The Alaska BAR RAG

"Kid from Fairbanks" joins Supreme Court

pg. 17

VOLUME 32, NO. 1 | Dignitas, semper dignitas | $3.00 | JANUARY - MARCH, 2008

Bar demographics change since '89

Who practices law in Alaska? How has the Alaska Bar changed since the last report in 1989? The Alaska Judicial Council asked Bar members in November 2007 to provide answers to a few questions about demographics and type of practice.[1] Nearly half (44%) of the in-state bar members responded.

The survey has indicated that the Bar is older, wiser (more lengthy years in practice), has higher incomes, is populated with more women, but is relatively unchanged in areas and location of practice.

Meanwhile, the American Bar Association has found another area of little change in lawyer demographics—the enrollment trend for law schools.

A March report on law school enrollment, compiled and released by the American Bar's Section on Legal Education and Admissions to the Bar, found that total enrollment by students seeking the Juris Doctor degree, the basic law degree, increased only slightly during 2007-08, while enrollment of first-year students was nearly flat, compared to the previous year.

Broken out by gender, the law school report further reveals that total enrollment of male students increased slightly but first-year male enrollment dipped, and total enrollment by females decreased despite a rise in the number of women students in the entering class. Minorities posted slight gains. In all, law school enrollment nationwide increased by just 402 candidates from the fall 2006 to fall 2007 academic years.

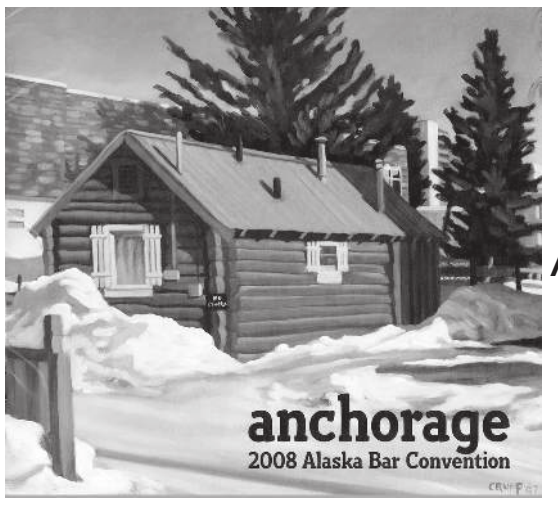
While the American Bar study examined the national demographics of higher education in law careers, the Alaska Judicial Council's study focused on actual practice trends. Its study, released in January, compares responses form Bar members in 1989 and 2007.

The council survey shows that the Bar member characteristics have changed substantially in some ways, and very little in others.

- The average age increased by over 10 years, from 40.4 years in 1989 to 51 years in 2007.
- The composition of the bar by gender shifted substantially, from 25% female in 1989 to 37% female in 2007.
- Practitioners' types of caseloads have remained stable in most categories, particularly in criminal or mixed practices. The drop in attorneys identifying themselves as "civil practice," and the concomitant increase in "other" may reflect the increase in retired practitioners.
- Bar members have more years of practice. In 1989, only 25% had practiced 16 years or more. By 2007, two-thirds, 66%, had practiced 16 years or longer. Over half had practiced more than 20 years.
- The type of practice for bar members shifted slightly. In 1989, 69% of the members were in private practice (including corporate). In 2007, the percentage was

Continued on page 7

IT'S HARD TO MAKE A BUCK, JIMMY — PG 4



Early-Bird Deadline April 4

Annual Convention &
Alaska Judicial Conference
Anchorage • April 30 - May 2

JUSTICE RUTH BADER GINSBURG
U.S. SUPREME COURT AWARDS BANQUET
KEYNOTE SPEAKER

FEATURED IN THIS ISSUE

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

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

PRESIDENT'S COLUMN

Justice Ginsburg speaks in Anchorage … fair and impartial courts

By Matt Claman

2008 Bar Convention in Anchorage

An early priority for the President of the Board of Governors is finding a keynote speaker for the annual banquet. The speaker should be well-known, articulate, and appealing to our membership. Justice Ruth Bader Ginsburg, the second woman to serve on our nation's highest court, is our keynote speaker for the 2008 Bar Convention in Anchorage. Following in the footsteps of Justice Stephen Breyer, Justice Antonin Scalia, Justice Sandra Day O'Connor, and Chief Justice John Roberts, Justice Ginsburg is the first Supreme Court Justice to speak at a bar convention in Anchorage. After speaking at the banquet on Thursday, Justice Ginsburg will join Alaska Chief Justice Dana Fabe for a joint bench-bar CLE on Friday afternoon, May 2. Professor Martin D. Ginsburg, the Justice's husband, who teaches tax law at Georgetown University Law Center, will speak on "Tax Reform: A U.S. Oxymoron" on Thursday.

Planning the annual convention involves coordination and planning with bar staff, state and federal court staff, local hotels and convention facilities, and bar membership. We have worked to find some CLE programs that appeal to a broad cross-section of our membership and other programs that provide more specialized information. We have also worked to find speakers who are more representative of our diverse membership. Of the confirmed speakers to date five are women, one is Native American, and two are African-American. To add zest to the programming, the ethics CLE features a rock musician, and the Wednesday lunch features Alaska's Writer Laureate, John Straley. Consistent with the MCLE rule adopted by the Alaska Supreme Court, we are offering a three-hour ethics CLE program, "Ethics Rock," that will allow every bar member in attendance to satisfy their 2008 MCLE requirements.

Each day has at least one program that we believe will appeal to a broad cross-section of our membership. On Wednesday, Jeff Robinson and Colette Tvedt will show us how to weave the story of the case into jury selection, opening statements, examining witnesses, and closing arguments. Thursday, perennial favorites Erwin Chemerinsky and Laurie Levenson are back for the U.S. Supreme Court update. Finally, on Friday, nationally-recognized writing expert Bryan Garner returns to Alaska for a presentation on advanced legal writing and editing.

"Each day has at least one program that we believe will appeal to a broad cross-section of our membership."

We will also offer more specialized CLEs for our members who seek more detailed knowledge and understanding. The Alternative Dispute Resolution and International Law Sections have collaborated to bring Ken Cloke, an international mediation expert, to explain "Mediators without Borders" and the resolution of both international and domestic human rights and business conflicts. At the same time as Professor Ginsburg's presentation on "Tax Reform: A U.S. Oxymoron," Professor Robert Anderson from the Native American Law Center at the University of Washington will provide the Alaska Native Law Update. On the nuts and bolts of trial practice, the New Lawyers Section has organized a panel presentation by experienced lawyers and judges on pre-trial discovery and motion practice while U.S. Magistrate Judge Deborah Smith heads a panel that highlights state/federal differences in practice and procedure.

Finally, to make the convention more attractive to our young lawyers, we have modified our nationally-recognized "2 for 1" registration offer. Any lawyer who has been a member of the Alaska Bar for 5 years or less can pair with any other lawyer—either a newer member or an older member—and attend the convention for one registration fee.

Both the Bar staff and the Board are confident that the 2008 Bar Convention in Anchorage will continue our strong tradition of bar conventions that offer relevant continuing legal education programs, interesting speakers, and ample opportunity to socialize with our friends and colleagues. We look forward to seeing you all at the Convention!

Judicial Council Appointments

The Alaska Bar Association is committed to fair and impartial courts in Alaska. Article IV, Section 8 of the Alaska Constitution establishes a judicial council system for appointing state court judges. The governor appoints a judge from two or more people nominated to the governor by the judicial council as the most qualified to serve. Alaska's judicial council system is the least political way to select our judges, and it delivers our Constitution's promise of fair and impartial courts. According to the Constitution, the governing body of the organized bar shall appoint three attorney members "without regard to political affiliation."

In the 1960s, people criticized the bar for appointing an attorney to the judicial council who appeared to be a Board of Governors "insider." In response, the Board of Governors began conducting an advisory poll prior to appointing an attorney to the Alaska Judicial Council. After reviewing the results of the advisory poll, the Board of Governors has historically appointed the attorney with the most votes in the advisory poll to the open seat on the judicial council. With Susan Orlansky of Anchorage completing her 6-year service on the judicial council in 2008, the Bar asked interested attorneys to apply for the vacant position. When nine well-known attorneys applied for the Third Judicial District seat, we recognized the possibility that the person with the most votes in the advisory poll might have less than 25% of the total votes cast. Members asked whether the Board of Governors would conduct a run-off advisory poll. Others queried whether Board policy required appointment of the person with the most votes in the advisory poll.

In response to these issues, the Board recently considered its policy and procedure for making its appointment to the Alaska Judicial Council. At scheduled meetings on three separate days, we reviewed options that included a specific policy about following the results of the advisory poll, instant run-off voting, establishing a required percentage of votes as a threshold for appointment to the council without a run-off, and how many applicants would appear in a run-off. The Board considered comments from members of the Alaska Supreme Court and from the Execu-

Continued on page 3

EDITOR'S COLUMN

See you at the hardware store

By Thomas Van Flein

Fairbanks is back! For as long as anyone can remember Fairbanks had at least one justice on the Alaska Supreme Court who called Fairbanks home.

When Justice Rabinowitz retired in 1997, that changed and for the last 11 years Fairbanks has been "unrepresented." Now, with the appointment of Dan Winfree, a long-time Fairbanksan with deep roots in that town (about as deep as you can get for a 100-year-old city), the Tanana Valley Bar has a new sense of pride. If that bar association walks with any more pride it could find itself cast in the next Viagra commercial next to the middle age guys riding motorcycles and playing mud football.

On an adjudicatory level, it probably makes no difference where an appellate justice resides. If geographic issues are relevant to a case, it is counsel's job to present that and make a record. Personal knowledge is neither necessary nor desirable.

On a practice level, however, it still means something. Fairbanks-based lawyers will be able to see a familiar face on the bench . . . for what that is worth. If you ever had your mom or dad as a teacher or employer, then you know that familiarity does not mean "going easy on you." No doubt Fairbanks lawyers will be twice as prepared for the grilling they are certain to receive.

Another benefit is a direct line of communication. Oral tradition from Fairbanks instructs us that it was not uncommon for a Fairbanks lawyer or superior court judge to see Justice Rabinowitz in town and to candidly let him know how the court had "screwed up" yet another case, accompanied with a head shake and look of disappointment.--something for Justice Winfree to look forward to as he goes to the hardware store.

"We trust the judicial council to focus on legal merit, not demographic gerrymandering. In the case of Justice Winfree, the council and the Governor got it right."

Professionally and personally I think Dan Winfree was a great choice no matter where he calls home. He earned it on his merit, not to fill a perceived geographic opening. We have a big state comprised of a variety of demographics. Our courts are not big enough to satisfy everyone's demographic. We trust the judicial council to focus on legal merit, not demographic gerrymandering. In the case of Justice Winfree, the council and the Governor got it right.

Welcome back Fairbanks, and next time you see Justice Winfree at Samson's, Lowes, True Value or Home Depot, make sure you let him know what you really think. He will expect it.

The Alaska BAR RAG

The *Alaska Bar Rag* is published bimonthly by the Alaska Bar Association, 550 West 7th Avenue, Suite 1900, Anchorage, Alaska 99501 (272-7469).

Publication Dates	Editorial Deadlines
January-March	Feb. 10
April - June	May 10
July - September	Aug. 10
October - December	Nov. 10

Board of Governors meeting dates
April 28 & 29, 2008
April 30 - May 2, 2008 (Annual Convention - Anchorage)

Letters

Ross was off base

I disagree with Wayne Ross' two major points—anonymous comments and Alaska Judicial Council (AJC) bias against conservatives—in the *Bar Rag* [31:4 Oct.-Dec. 2007]. He might have been more persuasive if he had adhered to a more principled critique by refraining from broad-brush criticism of four recent nominees as not conservative enough. After all, he failed to articulate a basis for such a statement by informing us whether he knows each nominee well enough to make such a statement. Even if he does know Justice Winfree, Judge Christen, Judge Bolger, and Andy Harrington, however, Ross failed to articulate any basis why an appellate judicial officer would take account of personal conservative outlook when adjudicating an appeal.

Ross' unexplained description of the four nominees undermines his criticism of anonymous comments on judicial selection surveys. The problem is not the anonymity but the inaccuracy, deliberate falsehood and intentional harm. If he had no basis for his description of the nominees as "not-conservative," then his comment is unjustified and indefensible even though he signed his name to it. Comments that are unjustified and indefensible should fall in the category of those that are inaccurate, false or intentionally harmful. He should practice what he preaches.

In practical terms, how would a conservative Justice Wayne Anthony Ross take account of his conservatism in adjudicating an appeal? Is he suggesting that he would not decide a case in a manner that violates his conservatism, regardless of the law or the facts of an appeal or the requirements of the state and/or federal constitution(s)? Is it correct to infer, therefore, that Ross believes that the sitting justices have violated their oaths of office by engaging in unprincipled decision-making based not on the law and the facts but on personal predilections, political or otherwise? Isn't that a serious charge that should be supported by facts or examples that would illustrate the point he is arguing? How can he justify such personal criticism in light of his dislike of unsubstantiated anonymous comments about himself? His comments are no better even though he signed his name.

There may well be a place for anonymity in comments, which is why they should not be disfavored. Depending on what is communicated, an anonymous comment might be the safest means of communicating important, truthful but disturbing information about an applicant for nomination or retention. No doubt like many others, I have little idea how the AJC does what it does since so much of its work is not revealed. But it was embarrassing to Alaska recently that, two years after the AJC nominated someone as well qualified for a judgeship, the successful appointee was removed from the bench for cause. Was there a need for more comments, including even anonymous but truthful comments, that might have provided better insight into character and fitness? What does that failing tell us about the AJC's process and procedures? Has the AJC learned lessons from the experience and, if so, what lessons have been learned? Has it implemented the lessons learned? How would we know, as members of the public, that the AJC properly carries out its function of checking applicants for fitness and checking judges for retention?

Anonymity may be especially important with respect to commenting about the performance of judges. Unlike most applicants for initial appointment, judges are in position to retaliate in a meaningful way. To the extent that an anonymous comment is helpful in pointing to problematic performance by a judicial officer, so much the better. The writer might not have offered such comments without the perceived safety of anonymity. Since the judicial officer is accountable to the public, there is no reason not to take account of comments about performance to the same extent and in the same manner as criticism of performance of any other high ranking, influential state employee who is charged with the public trust.

I sign my name when I comment on bar surveys. So I am not defending anonymity as one who uses that technique. But I do recognize that in our less-than-ideal system in which half a dozen Alaskans get first-cut at judicial applicants, that is the only means of trying to influence the selection process. I should add that I do not know Wayne Ross except through his political advertising. I did not make any comments about him in the survey since I do not know him.

Apart from disagreeing with Ross' major points, I feel that he missed important points as well. His dismissive criticism of the four nominees as not conservative enough to suit his political disposition managed to dishonor their individual abilities and accomplishments. Of the four, the only one I do not know is Judge Morgan Christen. Like me, Justice Winfree and Andy Harrington are from Fairbanks. I litigated against Judge Bolger in Kodiak some years ago not long before his first judicial appointment. If Judge Christen is like the three that I know, it is safe to say that as a group, they can be characterized as exemplars of professionalism instead of being painted by inaccurate tones of political opportunism.

It is worth commenting on another aspect that I feel is worth noting with greater concern than Ross' lament that the recent nominees—and presumably the current justices, too—are not conservative enough. Even though I do not know Judge Christen, I note that she has consistently topped the bar surveys every time she's in the running. She did so in this recent survey for Supreme Court. She did so not long ago in the survey for the federal district court appointment. Despite the obvious extremely high regard by the bar, however, she has not achieved her objective of advancing in the judiciary. For me, Judge Christen's pursuit raises a much more serious, broader concern about the prospects for women to achieve judgeships and to rise in the judiciary once appointed. What does a woman have to do in this state to be as competitive as men are for judicial appointments? I believe more women would apply if prospects of advancing were more promising.

But the rate of appointments in recent years, particularly through a number of years under Governor Murkowski, has been dismal. It remains to be seen if matters will improve under Governor Palin. It is notable that, in the recent survey, Judge Christen's bar survey results were matched by another well-known, accomplished woman appellate practitioner who, like Wayne Ross, did not get the nod from the AJC. As for me, therefore, the concern is not whether our process will or will not advance those who are conservative enough to suit Wayne Ross but whether the large number of, and the high percentage of, women in our state bar will enjoy the same prospects for professional success and advancement as men enjoy presently.

— Paul B. Eaglin

Response to Mr. Eaglin's comments

Mr. Eaglin's letter in the *Bar Rag* indicates to me that he either did not read my article "Running the Gauntlet" carefully or if he did, he missed my point. I certainly did not criticize any of the recent nominees who were sent to the Governor for the recent Supreme Court position. Indeed, I actually told the Governor's people that two of the nominees would make excellent justices. The other two I simply never heard of before.

The point I sought to convey in my article was that the most successful applicants to the Judicial Council are those who have hunkered down in a foxhole when it comes to public issues. Such folks have a better chance with the Council than those of us who have involved ourselves in public issues before applying.

It is my impression, and that of many others, that those who stick their heads up on public issues before applying for a judicial appointment all too often get verbally, and anonymously, shot at by other members of the Bar through the commenting process. Most nominees coming from the Council seem to be those who have successfully stayed below the radar screen on public issues, while those who have taken public stands face a vicious trashing in the Bar Poll from fellow members of the Bar who may disagree with them.

Certainly there has to be a better way in choosing judges. Unfortunately Mr. Eaglin thinks the status quo is just fine.

— Wayne Anthony Ross

Judicial appointment policy

Continued from page 2

tive Director of the Alaska Judicial Council. The discussion reflected a commitment to a clear and transparent process for appointing attorneys to the judicial council as required by the Alaska Constitution.

At the conclusion of the third meeting, the Board of Governors voted to amend its policy for appointing attorneys to the judicial council. The amendment establishes a clear and transparent process for the Board to make its appointments. First, the Board will conduct an advisory poll with all active members from the judicial district(s) in which the vacancy exists. Second, the Board will conduct a run-off poll if no applicant receives more than 40% of the votes cast in the initial poll. Third, the Board will appoint the person who receives the most votes in the advisory poll.

Contemporaneous with publication of this issue of the *Bar Rag*, active members in the Third Judicial District will have the opportunity to consider nine applicants for the Alaska Judicial Council. Well-known in the legal community and well-qualified to serve, each applicant has submitted a letter of interest and their resume for members to review on the Alaska Bar Association's website. Show your support for fair and impartial courts in Alaska: Please vote!

Lawyer's Assistance Committee offers substance abuse

CALL US! WE WILL:

- Provide advice and support;
- Discuss treatment options, if appropriate; and
- Protect the confidentiality of your communications.

In fact, you need not even identify yourself when you call. Contact any member of the Lawyer's Assistance Committee for confidential, one-on-one help with any substance use or abuse problem. We will not identify the caller, or the person about whom the caller has concerns, to any other committee member, the Bar Association, or anyone else.

Lanae R. Austin
Anchorage
278-4150 (wk)

Heather L. Gardner
Anchorage
375-8776 (wk)

Sonja D. Kerr
Anchorage
222-4523 (wk)

John E. McConnaughy
Anchorage
343-6445 (wk)

Brant G. McGee
Anchorage
830-5518

Michael Sean McLaughlin
Anchorage
269-6250 (wk)

Michael S. McLaughlin
Anchorage
793-2200 (wk)

Antone Nelson
Anchorage
336-3888 (wk)

Greggory M. Olson
Anchorage
830-9792 (cell)

John E. Reese
Anchorage
345-0275 (wk)
345-0625 (hm)

Lawrence F. Reger
Fairbanks
451-5526 (wk)

Jean S. Sagan
Anchorage
263-5414 (wk)
929-5789 (hm)
952-1785 (cell)

Vanessa H. White
Palmer
746-8170 (wk)

THE KIRK FILES

Caveat Advocatus, or let the lawyer beware

By Kenneth Kirk

Ah, Jimmy, it's good to see you again. I really appreciate your boss lifting the 86 order. The barkeep at that other place kept talking my ear off. You're a better conversationalist. But let's get one poured first, okay?

Anyway, I've got a bug in my ear right now. See, I had this idea to add consumer law to my practice. Just a few cases here and there, to keep things lively. But then the Supremes go and blow it out of the water the other day with a decision that's still got me grinding my teeth.

