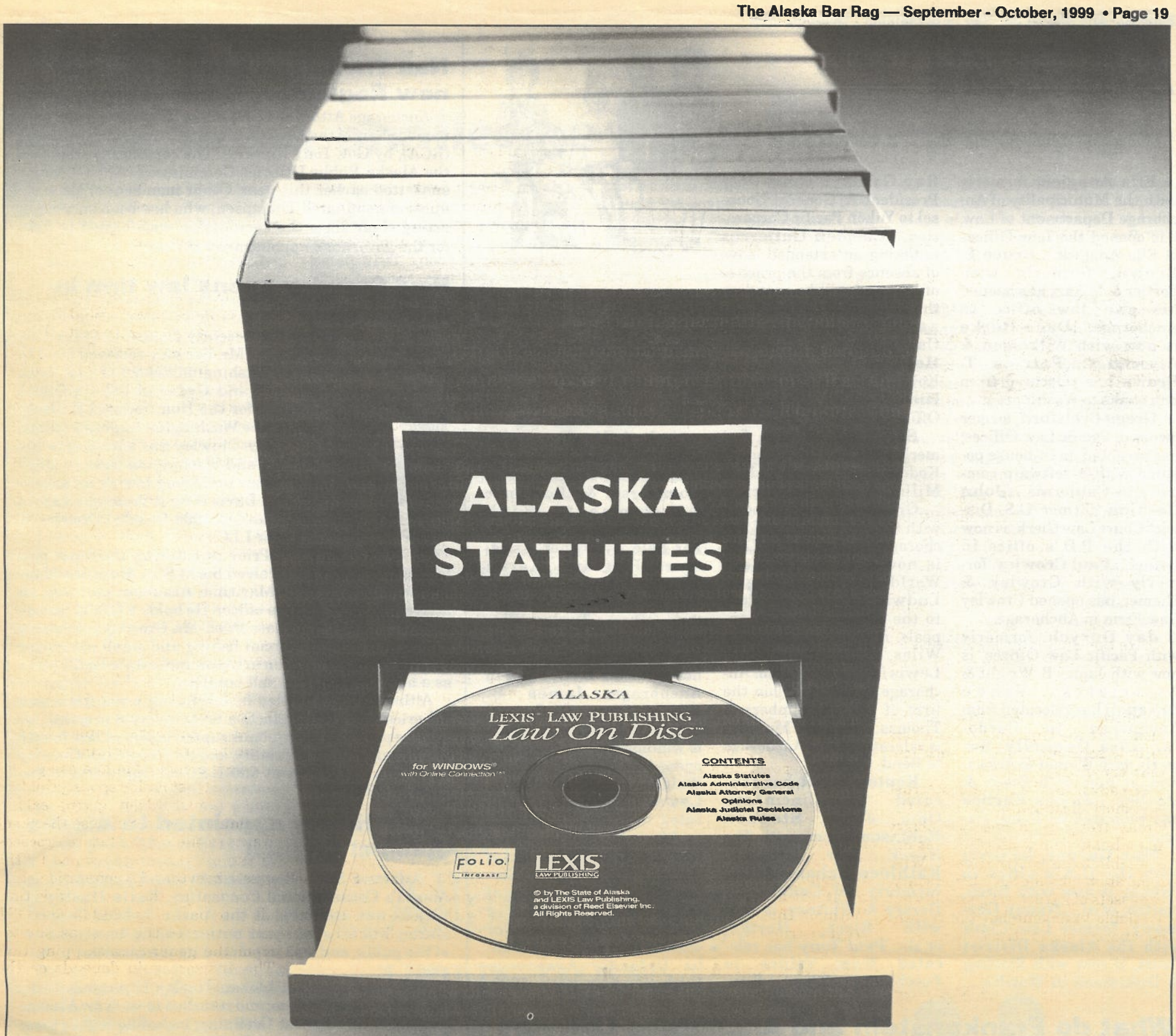
It may also be important to limit a grandchild's Crummey power to the greater of $5,000 or five-percent of the trust property. Here the regulations provide in effect that if a client gives a grandchild (or other skip person) a Crummey power, the lapse of that Crummey power may result in a taxable distribution under the generation-skipping tax (*See* Treas. Reg. Sec. 26.2612-1(c)(1) (the final two sentences therein) and 26.2652-1(a)(5)(Example 5)). Again, however, the $5,000 or five-percent safe harbor is of assistance. The regulations appear to confirm that a taxable distribution does not occur where the grandchild's Crummey power, which lapsed, was limited to the greater of $5,000 or five-percent of the trust property (*Id.*).

When a client calls and asks for an irrevocable life insurance trust, there are many varieties to discuss. Often the client will select a one-pot Crummey trust but will limit the Crummey powers to stay within the $5,000 or five-percent safe harbor and, if not exercised, to lapse within 30 days.