See, there's this consumer protection law, says folks can sue for consumer fraud, and if they win, they get triple damages, plus reasonable attorney fees. Now the problem for the lawyer is, if you win, you get your regular hourly rate, if you lose you get dog squat. Unless you win dang near every time, you're not coming out ahead, right? Of course right. If you win half the time, you're effectively getting half of a normal rate. That don't hold water for making a living. This glass is holding a fair bit of water though, Jimmy, so let's get some more booze in there.

Anyways, this guy, a local lawyer, comes up with a plan. His deal is, if he wins, he gets a third of the recovery, plus the attorney fees. Since the client's getting three times what he lost as an award, the attorney takes a third of that, the client's still coming out ahead, getting double what he lost. That almost makes it worthwhile. Maybe not as much as it sounds like to you, though, cause you gotta realize these are small cases. Say a used car dealer sells you a lemon, maybe hides some information about it. What's your loss, maybe ten thousand bucks? So the lawyer gets ten thousand as his one-third of the treble damages, that adds a little bit to the hourly fees, and maybe, just maybe, that's enough to offset the loss you take on the cases you lose. Well, hey, these things ain't always easy to prove, Jimmy, and the dealer might fight like a mad cat to avoid having a judgment that says he screwed somebody, out there on the books for anybody to see.

"See, the judge-types don't know what it takes to run a law practice. "

That left one problem. Say you take this case on, pump a bunch of hours into it, you're all set to go to trial, and then at the last minute, the dealer makes an offer. He'll give the money back, and add 50 percent for your trouble. The client's happy; he gets his money back, even after the lawyer takes a third. The lawyer has a problem though, cause he's only getting a little bit of money, since there's no treble damages and no attorney fees. He spent 70 hours on this, he got five thousand bucks. That ain't gonna cover costs. You're not gonna cover costs either, Jimmy, if you don't keep this thing topped off.

So this lawyer has a brainstorm. He gives his clients a deal: they go to trial, he gets his third plus fees. But if they take a settlement, he has the option of getting his hourly rate instead. Now the client can't sell him down the river. That works, until the Supremes get ahold of it. No, not the bunch on the Potomac; we got our own Supreme Court right here in the frozen north. They look at it, and say you can't do that, because the client's right to settle shouldn't be influenced by the attorney fees. They throw the deal out as an inherently invalid agreement.

See, the judge-types don't know what it takes to run a law practice. Most of 'em came up through the ranks of feeding at the public trough, served as DA's, public defenders, that kinda stuff. No, I ain't saying it's easy work, but at least you don't have to worry about getting paid, or how you're gonna pay your secretary. You want a laugh, read one of their divorce cases where they talk about valuing the property as close as possible before trial, like you got nothing better to do then, and your client can of course put up the money to have the evaluations updated. Well maybe you wouldn't get a laugh out of it... and I wouldn't either. Even with another shot under my belt. That was a hint, Jimmy. There you go.

You know, this whole thing reminds me of the time I took a Longshoreman's Act case. They're kinda like workmen's comp cases, but for longshore and harbor workers. It's a federal thing. Anyway, you get your fees awarded at the end, but only if you win. That means you gotta spend a lot of time going through potential cases to weed out the losers.

Now don't get me wrong here, Jimmy, every lawyer has to write off time somewhere, we can't collect for every minute we bill, at least not at full rate. Divorce lawyers have clients who can't pay at the end, criminal lawyers do appointment cases where they get a low hourly rate, business lawyers have to keep their rates down for regular clients.

But in longshore, you can spend a huge number of hours going through medical records of cases you end up rejecting. They do that in personal injury cases too, but there's usually enough of a payoff when you get that percentage of the recovery on a big one, to make up for the time you wrote off. In the longshore cases, there's no big recovery at the end, just the hourly rate. And they don't have to pay you until all appeals are exhausted, which can take years. Oh, and if you want to settle, they'll insist on you writing off some of your attorney fees.

Of course, a lot of the lawyers who take the longshore cases, are really looking for the occasional third party claims, to try to get that big ka-ching on a percentage. Same thing happens with worker's comp, you can't make much money off the regular cases cause you have to write off so much time, so you gotta make up for it with the contingencies. So it has to be a sideline, your real practice is in the third party claims. If you try to make the worker's comp your main business you ain't gonna do much.

Wanna know the worst practice to have? Child in need of aid. Most of it's appointments from the Office of Public Advocacy or from the court system, and those pay around 75 bucks an hour, half or less of what you normally get. You can get full rate on a private case, but if it drags out and goes beyond what the client can pay, you get screwed on that end too. Can you imagine sitting in the courtroom while the public employee lawyers let things drag on and on, and you have to sit there fuming because you know your client ran out of money three hours ago? I've been there, believe me. And those things do drag on.

You know, just recently, they changed the laws on veteran's claims, to try to get lawyers to take those cases. Now you can get paid an hourly rate – you weren't allowed to before – but only for the appeal part. So you gotta spend time scouring through cases, plus maybe spend time for free at the lower level, to get paid an hourly rate for the other part of your time. They'll probably get a few attorneys to do it, vets or retired JAGS who wanna do something for the disabled veterans, even if it costs them money, but I doubt they'll get a whole lot of 'em. Just doesn't pay. Yeah, it's tough being a lawyer nowadays.

Hey, Jimmy, what're ya doing? Put that green label crap away, give me the black label stuff. What, ya think I'm some kinda cheapskate? I can still make a living, and I can still afford a glass of good whiskey.

ECLECTIC BLUES

New school brings on the winter blues

By Dan Branch

In this season of growing light and continued cold, Alaskans get cranky. You can see it in our faces and read about it in the state's newspapers. Many in Juneau are focusing their late winter anger on our school district and its new high school.

Sometime this fall (construction is running behind schedule), Thunder Mountain High School will open along the banks of Mendenhall River. The new school is located in the Mendenhall Valley with its planned single family residence communities. The district clear-cut the land around Thunder Mountain and created a mall-sized parking lot for student use. When finished it should offer that new public institution feeling that only $40 million can buy. Yet just a fraction of our current high school students want to attend this new center for learning.

A few weeks ago the school district sent survey forms to students and parents upon which they were to indicate their first and second choices for high school attendance. They could select old Juneau Douglas High School (JDHS) and its general studies program, the alternative high school, or an academy at Thunder Mountain or JDHS. The vast majority selected JDHS's general studies program, which is basically what is being offered this school year to kids not attending the alternative school.

Such conservatism may surprise readers who considered Juneau to be Alaska's lotus land. I have to admit being puzzled, myself. We live in downtown Juneau, which allowed my daughter to walk to JDHS while many of her classmates had to drive at least 10 miles from their valley homes to attend school. Were not these the children Thunder Mountain was designed to serve? Apparently not.

Anyone attending Thunder Mountain must enroll in an academy where they will stay put until graduation. Those in the JDHS general studies program will be free to choose their teachers and classes. At first this may not seem like a big deal for those of us who are several decades out from high school graduation.

"Hopefully the district will figure out a way to make it work and not follow through on their threat to use a lottery to fill Thunder Mountain."

But think back to your high school days and that teacher who could put you to sleep during an atomic bomb blast. I had a somnambulistic like that teach me American History. Twenty five years of taking students from America's birth to the Korean War had left him as charred as over-done toast. The knowledge that I would never again have to hear his weary voice was all I had to cling during that long semester.

Now imagine that my burned-out historian is a permanent member of your child's academy teaching staff with whom your kid would be spending the next four years at Thunder Mountain High. This might explain in part why 4 out of 5 students have chosen JDHS over Thunder Mountain.

My daughter, who recently graduated from JDHS, thinks it more a matter of tradition and not being separated from your friends. She is always running into people from other generations who graduated from Juneau Douglas. This gives her diploma more meaning. The high school also provided her a bridge to the Mendenhall Valley kids. Some of her best high school friends came from there. If there had been a Thunder Mountain when my daughter started high school, she would have seen them, if at all, as part of a rival student body.

Dreamers planned Thunder Mountain High and the school district convinced Juneau voters to pay for it. Hopefully the district will figure out a way to make it work and not follow through on their threat to use a lottery to fill Thunder Mountain. As they are sorting it all out, the district should honor the students by letting them attend the high school of their choice. If the district does this, the warmth of the summer's first breath will soon put all in perspective. If not, this might be Juneau's long winter of discontent.

Interested in submitting an article to the Alaska Bar Rag?

The *Bar Rag* welcomes articles from attorneys and associated professionals in the legal community. Priority is given to articles and newsworthy items submitted by Alaska-based individuals; items from other regions are used on a space-available basis. Remember -- you get VCLE credit for substantive law-related articles printed in the *Bar Rag*.

A Special Note on File Nomenclature (i.e. filenames)

Use descriptive filenames, such as "author_name.doc." Generic file names such as "Bar Rag September" or "Bar Rag article" or "Bar article 09-03-01" are non-topic or -author descriptive and are likely to get lost or confused among the many submissions the Bar Rag receives with similar names such as these. Use, instead, filenames such as "Smith letter" or "Smith column" or "immigration_law."

Submission Information:

By e-mail: Send to oregan@alaskabar.org or By fax: 907-272-2932.

By mail: Bar Rag Editor, c/o Alaska Bar Association,
550 W. 7th Avenue, Suite 1900,
Anchorage, AK 99501

A matter of choice for the chemically dependent

By Don Logan

On June 5, 2007 our Ninth Circuit reversed a district court decision where the appellant claimed that a parole officer violated the Establishment Clause by requiring the parolee to attend Alcoholics Anonymous/Narcotics Anonymous ("AA/NA") meetings as a condition of his parole. The District Court of Hawaii granted summary judgment against the parolee.

The Ninth Circuit held "only that, for the purposes of reviewing the grant of summary judgment and on the facts alleged, the AA/NA program involved here has such substantial religious components that governmentally compelled participation in it violated the Establishment Clause." *Inouye v. Kemna,* 504 F.3d 705, 714 (9th Cir. 2007)

I have attended several recent Alaskan CLEs that touched on chemical dependency. In each CLE the comment was made that an appropriate treatment modality was "whatever worked for the individual." However, it seemed to me that the information actually furnished was almost wholly based upon what is commonly called the "12-Step" model which is closely associated with Alcoholics Anonymous and Narcotics Anonymous.

No substantial information was provided in these CLEs which addressed those able to quit without treatment or the other three commonly known modalities: SOS (Secular On Sobriety / Save Our Selves); Rational Recovery; and Aversion Therapy. I am troubled by this dearth of information and apparent focus on a single modality in a profession where we pride ourselves in our open minds.

There is a principle that is a bar against all information, which is proof against all argument, which cannot fail to keep a man in everlasting ignorance. That principal is contempt prior to investigation.
Herbert Spencer,
Victorian Philosopher
(1820 – 1903)

Given the recent Ninth Circuit pronouncement, and to ensure due process, this author believes that procedures governing courts, prisons, parole offices and the Bar Disciplinary process must provide information about all four modalities, together with a real choice among them, for the convicted or disciplined. For we, the attorneys, it is equally important that we understand the various modalities in order to educate the clients and, to some extent, match the modality that appears most likely to fit, to the client.

There follows a very abbreviated description of these four modalities together with contact information for each. I claim no special expertise in chemical dependency treatment and my purpose is only to inform the readers that alternative modalities to the best known 12-step modality exist and are worthy of consideration.

12-step programs:

A twelve-step program is a set of guiding principles for recovery from addictive, compulsive, or behavioral problems, originally developed by the fellowship of Alcoholics Anonymous (AA) for recovery from alcoholism. This method has been adapted as the foundation of other twelve-step programs such as Narcotics Anonymous. As summarized by the American Psychological Association, working the Twelve Steps involves the following. 1) admitting that one cannot control one's addiction or compulsion; 2) recognizing a greater power that can give strength; 3) examining past errors with the help of a sponsor (experienced member); 4) making amends for these errors; 5) learning to live a new life with a new code of behavior; 6) helping others that suffer from the same addictions or compulsions.

More Information can be found at: A.A. World Services, Inc., P.O. Box 459, New York, NY 10163; (212) 870-3400; http://www.step12.com/

SOS: Secular on Recovery/ Save Our Selves:

SOS takes a self-empowerment approach to recovery and maintains that sobriety is a separate issue from all else. SOS addresses sobriety (abstinence) as "Priority One, no matter what!" SOS credits the individual for achieving and maintaining his or her own sobriety. SOS respects recovery in any form, regardless of the path by which it is achieved. It is not opposed to or in competition with any other recovery programs. SOS supports healthy skepticism and encourages the use of the scientific method to understand alcoholism.

More information can be found at: SOS Clearinghouse (Save Our Selves) 4773 Hollywood Blvd., Hollywood CA. 90027, USA; Tel: (323) 666-4295; SOS@CFIWest.org

Rational Recovery:

Rational Recovery® says it is a worldwide source of counseling, guidance, and direct instruction on self-recovery from addiction to alcohol and other drugs through planned, permanent abstinence. Rational Recovery uses an exclusive method, AVRT®, which it suggests is the most cost-effective, dignified approach. (AVRT®) is the Addictive Voice Recognition Technique®. The definition of the Addictive Voice is, any thinking that supports or suggests the possible future use of alcohol and other drugs. Any contradiction of a personal commitment to permanent abstinence is the Addictive Voice. In Rational Recovery® using AVRT counters the addictive voice until the individual becomes sufficiently comfortable in abstinence.

More information can be found at: Rational Recovery, P.O. Box 800, Lotus, CA, 95651; tel. (530) 621-2667 or 4374; http://www.rational.org/.

Aversion Therapy:

Aversion therapy treats addiction as a physiological problem affecting the brain. Drug and alcohol rehabilitative aversion therapy, pioneered by Schick-Shadel hospital founder Charles Shadel, is based on the principles of classical conditioning of the subconscious mind responsible for addiction rather than the conscious brain. Aversion conditioning works directly at the brain's core (brain stem) to enact an automatic or subconscious aversive motor response. This response precedes the craving for the drug of choice. For the aversion to work, the conditions that would trigger the craving are conditioned to instead trigger the motor response of nausea and discomfort. Aversion treatment acts to create this aversive sensory/motor response at the threat of relapse, when the patient is exposed to environmental cues that used to bring on the craving - in effect, blocking the desire to use.

More information can be found at: Schick Shadel Hospital 12101 Ambaum Blvd. S.W., Seattle, Washington 98146; Tel: 1-800-CRAVING (1-800-500-6395); Contact-Us@SchickShadel.com.

Summary

When the "legal system" provides information focused on only the modality, without information about alternatives, the result is ignorance, not help. Full information is critical to reasoned choice.

Not everyone fits "the round hole." The United States Constitution, our Ninth Circuit, Alaskan and federal Due Process, and common sense, all require that someone burdened with chemical dependency, who requires help to stop, be provided by all government related instrumentalities, and by his or her counsel, with information about the various options available and a realistic opportunity to choose, and perhaps change their mind about, which modality will best suit their personality and needs.

We, in all our capacities, be it counselor, judge, parole officer, or disciplinary committee member, owe it to our profession to avoid ignorance where the subject has such grave consequences as does chemical dependency. I urge your investigation.

Quote of the Month

"Like my old skleenball coach used to say, 'Find out what you don't do well, and then don't do it'."
--Alf, of the old TV show of the same name.

Comparison of Alaska Bar Member Characteristics 1989 and 2007

	1989 Bar Profile	2007 Survey
Age (Average age)	40.4 years	51.0 years
Gender	25% female	37% female
	75% male	63% male
Age and gender	37.2 years female	46.6 years female
	41.4 years male	52.8 years male
Ethnicity	no data	93% Caucasian
		2% Alaska Native/Am. Ind.
		2% other minority
		3% no response
Type of caseload:		
Prosecution	4%	5%
Mainly criminal	5%	6%
Mixed civil and criminal	18%	18%
Mainly civil	70%	60%
Other	3%	10%
Years of Practice: [3]		
0-5	18%	12%
6-10	26%	11%
11-15	31%	11%
16-20	25% (for 16 + years)	13%
over 20	[not tallied separately; listed in 16 - 20 years above]	53%
Type of practice:		
Solo Practice	18%	22%
Office of 2 - 5 attys	20%	16%
Office of 6+ attys	29%	16%
Private corporate	2%	4%
Judge, judicial officer	6%	7%
All other government	20%	24%
Public service organization	3%	3%
Other, retired	2%	8%
Location of practice:		
First District	14%	13%
Second District	2%	2%
Third District	73%	74%
Fourth District	11%	11%
Income ranges[4]		
$50,00 or less	33%	14%
$50,001 -$130,000	52%	57%
$130,001 - $155,000	6%	10%
$155,001-$200,000	4%	9%
Over $200,001	6%	10%

Bar demographics change

Continued from page 1

58% in private practice. The changes appear to have occurred because the percentage of "all other" government attorneys has increased from 20% to 24%, and those identifying themselves as "other" or "retired" has increased from 2% to 8%.

- The distribution of members among the judicial districts has remained about the same.
- Bar members' incomes changed in expected directions. In 2007, 14% of those responding showed incomes of $50,000 or less,[2] compared to 33% of the 1989 respondents.
- Conversely, 19% of the 2007 group showed incomes of $155,001 or more, compared to 10% of the 1989 group with incomes in that category.

Footnotes

[1]The Council surveyed all active Alaska bar members in the U.S., along with inactive and retired members in Alaska. To keep the results consistent with the 1989 survey (see note 2, below), the Council analyzed only 2007 data for in-state bar members, including active, inactive and retired.

[2] In both surveys, 1989 and 2007, some members may have been retired or working less than full time.

[3]Years of practice for 1989 data taken from the "April 1989" column of Table 1, page 4, of the 1989 Bar Profile.

[4] The income categories were defined slightly differently in the 1989 survey. They were: Less than $10,000; $10,000 - $49,999; $50,000 - $124,999; $125,000 - $149,999; $150,000 - $199,999; and $200,000 or more. The 1989 survey asked respondents to provide "1988 adjusted gross income from the practice of law." The 2007 survey asked respondents to provide "approximate adjusted gross income from the practice of law." The income categories chosen for reporting in 2007 reflected the 2006 Anchorage district court judge salary ($129,516), the 2006Anchorage superior court judge salary ($152,760), and other income levels that would capture general information about bar members' typical incomes. In the 1989 survey, 4% of the respondents did not answer the question; in the 2007 survey, 6% of the respondents did not answer the question.

American Bar Association law school stats

In a new study released in March, the American Bar found relatively static enrollment in law schools across the country:

• Total enrollment for J.D. degrees increased from 141,031 to 141,433 from the academic year starting fall 2006 to the year starting fall 2007. The increase in first-year enrollment was smaller, from 48,937 to 48,964 or only 0.1 percent.

• Looking at gender for all students enrolled for J.D. degrees, there were 74,946 males in the 2006 academic year, but 75,383 in the current year, an increase of 0.6%. But the number of women decreased by 0.1 percent, from 66,085 in 2006 to 66,050 in the current year. Males represent 53.2 percent of total J.D. enrollment this year.

• Among first-year students, the number of males dropped from 26,322 to 25,799, or 2 percent. But the number of females increased from 22,615 to 23,165, or 2.4 percent. Males represent 52.7 percent of the first-year class.

• While the number of minorities enrolled for a J.D. degree increased from 30,557 in the 2006 academic year to 30,598 in the current year, they continued to represent 21.6 percent of all J.D. students.

• While there was a 0.9 percent increase in the number of minorities enrolled as first-year students, from 10,898 to 10,992, as a proportion of the first-year class they dropped from 22.4 percent to 22.3 percent.

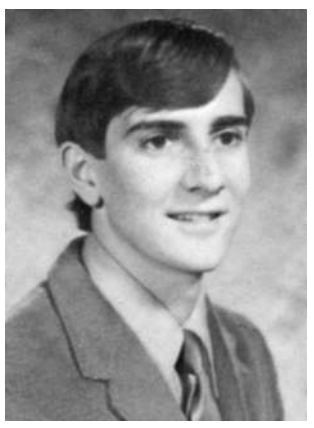
• Other statistics detailing law degrees awarded, law school enrollment in total and broken out by gender and racial or ethnic group over time, as well as other information, are posted on the organization's web site, at www.abanet.org/legaled/statistics/stats.html .

Justice Winfree with his wife Cathy at the start of the ceremony.

Justice Winfree with his children James and Christina after the robing segment of the ceremony. Photo by Steve Winfree

The installation ceremony drew a standing-room only crowd to the lobby of the Rabinowitz Courthouse in Fairbanks. Here, Fourth District Presiding Judge Doug Blankenship, center, visits with, L-R: Stephanie Cole, Administrative Director of the Court System; Marilyn May, Clerk of the Appellate Courts (back to camera): and long time Fairbanks resident William Mendenhall.

Winfree sworn as 3rd Fairbanks justice



Hundreds of Fairbanksans and colleagues from around the state attended Justice Daniel E. Winfree's swearing-in ceremony Feb. 12. "I always have been, I am today and I always intend to be just a kid from Fairbanks," he said of the occasion.

Gov. Sarah Palin in November appointed Winfree to the seat vacated by Justice Alexander Bryner, who retired.

"Most of those in attendance at the Rabinowitz Courthouse were forced to stand to see the first Fairbanksan appointed to the state's highest court in more than a decade and only the third man from Fairbanks to serve on the state supreme court since statehood in 1959," said the Fairbanks Daily News-Miner.

Fairbanks Superior Court Judge Mark I. Wood told the crowd that Winfree "has the gift of taking complex litigation and breaking it down to get to the heart of the matter."

Retired Superior Court Judge Niesje Steinkruger spoke of the city's hope for another justice appointed to the court. As the plans were being made for the new Rabinowitz Courthouse in the 1990s, the building was to be four stories tall. Among the architect's revisions was a decision to add a 5th floor--for a supreme court justice's chambers in the future. The chambers will be occupied by Winfree, but he'll share the "penthouse" with other judicial offices that have added to keep up with the growth of the Fairbanks court system.

"With each new plan, we kept holding back space hoping someone would be called to serve on the Alaska Supreme Court," Steinkruger said."

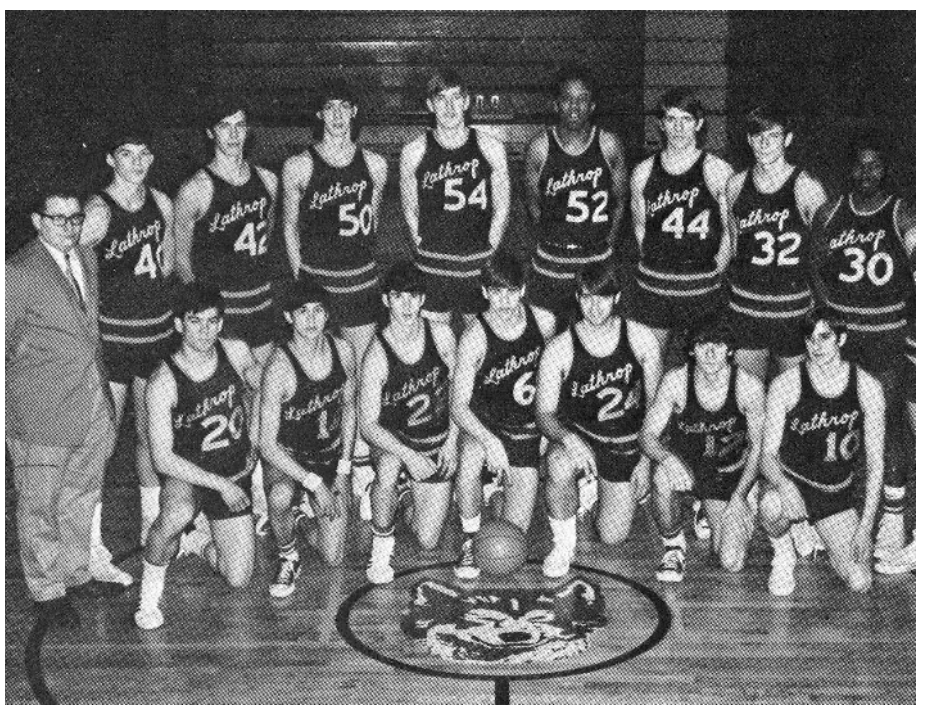
Justice Winfree brings diverse experience to the court. Between 1975 and 1978, he was a truck driver and warehouseman in pipeline camps and Prudhoe Bay working on the construction of the Trans-Alaska Pipeline and related projects on the North Slope. He was on site when the first barrel of oil made its way down the line to Valdez in 1977.

"I'm a third-generation Fairbanksan, born in Territorial Alaska, raised by the Golden Rule and the Code of the North, and encouraged to make a difference." *--Dan Winfree, June 21, 2007, Alaska Judicial Council Application for Judicial Appointment.*

Justice Winfree earned a B.S. in Finance from the University of Oregon in 1977 and then earned M.B.A. and J.D. degrees from the University of California, Berkeley, in 1981. He was admitted to the Alaska Bar in 1982 and spent 25 years in private practice in Anchorage, Valdez, and Fairbanks, working with large and small firms and as a sole practitioner.

Justice Winfree served on the Alaska Bar Association Board of Governors for nine years, including service as President in 1994-95 and related service as President of the Western States Bar Conference in 1997-98, and also served a term on the Ethics Committee and several terms on the Fee Arbitration Committee. At the time of his appointment to the court, he was executive director and counsel for the Fairbanks Hospital Founation.

The Alaska Bar Association presented him with its Distinguished Service Award in 2007. After his final term on the Board of Governors, he joined the Board of Trustees of the Alaska Bar Foundation and currently serves as its president. Justice Winfree is married to another Fairbanks-born, third-generation Alaskan, Cathleen Ringstad Winfree, and they have two children.



Which one is Dan in this vintage Fairbanks Lathrop High School basketball team? (See answer, page 10)

Justice Winfree, R, joins his new colleagues on the supreme court, L-R, Justice Warren Matthews, Chief Justice Dana Fabe, and Justice Robert Eastaugh. Justice Walter Carpeneti joined the ceremony later because of flight delays out of Juneau.

Photos by Fairbanks Clerk of Court Ruth Meier & Steve Winfree

ESTATE PLANNING CORNER

The future of the Federal Estate Tax — 2008 edition

By Steven T. O'Hara

In years past it appeared that Congress was set to repeal the federal estate tax. Then delay occurred and Hurricanes Katrina, Rita and Wilma hit. Now in 2008 we find ourselves in a Presidential election year with continued uncertainty about federal transfer taxes.

A quick review of the law will provide context for the drama that may unfold in the coming years.

The law currently in effect repeals federal estate and generation-skipping taxes beginning in 2010. The current law contains a "sunset" provision that provides, in effect, that the repeal will last one year only (Economic Growth & Tax Relief Reconciliation Act of 2001 at Section 901).

In other words, at present the U.S. government has scheduled one year – the year 2010 – for there to be a moratorium on federal estate and generation-skipping taxes.

During the year 2010, however, clients could owe substantial tax if they *gift* any of their property because the law does not repeal the federal gift tax.

By way of further background, the amount that may pass free of federal estate or gift tax is generally known as the unified credit equivalent amount or, more recently, the applicable exclusion amount. Here we will call it the "exclusion."

From 1987 through 1998, the exclusion was $600,000. Beginning January 1, 2000, the exclusion was increased to $675,000. The exclusion was scheduled to increase to $1 million in 2006.

Under the 2001 Tax Act, the exclusion increased to $1 million in 2002, four years earlier than the pre-existing schedule. Beginning January 1, 2004, the exclusion increased to $1.5 million but only under the estate tax. The exclusion remains at $1 million under the gift tax.

"So current law contains good news, but it also contains bad news with the scheduled erasure of all tax breaks in 2011."

The exclusion increased to $2 million for 2006, 2007 and 2008 and is scheduled to increase to $3.5 million in 2009 but only under the estate tax. The exclusion remains at $1 million under the gift tax.

In addition, the 2001 Tax Act reduced the top estate and gift tax rate from 55 percent to 50 percent in 2002, 49 percent in 2003, 48 percent in 2004, 47 percent in 2005, 46 percent in 2006, and to 45 percent for 2007, 2008 and 2009.

Under the sunset provision, the 2001 Tax Act is scheduled to go out of existence in 2011 as if it had never been enacted. The effect of this sunset provision is that, in 2011, the top estate and gift tax rate will increase back to 55 percent and the exclusion will decrease back to $1 million. The present effect is uncertainty.

So current law contains good news, but it also contains bad news with the scheduled erasure of all tax breaks in 2011.

Many are hoping the U.S. government will create only good news and change the law to make the reductions or repeal permanent. As a practical matter, complete repeal appears politically impossible.

Look for a compromise to be worked out after this year's Presidential election. For example, one compromise might be to increase the exclusion to $5 million. So only estates in excess of $5 million would be subject to federal estate tax. Also under this proposal, the top estate tax rate would be 15 percent, the same as the current top income tax rate on capital gains. Thus this proposal is known as the "5/15" plan.

In any event, from a public policy standpoint the uncertainty in federal transfer taxes ought to be eliminated.

Bar People

David Stebing has relocated to Oakland, California, where he works for the HMO Kaiser Permanente at its home office as Manager, Fraud Control Strategy & Operations in the National Compliance Office.

Lisa Crum recently joined Lindquist & Vennum in Minneapolis as a partner after serving as an assistant attorney general in both Minnesota and Alaska. She will provide counsel to clients on matters involving energy, agribusiness and land use. She most recently represented the Minnesota Public Utilities Commission on matters concerning petroleum pipelines and electric power generation and transmission.

Connie Aschenbrenner, formerly with the P.D. in Anchorage, is now with the Law Office of Ernest M. Schlereth. **John Dean**, formerly with Allstate, is now Staff Counsel for GEICO in Anchorage. **David Floerchinger**, formerly with the Attorney General's Office, is now with Russell, Wagg, Gabbert & Budzinski.

Gregory Gabriel is now with Baldwin & Butler in Kenai. **Lisa Kirsch,** formerly with the Attorney General's Office, is now with Legislative Affairs in Juneau. **Donna McCready** is now with Friedman, Rubin & White in Bremerton, WA. **Melanie Osborne**, formerly with Sonosky, Chambers, et.al., is now the Human Resources Director at Ahtna, Inc. in Anchorage.

Arden Page has ceased being Of Counsel to Burr Pease & Kurtz and is practicing as a sole practitioner. **Krista Stearns**, formerly with Boyd, Chandler, is now with the Attorney General's Office in Anchorage. **Charles Schuetze**, formerly with the Law Offices of David Shaftel, is now with Manley & Brautigam.

Alan Sherry has relocated from Anchorage to Bend, OR. Je**ffrey Vance**, formerly with the Bristol Bay Native Association, is now Chief Counsel/Supervisory Attorney for the U.S. Department of Housing & Urban Development in Anchorage. **Jason Weiner**, formerly with the D.A.'s office in Fairbanks, is now with Terrance Hall & Associates. **Julie Willoughby**, formerly with the P.D. in Juneau, is now with the Sitka D.A.'s Office.

Leonard Anderson, formerly with Large & Associates, is now with Burr Pease & Kurtz. **Madelon Blum** is retiring from Lynch & Associates, but will continue to be "Of Counsel" to the firm. **Matt Claman** is now Of Counsel to Lane Powell. **Dave Carlson**, formerly with Clapp Peterson, et.al., is now with the District Attorney's Office in Fairbanks. **Jon Ealy**, formerly Of Counsel to Tindall, Bennett & Shoup, is now Chief Operating Officer to Marsh Creek, LLC in Anchorage.

Marie Evans, formerly with Manley & Brautigam, is now with ConocoPhillips Alaska. **Shelly Ebenal**, formerly with Birch Horton, et.al., is now the Executive Director & General Counsel to the Fairbanks Memorial Hospital Foundation. **Ken Ford** is now with the Municipality of Anchorage Legal Department.

Ryan Fortson, formerly with Dorsey & Whitney, is now working part time at Alaska Legal Services as a staff attorney. He is also a partner at the Northern Justice Project. **Leigh Michelle Hall** has relocated from Barrow to Ft. Myers, FL. **Maryann Henry** has relocated to California. **SaraEllen Hutchinson** is now the Sustainable Communities Program Director for the Alaska Center for the Environment.

Lisa Hamby is now with Clapp, Peterson, et.al. in Fairbanks. **Greg Henrickson**, formerly with Richmond & Quinn, is now with Walker & Eakes. **Patrice Icardi**, formerly with Ken Kirk & Associates, has opened the Law Office of Patrice A. Icardi. **Jill Jensen** has relocated to Chattanooga, TN.

Joyce James, Hearing Officer for the Commercial Fisheries Entry Commission, has retired. **Steve Jones** has set up his own practice, Jones Law Group, LLC. **Rita Lovett**, formerly with the Attorney General's Office, is now with ConocoPhillips Alaska. **James McComas** has relocated to Park Falls, WI.

Curtis Martin, formerly with the Attorney General's Office, is now GEICO staff counsel. **Natasha Norris**, formerly with the P.D. Office in Anchorage, has relocated to Juneau and opened the Law Offices of Natasha Norris. **Joyce Rivers** has relocated from Anchorage to Astoria, OR.

John Strachan has relocated from Anchorage to Morganton, NC. **Brian Stibitz**, formerly with Bankston, Gronning, O'Hara, is now with Reeves Amodio. **James Whitehead**, formerly with Holmes Weddle & Barcott, has opened the Law Office of James F. Whitehead, PLLC in Seattle. **Pamela Weiss**, formerly with Guess & Rudd, is now an Assistant Municipal Attorney in Anchorage.

If you've changed firms, relocated to a new community, etc. please send us your information for Bar People, to info@alaskabar.org.

Lane Powell attorney listed in Chambers 2008

Fourteen Lane Powell attorneys and eight practice groups were recently selected by their peers and clients for inclusion in the 2008 edition of the legal rankings guide Chambers USA: America's Leading Lawyers for Business. Attorneys listed were from Alaska, Oregon & Washington, where the firm has practices.

Brewster Jamieson

In Alaska, Brewster Jamieson was listed in the category of Litigation: General Commercial, a practice area in which Chambers also listed the firm in Alaska. Chambers interviews clients & attorneys in 175 countries annually,. and ranks firms based on technical legal ability, professional conduct, client service, commercial awareness/astuteness, diligence, commitment and other qualities.

Lane Powell PC, Your Pacific Northwest Law Firm□, was founded more than 130 years ago, and also has offices in London, England.

Conway opens new practice

Maribeth Conway is pleased to announce the opening of her new practice in Anchorage, The Conway Law Firm, P.C.

Conway practices in the areas of estate planning, probate and trust administration, tax planning and asset protection, business formation and succession planning. She acquired her bachelor's degree from the University of Puget Sound in 1987 and her law degree from Willamette University College of Law in 1994. She is also a graduate of the Cannon Trust School and holds the prestigious Certified Trust and Financial Advisor designation from the American Bankers Association.

Conway was most recently with Wells Fargo Bank's Wealth Management Group, and was their personal trust manager for Alaska. She is a member of the Alaska, Oregon and Washington State Bar Associations, and the Anchorage Estate Planning Council, and was born and raised in Anchorage.

Casemaker 2.0: Bar member says, 'It's incredible'

By Jason Weiner

Bar members often asked, at least before the Board of Governors reduced bar dues, "What do I get for paying among the highest bar dues in the nation?" In addition to many other services and recently reduced bar dues, the Alaska Bar Association now brings you Casemaker – a quick, easy to use legal research tool that is free to all members of the Alaska Bar Association. The cost to the Alaska Bar Association is $22,644 per year (approximately $5.86 per bar member). We believe the value to the members will far surpass its costs.

Casemaker has been available to Alaska Bar members since October, 2007. The Board solicited comments from the membership to see how they liked it. The following are a few of the comments we received from bar members:

> Very cool! I took it for a test drive – seems simple and intuitive enough so far even for me!!
>
> •
>
> Brilliant, absolutely wonderful, Alaska Bar offers more services than any other Bar I belong to (CA & WA); a real feather in the Bar's cap. With the dues reduction, I feel like I'm living in opposite land.
>
> •
>
> Thank you to the Bar for getting Casemaker. This shows we really do care about the little guy, and again please tell everyone involved "thank you" and how excited I am!
>
> •
>
> I just gave Casemaker a trial run on federal case law (my focus is federal criminal defense). I was just fooling around, so not sure yet how refined the search engine is, but hey, it's up and running and all resources are welcome. I knew there was some reason to keep paying Alaska Bar inactive dues for the last 25+ years and finally a freebee came my way! Thanks very much.
>
> •
>
> Thank you, thank you, thank you! The research database is perfect for my practice! This is exactly what I've been waiting for! I have it under "my favorites." Thank you!

•

When we initially voted on adding Casemaker as a service to the members, I was working with the State of Alaska and had access to unlimited Westlaw (I still voted for it). Since that time, I have gone into private practice. Here is the comment I sent in:

"Casemaker is incredible. Fast, effective, and pretty thorough. I used it extensively while I was on vacation and it was a great help to my work. Of course, it's also free, which makes it all the better. It really is an amazing program."

As someone who has worked in a larger firm, for the State of Alaska, and now back in private practice in a two-person law firm, I believe Casemaker has something for everyone. For those who are working for a firm that made the choice not to purchase a subscription to a legal research tool, that are very careful about attorney use of on-line legal research, or simply cannot afford an on-line legal research service, Casemaker provides you with an invaluable legal resource. Casemaker goes a long way to creating a level playing field.

For those who already have an on-line research service, Casemaker is an excellent supplement to this service. Your current on-line research service still remains valuable due to the specialized resources it provides and extensive annotations not available on Casemaker. Casemaker, however, has a quick, easy to use "browse" feature for all state statutes and court rules. You will no longer wish you had your statute books or rules book with you while traveling if you have a laptop and can hook up to the internet. You also will be able to quickly look up statutes and rules and know that what you are looking at is up to date. In this way, the simplicity of Casemaker adds to its value.

Casemaker also is great for "cutting and pasting." You simply select the text on the screen you wish to copy and then can paste the information into a Word document and print it out. The transfer is seamless, and there is no extra syntax resulting from the transfer. During consultations with clients, some of whom I know only had the money to get as much information as they could from a one hour visit, I have been able to quickly go on line, pull up the statute, copy it to a word document, and print it out along with other statutes and cases for the client to take with him or her. Clients have really appreciated coming out with written information from their visit that they can turn to down the road.

Getting on Casemaker is simple. All you need to do is to go to the Alaska Bar Association's website – www.alaskabar.org. You will see to the right on the home page a symbol for Casemaker. Click on the symbol, and you will be asked for a username and password. Login and password information were sent by letter to all Bar members last fall. If you don't know how to login, please contact the Bar office at 272-7469 or e-mail webmaster@alaskabar.org. Once you enter, you will be asked to agree to a user agreement (you have no choice on that one). You will then be presented with the Alaska library. You can click on the screen to be sent to other state libraries.

Searching on Casemaker is almost exactly like searching on any other search engine. You can simply put in a group of words and if they all appear in the document, the document will be retrieved for you. You can put in commas, and documents with that word "or" the following word will be retrieved. There is a thesaurus feature that enables users to search for a specific words and synonyms. You can search for a document with specific words within a sentence, within 500 words in the document, or anywhere within the document. To the side of the retrieved case are other cases citing that case. To the side of statutes are notations indicating what changes are being made to statutes and codes. There is even "casecheck," which allows users to instantly determine the treatment of the case in question by a later court.

As with any on-line legal service, there have been some criticisms. Surprisingly, Casemaker 2.0, which just came on line in January, answers those criticisms. The previous version of Casemaker did not allow for searching by initials. Now it does. Another member was concerned that Casemaker did not allow the lawyer to search multiple jurisdictions at the same time. Casemaker 2.0 added this capability. Casemaker 2.0 also added statutes for all 50 states, additional federal library documents, and much more. Give it a try! I know you will not be disappointed.

The Bar Association has entered into a five year agreement with Casemaker. After that time the Board of Governors will be evaluating whether to renew our agreement. Please send us your comments about Casemaker. The Alaska Bar Association wants to be sure we are doing our best to provide services that the membership wants while remaining fiscally responsible.

IT'S TIME TO PLAY THE BAR HISTORIAN'S

HISTORY MYSTERY!

IDENTIFY THE PHOTOGRAPH BELOW CORRECTLY AND YOU'LL BE ENTERED TO WIN A BIG PRIZE!