Alaska Bar Association
Late September - December 1999 CLE Calendar

(NV) denotes No Video

Program #, Date & CLE Credits	Program Title	Program Location	In Cooperation With	Section
#88 September 24 3.0 CLE Credits 9 a.m. - 12:15 p.m	Mandatory Ethics: A Basic Program for New Lawyers in Alaska (NV)	Centennial Hall Juneau		
#67 September 24 3.0 CLE Credits 1:45 - 4:45 p.m.	The Case of the Silent Alarm: An Interactive Program Featuring Video Vignettes and Group Discussion (NV)	Centennial Hall Juneau	ALPS	
#58 September 27 3.5 CLE Credits 8 a.m. - 12 noon	Wisdom in Sentencing	Hotel Captain Cook	Anch. Bar Assn. & Anch. Downtown Partnership	
#73 October 5 1.75 CLE Credits 8:30 -10:30 a.m.	Civil Rule 90.3 Update	Hotel Captain Cook Anchorage		Family Law
#25 October 8 3.75 CLE Credits 8:30 a.m.-12:30 p.m.	6th Annual Workers' Comp Update	Hotel Captain Cook Anchorage		Employment Law
#19 October 14 6.5 CLE Credits 8:30 a.m. - 5 p.m.	2n Annual Intellectual Property CLE The Legal Side of Doing Business on the Internet	Hotel Captain Cook Anchorage		Intellectual Property Section
#04 October 20 6.0 CLE Credits 8:30 a.m. - 5 p.m.	12th Annual Alaska Native Law Conference	Hotel Captain Cook Anchorage		Alaska Native Law Section
#10 November 4 3.75 CLE Credits 8:30 a.m. - 12 noon	Technology in the Courtroom Part 2	Hotel Captain Cook Anchorage	US District Court	
#74 November 9 3.25 CLE Credits Morning	Review of the Alaska Securities Act Amendments and Alaska Regulations Update	Hotel Captain Cook Anchorage		Business Law Section
#72 November 18 3.25 CLE Credits 8:30 a.m. - 12 noon	Representing Military Members	Hotel Captain Cook Anchorage		Family Law Section
#12 December 10 2.0 CLE Credits Morning	Off the Record - Third Judicial District	Hotel Captain Cook Anchorage	Anchorage Bar Association	



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Bar People

Ella Anagick, formerly with the Municipality of Anchorage Department of Law, has opened the Law Offices of Ella Anagick....**Bruce L. Brown**, formerly with Fortier & Mikko, has opened his own law office in Anchorage....**Dana Burke** is now with Wilkerson & Associates....**Patrick T. Brown** has relocated from Fairbanks to Washington....

Gregg Brelsford, former owner of Pacific Law Offices, has accepted an in-house position with a software company in California....**John Cashion**, former U.S. District Court Law Clerk, is now with the P.D.'s office in Bethel....**Paul Crowley**, formerly with Crowley & Hiemer, has opened Crowley Law Firm in Anchorage.

Jay Durych, formerly with Pacific Law Offices, is now with James B. Wright & Associates....**Vince DiNapoli** has relocated from Anchorage to Cordova....**Lisa Donnelly**, formerly with Winner & Associates, is now with Stock & Moeller....**James Forbes** has relocated to Bend, Oregon.

Max Garner, formerly with the D.A.'s office in Palmer, is now with Birch, Horton, et.al....**Nancy Germany**, former Law Clerk with the Alaska District Court, is now with Sterling & DeArmond in Wasilla....

Ray Gardner is now Vice President & General Counsel to Yukon Pacific Corporation....**Carmen Gutierrez** is taking an extended leave of absence from the practice of law, and will be spending the majority of the winter in a small Mexican town in Baja California Sur .... **Karl Heimbuch** is now with Koval & Featherly....**Linda Hiemer** is now with the Law Office of Robert Griffin.

Sarah Josephson, formerly with the P.D. Agency in Kodiak, is now with Eide & Miller in Anchorage ....**Gregory King**, formerly with the Municipality of Anchorage Department of Law, is now with Arctic Slope World Services....**Megan Ludwig**, former Law Clerk to the Alaska Court of Appeals, is now with Delaney, Wiles, et.al....**Robert D. Lewis** is relocating from Anchorage to Nome to join the firm of Larson, Timbers & Thomas....**Eugene Murphy** is relocating from Anchorage to Bend, Oregon.

Kenton Pettit has relocated to Cincinnati, Ohio....**John Stephen Robinson** is now with The Nosek Law Group.... **Kathleen Schaechterle**, formerly Of Counsel to Dorsey & Whitney, is now with Birch, Horton, et.al....**Paul Tony** has relocated from Valdez to Fairbanks....**The Rev. Patrick J. Travers** has relocated from Petersburg to Holy Name Church in Ketchikan.

Vincent Usera, formerly with the A.G.'s office, is now a Senior Securities Examiner with the Department of Commerce & Economic Development....**Kirk Wickersham** is now with For Sale By Owner, Assistance Program....**Karen Weimer** is now with the Anchorage Municipal Prosecutor's Office....**Taylor Winston**, formerly with Atkinson, Conway & Gagnon, is now with the D.A.'s office in Anchorage....**James B. Wright**, former Of Counsel to Ruskin & Molenda, which is winding up its affairs, has opened the office of James B. Wright & Associates.... **Lewis Gordon** has relocated to Grass Valley, CA. ....After 18 months away from law, **Gina Tabachki** is working in the Human Services Section of the Office of the Attorney General in Fairbanks. She previously worked for the Alaska Public Defender Agency in Fairbanks from 1991 - 1997.

Nan Thompson named chair of new Regulatory Commission

Anchorage Attorney **G. Nanette Thompson** has been named chair of the new Regulatory Commission of Alaska (RCA), by Gov. Tony Knowles. The commission replaced the Alaska Public Utilities Commission (APUC), which sunsetted earlier this year. Other members of the commission nominated Thompson, who has been serving as acting chair since the commission was formed in July, for the governor's appointment as chair.

Paul Crowley opens law firm in Anchorage

Paul C. Crowley has recently formed Crowley Law Firm LLC, a sole practice. Mr. Crowley received his J.D. from the University of Washington School of Law (with Honors and Order of the Coif) and clerked for the Hon. Richard B. Sanders at the Washington Supreme Court.

Paul C. Crowley

Mr. Crowley was admitted to the Alaska and Washington Bars in 1996. He began practicing law as an associated at Davis Wright Tremaine LLP in 1966, and in 1998 founded Crowley & Hiemer LLC.