L-R: _____

NOTE: INCOMPLETE ENTRIES ARE ACCEPTABLE--YOU MAY KNOW MORE THAN ANYONE ELSE!

LOCATION OF PHOTO: _____

DATE OF PHOTO: _____ **OCCASION:** _____

SEND YOUR ENTRY BY APRIL 1, 2008, TO:

HISTORY MYSTERY! Alaska Bar Historian's Committee P.O. Box 100279 Anchorage, AK 99510

Correct entries will be entered in a Prize Drawing and the winner will receive coupons for a Dozen Loaves of Bread from Great Harvest Bread Co.

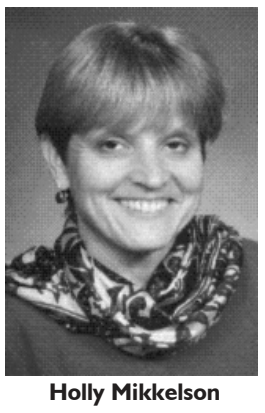
Kid from Fairbanks

The editor believes that #10 is Dan Winfree on the court. (far right, first row) page 8.

Language Interpreter Center opens

On September 21, 2007, the Alaska Immigration Justice Project officially opened the Language Interpreter Center, a public/private initiative that will ensure that Alaskans with limited English-proficiency have access to services. The Language Interpreter Center will improve the quality of life for Alaskans with limited English-proficiency (LEP) by increasing access to state services and businesses. The LIC will create a cadre of trained and certified interpreters and translators, thus removing communication barriers for LEP individuals. In addition to institutionalizing the first Alaska certification and training program for language interpreters and translators, the Center will develop and implement a sustainable service delivery model linking customers with qualified interpreters and translators. All Alaskans will be served by the Language Interpreter Center.

This March, The Language Interpreter Center is hosting workshops in Anchorage with Holly Mikkelson. Ms. Mikkelson is a professional interpreter and translator and adjunct professor at the Monterey Institute of International Studies (MIIS) in Monterey, California. She has written many articles and books about the field of interpreting. She is also the Director of the



Holly Mikkelson

Barb Jacobs

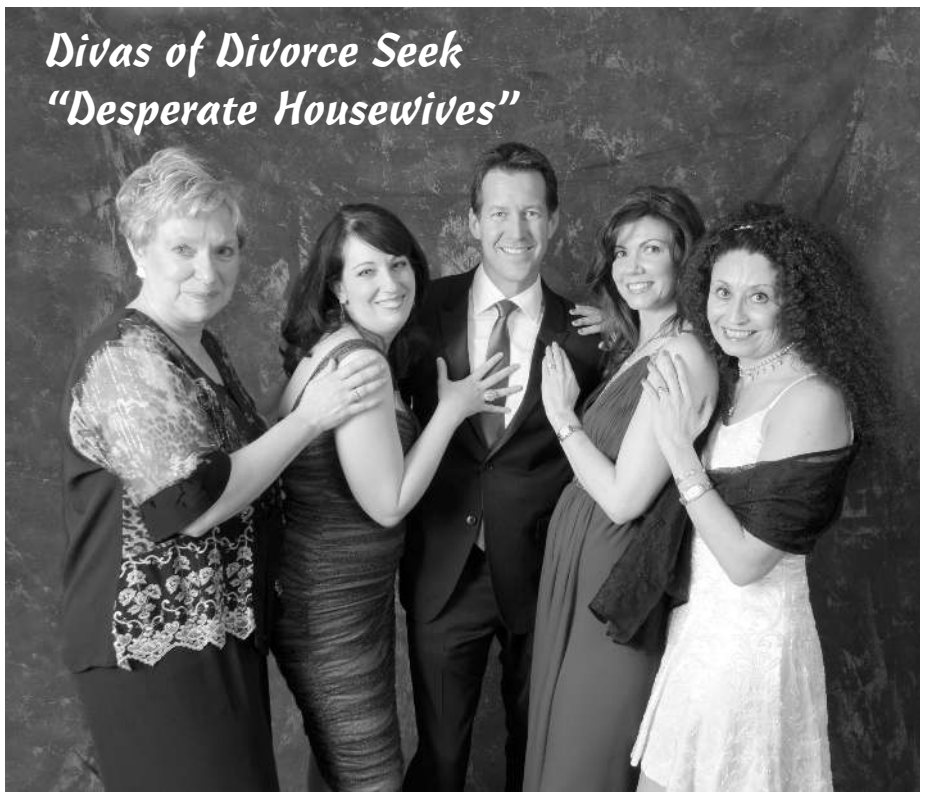
International Interpretation Resource Center (IIRC) at the (MIIS). Holly is a state and federally certified court interpreter and is accredited by the American Translators Association. She has given many training workshops throughout the United States, and has been a consultant to a number of court-interpreter testing and regulatory entities, including the California Judicial Council and the National Center for State Courts.

Our first interpreter training with Ms. Mikkelson will occur in March 2008. If you are interested in becoming a certified interpreter or would like more information, please contact the Language Interpreter Center at AIJP, or visit our website at www.akijp.org.

Alaska Bar Association 2008 CLE Calendar

Date	Time	Title	Location
March 18 Live & Webcast	8:30 a.m. – 12:30 p.m	What To Do When the Media Calls: Making Your Case to the Media CLE# 2008-003 3.75 general CLE credits including 1.0 Ethics credit	Anchorage Hotel Captain Cook
March 25	8:30 a.m. – 12:30 p.m.	Lights, Camera, ActionUsing Persuasive Images in Briefs, Pleadings, and at Trial (Digital Photography & Videography) CLE#2008-031 3.75 general CLE credits	Anchorage Hotel Captain Cook
June 12	TBA	Attorney Client Privilege (Feldman) CLE#2008-027 CLE credits TBA	Anchorage Hotel Captain Cook
June 19	11:30 a.m. – 1:30 p.m. (Reception, Lunch, & CLE)	Conflicts of Interest with Professor John Strait – Seattle University School of Law Program CLE#2008-006 1.0 Ethics credits	Anchorage Hotel Captain Cook
July 22 Live & Webcast	8:30 a.m. – 5:00 p.m. Lunch included	ANCSA Corporations - Governance, Resource Development and You! With Lewis & Clark Law School CLE#2008-013 CLE credits TBA	Anchorage Hotel Captain Cook
August 20 Live & Live Webcast	8:30 a.m. – 12:30 p.m.	Bankruptcy Double Feature: Family Law & Bankruptcy and Exemptions and Asset Protection Trusts CLE#2008-002 3.75 general CLE credits	Anchorage Hotel Captain Cook
August 26 Live & Live Webcast **NEW**	8:30 a.m.– 10:30 a.m.	Tort Law Update CLE #2008-034 2 general CLE credits	Anchorage Hotel Captain Cook
September 23 (Video of plenary session only)	All Day	Impeachment with Terry Mac Carthy & Ray Brown CLE #2008-021 CLE credits TBA	Anchorage Hotel Captain Cook
May 4 (NV)	8:30 a.m. – 12:00 p.m.	**Convention CLE** Juries: Reexamining the Box – Innovations in Approaches to Juries CLE#2007-209 3.25 general CLE credits	Fairbanks Princess Fairbanks Riverside Lodge
May 4 (NV)	2:15 -4 :15 p.m.	**Convention CLE** Federal-State Appellate CLE CLE#2007-710 2.0 general CLE credits	Fairbanks Westmark
May 18	11:30 a.m. – 1:15 p.m.	Managing Cases Involving Persons with Mental Disorders: Community Behavioral Health Treatment Matching & Linkage Programs –CLE #2007-004 1.5 general CLE credits	Anchorage Downtown Marriott Hotel
June 7 Live & Webcast	8:30 a.m. – 12:30 p.m.	Alaska Native Land Base CLE#2007-013 3.75 general CLE credits	Anchorage Hotel Captain Cook
June 8	11:30 a.m. – 1:15 p.m.	Managing Cases Involving Persons with Mental Disorders: Law of Competence for Criminal Proceedings –CLE #2007-005 1.5 general CLE credits	Anchorage Downtown Marriott Hotel

"Desperate Housewives" TV star James Denton posed with a large group of bar members in February, where he appeared for the Dare to Care gala fundraiser in Anchorage. Among the readily recognizable attorneys who gathered for the photo with Denton--who's crouching in the second row--were: front row (left to right), Jon Katcher, Herman Walker and Barry Kell; second row (left to right) Frank Pfifner, Kim Colbo, (Denton), Mary-Ellen Meddleton, Lynne Freeman, Jennifer Holland, and Lynda Limon. Colleen Moore, Blake Call, and Bar Rag Editor Tom Van Flein also appear in the third row. Katcher is president of Dare to Care, a non-profit organization that provides free lunches to school children who otherwise don't qualify for aid.



Family law (and divorce) attorneys (l to r) Mary-Ellen Meddleton, Jennifer Holland, Lynne Freeman, and Lynda Limon share a moment of levity with "Desperate Housewives" TV star James Denton.

Photos by Carl Johnson, carljohnsonphoto.com

Hey dude, where's my wig?

By Peter Aschenbrenner

Alert readers may recall the episode titled "The Man of the Hill," from Book VIII, Chapter XI of Henry Fielding's *Tom Jones*. Fielding served at Bow Street's Magistrate Court in London. Since 2004 the court has decamped to Horseferry Road, under a lackluster name, something with 'Westminster' in it. {Wikipedia 'BMSC').

Since Fielding is one of a few women and men of English letters who can claim to have invented the novel as we know it, the fact that he served as a judge (and co-founded a police force as well) recommends him to our attention.

In "The Man of the Hill" episode, Lord Justice Page parried with 'Frank' as follows, a little matter of horse-thievery playing out in court. It was assize-time, naturally. (Which reminds me, Fairbanks was founded by a horse thief, but I digress.)

Here's Frank (the witness, not the defendant) introducing himself to the reader: I was "a good hopeful young fellow: [I] got into Ovid's Epistles, and … could construe you three lines together sometimes without looking into a dictionary."

Frank spots his father's mare at a fair and gives out the 'hue and cry.' He's the Crown's principal witness. Is this all about asportation? Beats me.

"Well you, fellow," says my lord (this is Lord Justice Page), "what have you to say? Don't stand humming and hawing, but speak out."

Frank's blunt 'I found my father's horse' did not satisfy the Lord Justice's appetite for wit. His own, that is.

"Ay!" answered the judge, 'thou art a lucky fellow: I have travelled the circuit these forty years, and never found a horse in my life: but I'll tell thee what, friend, thou wast more lucky than thou didst know of; for thou didst not only find a horse, but a halter too, I promise thee."

Fielding doesn't leave it there.

"Upon which everybody fell a laughing, as how could they help it? Nay, and twenty other jests he made, which I can't remember now. There was something about his skill in horse-flesh which made all the folks laugh. To be certain, the judge must have been a very brave man, as well as a man of much learning. It is indeed charming sport to hear trials upon life and death. One thing I own I thought a little hard, that the prisoner's counsel was not suffered to speak for him, though he desired only to be heard one very short word, but my lord would not hearken to him, though he suffered a counsellor to talk against him for above half-an-hour. I thought it hard, I own, that there should be so many of them; my lord, and the court, and the jury, and the counsellors, and the witnesses, all upon one poor man, and he too in chains. Well, the fellow was hanged, as to be sure it could be not otherwise … ."

A judge should be able to crack a joke every now and then, if only in self-defense.

A judge should be able to crack a joke every now and then, if only in self-defense. I have already quoted Chief Justice Lord Holt (1642-1710) who deplored "reports [of judicial decisions], making us appear to posterity for a parcel of blockheads." (Fifoot's Lord Mansfield 14.) If giving reasons for decisions is compelled by due process, the judicial wit should be able to shine, now and again. The professoriat will always find something to complain about in what the judge says or writes.

As for the occupational hazard of being called "blockheads" there is an upside, for which this immortality may be quoted. *Bend my black brows that keep the Peers in awe/ Shake my full-bottom wig and give the nod of Law.* Unfortunately the poet here is Lord Chancellor Thurlow (1731-1806), one of the stiff-necks in Lord North's cabinet, which regime was responsible for "one if by land and two if by sea" and other transatlantic mischief.

If giving reasons for decisions is compelled by due process, the judicial wit should be able to shine, now and again. The professoriat will always find something to complain about in what the judge says or writes.

What ties Fielding and Thurlow together? The novelist describes judicial misconduct; the poet judicial conduct. Straightaway the *don't* seems more useful. The judicial cops can instruct judges not to make fun of witnesses. Simple enough.

The apotheosis is a bit tricky. The public does have an image in mind of what a judge should do. And look like. So the wig stands proxy for the public's idea of what a judge does.

In short, the poet Thurlow may traffic in images and suggest what a judge does, like "bend brows" and "shake my wig," while the novelist Fielding tells a story to show us what judges shouldn't do.

In general, *do* is a lot harder to parse out. Which is perhaps why novelists won't touch the subject. But then there was Charles Dodgson, the Oxford mathematician who poked fun at Achilles; a link to his paradox is on line at www.lewiscarroll.org/logic.html. The article *What the Tortoise said to Achilles* (1895) tells us that cumulating instructions isn't always (okay he said *ever*) the answer.

So you can't (on Lewis Carroll's account) list everything a judge should do. It's the listing paradox, which may be why we leave that task to wigs, accoutrements and other proxies, poetically expressed or not.

So, if we don't set out what it is that judges do, then the public will rely on Thurlow for answers. In the meantime, if your wig needs adjusting, remember the length you're aiming for.

ATTORNEY DISCIPLINE

ATTORNEY RECEIVES PRIVATE ADMONITION

An Anchorage attorney received a written private admonition for violating Alaska Ethics Opinion 88-1 entitled *Potential Impropriety of Sexual Relationship With a Client During the Time the Attorney Represents the Client.*

Attorney X represented his client in a divorce that was essentially complete but for the filing of some final papers. As the representation approached its conclusion, the client suggested a "no strings attached" sexual relationship. A brief sexual encounter occurred while Attorney X was attorney of record. The client abruptly ended the relationship. Some months later she filed a bar complaint against her attorney.

Ethics Opinion No. 88-1 instructs that divorce litigation is a time when a client is deemed to be more vulnerable and a sexual relationship is inconsistent with a professional relationship. Attorney X acknowledged that he did not maintain appropriate boundaries in the attorney-client relationship. An area division member approved the imposition of a written private admonition by bar counsel and Attorney X accepted the written private admonition.

SUPREME COURT SUSPENDS ANCHORAGE ATTORNEY

The Alaska Supreme Court suspended Anchorage attorney Frederick H. Hahn, V, from the practice of law for a period of two years and one day for neglecting the legal matters of three clients and failing to respond to his clients' repeated inquiries. Hahn also failed to cooperate with Bar Counsel's investigation.

In 2006 three clients filed bar grievances alleging that Hahn was failing to complete work that he had undertaken to perform in various legal matters. Each client also alleged that he had great difficulty in reaching Hahn to discuss concerns about Hahn's failing to move matters along. When bar counsel opened an investigation into the complaints about lack of diligence and failure to communicate, Hahn did not respond despite a mandatory duty to do so.

Bar counsel filed a petition for formal hearing setting out allegations of misconduct. Hahn's failure to respond to the petition resulted in the violations of the professional conduct rules being deemed admitted. A disciplinary hearing committee issued a sanctions recommendation for consideration by the disciplinary board. The board's disciplinary recommendation proceeded to the Alaska Supreme Court which ordered a two year and one day suspension which began on January 12, 2008.

If Hahn petitions for reinstatement at the conclusion of his disciplinary suspension, he will need to demonstrate at hearing by clear and convincing evidence that his resumption of the practice of law will not be detrimental to the integrity and standing of the Bar. Prior to reinstatement Mr. Hahn must reimburse the Bar Association for expenses of retaining trustee counsel who was appointed to oversee Hahn's practice after a court deemed Hahn an unavailable attorney, and pay the Bar Association $1,000 in costs and attorney fees.

NOTICE TO THE PUBLIC

By order of the Alaska Supreme Court,
entered December 14, 2007

KENNETH D. LOUGEE
Member No. 8111111
Sandy, Utah

is reinstated
to the practice of law
from disability inactive status
effective January 17, 2008

Published by the Alaska Bar Association,
P.O. Box 100279, Anchorage, Alaska 99510
Pursuant to the Alaska Bar Rules

NEWS FROM THE BAR

Board action items: January 31 & February 1, 2008

• Voted to certify 8 reciprocity applicants for admission.

• Was advised that Oregon changed their rules so that Oregon and Alaska are now reciprocal states for admission purposes.

• Granted requests by two February bar exam applicants for special accommodations.

• Voted to contact Duke Law School regarding renewal of the contract to publish the Alaska Law Review.

• Voted to adopt the Hearing Committee recommendation to disbar Cathleen McLaughlin with the additional recommendation that a condition of reinstatement be that McLaughlin must pay all criminal restitution and all civil judgments related to her misconduct.

• Voted to amend the Standing Policies of the Board of Governors to allow the President to designate a Board member to attend a national conference that had been budgeted for by the Board, if the President or President-elect are unable to attend.

• Directed staff to submit a revised draft of the policy regarding reimbursement to Board members for meeting expenses.

• Voted to amend the Standing Policies of the Board of Governors to reimburse all Board members and the New Lawyer Liaison for their expenses during the annual convention.

• Voted to waive the fee to join the New Lawyer Section.

• Voted to pay bar dues for all Bar employees who are required to be members of the Bar.

• Voted to refer to the Governor the names of the two lawyers, Thomas Nave and Peter Aschenbrenner, who put their names in for the two vacancies on the Judicial Conduct Commission.

• Voted to approve the minutes of the Board of Governors meetings on October 25 & 26, 2007 and November 2, 2007.

• Appointed Board members Billingslea, Granger & Mendel to the Board Awards subcommittee.

• Voted to adopt the ethics opinion entitled "May Lawyers Maintain Electronic Copies of Records in Lieu of Paper Copies?"

• Voted to approve the Lawyers' Fund for Client Protection Committee recommendations for reimbursement in six matters.

• Voted to amend the Bylaws to create a Standing Committee on the Unauthorized Practice of Law.

• Voted to send to the Supreme Court a proposed amendment to Bar Rule 41 providing for service by email with electronic confirmation in Fee Arbitrations.

• Set the reinstatement fee at $250 for a Bar member who has been suspended for failure to comply with MCLE requirements.

• Asked staff to put together a timeline of all the steps that happen with the MCLE requirements.

• Adopted a resolution regarding the 25th anniversary of ALSC's pro bono program.

• Voted to amend the 2008 budget to reflect the lobbyist fee and payment of bar dues for the three Bar Counsel.

• The majority of the Board adopted the recommendations of the Area Hearing Committee in the Jody Brion matter, providing for a three year suspension, with two years stayed. As a condition of reinstatement Brion is required to complete 12 hours of CLE in law office management and accounting practices, including trust account management. For two years after reinstatement Brion is required to retain an office manager with appropriate law office experience to assist in the billing, case management, and trust account management. Brion must hire a licensed and insured certified CPA to oversee all general and trust accounts of the firm and who will provide annual written reports to the Bar. Finally, during the two years after reinstatement, Brion must establish a mentorship relationship with an attorney approved by the Bar Association to consult with him bi-weekly, concerning case management issues.

• Discussed the process for appointing the attorney member to the Judicial Council.

Ethics Opinion 2008-1

It's official — you can dump some of your papers

ALASKA BAR ASSOCIATION
ETHICS OPINION NO. 2008-1

MAY LAWYERS MAINTAIN ELECTRONIC COPIES OF BUSINESS RECORDS IN LIEU OF PAPER COPIES?

QUESTION PRESENTED

The Rules of Professional Conduct require certain records to be kept under Rules 1.4, 1.15 and 7.2. The Committee has been asked to give an opinion as to whether it is permissible for a lawyer to maintain electronic copies of these documents in lieu of paper copies.

CONCLUSION

It is the committee's opinion that lawyers may maintain electronic copies of documents, but may not destroy or otherwise alter "original" client documents.[1]

DISCUSSION

The Rules of Professional Conduct require lawyers to maintain records of certain client communications. In this age of electronic communication and the advancing "paperless office" the question for lawyers is whether the Rules of Professional Conduct permit electronic recordkeeping.

For example, Rule 1.4(c) requires a lawyer to inform a client in writing if the lawyer does not have at least minimal malpractice insurance or if the lawyer's coverage falls below certain minimums.[2] The lawyer must maintain records of written disclosures for a period of six years from the end of representation. Similarly, under Rule 1.15 lawyers must maintain records relating to client property, including trust funds, for a period of six years following termination of the representation. Finally, lawyers must maintain copies of advertisements under rule 7.2. Records must be maintained showing where and when advertisements were used for a period of two years following the last dissemination.

In each of the rules just mentioned, a lawyer has an obligation to maintain the records for a period of time. Except in the case of advertisements, nothing in the rules or professional conduct dictates the specific form of the records.[3]

Historically, courts preferred the "original" of a document to be introduced for evidentiary purposes to prove its contents.[4] However, courts also recognize that a duplicate or copy may be equally admissible in many circumstances.[5] With updates in technology and the advent of "paperless offices" scanning technology has in recent years become popular for record keeping.[6]

The Alaska legislature has answered many questions relating to electronic record-keeping and the admissibility of electronic records in passing the Uniform Electronic Transactions Act in 2004.[7] "If a law requires a record to be in writing, an electronic record satisfies the law. If a law requires a signature, an electronic signature satisfies the law."[8] "If a law requires that a record be retained, the requirement is satisfied by retaining an electronic record of the information . . . ."[9] A record or signature may not be denied legal effect or enforceability simply because it is in electronic form."[10] Similarly, "evidence of a record or signature may not be excluded solely because it is in electronic form."[11] Finally, the statute recognizes that even notarized or verified documents may be maintained with an electronic signature.[12] Consequently, the statute concludes that electronic records are permissible for evidentiary purposes. The Committee believes that electronic records are equally acceptable for ethical purposes.

Simply because a lawyer may keep electronic records of his or her own business records, that does not mean the lawyer is free to discard "original" records. Rule 1.15 requires the lawyer to safeguard and hold a client's property separate from the lawyer's own property. Thus, for example, if a lawyer scans client documents for electronic document management, that does not relieve the lawyer from the obligation to maintain and safeguard the client's property. Further, the Uniform Electronic Transactions Act recognizes that certain types of documents must be maintained in original form. These include wills, testamentary trusts, and certain documents created under the Uniform Commercial Code.[13]

In the Committee's view, the Alaska Rules of Professional Conduct by analogy to the Alaska Uniform Electronic Transactions Act permit lawyers to maintain any records required to be kept pursuant to Rules 1.4, 1.15 and 7.2 in electronic form. The lawyer must still maintain in original form any client documents entrusted for safekeeping.

Approved by the Alaska Bar Association Ethics Committee on January 3, 2008.

Adopted by the Board of Governors on January 31, 2008.

Footnotes

[1]This Opinion is directed to the lawyer's "business records" rather original documents supplied to a lawyer by the client. As with all records, lawyers are encouraged to safeguard their records and keep them in an unalterable form. Thus, scanning of records to a non-alterable file format rather than maintaining a word processing copy would be preferred. Further, if a lawyer chooses to keep electronic, rather than paper records, the lawyer is encouraged to make adequate backups to assure the preservation and integrity of the lawyer's records.

[2]Lawyers must inform clients in writing if they do not maintain malpractice insurance in the amount of $100,000 per claim and $300,000 in the aggregate.

[3]Here, the rule specifically contemplates that something other than a paper copy may be maintained, as the advertisement itself may not be in print. Thus, it is specifically permissible to maintain an electronic or other recording of television or radio advertisements.

[4]See Evidence Rule 1002 ("The Best Evidence Rule.")

[5]See Evidence Rules 1003 and 1004.

[6]See Moreland, Admitting Scanned Reproductions into Evidence, 18 Rev. Litig. 261 (1999).

[7]See AS 09.80.010-195. The act provides that a record retained in electronic form satisfies a law requiring a person to retain a record for evidentiary, audit, or like purposes, unless a law enacted after July 1, 2004 specifically prohibits the use of an electronic record for the specified purpose. AS 09.80.090(f).

[8]AS 09.80.040(c) and (d).

[9]AS 09.80.090(a).

[10]AS 09.80.040.

[11]AS 09.80.100.

[12]AS 09.80.080.

[13]AS 09.80.010(b).

HI-TECH IN THE LAW OFFICE

Quick and simple digital video for litigators

By Joe Kashi

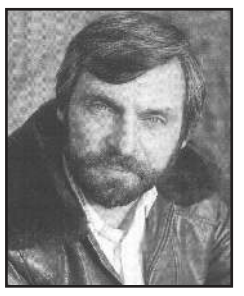
Video is one of the most powerful but least used tools in the modern litigator's arsenal, probably because doing video right was too complex and expensive for the average litigator until the recent advent of digital consumer cameras with decent video capabilities and direct digital storage on removable PC memory cards. All that's changed now and video has become one of the easiest, least expensive yet most powerful weapons in the litigator's arsenal. I myself shied away from using video until about four years ago when I bought my first modern digital camera.

Almost all consumer digital cameras except dSLR models include some form of video capability; indeed that capability is one of the strongest reasons for choosing a good quality compact digital camera and digital video taken with a consumer grade digital camera has many practical advantages. Some consumer digital cameras even allow you to perform some minor video editing directly with the camera, using the camera's LCD screen and its review mode menu options. In the long term, though, you'll want the ability to process your litigation-oriented video clips on your desktop PC. Doing so is much faster and more precise.

Digital SLR cameras are inherently incapable of making video clips, which is one argument for choosing a high grade consumer digital camera over a digital SLR for daily legal use. Although some camera manufacturers like Kodak capture video using Apple's flexible, compact QuickTime video format (which I greatly prefer), others such as Canon use the old uncompressed AVI file format, which I find much too bulky and unreliable.

Camcorder, or no camcorder?

Traditionally, we did video with camcorders recording to videotape or to a miniature DVD disk while camera-shaped objects were used to take still pictures. I do not believe that this distinction makes as much functional or economic sense as it did previously. Camcorders are expensive and their output typically requires conversion and processing before it can be used in an Acrobat brief or easily projected from your notebook computer in the courtroom. Camcorder files are very large until processed on your PC into a compressed format like Windows Media Video, making raw camcorder files much more difficult to store on your computer or network. Although a camcorder is useful for recording a lengthy event, such as a deposition, from a single location, even in such cases, an efficient compact digital camera may make more sense these days because it directly records already processed video to a 4GB or larger memory card that can be popped into your computer's card reader and stored in immediately usable form.



"...video has become one of the easiest, least expensive yet most powerful weapons in the litigator's arsenal."

Some uses for digital video in a litigation practice:

Here are a few suggestions for using digital video effectively but inexpensively in your law practice. All of them can be accomplished using a decent compact digital camera if it has a good video mode capability.

• Witness statements and inexpensive depositions: A video witness statement can be both more convincing and also easier than interviewing the witness, typing up the statement, and then contacting the witness to sign the statement. Instead, just place your digital camera on a small tabletop tripod (usually about $8.00 or so) and tape the statement. Instead of transcribing it, just produce a CD with the video clip. If you live in a state that allows attorneys to do their own video depositions without a court reporter present, then this approach can allow you to do much more discovery in smaller cases than would otherwise be economically practicable. However, first be sure that the audio quality is adequate for the situation. If audio quality may be a problem, then consider using a camera whose video mode includes optimized audio pickup. For example, the Kodak z812IS long zoom camera includes stereo microphones in the camera, an obvious plus, and the z812IS takes excellent 8 megapixel still photos to boot. For optimum sound quality under difficult circumstances, though, you may need to use a traditional camcorder that has a separate microphone jack.

• Automobile accident scenes: Video traffic patterns at intersections and drive through the approaches to an accident site from both directions so that the jury can see exactly what both Plaintiff and Defendant might have encountered when approaching an accident. You can safely do this with a digital camera that has optical image stabilization and that is attached to the side window of your car with a readily obtainable tripod –type mount. I got one at the local Kroger-Fred Meyer store for $25.00 and it works fine.

• Quickly documenting the extent, nature and condition of personal property

• Real property walk-throughs

• Construction activity videos used for demonstrative exhibits, such as typical crane, oilfield or heavy equipment operations.

• Slip and fall accidents: videotape a walk-through of the accident area and the path taken by the injured party prior to the fall and injury.

• Simulations: Rather than an expensive third party animation that may be difficult to validate and admit under Daubert criteria, use full motion or time lapse video for your client or experts to prepare their own homespun simulations in your own office to use as demonstrative exhibits.

• Surveillance: This one is obvious if you do defense or family law work. A small, high quality long zoom digital camera such as the Panasonic FZ18 or Kodak z812IS is better for this kind of work than a bulkier and more expensive video camcorder and the image quality usually has a higher resolution as well.

• Play an entire video deposition, such as that by a doctor or out of state witness in front of the trier of fact using a digital projector and large screen rather than a small television set and VHS or DVD player.

• Deposition testimony: Make video clips of really interesting video deposition testimony to show to the trier of fact in opening and closing statements and for use as cross-examination impeachment testimony. The latter really works and, if you can catch a dissembling witness early on with video of his or her prior inconsistent deposition testimony, this can really shake the witness's poise on the stand. In one case, I did a discovery deposition of a defense-oriented physician who had done an IME (independent medical examination) of my client and reported unfavorably. As it turned out, some years earlier I had done a video deposition of the same MD and, in that earlier deposition, the MD had stated diametrically opposed opinions. After establishing on video during the new deposition that the MD claimed to have not changed his methods nor opinions over the past several years, I pulled out a DVD of his earlier testimony, played pertinent parts of his earlier deposition to him on my notebook computer, and then entered the CD of his entire previous deposition as an exhibit in the newer deposition. The deposition of that defense expert proceeded much more satisfactorily after that point even though he was sufficiently experienced that he had testified for the defense a few hundred times. The difference was confronting him during his later deposition with video clips showing him earlier stating precisely the opposite point of view.

Capturing video & converting to a useful format

You'll need your video data captured in a readily useful digital file format that can be easily edited and from which short video clips can be non-destructively extracted.

Capturing digital video with a consumer digital camera is usually easier and often much more practical compared to using a traditional video camcorder. That's because the video captured by a standard consumer-grade digital camera is already digitized in a PC-compatible format by the time that it's stored on your camera's removable memory card, thus greatly reducing the hassle of transfer and digitization. When video is in an inherently digital form, as opposed to the analog recording of traditional camcorders, the digital video can be easily edited and shorter clips made as needed for insertion into an electronic brief using Acrobat or for direct display in the courtroom.

Digital video when used taken at the flicker-free speed of 30 frames per second at maximum quality used a lot of memory card capacity quickly. Indeed, some older, less efficient, digital video formats like uncompressed AVI use as much as three megabytes for every second of video recording, which works out to about 180 MB per minute. More modern and efficient video file formats like QuickTime and Windows Media Video, are far more compressed and efficient, producing much smaller files without losing quality. Video file sizes are also affected by how many frames you record per second and the resolution. Obviously, higher resolutions and faster frame speeds take more space. Generally, a speed of 30 frames per second provides optimum quality but 15-20 frames per second is usable for less critical applications when space is at a premium. I will sometimes use a 15 frame per second speed for lengthy witness statements and video depositions and I can sometimes fit up to one hour of testimony on a standard 1 GB SD memory card. Newer cameras often use SDHC high capacity SD memory cards. These are available in sizes from 4 gigabytes through 16 gigabytes at present. That's more than enough for even a lengthy deposition. Be sure, though, that you have enough space on your network or PC to store such large video files after you've transferred them from the camera's memory card and be sure to fully back up that data regularly. Once you convert these larger original video files to a highly compressed digital format like Windows Media Video, then your long-term storage requirements will be greatly reduced.

If the court reporter or videographer hands you a DVD containing a video deposition or a tape or disk from

Continued on page 15

Digital video techniques

Continued from page 14

a traditional video camcorder, then you'll need to capture and convert the video into a digitized format on your PC before you can use it to make video clips of particularly interesting or damning testimony for use in court or embedded in pleadings. Capturing and converting traditional analog video or DVD video sometimes requires special hardware and software in your PC but you can often just plug your camcorder directly into a Firewire or USB port on your computer, start its playback mode, and transfer the video to your hard disk. Or, you can buy a complete package that includes all of the hardware and software required to capture and digitize video from any source including a DVD or VHS player. Among the latter, I've used both the Pinnacle Studio and Turtle Beach combinations with success. In some ways, I prefer the Pinnacle product because it's easier to set up the capture process and because this program simplifies conversion to the standardized, efficient Windows Media Video format that I prefer.

Editing video in your office

The least expensive editing solution is to download Apple's QuickTime viewing software and then buy an on-line upgrade that allows you to do basic editing such as trimming a video clip to length. You might also consider the similar Real Player Plus from www.real.com. Either QuickTime Pro or Real Player Plus will provide excellent video playback capabilities and will cost between $30 and $40. I displayed some high definition 1024x768 AVI format video clips at on my PC using QuickTime Pro, Windows Media Player, and Real Player and found that each of these standard playback programs worked very well, producing exceptionally sharp, clear output. I took these video clip tests with the high definition mode of my Canon G9 and was very pleased with the results.

High definition video is becoming more common in the newest consumer digital cameras and that's a real plus. Along with some other vendors, Kodak will ship most of its 2008 models with high definition video modes whose resolution is as high as 1280 x 720 lines (so-called 720p format). High definition Kodak models for 2008 will include their relatively inexpensive but highly regarded z812IS, z1085IS, z8612IS and z1012IS cameras. These should produce video output superior to most existing video camcorders. One short-term caution: I suggest that you do not shoot any video clips with a definition greater than 1024x768 until an updated generation of high definition digital projectors ships. Current digital projectors typically do not exceed a resolution of 1024x768 and hence may not be able to properly display any higher definition video clips. In the short term, 640x480 VGA video clips should not pose any problems with any display device.

Once your needs surpass downloaded products like Real Player Plus and QuickTime Pro, particularly if you need to make clips from video depositions, then you'll need a more sophisticated video editing program. Editing video and audio files can be daunting if you overdo it and the value of fancy effects is very minimal. This is definitely an area where you should first consider a program's ease of use rather than advanced features. Among the more usable consumer level video editing programs are Sony's Vegas Movie Studio, Pinnacle Studio, and Adobe Premiere Elements 4.

Be sure that the software can convert a wide range of video formats into a format that's compact and efficient, widely used, and compatible with Acrobat and Windows. I prefer converting my digital video files into Windows Media Video (wmv) format. Aside from the efficiency and broad compatibility of this format, it is easy to insert WMV video clips into Acrobat documents and they're almost always compatible with the basic software on the Court's own computers, reducing potential compatibility problems and general hassles and increasing the chance that the Court will in fact review any pleadings in which you have included video clips.

Digital video can be processed and edited on almost any Windows PC or Apple Mac with the right software. However, processing video is one of the most computationally demanding office PC tasks, often taking several hours, or even overnight, to complete a single two hour tape. This is one of the few instances where a really fast PC makes a tangible difference. For this task, buy the fastest PC that you can afford. At the moment, higher end Intel Core 2 Duo and Quad processors have the edge in video processing performance. A slower PC will ultimately do the job just as well if given enough time. In my office, we have a fast spare computer dedicated to video and photo processing so that other work can continue unimpeded. In this case, the faster AMD processors are more than adequate and typically less expensive.

Digital Presentation in the Courtroom

I believe that it's most effective and facile to combine printed exhibits with digital projection. Properly mounted large still photographs may be easier to handle, especially during presentation of evidence, and may be generally preferred by some judges and jurors. In any event, judges and jurors will need a marked and admitted exhibit during deliberations or in chambers and you will need to ensure that the record is complete in the event of appellate review. Be sure that you mark and admit your largest prints as your exhibits rather than a smaller print. It's likely that the Court will not allow you to substitute the enlargement later when the case goes to the jury. Consider simultaneously digitally projecting a very large, highly detailed still photographic image. Doing so often has more impact when viewed at a distance by the trier of fact, allows you to zoom in and enlarge critical points such as construction details, and is particularly suited to fast-paced trial aspects such as opening statements, cross-examination and closing arguments. Of course, you should use a digital projector and screen or a very large monitor that's 42 inches or larger. A digital projector and screen is likely to be less expensive and less awkward.

Because of recent electronic advances by Texas Instruments, high quality digital projectors are now quite inexpensive and available from a variety of vendors for about $800. Choose a top tier brand such as ViewSonic or Epson and be sure that the digital projector has a light output of at least 2000 lumens, that it has at least 1024x768 XGA resolution, and that it synchs with your notebook computer. I suggest deferring any new video projector purchase a bit until the advent of newer digital projectors that include a high definition (HD) video output of 1280x720 pixels in order to match the better quality video now becoming standard on better quality consumer cameras in 2008.

You'll also need a fast notebook computer to store and play the digital video output to the projector along with a set of good speakers plugged into your notebook computer. At the moment, notebooks based upon Intel's Core 2 Duo mobile chipsets seem to work best with video streams. Bring a spare notebook whose case data is synchronized with your primary trial machine. Bring a spare projector as well. I've had both notebook computers and projectors fail during trial and that's really awkward unless you can switch over during a short break to a backup system. Luckily, good notebook computers and digital projectors now cost under $1,000 each, so bringing a spare is a lot less expensive than it used to be and a lot less expensive than doing badly in a case when you have no contingent capability. Be sure to bring enough power and video extension cords, extra power strips, and a remote control mouse-laser pointer combination. Velcro cable ties and wide electrician's tape are useful for preventing tripping accidents and for making your equipment look neat and business-like to the judge and jury.

Because digital projectors are so versatile and inexpensive, I no longer bother with the extra clutter and hassle of a document camera in court except for highly specific real-time needs such as magnifying a physical object. It's usually easier, more efficient, and more versatile to just directly project a PDF image of a document rather than putting a piece of paper under a document camera

Digital projection is unavoidable when you're using video. I have found video clips embedded in Acrobat pleadings to be a surprisingly powerful means of illustrating important points in a case during pretrial motion practice and that these can then be re-used as part of your trial presentation. Dedicated trial presentation programs can be very effective, particularly with full length unedited video depositions in which the video is synchronized with a simultaneous scrolling display of the typed text of a video deposition. Trial Director, Visionary and Sanction are among the more commonly used programs. Another low-cost but powerful approach is to embed your video presentations in a MS PowerPoint presentation.

When using video in the courtroom, you will need to make it part of the record. I usually provide a CD or DVD containing the video clips or the Acrobat file that includes embedded video clips. Be sure that any CD or DVD that you make uses a standard video file format that's compatible with Acrobat and with the Court's own computer equipment. After some trial and error, I have settled upon the Windows Media video and audio file formats. .

Technology is a wonderful aid to courtroom presentation, being faster, more efficient, and more effective. However, there will be times when your in-court technology may fail or simply be cumbersome under the circumstances. As a fail-safe backup, I still take a printed trial notebook and complete sets of printed exhibits with me to court, just in case. And, I've needed them on occasion.

TALES FROM THE INTERIOR

Ham sandwich team survives Supreme Court clock

By William Satterberg

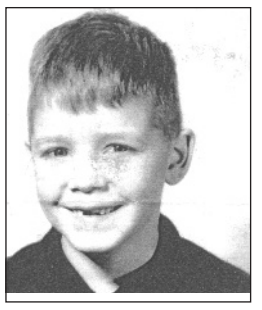
Very seldom can an attorney claim to be responsible for having an entire statutory revision declared unconstitutional. But, that is exactly what happened to me over a decade ago. In fact, the likelihood of arguing before the United States Supreme Court is probably greater by the end of one's professional career. Or so I like to think.

It was 1996. Some politicians thought that Alaska's sleazy criminals were apparently winning too many cases. In response, the Alaska legislature unanimously revised Alaska's criminal law to provide for what was mistakenly termed "reciprocal discovery." Under the widespread revision, all criminal defendants were required to disclose to the prosecution the statements, names and identifiers pertaining to probable defense witnesses, and other information about individuals whom they were simply "likely" to call as witnesses at trial. Even the defendant's own statements to their own counsel were potentially discoverable, if the defendant were expected to testify in the case.