Prior to entering the legal profession, Mr. Crowley received his M.S. in Maritime Management from Maine Maritime Academy and was an active merchant marine officer. He holds a USCG license as Master and First Class Pilot. Mr. Crowley previously owned several commercial fishing and small passenger vessels. He has also been active in real estate for 25 years as a broker, developer, and landlord.

Although Mr. Crowley is developing a maritime and fisheries focus, he conducts a broad general practice, including personal injury, bankruptcy, business law, family law, social security disability, and civil litigation. Crowley Law Firm has offices at 500 L Street, Suite 503 in Anchorage, 272-0980.

Katie Hurley appointed to Alaska Judicial Council

A former State Representative and participant in Alaska's Constitutional Convention, **Katie Hurley** of Wasilla was appointed to the Alaska Judicial Council. Hurley will fill a four-year term set aside for a member of the public and was appointed by the governor in August.

Born and raised in Juneau, Hurley, 78, attended college in Portland, Oregon, and returned to work for Alaska territorial Gov. Ernest Greuning, including eight years as his executive secretary. In 1955 and 56, she served as chief clerk for Alaska's Constitutional Convention and also served as secretary to the territorial and State Senate.

Hurley moved to the Matanuska Valley in 1960 to work in the private sector, but remained active in public life with appointments to the State Board of Education, Board of Vocational Education and the State Manpower Planning Council, among others. She served as Executive Director of the Alaska Commission on the Status of Women and as a member of the State Commission for Human Rights. In 1984, Hurley was elected to represent Wasilla in the State House and served one term.

What do Frankenstein and Anchorage Lawyers have in common?

They're both helping cure muscular dystrophy

The Anchorage Bar Association is helping to find a final cure for the forty muscular diseases which the Muscular Dystrophy Association has been combating for the past half century. Recent advances in gene therapy have resulted in a cure for Duchenne's dystrophy in laboratory animals. Duchenne's is the most common form of muscular dystrophy. This medical breakthrough has implications for all of the dystrophies, including amyotrophic lateral sclerosis (Lou Gehrig's disease). Human trials began last month.

At the annual Labor Day telethon, Michael White, Vice President of the Anchorage Bar Association, presented a $1,000 check, which represents the Association's sponsorship of the Goodwill Ambassador family's table at the upcoming MDA fundraising Gala, dubbed "Frankenstein's Affair." Attorneys Michael and Vanessa White are co-chairpersons for this, the inaugural year for the Halloween weekend event.

On Saturday, October 30, 200 of Anchorage's finest will haunt the halls of the Regal Alaska Hotel for this, the kick-off social event for the holiday season. The black tie, masked ball, dinner and auction designed to raise funds for "Jerry's kids" promises a fun-filled evening of ghostly delights for all who attend. The third floor of the Regal will be transformed into the exclusive hideaway home of Mr. and Mrs. F. Stein, your hosts for the evening. Guests will be wined, dined, feted with trick-or-treat bags, and afforded the opportunity to bid on fabulous items at the "living" auction. After dinner, one of Anchorage's most ghoulish bands, comprised mostly of local legal talent, will rock the night away in Frankie's swank ballroom while guests vie to acquire that special treat at his eerily silent auction.

Don't worry about driving home. The Regal is offering an overnight package for Frankie's friends at just $79 per couple. Don't miss this opportunity to be part of what is certain to become an All Hallow's Eve tradition! Help make Frankenstein's Affair come to life. Seating is limited. Contact Michael White (276-1592) or Vanessa White (278-2386) for your reservations now.

HI-TECH IN THE LAW OFFICE

A sampling of Touch N' Go's reviews.

New product launched

Continued from page 1

pay long distance telephone charges. With the web, many users can obtain information at the same time." So he called the court, learned there were no plans to put cases on the web, and decided to do it, himself.

"By May of '95, we said 'whoa," this is getting to be a long list," said Gottstein. Mike McCabe, an Alaskan computer science major at Princeton, interned for Gottstein that summer and wrote the code that enabled the site to explode. "McCabe was amazing," said Gottstein. He implemented the program that indexed all the appellate and Supreme Court cases by word and subject (from Lawyer Support Services in Fairbanks). "No other state does this as well," said Gottstein. Next, the team attacked state statutes and regulations, which at the time were published on CD-ROM. "The state had no intention of putting them on the web, either," said Gottstein. "So Mike wrote a program to mash 40 megabytes of text files into 33,000 web pages." These pages are each "hard-coded" in HTML, which means that each can be retrieved by Internet search engines. That functionality may also be unique for legal sites on the web. Then court rules were added. (And McCabe went on to work for Netscape).

The statutes and regulations can now also be found on the State of Alaska's website, but they're removed when published by West and have no search functionality.

While it is true that all the information Gottstein posts is available through subscriber-based sources such as West, Lexis, and Michie, the Alaska Legal Resource Center site provides them at no charge. Statutes are updated annually the site. Regulations and court rules are updated quarterly. Cases are posted immediately (the Pacific Reporter waits 90 days, and the court system removes non-current posted cases from its site).

Why does Gottstein put such focus and effort into a project of such magnitude? "I personally feel that this kind of basic legal material should be available at no charge—if 'ignorance of the law' is not a defense, people ought to be able to easily learn what the law is," he says. "The idea of the site was not to make money, but we've always had a goal of having the site support itself with advertising."

Advertising, indeed. There's that on the website, as well (although one wonders why lawyers have not pounced on this opportunity in far greater numbers). Family practice attorney Steve Pradell has capitalized on Gottstein's site; Pradell's law office sponsors every page in the Title 25 chapter of the Alaska Statutes, for a mere $25 per month. *Bar Rag* columnist and bankruptcy attorney Tom Yerbich maintains the bankruptcy area in the federal law section on the website, and advertises on it, as well. GeoNorth's Ingens public information data product is another example of services advertised on the site. For as little as $10 per month, attorneys may list themselves on the site, with a link to their own website. (If they don't have one, Gottstein's staff can build it, and store their web page, as well.) Most page sponsorships on the site are $25 per month, with the more popularly-browsed pages, such as Supreme Court opinions at $50.

The site's exposure is remarkable, considering Alaska's "remote" status among the states. User sessions range from 2,000 to 3,000 per day, with 10,000 to 12,000 page views daily. That's in addition to the popular AlaskaCam site Gottstein added—a live photo of 4th Avenue, updated every minute, aimed at the old federal building and 4th Avenue Theater from Gottstein's roof. That page logs 3,000 viewers—and often more—each day of the year. Stores and services in the law office's neighborhood also advertise on the site, which has grown to an AlaskaCam Mall. And a good number of non-profit organizations, such as Alaska Junior Theater and the Alaska High-Tech Business Council also are housed at no charge on Gottstein's web server

The growing information-technology activity in Gottstein's building may take a lot of his time, but he still is active in the practice of law. "I'm taking select matters that are interesting to me, and serving my existing clients," he said. And for the matters he handles, Gottstein doesn't have to go far for research.

KEY CITE OFFERED FREE OF CHARGE

The Alaska State Court Law Library is pleased to announce a new service in Anchorage and Juneau. Attorneys in those locations can access West Group's new citation research service KeyCite at the law library without charge. By the end of the year free KeyCite will also be available in the Fairbanks, Kenai, Ketchikan and Palmer law libraries.

KeyCite is an electronic citator service which, like Shepard's, traces the history of a case and lists cases and secondary sources citing your case. KeyCite data is as current as the Westlaw database, and the program is flexible and easy to use. Simply open the KeyCite program and type in your citation to find its history and status. You may then choose to view all of the citing cases and citing secondary sources or you may limit your search results to specific headnotes and/or depth of treatment. For example, you may decide to eliminate any cases that merely mention your case, and choose to focus on cases that examine or discuss your case. KeyCite displays complete citation information for the citing sources, including case name or title of article, citation, date and jurisdiction.

Attorneys in locations without KeyCite access in their law libraries may contact the Anchorage Law Library Reference Desk at (907) 264-0585 to request KeyCite for specific citations.

Attorneys may also be interested to learn that both LEXIS-NEXIS and WESTLAW now offer non-subscribers access to some citations services and most documents in their databases via the internet using a credit card.

LEXIS-NEXIS Xchange (http://www.lexis.com/xchange) allows searches and retrieval of state cases, administrative materials, statutes and attorney general opinions and practice materials for $9 per document retrieved. You can also Shepardize a citation using Xchange for $4 per citation.

WestDoc (http://www.westdoc.com) offers cases, statutes, treatises and law review articles, administrative regulations and pending bills for $10 per document retrieved. West also offers non-subscriber access to KeyCite via www.keycite.com. The charge is $3.75 per citation.

Jessica Van Buren, Public Services Librarian
Alaska State Court Law Library

PRODUCT REVIEW

OFFICE LOGIC

I've used the DOS-based Futurus office automation program suite for many years and always found it to be straightforward, practical and useful. Office Logic is an outgrowth of DOS-era Futurus. It's written by the original developers and can convert and use all of your old Futurus data. You can reach Office Logic at 1-800-LAN-ACES or at www.lan-aces.com. Office Logic can be a very usable and inexpensive alternative to more elaborate case management programs and is definitely worth a look.

Office Logic includes several very useful functions, some of which are either not included in competing programs or are not very easy to use. The primary functions included in the 32 Windows version are:

- Personal and group calendars with E-mail notification and alarms.
- Good E-mail program that handles LAN and wide area network E-mail quite easily and that can be configured to send and receive Internet E-mail as well using a local dial up modem or network based E-mail. However, the Internet address book functions are weaker than the directory of local users.
- Phone message function.
- Global and personal flat file and relational databases that are simple to set up and easy to use. I can set up a basic but useful flat file database in about 30 seconds.
- An in and out board that's a useful way to know where everyone is and when they'll return. Another good Windows in and out board program is Touch 'n Go from Touch 'n Go Systems in Anchorage (www.touchngo.com).
- Global and personal free form text notepads that are a useful way to keep notes about specific cases and immediately accessible to everyone on the network. You can encrypt databases and notepads if desired.
- A good to-do list.

The DOS program versions include some additional functions including a nice file manager, a modem dial up terminal screen, and a numerical calculator. I'd like to see these features included in future 32-bit Windows versions.

Office Logic sells optional remote user versions that include the same features as the basic system described above but that also includes a secure proprietary host program and remote modem communications capabilities.

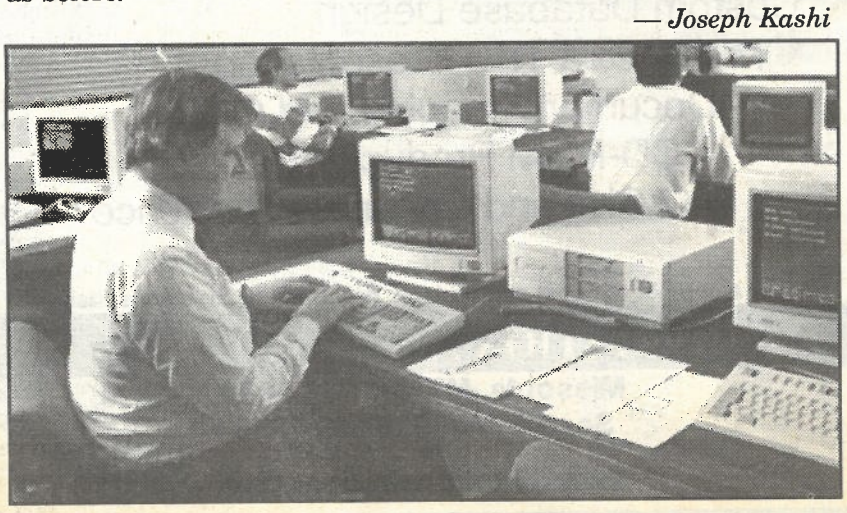
I have mixed thoughts about Office Logic's remote user programs. Prior versions handled a limited number of functions, mostly Email forwarding and calendar synchronization, easily and without any difficulties. Current remote user client software works very well and include many more remote user functions such as database and notepad update and synchronization. Unfortunately, the necessary office host computer programs sometimes exhibited flaky behavior, not always making reliable modem connections and sometimes failing to reliably update data files.