In contrast, prior to this revision, criminal defendants could engage in what prosecutors disdainfully called "trial by ambush." In short, very little of the defense case needed to be disclosed. Something to do with petty nuisance concepts of Constitutional rights and reasonable doubt. This occasionally produced most humorous results at trial, admittedly, when the prosecution missed the defense theory of the case. However, in its wisdom, the Alaska legislature decided to "level the field." Prosecutors and police were ecstatic.

The law struck terror into the heart of more than one defense counsel, who had grown accustomed to the constant complaining from law enforcement personnel and who complacently assumed that nothing in the system would ever change. A crisis existed. The implications of the new law were immediate and chilling. Situations could develop where attorney-client communications and attorney work product would be immediately and directly impacted. The ability of an attorney to consult openly with a client or interview witnesses was clearly frustrated. Yet, on the other hand, there were still some inherent advantages: the law effectively legitimized and encouraged ineffective assistance of counsel. After all, if one didn't know the bad stuff, one didn't have to disclose it. A new "Don't ask" policy was emerging, pioneered first by our Armed Forces.

Initially, many offices complied with the new statute. Certain judges were reportedly even compelling production to take place. A direct legal challenge, although expected, had yet to emerge.



"...prior to this revision, criminal defendants could engage in what prosecutors disdainfully called "trial by ambush."

Shortly before the law was passed, I had become embroiled in a serious Fairbanks felony case with interesting implications, *State v. Summerville.* Substantial factual issues were in dispute. In order to avoid the claims of ineffective assistance of counsel possible under the old law, I had broken established protocol. In fact, I had actually prepared the case for trial. Over several weeks, I had laboriously interviewed my client and numerous witnesses. Even some recorded witness interviews had taken place.

To my surprise, the State of Alaska demanded via discovery that all defense statements be produced. It was a sort of a "Show me your Underalls" thing. In response, I refused. I reasoned that the State would just ignore the issue as it usually did. After all, that is how discovery is traditionally handled by both sides in Fairbanks. But, this time, the State insisted on production being made. Moreover, it even had the audacity to file something called a discovery motion. The battle was on.

In my research, I quickly recognized that someone in the Alaska Court System had apparently inadvertently stapled a copy of the controlling case, Scott v. State, 519 P.2d 774 (Alaska 1974), to every copy of the Criminal Rule revision which was distributed to all practicing counsel. Scott had previously ruled that such discovery requests were unconstitutional under Alaska's Constitution. Seizing the moment and using my superb analytical skills, I authored an original argument that, just perhaps, Scott was still valid legal authority for declaring the statute unconstitutional. Apparently anticipating such a challenge, the legislature also had defiantly inserted a clause in the statute which stated that, if any portion of the statute were declared to be unconstitutional, the entire statute toppled. (In retrospect, perhaps my only claim to fame really isn't that well grounded, after all. Nevertheless, I always take duck shots when I play billiards. So, I'll claim it anyway.)

Following oral argument, Judge Richard Savell, applying the antiquated doctrine of stare decisis, ruled that Scott was still the controlling precedent. In short, Judge Savell courageously declared the entire statute unconstitutional. Some rulings are best left alone, destined to fade into obscurity by being stashed into the dusty drawers of the lower court archives.

Stunned, the State unwisely petitioned the Alaska Court of Appeals for review. Following more briefing, the Court of Appeals agreed with Judge Savell in a similarly well-reasoned and eloquent opinion. Still not discouraged by this second opinion, the State took its final petition to the Alaska Supreme Court. The case was gathering momentum. Important issues were at stake. The Public Defenders Agency and the Office of Public Advocacy, both of which had been silent to that point in time, were granted permission to join the fray as amici and soon provided excellent briefing on the issues. I was pleased with their support, especially since my client's financial resources had long since been depleted. Against my principles, I was doing pro bono work--something I purportedly abhor.

At the Supreme Court level, attorney Marcia Holland from Fairbanks represented the Public Defenders Agency. Attorney Jim McComas, private counsel from Anchorage, represented the Office of Public Advocacy. (In fact, when newspaper articles later came out, Jim McComas was bestowed the honor of actually being an attorney who was an employee of the Office of Public Advocacy, causing Jim to regularly launch into numerous passionate excuses to deny the de facto promotion whenever confronted about such.)

After briefing, oral argument was scheduled by the Supreme Court clerk. In advance, time limits were announced. To my consternation, the Supreme Court allowed the defense team only one-half hour in total to argue its position. That meant each of us--the Public Defenders Agency, the Office of Public Advocacy, and I, the one who had the audacity to start the fray--had to split our measly half hour three ways. We would really have to talk fast.

Initially, I felt entitled to the lion's share of oral argument. After all, I advanced the case both before the Superior Court and the Court of Appeals without assistance, hadn't I? (Although my paralegal, Joanne, disagreed.) Besides, it was my client who was facing jail, wasn't he? But, I was alone. Both attorneys Holland and McComas respectfully dissented. Both counsel claimed that far greater issues were at stake than my client's freedom or even my fragile ego. In a rare, but clearly most magnanimous gesture, I graciously conceded their points. Besides, they were smarter than me. To my relief, the anonymous midnight phone threats also ceased soon after that. Agreement was reached to split the time into three equal 10-minute increments. Each attorney subsequently retired to prepare their respective arguments for presentation to the Alaska Supreme Court in October of 1997. However, while Marcia and Jim worked, I pouted.

On the day preceding oral argument, a final "defense team" meeting took place. It was an "L.A. Law" thing convened at the Public Defender's office. Each attorney outlined the various arguments which they intended to pursue. It was agreed that Marcia would argue stare decisis and the Scott decision. To balance Marcia's academic presentation, Jim would wax philosophically about "the doctrinal issues." Jim would also appear as the clean-up hitter. This meant that I would be placed as the middle argument. I was confused. For the life of me, I could not determine what could possibly need to be cleaned up, since I would precede Jim. Despite my inquiries, no one would answer my question directly. Instead, Jim politely pointed out that he had worked on this issue for several years. It was "his baby" and

Continued on page 17

TALES FROM THE INTERIOR

Ham sandwich

Continued from page 16

he was not about to let it go. Jim was insistent. Reason prevailed. "Your arguments make sense," I gasped, as I pried Jim's figurative fingers from my intellectual throat.

As for myself, as the middle argument, I would argue practical considerations of the law. My discussion would deal with such things as the attorney as witness and effective versus ineffective assistance of counsel. After all, I was well experienced on both issues. I would also discuss the very real risk that an attorney, by announcing an affirmative defense, would be making a judicial admission which could later bind the client at trial when a client elected to change defense strategies, otherwise known as the "You put your foot in your mouth again, Satterberg" technique. In retrospect, all three positions had merit. All three arguments furthermore had appellate appeal. As such, all three counsel were excited about their respective arguments. We were all absolutely convinced that our presentations could well be the key to winning the case. (Still, mine was the best.)

On the day before argument, a last-minute change occurred. Without my knowledge, it was apparently decided by Jim and Marcia that I would now argue first, Marcia second, and Jim last. I was relieved to see that Jim now would not be cleaning up after me, until I realized that Jim and Marcia now both shared that task. Obviously, one attorney would cover up and one attorney would clean up. I began to have self-esteem issues. Was I really that messy? Yet, even another, last, last-minute change occurred on the day of the argument. Hours before the scheduled argument, a hastily arranged telephone conference took place during which it was "agreed" that Marcia should now argue first, since Marcia's task dealt with a hard hitting core issue (didn't mine?) and Marcia's argument could well be the pivotal issue for the case (wasn't mine?). My arguments would now follow in second position. Jim would still end the show. It would truly be a three-ring affair.

In addition, Jim now demanded a full 15 minutes to present his arguments. After all, it was "his baby." I panicked. How could I ever justify billing the client? My fears were allayed when Marcia assured me that she could easily cut her presentation to less than 10 minutes. Marcia claimed she really didn't have that much to say. If I could just keep my presentation to seven to eight minutes, Marcia and I could easily accommodate Jim's desires. After all, Jim is an acknowledged master at law, in my opinion, and deserves due deference. Everyone pledged to each other again that this was the final, final decision. Obviously, the menu had changed many times. Where Marcia had previously been the meat in a Satterberg/McComas sandwich, it now became Satterberg who became the meat in a Holland/McComas sandwich. I remarked that it would be a ham sandwich. It was a cheesy joke. I was a poor boy at jokes.

When we arrived at Court, the clerk announced we were appearing before a four-justice instead of a five-justice panel. Justice Bryner, who wisely had previously correctly ruled in the Summerville case in my favor while sitting on the Court of Appeals, had recused himself, apparently deciding that he did not need to rule on the same issue twice. No sense risking an inconsistent ruling. That left the four remaining justices. After the obligatory pomp and circumstance, the arguments commenced.

Because the State was the appellant, it argued first. The State also had the right to an optional, rebuttal argument. Traditionally, in appellate arguments, I reserve approximately one-third of my time for rebuttal arguments if I am the appellant, which is usually the case. I suspected the State's attorney, Eric Johnson, calculated likewise. I recalled that the Supreme Court had made it quite clear that only 30 minutes would be allocated per side. Given the mathematics, I anticipated that the State would set aside 10 minutes for its closing. As usual, my logic was once again misplaced. Rather, the State took in excess of 29 minutes for its opening argument. By my computations, only 47 seconds remained for the State's rebuttal. The State was in a fix. A hard-hitting rebuttal in 47 seconds would be more like a sniffle. The justices might not even have time to wake up after our devastating, three-part, highly coordinated defense presentation even to catch the State's arguments.

Urgently whispered discussions had been taking place at defense counsel's table during the State's arguments. When it became obvious that the State had stumbled into a time trap of its own making, a covenant was made that we would stick strictly to our time allocations. We all pledged not to go over the 30 minutes allotted to the defense at any cost. In short, we agreed to follow the Supreme Court's earlier order. Our rationale was simple: if we stayed within our time, the Court would not grant the State any additional rebuttal time. So far, the plan was proceeding quite well. Eric finally sat down, after casually remarking that he may have used up almost all of his time, to which Justice Matthews quickly agreed. We were on!

Exuding a supreme confidence borne from years of appellate practice, Marcia calmly approached the podium. Sensing the importance of the moment, she carefully arranged her papers, looked each member of the Court resolutely in the eye, and launched into her argument. I was awestruck. I admired Marcia. Like Jim, Marcia was truly a master of her profession. I marveled at how Marcia could present her entire case in only seven to eight minutes. Truly, Marcia was a far better attorney than I, for I have rarely, if ever, been able to hold my arguments to less than one-half hour, and that has only been when my position has been unopposed, or when I am fighting with my in-laws over dinner. Given Marcia's eloquence, I was not concerned when I saw seven to eight minutes come and go. In fact, I was somewhat relieved and validated. This was because I actually expected that Marcia would take a bit longer than she had promised. I was pleased to see that perhaps Marcia was not that concise and precise, after all. My shriveled ego began to grow once again. Even Marcia was human!

Marcia was on a roll. Ten minutes came and went. Personally, I figured Marcia was due to close any second. My tablemate, Jim, thought otherwise, however. Jim began to fidget nervously in his chair, commenting that the argument was now getting longer than anticipated. Did Jim know something that I didn't? Whispering across the counsel table, Jim requested assurances from me, apparently invoking some archaic concept of detrimental reliance, that I would still give him the full 15 minutes he was promised.

"No problem, Jim," I responded. "Marcia will be done any second now. I promise that I will be brief."

Jim looked less than confident in my prediction, apparently realizing that I had been doing recent work with the Russians and may inadvertently have adopted some of their cultural attitudes about the flexibility of binding commitments. In time, I began to sympathize with Jim.

Fifteen minutes came...and went. Marcia was still on a roll and picking up speed rather than slowing down. During the intervening five minutes, I became as concerned as Jim. Conversely, Marcia was clearly having a delightful time. Marcia was jousting skillfully with the Court, fielding questions like a tennis pro. Moreover, from all appearances, Marcia was still far from wrapping up. Meanwhile, the digital timer on the clerk's counter clicked relentlessly onward. Marcia now was completely through my time allocation and cutting well into Jim's. By then, I could actually hear the electric timer ticking. In addition, Jim had lost all pretenses of subtlety. Jim began to vigorously elbow me. Jim felt that I needed to step up to the lectern immediately and stop Marcia.

"Bill, do something!" Jim pleaded. "Walk up and put your books down in front of her. Pull her on the floor. Beat her severely. But do something!" (Well, perhaps Jim didn't say exactly all of those things. But, I believe the intentions were there.) Perhaps Jim had a point. Still, I looked at the positive side of things. If Marcia used 15 minutes and Jim used 15 minutes, I probably wouldn't get grilled too badly by the Court. For once I had the perfect excuse for not being prepared!

At zero plus 16 minutes, I walked forward. I patiently stood behind Marcia for a few micro-seconds, gurgling loudly as I cleared my throat. I then stacked my papers on top of the table adjacent to Marcia, hacking uncontrollably and feigning a seizure. Marcia, always the professional, acted as if she didn't even notice me or the tears streaming from my cheeks.

Just when I was ready next to place Jim on top of the table next to Marcia, Marcia announced that it was probably her time to retire and allow me to present the next argument. As anticipated, despite the time, Marcia's presentation had been excellent. As Marcia retired, Justice

Continued on page 18

TALES FROM THE INTERIOR

Ham sandwich

Continued from page 17

Matthews commented in empathy that I actually had appeared to be somewhat agitated. To this date, I've always marveled at how the Court can downplay an issue.

I charged to the lectern, and quickly clipped the microphone to a fold of skin in my double chin, pretending not to notice. In another rare moment of generosity at counsel's table, I had promised Jim that I could still do my shtick in three minutes. After all, three minutes can be a long time for me to perform in some situations, I'm told. I pointed out to the Court that, if assaults were not illegal, they probably would have witnessed one in the courtroom. That brought forth a chuckle from almost everyone, except Marcia, who allegedly was busily trying to pry Jim's figurative fingers from her intellectual throat.

Ignoring the pounding and gagging from the table behind me, I deftly presented my 10-minute argument in eight minutes. (Okay, so I also had told my co-counsel at the meeting it would be three minutes. I still figured I could go over "just a little bit.") Dispensing with "the law," which is usually just a nuisance and is rarely followed by Fairbanks juries, in any event, I laid out a number of practical illustrations. In closing, I asked the Court to "Throw this whole thing right out on its ear." It seemed like an appropriate close at the time. So much for style and eloquence before the highest court in Alaska. In retrospect, I believe that I actually may have been referring to tossing out the new courtroom lectern which left no room for papers. The justices, however, apparently thought that I was referring to the statute at issue.

My time allocation was gone, along with a bunch of Jim's. Recognizing that any questions would be out of the question, I unilaterally and colloquially announced that, "I'm outta here. Jim McComas was promised 10 minutes, and he is next." In a flash, I retreated to the defense table. I figured the justices could submit their questions in writing, if they really cared, or petition me for re-argument, which I might grant if so inclined.

Marcia, intellectual bruises and all, met me meekly as I sat down. "Bill, I hope you're not angry at me," she pleaded. Fortunately, due to Jim McComas' loud, booming voice, I do not believe that the justices overheard my shouted response.

Jim's promised 15 minutes had been cut to 9 minutes and 46 seconds. Jim also proceeded admirably in the presentation of his case. Jim also apparently used very little over the clock's zero second mark in closure, although it is hard to tell since the clock always stops at that point. As the last to argue, Jim also stressed arguments which I had made, or arguments which had not been made. To me, it seemed a lot like "cleaning up" my presentation. Still, in retrospect, I was quite pleased with the presentations of both Marcia and Jim. Both counsel did a great job covering my intended arguments in their entirety from either end, which was probably best, since perhaps I never did get to my intended arguments after all.

Eventually, Jim, too, had to conclude. After Jim sat down, Eric Johnson was allowed a rebuttal for the State. I still figured that Eric only had 46 seconds of time left. As such, Justice Matthews was quite generous in allowing Eric "an extra minute or two." In fact, I was rather pleased. Even Eric highlighted a couple of issues which had not been stressed as much as I would have liked in my own arguments. In fact, everyone seemed to be cleaning up after me. It reminded me of when I used to go to friends' houses as a five-year-old, or out on dates as a teenager.

After the show, the Supreme Court took the matter under advisement. To this very day, despite many arguments which I have made before that wise tribunal, regardless of the month of year, I have yet to see it ever issue an opinion from the bench. But, this one was close! In scarcely three weeks, the two lower court decisions were both affirmed in a very brief, one-page opinion. (With all due respect to the existing and past Supreme Court, if there were ever a chance to revamp the Court, I would love it if they would put people the likes of retired Fairbanks Superior Court Judge Gerald Van Hoomissen and Jay Hodges on the bench--if even for a day. I can envision those two now, sitting in high-backed chairs with their famous scowls on their faces, arms defiantly folded, effectively announcing their decision before arguments even began. Under that scenario, the three minutes that I used would seem like an eternity. To these two judges, time had distinct value. In fact, I still recall one of my first cases in Fairbanks when Judge Van Hoomissen made several factual findings from the bench before ruling on a summary judgment motion where several facts were agreed to be in dispute.)

Fortunately, all's well that ends well. Following the arguments, Marcia rendered a truly heartfelt and genuine apology, and even sent me a six pack of Alaskan micro beer and a bottle of quality red wine to seal the deal. Jim, I suspect, likely received caviar and champagne. The gifts were timely, since most of my office got drunk that afternoon. By prior arrangement, the local town physician was coming in to give flu shots to the staff, and traditional anesthesia was needed. Wine and beer were always popular choices.

As for myself, when I finally finished my pouting and began to postmortem the case, I accepted that our team had done an excellent job. The thin slice of ham which I provided in the proverbial sandwich still was probably more than the Court could handle. Sometime I wonder, however, if I was not actually intentionally outsmarted by my two most capable co-counsel. Maybe, it wasn't just an oversight. For the first time ever, because I was the middle presentation, enforceable controls restricted my ability to talk. This was something even my mother couldn't do for very long during my childhood. In a moment of deja vu, I recalled the days when my parents used to keep me effectively pinned between them in the china section of the local department store, thus ensuring that the family's budget remained in control. Apparently, some concepts never really change.

Pro Bono Corner

Legal Services provider profile: Kara Nyquist

By Krista Scully

This interview is the third in a series profiling the pro bono coordinators in Alaska.

You are probably not a stranger to Kara Nyquist: If you've done pro bono or more likely, if you HAVEN'T done pro bono lately, she knows who you are. As Executive Director of the Alaska Pro Bono Program since spring 2004, Kara spends a significant amount of time on the phone with volunteers, and potential clients, plus continuing good business development work for the organization.

Since arriving in Alaska in 2000, Kara has a steady history of project development and work all rooted in bettering our Alaskan communities. For as long as this writer has known her, she's always held at least two jobs and juggled a few volunteer projects simultaneously. Will this all change when the Nyquist household grows by one later this month? Kara and her husband are expecting their first child in February and the equal justice community will miss her greatly while she is on maternity leave.

Kara lives in Anchorage with her husband Jamie and newborn son. Until nine months ago, she was running marathons, competing in triathlons, reading *ChiRunning*, and dreaming of her next vacation to Mexico. If she only got to eat one food for the rest of her life, Swedish Fish is her pick and if she wasn't doing such inspiring and important work as the Executive Director of the Alaska Pro Bono Program, she'd love to be a personal shopper for designer clothes.

Readers: Please meet Kara Nyquist.

•

How did you come to Alaska?

Moved to Alaska after finishing law school to be closer to family here.

What kind of work did you do before becoming APBP's Executive Director?

In 2000/2001 I was a law clerk for the State District Court judges. Then I worked at Birch Horton Bittner & Cherot for two years. Then I did legal advocacy at Covenant House Alaska.

Why did you decide to move into this area of work?

My passion is to use my education to help people in need.

What do you enjoy most?

Helping people understand the legal system and finding them an advocate.

What has surprised you most?

The huge need for pro bono legal assistance and the small percentage of attorneys available to volunteer.

What is the most difficult part of your job?

Placing cases; out of ten calls I make, I am able to find one volunteer.

What lessons and experiences have you learned from your work for a legal services agency?

A law degree is an amazing asset that can be used to assist people.

There are a number of different pro bono programs, each specializing in different types of cases. What should people know about your program?

We have no federal restrictions on the types of cases we can accept because we do not receive any federal funding. We are available to accept a variety of civil matters for individuals who meet our financial eligibility standards.