At this point, the DOS host program seems to be somewhat more reliable. Both the DOS and Windows 95 host programs can run in the background concurrently with other application programs. However, I prefer to use a somewhat slower old computer as a dedicated Office Logic dial up host computer because I believe that a dedicated dial up host is more stable and reliable and it's a good use for older Pentium systems that might be too slow for day to day use. Slow speed not a real problem for a dial up host computer because slow modem speed is the basic bottleneck.

The basic Office Logic disks include both DOS and Windows 95/98 program versions. You can mix and match DOS and Windows 95/98/NT users as needed, a real advantage in offices where you're gradually converting to 32-bit Windows. Office Logic is a compact, well written and fast program. It's extremely stable, no small virtue these days. In fact, after several months' use, I could not trace any system crash to Office Logic and cannot recall any time when the program failed to work properly. The Windows interface is very clean and straightforward; there's no printed manual and none is needed. I was able to teach clerical staff how to use this program in about 10 minutes.

Installation on a NetWare 4.11 network was very straightforward. I did experience an initial problem recognizing all of the prior users that I traced that back to a corrupted user data file that had been damaged prior to upgrading to the 32-bit Windows version. The best fix was to simply delete all users and reinstall each of them individually, setting the passwords and personal data directory paths as before.

— Joseph Kashi



Decision: When is an upgrade a bad choice?

BY JOSEPH KASHI

In a recent *Bar Rag* column, I discussed when hardware upgrades make economic sense and when to avoid throwing away money needlessly. I've just had a dose of my own medicine.

I recently obtained a review copy of Dragon Naturally Speaking Deluxe Legal Suite version 3.52. Installing this upscale version of Dragon's voice dictation within WordPerfect 8 Legal Suite makes a lot of sense. The natural speech recognition used by Dragon now works very well, showing substantially improved performance, ease of use and accuracy compared to software available only a year ago. This makes voice recognition and dictation software finally usable for day to day law office production without the usual gritting of teeth. There's only one catch: you need the fastest possible computer along with the best available sound card and microphone. If you don't use high-end sound cards and microphones, then the incoming sound waves are not correctly formed digitally, making it harder for the computer to correctly distinguish them.

Voice dictation demands more from a computer than almost any other routine law office task, putting a premium upon cutting-edge performance. With that in mind, I set out to upgrade my own office desktop computer to the maximum extent that I could readily afford.

Although the recently introduced AMD 650 Mhz Athlon (K-7) CPU provides about 50% more real world performance than I could achieve here, this next generation technology is in its infancy, too expensive, too hard to find, and too immature to be immediately practicable. Still, the Athlon may well be the high-end CPU of choice within 6-9 months, particularly when faster SDRAM memory becomes available. AMD's Athlon can run appropriate SDRAM memory at up to 200 Mhz, 50% faster than Intel's recently announced 133 Mhz standard. Any additional memory speed translates into faster real world performance. With voice recognition, any improvement at all makes a difference. The upgraded computer that I discuss below is ALMOST fast enough to keep up with my normal fast dictation pace.

WHY I UPGRADED

I initially decided to upgrade my own office computer partly in order to test how different hardware would affect real world performance. Was I surprised! Much of the upgraded hardware caused major system problems, even crashes, and resulted in little or no performance gain. I used the highly regarded Ziff-Davis Labs Winstone 99 high end benchmark series, with Windows NT 4.0, Service Pack 4. These benchmarks include tests of the digital signal processing that's crucial to voice recognition and thus provided the best indicator of voice recognition capabilities.

PERFORMANCE CHANGES

My base system was a 200 Mhz AMD K6 with 128 MB of 66 MHz SDRAM, 128 bit STB video card, Adaptec 2940UW Ultra Wide SCSI hard disk controller and 2 gigabyte IBM 5400 rpm Ultra Wide SCSI hard disk. My overall performance benchmarked at 10.6. This computer is generally comparable to many one to two year old systems.

Moving up to the a 300 MHz K6-2 with 128 MB of much faster 100 MHz SDRAM, 128 bit Hercules Terminator AGP video card, Adaptec 2940UW SCSI controller and a high end 7200 rpm IBM 4.5 gigabyte Ultra2Wide SCSI hard disk benchmarked at 16.8, a respectable 55% improvement mostly attributable to a CPU and SDRAM that are both 50% faster.

This is already a fairly well-optimized computer, with lots of fast PC100 SDRAM, a good AGP video card and a near cutting-edge SCSI hard disk subsystem. Making any changes from that point would show how much extra performance we might gain from that last little bit of tweaking and upgrading.

Overall, getting that last bit of extra computer performance is like the old 80-20 rule: the first 80% comes easily and inexpensively but the last 20% is often not worth the cost or hassle. I used the 300 MHz system as my experimental testbed, making incremental changes to it.