How has your program maintained the level of service with ever-dwindling funds?

No office space reduces overhead.

Are there any projects you are currently working on or would like to undertake?

Expand outreach about our program, but we have limited funds and don't advertise.

What makes you come back every day?

I get paid to help people.

Krista Scully and Kara Nyquist (L-R) at Bean's Café in Anchorage while meeting with Social Services Director Maggie Carey about the monthly legal clinic for Bean's clients.

Erick Cordero and Kara Nyquist (front L to R) pose with fellow 2007 Golden Heart award recipients as one of Alaska's Outstanding Volunteer Programs.

Pro bono collaboration provides wills and estate planning to Habitat for Humanity recipients

By Kara Nyquist and Krista Scully

The Alaska Bar Association, Habitat for Humanity and the Alaska Pro Bono Program launched a successful pilot project in December 2007 providing pro bono legal services to six families, totaling 27 community members who received the benefit of service in one evening at the Alaska Bar Association office. All of the clients—2007 Habitat For Humanity housing recipients — went home that evening with a finalized will or an appointment to continue the estate planning process.

By working with the Estate Planning Section, six volunteer attorneys, three paralegals, and a language interpreter were recruited to assist with the event. Volunteers were provided with the client's background information prior to the event to ensure that conflict checks and any necessary research were complete. This ensured that once volunteers and clients arrived on the December event date, all would go seamlessly. Upon arrival, volunteers' time with the clients was spent interviewing, educating, drafting and then finalizing a simple will; afterwards, paralegals and notaries were on hand to finalize and notarize the wills for the clients.

One of the clients that received pro bono legal assistance is terminally ill and additional estate planning was provided following the event and included the securing of a professional fiduciary and medical bankruptcy consulting.

The project was profoundly successful and all organizations hope to continue it on an annual basis. As a result, we have a strong new partnership with Habitat for Humanity, a better understanding by community members of how the legal community strives to help those in need, and the completion of an enforceable will and legal advice to six families who will share with others about their very positive experience working within the justice system.

We could not have done it without our great volunteers. Please join us in thanking:

Zach Manzella
Bill Pearson
Tonja Woelber
Susan Foley
John Whittington
Christina Passard
Tiffany Williams
Heather Kegley
Dena Bryant
Nathan Beauchamp

(L-R) Kara Nyquist, executive director of the Alaska Pro Bono Program and Krista Scully, pro bono director of the Alaska Bar Association pose with Margaret Forbes of Habitat for Humanity.

(L-R)Habitat for Humanity family Alberto and Margarita Santana with Nathanial Beauchamp and volunteer attorney John Whittington of law firm Foley and Foley in Anchorage.

Volunteer attorneys and paralegals with Habitat for Humanity clients at Alaska Bar Association office.

In Memoriam

Bill Ford

William Thomas "Bill" Ford, 68, of Anchorage, a practicing attorney for more than 25 years, died Dec. 14, 2007, from complications of liver cancer.

Bill was born in Buffalo, Ill., on Sept. 19, 1939, and grew up in Alton, Ill. He graduated from Southern Illinois University with a bachelor degree in English literature. He then continued his education at Dominican University in River Forest, Ill., from which he received a Masters of Library Science in 1968.

He received his Juris Doctorate from De Paul University College of Law in Chicago. Before becoming a reference librarian at Los Angeles County Law Library, he had worked as a catalog librarian, first at the University of Chicago and then at Northwestern University in Evanston, Ill. In 1978 he moved to Anchorage, where he developed a family law practice. His appellate practice helped define family law in Alaska.

Although an excellent attorney and zealous advocate for his clients, Bill's greatest and longest life passion was for the work of the poet Wallace Stevens, whose poetry he considered superior to all others (an assessment, sadly, not shared with or fully understood by many of his less literary friends). His other great artistic passion was the music of Gustav Mahler, whose symphonies in festivals and concerts he followed all over the world. Bill's singing is best left to history, but his deep and rich appreciation for great classical and romantic music was genuine and unequalled, said his family.

While still in college, he was one of the founders of the now nearly 50-year-old literary magazine Sou' Wester, which has been in continuous publication since 1960. Although the Sou' Wester is a nationally renowned publication and the pride of the English Department of Southern Illinois University Edwardsville, Bill's most important contribution to literature was the founding of the Wallace Stevens Newsletter in 1968, which ran for four years. After a hiatus in 1977, he collaborated with Robert Deutsch at California State University Northridge to start publication of the Wallace Stevens Journal, which has been published continuously since then by the Wallace Stevens Society. He remained closely involved with the journal as an editorial assistant and member of the Society Advisory Board. As a Stevens scholar and collector, Bill's research has culminated in an important contribution to Stevens Studies which will appear in print sometime in 2008. His passionate advocacy for Stevens' poetry will be greatly missed.

Bill was preceded in death by his father.

He is survived by his wife of nearly 40 years, Deirdre "Dee" Ford; mother, Mary Katherine Ford of Sonoma, Calif.; brother and his wife, Robert and Darlene Ford of Sonoma; and nieces and their families, Tiffany Delalay, Marianne, Chris, Tristan and Natalie Anderson, all of Sonoma, and Erica, Matt, and Audrey Clark and Jill Ford, all of San Francisco.

His family said that rather than flowers, Bill would have wished memorial contributions to Wallace Stevens Society, John N. Serio, Editor, Clarkson University, P.O. Box 5750, Potsdam, NY 13699; or to the Colorado MahlerFest, P.O. Box 1314, Boulder, CO 80306-1314.

Sarah Armstrong

Sarah Armstrong, of Clam Gulch, died in a car accident on the Sterling Highway on Christmas Eve, Dec. 24, 2007. She was 46.

She was born, with her twin sister, Meg, in New York City on Jan. 10, 1961, and grew up in Mt. Carroll, a small town in northwestern Illinois. She received her bachelor's degree at the University of Minnesota, where she was a star member of the crew team. She completed her Juris Doctor, cum laude, at the University of Minnesota Law School in 1988 and joined the law firm of Faegre and Benson in the same year and. As a member of the firm's environmental law team, she supported cases that helped save the lives of black-footed ferrets, whales and elk. In 1989, Armstrong joined the

Continued on page 21

Judge Thomas Stewart passes at 88

Retired Superior Court Judge Thomas Byrd Stewart died Dec. 12, 2007, in Juneau. He was 88. Born Jan. 1, 1919, in Seattle, he arrived by steamship in Juneau, where he resided with few interruptions until his death.

Following his service in World War II, where he earned bronze and silver stars, he returned to Alaska to begin a career in public service that spanned more than 60 years.

"Many of us feel that we've lost not only a wonderful colleague and mentor, but someone who was in many ways a father to us: a father of our constitution; a father of our justice system, including a judicial selection process admired around the nation and world; and a father of so many chapters in our state's young history," said Chief Justice Dana Fabe of the Alaska Supreme Court. "Tom Stewart was the quintessential public servant. He lived his life in a way that always showed his great love and respect for the people of Alaska. We loved and respected him, too, and we'll miss him greatly."

Judge Stewart is perhaps best known for the pivotal role he played as Secretary of Alaska's Constitutional Convention from 1955-56. As a member of the territorial legislature in 1955, he chaired the joint House-Senate Committee on Statehood and Federal Relations. He also served as Executive Officer of the Alaska Statehood Committee.

As part of his duties for these committees, he traveled the country to identify experts in state government who could serve as consultants to Alaska's leaders in crafting a constitution for the proposed new state. Under his direction, these experts and 55 elected delegates gathered on the University of Alaska campus in Fairbanks from November 8, 1955, to February 6, 1956, for the Constitutional Convention. The document they crafted has stood the test of time, and certain articles—especially the Judiciary Article—have been cited nationally and internationally as models to follow. It was during his work at the Constitutional Convention that he met and later married his wife, Jane.

In 1959, Judge Stewart was elected to the Senate of the first Alaska State Legislature, where he served as Chair of the State Affairs Committee and as a member of the Judiciary Committee. In 1961, he became Administrative Director of the new Alaska Court System, helping build the state's judicial system into one that remains strong today—over 40 years later.

Governor William Egan appointed Stewart to the Superior Court bench in Juneau in 1966, and he served in that post for 15 years, until his retirement in 1981.

In the years since his retirement, Judge Stewart has remained very active in the legal and judicial community. Most notably, he has served as a tireless advocate for both preserving the history of our constitution and protecting fair and impartial courts as envisioned by the constitution's Judiciary Article.

Even in his late 80's, Judge Stewart continued to play a key role in educating the public and the profession about our state's founding principles. His patience, dedication, clarity and grace helped lawyers, judges, legislators, and members of the public better understand our state's history and the strength of our legal system. "Judge Stewart will be remembered fondly for his remarkable life's work and his enduring commitment to justice for all," said his colleagues at the state court system.

"To know Tom Stewart was to touch the Alaska Constitution," said Superior Court Judge Morgan Christen. "Through him, we experienced the delegates' work at the convention, and came to know the purpose and strength of the bedrock document they created. In the legal community, Judge Stewart was a compass. We revered him, and will miss him very much."

Gov. Sarah Palin also honored the retired jurist, and ordered state flags to be flown at half mast in his memory. "We have lost a true visionary and a wealth of Alaska knowledge," said Palin. "We can forever hold on to Judge Stewart's Alaskan spirit and his guidance for the future if we abide by the constitution he helped create.

Family members told the *Juneau Empire* that while he never thought of himself as an overachiever, he loved to tell the story of the day he climbed Mount Roberts, skied down, climbed Mount Juneau, skied down and then went to the dance hall and twirled the girls.

The Stewarts were known for hosting teas in Juneau with special guests from around the world—from John F. Kennedy to Alexander Solzhenitsyn. Consummate performers, they ensured everyone was entertained. Jane would play the piano while Tom sang. He never tired of reciting "The Ballad of Yukon Jake" from memory. He shared his love of reading with his children, to whom he read every night. He also passed on his passion for the outdoors to his children, taking them hiking, camping and fishing. His favorite wilderness was the Taku River drainage, which he thoroughly explored.

His family told the *Empire* that the patient demeanor he brought to the bench was "a quality was particularly appreciated by his children and wife." They raised seven children. He said it was the hardest, yet most rewarding, of all his achievements.

Judge Stewart was preceded in death by his wife, Jane Stewart; and son, Thomas Stewart. He is survived by his siblings, John and Jeannette Stewart; children, Rebecca Stewart and her daughter, Audra; Donna Stewart; Elizabeth Hendricks and her daughter, Lindsay, and son, Jared; Stephen Stewart and his wife, Ann; Mary Etheridge and her partner, Larry Russo and his son, Clayton, and daughter, Jessica Dillon, and her husband, Jody; and Caleb Stewart and his friend, Michelle Sydeman, and their daughter, Tiernan; and many nieces and nephews.

The family has created a Memory Book that was shared at a celebration of his life in Juneau in December and would be honored to receive tributes or special photos of Tom to donnastewart1000@hotmail.com or Donna Stewart, P.O. Box 776, Mill Valley, CA 94942.

In Memoriam

Continued from page 20

Faegre team that would come to Alaska to represent fishermen whose livelihoods had been damaged by the Exxon Valdez oil spill. She received the 1995 Trial Lawyer of the Year award as co-counsel for Exxon Valdez Trial Lawyers for Public Justice.

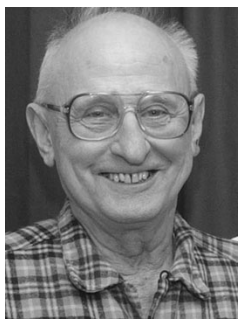
In Alaska, Sarah met the love of her life, Dean Osmar, and the two married on March 21, 2002. Like many Alaskans, her life was split into two seasons. In summer, she became a commercial setnetter and, in winter, a dog musher. She loved to go to the Caribou Hills with her husband to run sled dogs all night, with only the glow of moonlight lighting their way. She loved and took good care of their dogs and the puppies.

Her faithful friend Bernie, Hermann the Ermine and all of the other woodland companions she rehabilitated and nurtured miss her very much. She also took care of Houdini, a pet Russian boar and local escape artist.

She had a beautiful garden and shared her love of flowers and cooking with everyone.

Sarah Armstrong is survived by her loving husband, Dean; mother, Joanne; sisters, Meg and Jenny; stepfather, Don; and nephew and nieces, Bruno, Sofia and Jessica.

Chuck Cloudy



C. L. "Chuck" Cloudy, 83, died Dec. 18, 2007, at his home in Coupeville, Wash., with his immediate family at his bedside. Mr. Cloudy was born May 26, 1924, at Ketchikan General Hospital to C. L. (Chick) and Doris Wells Cloudy. He attended Main School for both elementary and high school.

After serving in the 10th Army Air Force Emergency Rescue Boat Squadron in Alaska during World War II, he finished his education at San Bernardino Jr. Valley College.

He married Marjorie Peihl in Ketchikan on Aug. 19, 1948, at the First Methodist Church. He then completed his education at Willamette University in Salem, Ore., where he graduated with high honors, earning a Bachelor of Science degree and a Doctor of Jurisprudence. While at Willamette, Chuck edited the Law Review, was inducted into Phi Delta Phi, and became a charter member of the Sigma Alpha Epsilon fraternity.

He passed the bar and was admitted to practice law in Oregon in 1952. He then passed the bar for the Territory of Alaska in November 1952 and joined the law firm of Ziegler, King and Ziegler as a partner in January 1953.

Mr. Cloudy practiced law in Ketchikan for 50 years and received his 50-year pin in 2002 from the Alaska Bar Association. There were many highlights in his long career. He spoke out in favor of statehood for Alaska. He was instrumental in promoting the export of timber products to Japan; and he argued a precedent-setting case against the State of Alaska related to the use of fish traps, before Justice Brennan of the United States Supreme Court. The case resulted in a favorable decision for the communities of Metlakatla, Kake, and Angoon. It allowed these fishing communities to continue using fish traps after Alaska became a state.

Mr. Cloudy served in the U.S. Army crash boat service from 1943 to 1945. He received a good conduct medal and was honorably discharged as a private first class.

He was a member of the Order of Purple Honorary at Willamette University; was a Star Scout apprentice seaman in Sea Scouts; was a member of the Elks Lodge and served as a Past Exalted Ruler; was a member of the Pioneers of Alaska; was a member of the Alaska Bar Association Board of Governors (1950-1956); was editor-in-chief of the Willamette University Legal Handbook (1951-1952); president of the Ketchikan Chamber of Commerce (1956-1957); president of the All-Alaska Chamber of Commerce (1957-1958); member of the Council for Boy Scouts of Southeast Alaska (1956-1958); life membership in the Veterans of Foreign Wars; 52 consecutive years of membership in the American Legion; and president of the Ketchikan Bar Association from 1991 until his death.

Survivors include his wife of 59 years, Marjorie; their children, Charles L. "Chad" Cloudy Jr. of Coupeville, Wash., and Candace "Candy" Bartsch of Waterford, Conn. and their spouses; sisters Elaine (Duane) Bartsch of Portland, Ore., and Joan (Howard) Banta of Tigard, Ore.; brother George A. (Bobbie) Cloudy of Meteesse, Wyo.; six grandchildren, two stepgrandchildren, nine great-grandchildren, and one stepgreat-grandchild; cousins, Jane (Jim) Church and family of Ketchikan and George Wells and family of Las Vegas; 14 nieces and nephews; and many grandnieces and grandnephews.

A wake and funeral services were planned for Dec. 22, 2007, at Burley Funeral Chapel in Oak Harbor, Wash., followed by a service with the Rev. David Lura officiating.

The Cloudy family hosted a Ketchikan celebration of his life at Cape Fox Lodge on Thursday, Dec. 27, 2007, from 1 to 3 p.m.

From the Ketchikan Daily News
Photo by Hall Anderson, Ketchikan Daily News

Dick McVeigh

Former Anchorage attorney Richard L. "Dick" McVeigh died Nov. 18, 2007, at his home in Green Valley, Ariz. He was 74.

Mr. McVeigh was born June 12, 1933, in Spalding, Neb. And moved to Alaska in 1939, growing up in Anchorage and Fairbanks. He attended high school in Fairbanks before finishing his junior and senior years at the Army-Navy Academy in Carlsbad, Calif. He graduated from the University of Notre Dame in 1955 with a Bachelor of Arts degree, and entered the U.S. Air Force as a pilot until 1959, the same year he met and married his wife Carolyn.

He received his law degree at Georgetown Law School in 1962, and served as a legislative aide to E.L. "Bob" Bartlett, then senator for Alaska.

After law school, Dick and his family returned to Alaska.

He worked as an assistant attorney general for the State of Alaska from 1962 until 1963 in Juneau, after which he moved to Anchorage to be a prosecutor in the district attorney's office for a short time before joining the.firm of Ely, Guess, Rudd and Havelock. In 1965, at the age of 31, he was appointed by President Lyndon B. Johnson to be U.S. Attorney, becoming the youngest one in the country.

In 1968, Dick was elected to the Alaska House of Representatives, where he served for six years. His work as a legislator included serving as chairman of the House Rules and State Affairs committees, where he was instrumental in legislation establishing the trans-Alaska pipeline and creating the Public Television Network.

After leaving the House, he went into private practice in the firm McVeigh, Peterson and Melaney, where he spent 14 years practicing both civil and criminal law. In 1988, he worked for Mayor Tom Fink and then was appointed municipal attorney for Anchorage in 1990 until his retirement in 1994.

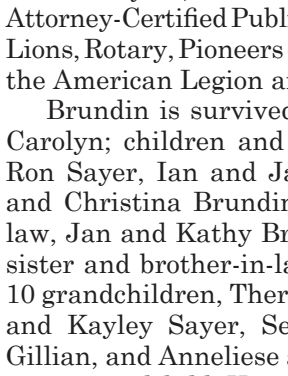
Dick and his wife, Carolyn, moved to their retirement home in Settlers Bay near Wasilla in 1997. In 2003, they moved to Green Valley.

"Dick will be missed for his quick wit and remembered for his dedication to Alaska," his family wrote.

He is survived by his wife of 48 years, Carolyn McVeigh; sons and daughters-in-law, David and Jane McVeigh and Steven and Karen McVeigh; daughter and son-in-law, Katherine and Wayne Blank; grandchildren, Emma, Kyle, Brittany, Dylan, Nicole and Brandon; and many nieces, nephews, cousins, stepgrandchildren and close friends.

In lieu of flowers, memorial contributions may be made to the Salvation Army, 143 E. Ninth Ave., Anchorage 99501, or St. Jude Children's Research Hospital, 501 St. Jude Place, Memphis, TN 38105.

Brian Brundin



Retired Anchorage & Fairbanks attorney and CPA Brian J. Brundin, died of cancer Feb. 26 at his home in Arizona. He was 68. His friends and colleagues held a celebration of his life March 15 at La Mex restaurant on Spenard Road.

Brian was born Oct. 11, 1939, in St. Paul, Minn., and came to Alaska in 1951. He grew up in Anchorage and Fairbanks. Brian graduated from Fairbanks High School in 1957, from the University of Alaska in 1961, and from Harvard University in 1964.

From 1964 to 1966, he served as a captain in the U.S. Army. In 1966, Brian joined the law firm of Hughes, Thorsness and Lowell, where he practiced in the commercial law division. He later became a full partner until he went into private practice and moved to Arizona due to his wife's health. He retired in 2006 due to his own poor health.

Brundin specialized in estate planning, was an adjunct instructor for the University of Alaska, and was a frequent presenter at seminars, tax conferences and continuing education. He served on boards including the World Trade Center of Alaska, University of Alaska Foundation, president of the University of Alaska Board of Regents, University of Alaska Alumni Association, Harvard Law School Fund and the Alaska Center for International Business.

He enjoyed boating, gun collecting, hunting, golfing and singing and was active in the metaphysical community. He was a member of the Anchorage and American bar associations, American Trial Lawyers, Academy of Hospital Attorneys, Attorney-Certified Public Accountants, Anchorage Lions, Rotary, Pioneers of Alaska, Sons of Norway, the American Legion and Amvets.