The 7200 rpm hard disk probably helped somewhat, although I initially used it with a backward compatible Adaptec 2940UW Ultra Wide SCSI hard disk controller. UltraWide SCSI has a maximum electronic throughput of 40 MB per second, a rate that's far faster than the hard drive can mechanically read or write data. Ultra2 SCSI has a maximum electronic 80 MB per second throughput that's theoretically twice as fast.

RAM change

My first change was to increase NT's SDRAM memory from 128MB to 256 MB. This resulted in absolutely no performance improvement, even with the very demanding high-end benchmarks. Thus, 128 MB SDRAM seems to be the right amount for any Windows 95/98/NT desktop computer and adding more SDRAM is essentially wasted money except for network file servers, which almost always do better and better as you add more fast SDRAM.

Controller change

My next change substituted a very expensive new Adaptec 2940U2W Ultra2Wide SCSI controller for the older 2940UW. I expected that this newer card would be backward compatible like almost all previous Adaptec cards and would probably be faster because it uses a newer, more efficient SCSI processor. Absolutely wrong!

The U2W cards are not at all compatible with older NT driver software and all of Adaptec's proposed workarounds for NT not only failed but caused my computer to crash on every bootup. Finally, I had to totally reinstall and reconfigure NT 4.0 from scratch with the 2940U2W software. This took about 10 working hours. When I benchmarked the same computer, substituting only the 2940U2W controller, there was absolutely no performance improvement!

My first conclusion: a higher rpm hard disk helps somewhat but UltraWide SCSI and UDMA IDE hard disk controllers provide more electronic performance than even a new 7200 rpm hard disk can mechanically feed. There's no benefit for

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Decision: When is an upgrade a bad choice?

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the average user to upgrading to Ultra2Wide SCSI even though it's electronically the fastest hard disk interface on the market.

NOW THE VIDEO CARD

Once I finally got the U2W hard disk controller working reliably, I tried to change the video card. Hercules makes a perfectly nice 8 MB AGP video card that generally installs easily and runs reliably but my hardware distributor recommended a German made ELSA Erazer Victory LT AGP card as particularly good for Windows NT. Unfortunately, this card turned out to have a known incompatibility with the VIA system board chip sets that are about the only option for AMD users. The ELSA card simply wouldn't install at all on any NT computer, even when I got the newest NT drivers from ELSA's web site. Back to the Hercules card, which at least had worked reliably on the AMD system.

COMPARING OUR TWO-YEAR-OLD, LOW-END 200 MHZ K6 SYSTEM WITH THE CELERON RUNNING AT 500 MHZ, PERFORMANCE WAS ABOUT 140% BETTER

NEXT, THE SYSTEM BOARD

I then switched system boards to an Intel 400 MHz Celeron using Intel's high performance Slot 1 architecture and Gigabyte's newest 440BX chipset system board. At 400 MHz, this system benchmarked at 21.6 with the Hercules AGP video card, a useful 28% improvement. Unfortunately, the Hercules card proved to be unreliable with the Celeron and this system board, frequently resulting in a black screen at various resolutions and occasional total system crashes. I had to substitute an ATI Rage 3D AGP card, which slightly reduced my high-end benchmarks to 21.4, suggesting that the Hercules AGP card has better display speed for the high end benchmarks, whose 3D rendering tests make a lot of demands upon the video subsystem. Still, substituting the ATI card resulted in a slower NT computer that doesn't crash once I installed ATI's newest video driver software.

Another tweak

Finally, I over-clocked the 400 MHz Intel Celeron to 500 MHz by changing system board jumpers. Celerons reputedly can be run faster than the rated clock speed, unlike all other current processors, and perform better because of their full speed internal L1 cache. The 400 MHz Celeron's clock multiplier is essentially fixed at six times the speed of the memory bus. Because the Celeron expects to use 66.6 MHz SDRAM, multiplying the clock speed by 6X results in the 400 MHz CPU speed. However, if you use 100 MHz SDRAM memory, which is not only faster and more reliable but now cheaper than old 66 MHz memory, you may be able to increase your system's performance somewhat without sacrificing any stability at all.

Because of unnecessary limitations built into the lower priced Celeron, it can't handle memory running at the full 100 MHz speed like the more expensive Pentium II/III or the less expensive AMD K6 processors. However, I did find that changing the system board's memory speed from 66.6 MHz to 83 MHz worked reliably with a 400 MHz Celeron, was easily accomplished by flipping a few dip switches on the system board in accordance with diagrams in the manual, and resulted in our test bed computer running our $100 Celeron at a true 500 MHz with faster memory access as a bonus. At that speed, our system benchmarked at 24.9, a 15% improvement compared to the same computer running at 400 Mhz and 66.6 MHz memory.

Note that the clock speed of a 500 MHz CPU is 25% faster than the 400 MHz processor but that overall performance only improves by 15%. That's due to the limitations inherent in high CPU clock multipliers where the processor runs at very high speed but is often starved for data from the slower SDRAM memory, resulting in wasted CPU cycles.

If you try to boost the speed of a Celeron, then cooling the CPU will be crucial to both reliability and stability. Be sure that you use a very good CPU fan monitored by the system board and set the BIOS's CPU high temperature shutdown feature to not more than 65 degrees Celsius.

The bottom line

Comparing our two-year-old, low-end 200 MHz K6 system with the Celeron running at 500 MHz, performance was about 140% better, an obvious and useful improvement. However, the 500 MHz Celeron system, with all reasonable performance enhancements (and about $1,000 worth of parts), was only about 50% faster than the 300 MHz AMD K6-2 system with the older Ultra Wide SCSI hard disk controller and basic Hercules AGP video card. That extra 50% was expensive, both financially and in terms of wasted time.

What makes the most sense? Generally, there's little benefit to upgrading the hardware in a year-old computer. By the time that a system is two years old, everything is probably out of date and complete system replacement makes the most sense in this era of fast $1,000 computers.

AMD processors, especially the new K6-3, which combines the Celeron's full speed internal cache with the Pentium II/III's 100 MHz memory bus, easily equals or exceeds the performance of Intel's offerings at a lower price. My older AMD system, in fact, initially proved to be more stable than the Celeron-based system, even when we used comparable system boards, SCSI controllers and video cards from the same manufacturers.

Conclusion: I recommend the fastest affordable AMD K6-3 system if you're planning upon purchasing a new computer system in the immediate future. However, if you intend to use voice dictation on a daily basis and can afford to wait six to nine months, then an AMD K-7 system with the fastest available memory and the best possible sound card and microphone will ease your days and help you stop gritting your teeth as you talk to your computer.

PRODUCT REVIEW

I've previously complained about Windows utility program suites, none of which were entirely satisfactory and none of which worked with Windows NT. That situation has changed for the better.

FIX-IT UTILITIES99

Mijenix's Fix-It Utilities 99, much awaited since its November 1998 Comdex win, finally hit retail shelves in May. Fix-It Utilities 99 is, in my opinion, at least as good as Norton Utilities and possibly better. Every diagnostic and repair function is well integrated into a single easy to use package that suffered from relatively few deficiencies. Although the first shipping version sometimes encountered non-critical application errors that did not crash Windows, Mijenix offers every user, registered or not, the ability to easily and quickly update your software to the latest version through special Internet software.

Fix-It Utilities99 is, to my knowledge, the only utilities package to repair Windows NT 4.0 registry and disk problems and to easily edit troublesome NT configuration and menu problems.

One feature that I liked about Fix-It Utilities 99 was that it completely installed and set itself up without automatically adding any number of potentially troublesome applications to the startup menu. Many other competing utilities install by default a number of subroutines that run at startup; that can occasionally cause unpredictable results that are hard to repair. Fix-It does, however, include a scheduling program that optionally runs periodic unattended diagnosis and computer maintenance.

Here are some of the features that I liked in Fix-It Utilities 99:

- Extensive Windows 95/98/NT registry and hard disk repair, clean up, editing and optimization.
- Easy, automatic Internet-based utility program update.
- Good included anti-virus program with free updates for one year.
- Workable Windows 95/98 crash protection although, realistically, Windows 95/98 is going to bomb from time to time.

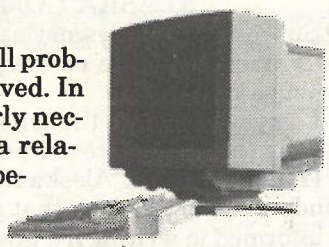
Complete hard disk defragmentation, although we found that Windows NT's NTFS file system fragments easily but defragments slowly, a problem probably not attributable to Fix-It. I've encountered the same problem using other NT defragmentation programs.

- Year 2000 system compliance checking and partial correction.
- Good hardware diagnostics.
- System resource usage monitoring.
- Apparently very reliable technology (although the file undelete application did seem to crash harmlessly in our Windows NT environment).
- Excellent PowerDesk file management and zip/unzip utility, substantially better than Windows's own Explorer.

The only significant feature missing from Fix-It utilities is the ability to scan the Windows operating system and common application programs to determine whether you have the latest and/or most compatible DLL software modules. Mixed up DLL modules are not too big a problem with Windows NT but can easily cause massive system instability with Windows 95 and Windows 98. CyberMedia's First-Aid and Oil Change utility programs address that need.

However, before you install and run ANY Windows utility program, I strongly suggest that you first install the latest Windows service pack. These include Service Pack 1 for Windows 95 and Service Pack 4 or 5 for Windows NT. We haven't seen a Windows 98 service pack yet but one should be available any day. In our experience, the initial release of any Microsoft service pack has some initial problems. Accordingly, we recommend that you wait a month or two before obtaining the latest service pack, so that any bugs can be exterminated.

MONITORS



More Is Only Sometimes More.

If you're doing any imaging, then you'll probably want to easily read what you've saved. In that case, bigger monitors become clearly necessary. Seventeen-inch monitors, once a relatively expensive luxury, are now rapidly becoming the office standard. Good quality monitors from second-tier manufacturers now typically sell for about $210 retail at a mass discounter like Costco. You might want to spend a little more, though, and purchase a top-end brand like NEC or Viewsonic. For example, I recently purchased Phillips 107S and KDS 17 monitors, both of which seemed bright and sharp, but both of which have started to flicker and otherwise act as though the power supply or CRT is beginning to fail. On the other hand, I purchased several Princeton Graphics 17 monitors at Costco for $199 each. These monitors, made by reputable second tier manufacturer Mag, exhibit excellent image quality and have proven reliable. I also purchased a $359 19" Sylvania F91 monitor from Costco for my own desk. The first monitor had some non-linear image problems but it's replacement has been reasonably satisfactory but not spectacular: there's still some uncorrectable image bowing and color fringing. On the other hand, where else can you get a usable 19" 1600 X 1280 color monitor for $359? I decided to live with the Sylvania's minor imperfections but I would have purchased Viewsonic's new 19 inch Viewsonic E790 if I lived in a state served by inexpensive UPS ground shipping. At a cost of about $475, the Viewsonic E790 is one of the best monitors around and worth the price. It will outlast two or three computer systems.

— Joseph Kashi

Rule changes effective April 15, 2000

THE ALASKA SUPREME COURT ADOPTED FIVE RULE AMENDMENTS RELATING TO THE PRACTICE OF LAW IN A SERIES OF ORDERS SEPT. 2, 1999. THE ORDERS ARE PRINTED HERE IN THEIR ENTIRETY.