Brundin is survived by his wife of 47 years, Carolyn; children and their spouses, Iana and Ron Sayer, Ian and Jayne Brundin, and Dane and Christina Brundin; brothers and sister-in-law, Jan and Kathy Brundin, and Kip Brundin; sister and brother-in-law, Mia and Bob Nistler; 10 grandchildren, Thera, Shelby, Hillary, Braedi and Kayley Sayer, Sean and Derek Brundin, Gillian, and Anneliese and Kimber Brundin; one great-grandchild, Hannah; and many nieces and nephews.

In lieu of flowers, Brian requested that donations be sent to the VA, General Purpose Health Fund, c/o Judy Thompson, 2925 DeBarr Road, Anchorage 99508.

David Roderick

Former Anchorage attorney David Roderick died of respiratory failure Dec. 4, 2007 in Seattle. He was at 86. Born Oct. 21, 1921, Roderick was raised in Seattle and graduated from Broadway High School in 1939.

He was commissioned an ensign in the U.S. Navy Air Corps and flew twin-engine planes in the Pacific during 1944-46.

After returning from the war, Roderick graduated from the University of Washington in 1947 with a degree in economics. He obtained his doctoral degree in law from that university in 1953, while serving in the Washington legislature. While at UW, he also captained the nationally recognized University of Washington crew in 1946.

Roderick was elected to the Washington State House of Representatives in 1948, representing downtown Seattle, and served two terms. Over

Continued on page 22

In Memoriam

Continued from page 21

the years, he marched with the Rev. Martin Luther King Jr. and worked for John F. Kennedy's presidential campaign in 1960, and formed close ties with U.S. Sens. Warren Magnuson, Henry "Scoop" Jackson, and Gov. Albert Rosellini, who appointed him to his "patronage committee" that awarded state contracts.

The family moved to Alaska in 1971. In Anchorage, Roderick was the attorney for the Alaska State Housing Authority and president of Pacific Rim Inc. He served as campaign chief for his brother Jack's successful run for Anchorage Borough mayor in 1972. Later he was chief counsel for the Alaska Railroad from 1977 to 1985, and an administrative law hearing officer for the Alaska Department of Commerce and Economic Development from 1985-95. He was an active member of the Anchorage Downtown Rotary Club, the Alyeska Ski Club, and was wing legal officer for the Civil Air Patrol.

His family said he owned several small Cessna aircraft and took great pleasure in puddle-jumping around Alaska and once survived a crash in Yukon Territory. "Throughout his life, he loved every kind of sport. He rooted for the Huskies, played basketball well into his 50s, raced his sailboat, Blueberry, in regattas throughout Puget Sound, and remained a competitive ski racer late into his 70s," said his family.

After his retirement in 1995, Roderick reluctantly left Alaska and settled in Tacoma, where he spent his evenings arguing politics with his lifelong friend, Judge Jack Tanner.

"He was absolutely colorblind with regard to race, and was renowned for his sense of humor and open heart," said his son John, of Seattle, who recounted his father's memories of visiting a friend in Seattle's old Japantown during the war, only to find the family packing up, for a forced move to an internment camp. Having fought the Japanese in World War II as a U.S. Navy pilot, "he had this tremendous conflict because so many of his friends were Japanese, but he was comfortable wrestling with those dichotomies," John Roderick said.

"Dad was part of a really different generation, a generation that's fast on the wane, He was brought up with the idea that public service was something that any good citizen did, and he dedicated a large portion of his life working on behalf of other people," he said in the Seattle Times newspaper. "At one time Dad seemed like the heir apparent, but then he lost a power struggle within the (Democratic) party," the younger Roderick said, adding that his father's FDR-styled idealism was giving way to a country divided over Vietnam.

David was also an active member of Alcoholics Anonymous for over 45 years, attending meetings whenever possible. He credited AA with saving his life on more than one occasion and regarded it as his church, said the family.

Describing himself several years ago, he wrote: "Son, brother, father, grandfather, uncle, lawyer, pilot, Bill's friend and helper to all Bill's friends, and (his cat) Puppy's slave."

David Roderick is survived by brother Jack, of Anchorage; five children, David, of Seattle; Laura, of Olympia; Bartley, of Selah; John and Susan, both of Seattle; his grandchildren, Elizabeth and Riley; his great-granddaughter, Juniper; and two former wives.

Memorial donations may be made to the Humane Society.

NOTICE CONCERNING OIL AND GAS PRODUCTION TAX AMENDMENTS MADE IN CHAPTER 1, SSSLA 2007 IN THE LATE FALL OF 2007

The law amending the oil and gas production tax---ch. 1, SSSLA 2007---was approved by the Governor December 19, 2007. That date was too late for the measure to appear in the normal printed publication of the Alaska Statutes. The revisor of statutes decided that printing an additional supplement was not cost-effective, especially since additional amendments to the oil and gas production tax being considered during the second regular session in the spring of 2008 would, if enacted, make an additional supplement obsolete. However, the amendments made by ch. 1, SSSLA 2007 have been integrated into the official electronic versions of the Alaska Statutes, including the version on the state website. The text of ch. 1, SSSLA 2007, including uncodified provisions, can be found on the state website as well. The addresses of these websites, a list of the provisions affected by ch. 1, SSSLA 2007 that were renumbered or relettered editorially, and a list of the sections affected by ch. 1, SSSLA 2007, are set out below.

Website for state statutes:
www.legis.state.ak.us/basis/folio.asp.

Website for ch. 1, SSSLA 2007: www.state.ak.us/basis/get_bill_text.asp?hsid=HB2001Z&session=25

Provisions of ch. 1, SSSLA 2007 renumbered or relettered editorially:

AS 43.55.023(l), added by sec. 31, relettered as AS 43.55.023(k)
AS 43.55.025(l), added by sec. 45, relettered as AS 43.55.025(k), and conforming changes made in AS 43.55.025(f)
AS 43.55.165(k) and (l), added by sec. 62, relettered as AS 43.55.165(j) and (k), and conforming changes made in AS 43.55.165(a), (j), and (k)
AS 43.55.900(22), added by sec. 65, renumbered as AS 43.55.900(21)

Alaska Statutes sections affected by ch. 1, SSSLA 2007 (Unless otherwise noted below, changes --- i.e., amendments, repeals, and additions --- take effect December 20, 2007 and are not retroactive.)

AS 38.05.035(a)
AS 38.05.036(b), (f), and (g)
AS 38.05.123(f)
AS 38.05.133(e)
AS 38.05.180(j)
AS 38.05.275(c)
AS 39.25.110 (42)
AS 41.09.010(d)
AS 43.05.230(a)
AS 43.05.230(h)
AS 43.05.260(a)
AS 43.55.011(e) - (h) and (j) - (o)---changes are retroactive to July 1, 2007
AS 43.55.020(a), (g), and (h)---changes are retroactive to July 1, 2007
AS 43.55.023(a), (b), (d), and (e)---changes are retroactive to July 1, 2007
AS 43.55.023(f), (g), and (i)---changes are effective January 1, 2008
AS 43.55.023(l), relettered as (k)---change is retroactive to April 1, 2006
AS 43.55.024(a), (c), (e) and (g)---changes are retroactive to July 1, 2007
AS 43.55.025(a) - (d) and (f)---changes are effective July 1, 2008
AS 43.55.025(g)---change is retroactive to July 1, 2003
AS 43.55.025(h) and (i)---changes are effective July 1, 2008
AS 43.55.025(k), relettered as (l), and (l), relettered as (k)---changes are effective July 1, 2008
AS 43.55.028---effective January 1, 2008
AS 43.55.030(a), (d), (e), and (f)
AS 43.55.040
AS 43.55.075
AS 43.55.110(e) - (i)
AS 43.55.150---change is retroactive to July 1, 2007
AS 43.55.160(a) - (c) and (e)---changes are retroactive to July 1, 2007
AS 43.55.165 (a) - (d)---changes are retroactive to July 1, 2007
AS 43.55.165(e)(6) and (19)---changes are retroactive to April 1, 2006
AS 43.55.165(e), other than (6) and (19)---changes are retroactive to July 1, 2007
AS 43.55.165(h)---change is retroactive to July 1, 2007
AS 43.55.165(k) and (l), relettered as (j) and (k)---changes are retroactive to January 1, 2007
AS 43.55.170(a)---change is retroactive to July 1, 2007
AS 43.55.890--retroactive to July 1, 2007
AS 43.55.895---retroactive to July 1, 2003
AS 43.55.900---change is retroactive to July 1, 2007

FAMILY LAW

Preparing for a domestic relations settlement conference

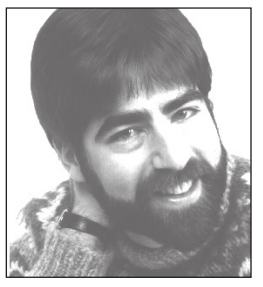
By Steven Pradell

Most cases settle. But this maxim is not necessarily as applicable to family law cases than to other types of cases, such as criminal matters and personal injury actions. Perhaps one reason for this is the emotional states of the clients, whose entire lives are hanging in the balance. Also, when children are involved, parents may have difficulty coming to agreements on issues, or a parent may be moving out of state, and a child cannot easily be divided in two.

When a settlement conference is agreed upon by the clients, it may be important to meet with the client prior to the hearing not only to prepare your settlement brief and property tables, but to place the client into the correct emotional framework so that the client both understands the settlement process, and is able to make clear, rational choices during the conference which are not primarily motivated by anger, hurt or other factors.

For those without children, the settlement conference represents a process akin to a business transaction. But getting a client to see that "his house" or "her retirement" is something that the court will ultimately divide in some manner may be difficult. Explaining the way that property is normally divided by judges in trial may provide a client with a framework such that the client knows in advance the risks of going to trial and expects that there will be a division of all assets and debts in some equitable manner regardless of whether the case is settled or tried.

Explaining different roles of the mediator, who may also be a judge, is also beneficial. Divorcing parents may have an axe to grind and may want their "day in court." But a mediator is not there to hear evidence. During the settlement process, it may be helpful for the client to let off some steam so that it can be felt at some level that someone was listening to the client.



"One piece of advice that I have given to clients is that there are normally no winners in settlement conferences."

Female clients should be told in advance that if the case settles, they will most likely be asked if they are pregnant so that the court can determine that all children are accounted for. Asking a woman this question out of the blue can cause embarrassment.

One piece of advice that I have given to clients is that there are normally no winners in settlement conferences. If both sides are equally unhappy at the end of the day, the outcome of the settlement conference is probably a good one.

It is also important to find a client's "bottom line" separate and apart from the relief requested in the settlement brief. A client needs to know that there will need to be give and take by both sides in order for settlement to occur. Finding the client's priorities is essential; what does the client absolutely need to have in order for the settlement to occur?

Also, having an "offer" to give to the other side at the start of the settlement process, separate from the settlement briefs, may be desirable. Some mediators ask for that to occur at the start of the proceeding. Having it ready in advance saves time.

If settlement briefs are exchanged contemporaneously (which may be wise) a client's position may change somewhat from that stated in the original brief. This can be factored into the "offer" made at the start of settlement.

Mediators employ different rules during settlement negotiations. Some go back and forth between rooms. Some want to meet with the lawyers only. Others meet with the client. By advising the client of the numerous possible scenarios there will be fewer surprises during the process, and a client may understand that the process in his case is normal not feel that the lawyers and the judge/mediator are making decisions behind the client's back without input.

Finally, after a successful settlement is placed on the record in open court, it is important to ask the parties questions, such as whether or not they have any other questions for the court or counsel, whether or not the client felt that they had time to speak with their attorney, that they know what they are doing, aren't under the influence of drugs or alcohol, were not coerced into settling, that there are no side agreements, that they understand that the agreement is binding and that buyer's remorse is not grounds for a future trial, etc. These questions of both sides can help to minimize uncertainty in the future, and hopefully prevent the filing of future appeals.

PUBLIC NOTICE

CHILD SUPPORT RULE
Request for Comment and Notice of Hearing
REQUEST FOR COMMENT

A committee appointed by the Chief Justice of the Alaska Supreme Court has proposed changes to Alaska's child support guidelines (Civil Rule 90.3). The committee is seeking comments on the proposed changes.

You can find the proposed changes, as well as an explanation for the reasons the changes are being proposed, on the court system's website at www.state.ak.us/courts or as follows:

Write to:
Annie Ellis – Rule 90.3
Alaska Court System
820 West 4th Avenue
Anchorage, AK 99501
Email to: Rule90.3@courts.state.ak.us

The deadline for written comments is April 30, 2008.
Comments can be mailed or emailed to the above addresses.

NOTICE OF HEARING

In addition, the committee will hold a public hearing on April 23, 2008 to give the public an opportunity to comment on the proposed rule changes. It will be a teleconference hearing at the Anchorage, Fairbanks, Juneau, and Kodiak Legislative Information Offices from 5:00-6:00 p.m. If you do not live in one of these places, email Rule90.3@courts.state.ak.us or call 264-0573 by April 17 for instructions on how to participate. Please check with your Legislative Information Office to confirm the time.

Persons with disabilities who need assistive listening devices or other accommodations in order to participate in the teleconference should contact the court system at 264-0573 by April 17 to arrange for this.

New state office helps elders victimized by financial exploitation

By Anthony Baker

In September of 2006, the Legislature created The Office of Elder Fraud & Assistance. The office is part of the Department of Administration, Office of Public Advocacy.

In its first year, the office received 236 reports. It is estimated that only 1 of 25 cases of financial exploitation is actually reported.

The mission of the office is to investigate claims regarding the financial exploitation of Alaskans 60 and older, and seek civil remedies on behalf of elders unable to bring a complaint without assistance.

The Office of Elder Fraud & Assistance is charged with addressing all forms of financial exploitation and coordinating related services for the entire elder population of the state of Alaska. The goal is to provide help for every elder victim of financial exploitation who wants help.

The statute defines "fraud" as: "Exploitation of another person's resources for personal profit or advantage with no significant benefit accruing to the person who is exploited."

Most of the 2007 cases involved exploitation by family, caregivers, and "new friends." Older Alaskans are loosing substantial amounts of money to persons misusing a power of attorney. The office strongly encourages Alaskans to seek legal advice prior to executing a power of attorney.

In 2007, with a two person staff, the office recovered more than $500,000.00 worth of assets fraudulently taken from elder Alaskans. In 2008, the office will be fully staffed. It is a response to the overwhelming volume of reports from all over the state. Thanks to funding from the Legislature, the office is adding a second attorney, a full-time investigator, and an administrative assistant.

Through partnerships with federal, state, and local law enforcement and social service agencies, the office is working to tighten a web of protection for elder Alaskans.

You can help those you care about by helping to ensure that they do not become isolated. If you think someone you know is being financially exploited, please report it.

You can reach the Office of Elder Fraud & Assistance by calling the office at 334-5989 in Anchorage, or through the Statewide Fraud Hotline 1-888-925-2521.

2008 Alaska Bar Annual Convention & Alaska Judicial Conference in Anchorage

Watch for details in the convention brochure!

April 30, May 1, & May 2
Marriott Downtown Hotel & Hotel Captain Cook

WEDNESDAY, APRIL 30

- Trial Skills: Openings That Swing, Closings, and Theories & Themes in Trial
  Colette Tvedt, The Defender Association, Seattle
  Jeffery Robinson, Schroeter Goldmark & Bender, Seattle
- Bar Lunch
  Keynote: John Straley, Writer Laureate of Alaska, investigator, author of the Cecil Younger series and other novels, including the new historical crime novel, "The Big Both Ways" set in 1935 on a dory ride up the Inside Passage.
- Ethics Rocks! A Musical Interactive Legal Seminar
  Listen to the music as over 40 ethics issues are revealed in a medley of rock tunes.
  Jack Marshall, Attorney/Ethicist and Mike Messer, Rock Musician - ProEthics, Ltd., Alexandria, Virginia
- Mediators without Borders: Resolving International and Domestic Conflicts from Business to Human Rights
  Ken Cloke, Mediator/Arbitrator, Attorney
  President, Mediators without Borders
  Director, Center for Dispute Resolution, Santa Monica, CA
  Presented in cooperation with the ADR Section and the International Law Section
- Differences in Practice and Procedures Between State and Federal Court
  Presented in cooperation with the U.S. District Court and the Federal Bar Association, Alaska Chapter
- Opening Reception
  Join us for appetizers and art at the Anchorage Museum!

THURSDAY, MAY 1

- U.S. Supreme Court Opinions Update
  Erwin Chemerinsky, Alston & Bird Professor of Law, Duke University School of Law
  Laurie Levenson, Professor of Law, William M. Rains Fellow and Director, LLS Center for Ethical Advocacy, Loyola Law School, Los Angeles


Erwin Chemerinsky

- Bench and Bar Lunch
  Presentation of 25-Year, 50-Year & 60-Year Bar Membership Pins
- Alaska Constitutional Law Update
  Erwin Chemerinsky, Alston & Bird Professor of Law, Duke University School of Law


Laurie Levenson

- Tax Reform: A U.S. Oxymoron
  Martin D. Ginsburg, Professor of Law, Georgetown University Law Center; Of Counsel, Fried, Frank, Harris, Shriver & Jacobson, LLP
- Update on Alaska Native Law Issues For All Practitioners
  Presented in cooperation with the Alaska Native Law Section


Martin Ginsburg

- New Lawyers CLE - Nuts & Bolts of Basic Pre-Trial Practice: Discovery & Motions — Panel TBA
  Presented in cooperation with the New Lawyers Section
- Awards Reception & Banquet
  Keynote: Justice Ruth Bader Ginsburg, Supreme Court of the United States

Justice Ruth Bader Ginsburg U.S. Supreme Court Awards Banquet Keynote Speaker

FRIDAY, MAY 2

- Advanced Legal Writing and Editing
  Bryan Garner, LawProse, Texas
- Alaska Bar Association Annual Meeting and Lunch
- A Conversation with
  Justice Ruth Bader Ginsburg
  Moderated by Chief Justice Dana Fabe

CONVENTION REGISTRATION

April 4 is the deadline for early bird registration.

3 day registration fee (access to all CLEs) $225
1 day registration fee (morning & afternoon of same day) $150
½ day registration fee (morning or afternoon of same day) $90

After April 4
3 day registration fee (access to all CLEs) $240
1 day registration fee (morning & afternoon of same day) $165
½ day registration fee (morning or afternoon of same day) $105

AIR TRAVEL

Alaska Airlines is offering a fare discount as follows:
Fare: 10% discount off all published fares
* Discount are not valid on promotional fares
* Refunds and reissues are allowed per the fare rules and will be charged a $75 fee
* All fare rules apply

Reservations: Can be made at www.alaskaair.com using e-certificate code ECCMA0929 or by calling Alaska Airlines' Group & Meeting Desk at 1-800-445-4435. There is no ticketing fee when booking on AlaskaAir.com; however, a $10.00 ticketing fee will apply for bookings made by calling into the Group Desk.

HOTEL RESERVATIONS

Deadline for making hotel reservations at the Downtown Marriott is Monday, March 31.

The Downtown Marriot Hotel is the convention hotel for the 2008 convention. Located at 820 W. 7th Ave., Anchorage, AK 99501. Phone 907-279-8000/guest fax 907-279-8005
A block of rooms has been reserved for the Alaska Bar. Rates are $119.00 plus 12% tax single or double.
To make reservations: Call 1-800-228-9290 and refer to the Mini Hotel Code "AKB" and the name of the conference, "Alaska Bar Association".
OR
Book online: go to www.marriott.com/ancdt and follow these steps:
1. Under _Check Rates & Availability_ (on the right-hand side of the page) enter the desired arrival and departure dates.
2. Enter your online group code, AKBAKBA, in the box that says "Group Code."
3. Select the button _Find._
4. Follow the steps outlined to complete the reservation.

Check-in time is 3:00 p.m. and check-out time is 12:00 noon.

CANCELLATION POLICY

There is a $30 cancellation fee. No refund of registration fees can be made for cancellations after Friday, April 25. Free CLE Certificates do not apply to the convention.

MCLE CALIFORNIA: The Alaska Bar Association is an approved California MCLE provider. The CLE activities listed on the registration form have been approved for minimum CLE credit by the State Bar of California in the amount of hours noted. The Alaska Bar Association certifies that these activities conform to the standards for approved education activities prescribed by the rules and regulations of the State Bar of California governing minimum continuing legal education.

QUESTIONS? Call the Alaska Bar office 907-272-7469/fax 907-272-2932 or e-mail info@alaskabar.org for more information