IN THE SUPREME COURT OF THE STATE OF ALASKA
ORDER NO. 1365

Amending Alaska Bar Rule 9(a) concerning the license to practice law in Alaska.

IT IS ORDERED that Alaska Bar Rule 9(a) is amended to read as follows:

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

EFFECTIVE DATE: April 15, 2000

IN THE SUPREME COURT OF THE STATE OF ALASKA
ORDER NO. 1370

Amending Alaska Rule of Professional Conduct 1.4 concerning communication.

IT IS ORDERED that Alaska Rule of Professional Conduct 1.4 is amended to read as follows:

Rule 1.4 Communication.

* * * *

(c) A lawyer shall inform an existing client in writing if the lawyer does not have malpractice insurance of at least $100,000 per claim and $300,000 annual aggregate and shall inform the client in writing at any time the lawyer's malpractice insurance drops below these amounts or the lawyer's malpractice insurance is terminated. A lawyer shall maintain a record of these disclosures for six years from the termination of the client's representation.

ALASKA COMMENT

Subsection (c) does not apply to lawyers in government practice or lawyers employed as in-house counsel.

Lawyers may use the following language in making the disclosures required by this rule:

(1) no insurance: "Alaska Rule of Professional Conduct 1.4(c) requires that you, as the client, be informed in writing if a lawyer does not have malpractice insurance of at least $100,000 per claim and $300,000 annual aggregate and if, at any time, a lawyer's malpractice insurance drops below these amounts or a lawyer's malpractice insurance coverage is terminated. You are therefore advised that (name of attorney or firm) does not have malpractice insurance coverage of at least $100,000 per claim and $300,000 annual aggregate."

(2) insurance below amounts: "Alaska Rule of Professional Conduct 1.4(c) requires that you, as the client, be informed in writing if a lawyer does not have malpractice insurance of at least $100,000 per claim and $300,000 annual aggregate and if, at any time, a lawyer's malpractice insurance drops below these amounts or a lawyer's malpractice insurance is terminated. You are therefore advised that (name of attorney or firm)'s malpractice insurance has dropped below at least $100,000 per claim and $300,000 annual aggregate."

(3) insurance terminated: "Alaska Rule of Professional Conduct 1.4(c) requires that you, as the client, be informed in writing if a lawyer does not have malpractice insurance of at least $100,000 per claim and $300,000 annual aggregate and if, at any time, a lawyer's malpractice insurance drops below these amounts or a lawyer's malpractice insurance coverage is terminated. You are therefore advised that (name of attorney or firm)'s malpractice insurance has been terminated."

COMMENT

* * * *

EFFECTIVE DATE: April 15, 2000

IN THE SUPREME COURT OF THE STATE OF ALASKA
ORDER NO. 1371

Amending Alaska Rule of Professional Conduct 5.4(a) concerning the sharing of legal fees with a nonlawyer.

IT IS ORDERED that paragraph (a) of Alaska Rule of Professional Conduct 5.4 is amended to read as follows:

(a) A lawyer or law firm shall not share legal fees with a nonlawyer, except that:

(1) an agreement by a lawyer with the lawyer's firm, partner, or associate may provide for the payment of money, over a reasonable period of time after the lawyer's death, to the lawyer's estate or to one or more specified persons;

(2) a lawyer who purchases the practice of a lawyer who is deceased, disabled, or whose whereabouts are unknown may, pursuant to the provisions of Rule 1.17, pay to the estate or other representative of that lawyer the agreed-upon purchase price; and

(3) a lawyer or law firm may include nonlawyer employees in a compensation or retirement plan, even though the plan is based in whole or in part on a profit-sharing arrangement.

EFFECTIVE DATE: April 15, 2000

IN THE SUPREME COURT OF THE STATE OF ALASKA
ORDER NO. 1372

Amending Alaska Bar Rule 34(h) concerning complex arbitration.

IT IS ORDERED paragraph (h) of Alaska Bar Rule 34 is amended to read as follows:

(h) **Complex Arbitration.**

(1)Upon recommendation by bar counsel or a panel chair, the executive committee may determine that a dispute constitutes a complex arbitration based on any of the following factors:

(A) complex legal or factual issues are presented;

(B) the hearing is reasonably expected to or does exceed eight (8) hours; or

(C) the amount in dispute exceeds $50,000.00.

Such determination may be made at any time after the filing of a petition but before the hearing on the merits of the petition begins, unless the parties otherwise agree.

(2) When a case is determined to be complex, the executive committee may require payment by one or both parties for reasonable costs of administration and arbitration.

EFFECTIVE DATE: April 15, 2000

IN THE SUPREME COURT OF THE STATE OF ALASKA
ORDER NO. 1373

Amending Alaska Bar Rule 40(t) and (u) concerning judicial review of fee arbitration awards.

IT IS ORDERED:

1. Paragraph (t) of Alaska Bar Rule 40 is amended to read as follows:

(t) **Confirmation of an Award.** Upon application of a party, and in accordance with the provisions of AS 09.43.110 and AS 09.43.140, the court will confirm an award, reducing it to a judgment, unless within ninety days either party seeks through the court to vacate, modify or correct the award in accordance with the provisions of AS 09.43.120 through 140.

2. Paragraph (u) of Alaska Bar Rule 40 is amended to read as follows:

(u) **Appeal.** Should a party appeal the decision of the court concerning an arbitration award under the provisions of AS 09.43.160, the party must serve a copy of the notice of appeal upon bar counsel. If a matter on appeal is remanded to the arbitrator or panel, a decision on remand will be issued within thirty (30) days after remand or further hearing.

EFFECTIVE DATE: April 15, 2000