

U.S. Attorney’s Office joins others to combat opiate crisis



By Andrea Hattan

The U.S. Attorney’s Office for the District of Alaska, along with partners in law enforcement and the medical community, has undertaken a heroin and prescription opiate awareness initiative, bringing an informative and powerful film to communities across the state. The initiative was recently recognized nationally by the United States attorney general.

Addiction to prescription opiates and heroin has become one of the most urgent issues facing Alaska. These drugs are killing Alaskans at rates far higher than the national average and in every corner and segment of our state, regardless of region, socioeconomic status, age, gender, racial/ethnic group, etc. Statistics show that young people are particularly vulnerable: For example, nationally, one in five high school seniors reports having mis-

used prescription drugs at least once in their lifetime.

The aim of this initiative is to increase awareness of the dangers that heroin/opioid addiction pose and how these drugs are impacting Alaska. The program also provides attendees with practical information about the simple steps they can take to protect themselves and their loved ones from this epidemic. To that end, the U.S. Attorney’s Office events feature “Chasing the Dragon,” a 49-minute film co-produced by the Federal Bureau of Investigation and Drug Enforcement Administration. The documentary compellingly depicts the grim reality of this. “Chasing the Dragon” explains why addiction to prescription pain pills often leads to heroin abuse. The film also emphasizes that prescription pain pills and heroin are both highly addictive opiates, both easily

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Alaska’s 1964 earthquake, a perspective

By Robert C. Erwin

The 1964 earthquake, some 50 years ago, has spawned a number of stories, sometimes true and some imagination coupled with exaggeration. This article is simply to note the successful exercise of the combined common sense of everyday

Alaska people and the good will of an entire community to help their neighbors.

This good will and the willingness to help strangers and neighbors in need in 1964 are the same emotions and feelings that have been expressed by similar everyday people today as everyone pitches in to help those hurt by the ravages of the hurricanes in Texas, Florida, Puerto Rico and the various islands.

The Anchorage property damage was immense but the loss of life minimal under the circumstances caused by the strongest earthquake (9.1) for the longest time period (4½ minutes) to ever hit North America.

Almost every large building in Anchorage suffered damage. The following structures were almost completely destroyed or more severely damages than the others:

1. The aircraft tower at the international airport fell into the terminal building;
2. The eight-story four seasons apartment building at Ninth and L was completely destroyed into a pile of rubble;
3. The Government Hill primary school broke in half and one half slid down into the railroad yard;
4. The exterior of the JCPenney store broke off and fell into Fifth Avenue — the structure had to be torn down and replaced;
5. The Austra Alaska Building at Fourth and K had the interior fell



Earthquake damage: Fourth Avenue looking east. Google Images

into a 20-foot fault while both ends stayed up destroying the structure. The remaining structure had to be demolished;

6. The fourth story wooden hotel at Fourth and L, the Inlet Inn, was forced off its foundation and had to be demolished;

7. The 14-story apartment building at 15th and L Street and the 14-story McKay building both had extensive damage which rendered them untenable and required millions of dollars plus for repairs;

8. The second story of the West High School collapsed into the first floor but the first floor was salvaged;

9. The city hall core elevator

shaft and connecting steel fell several feet while the exterior beams remained stable calling for extensive repairs

10. The Westward Hotel tower kept hitting against the earlier concrete part of the hotel causing extensive external and internal damage. All other hotels were without water and electricity;

11. The roof of the new Alaska Sales and Service building at Merrill Field collapsed destroying the building;

12. The Cordova Building suf-

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Hidden in plain sight: substance abuse in the legal profession

By Darrel Gardner

I can't believe how quickly time has passed; this is my last column as president of the Alaska Bar Association. At the conclusion of the upcoming Bar Convention May 11, Brent Bennett from Fairbanks will be sworn in as our new president. I hope he enjoys his presidency as much as I have relished mine. Although I'll miss my presidential duties, I'm looking forward to serving the two remaining years of my term on the Board of Governors. Thank you for electing me to the BOG, and thank you for the honor and privilege of serving as your president. I hope to see you at the Bar Convention.

While I was thinking about this column, a number of topics came to mind; however, the one that kept percolating to the top of my list is attorney well-being. The Bar's bylaws contain the official purposes of the Alaska Bar, which are to:

- (1) regulate the practice of law;
- (2) promote reform in the law and in judicial procedure;
- (3) facilitate the administration of justice;
- (4) encourage continuing legal education for the membership; and
- (5) increase the public service and efficiency of the Bar.¹

Purpose 5 is my concern in this column. One of the ways we can "increase the efficiency of the Bar" is to make sure that our members are receiving support, understanding and assistance if they ever find themselves personally struggling with substance abuse, chemical dependence, or depression. This is not an easy topic for us lawyers; I know this from personal experience early on in my career. I don't feel a need to go into detail, so let's just say that I've been there, done that, suffered profound personal and professional consequences, got help, and thankfully moved on. We lawyers are generally a bunch of "Type A" personalities; we are smart, driven, hard-working perfectionists, who also hold incredible power involving the lives of other people. On a daily basis, we assist people with some of the most important events in their

lives, including business and financial issues; marital and child custody disputes; personal injury litigation; crime victimization and prison terms. New lawyers face even more stresses because they are just starting out in their careers, often have young families, and are usually saddled with crushing debt. Most of us, especially here in Alaska, it seems, became lawyers to help people. Sometimes the stresses of those immense responsibilities of representation can turn us into the ones who need help. As president, I have attended numerous conferences for bar leaders, and this topic is almost always on the agenda. Here are some startling statistics:

"The presence of employees with substance use disorders in the workplace is a serious issue. Over 77% of illicit drug users are employed and the loss of productivity resulting from drug and alcohol abuse is significant. Alcoholism alone is responsible for 500 million lost work days each year. Alcohol and drugs know no social, economic or educational barriers, and legal professionals face unique stressors. In fact, lawyers are almost twice as likely to struggle with alcohol abuse when compared to the general population! Lawyers start facing very heavy workloads and conflicts with their value systems right when they enter law school, and they may use alcohol or drugs to cope. They also suffer from disproportionately higher rates of mental health issues, which may provide access to prescription medication that could be addictive. As per a 2016 study more than 1 in 5 lawyers reported that they felt that their use of alcohol or other drugs was problematic at some point in their lives, and, of these, nearly 3 of 4 reported that their problematic use started after they joined law school."²

"A newly released study³ con-



"While I was thinking about this column, a number of topics came to mind; however, the one that kept percolating to the top of my list is attorney well-being."

ducted by the Hazelden Betty Ford Foundation and the American Bar Association Commission on Lawyer Assistance Programs reports an alarming statistic: Up to 21 percent of licensed, employed lawyers qualify as problem drinkers; for lawyers under age 30, it's 31.9 percent. By comparison, only 6.8 percent of all Americans have a drinking problem. In addition to questions related to alcohol, participants were asked about their use of licit and illicit drugs, including sedatives, marijuana, stimulants and opioids: Seventy-four percent of those who used stimulants took them weekly."⁴

"Lawyers are at roughly twice the risk of becoming addicted to drugs or alcohol as people in other professions. They also have higher incidence of depression, anxiety, suicide and other mental health issues than the general population. While many cite long hours, huge case-loads and the stress of the field as reasons for these problems, one judge warns that the seeds of addiction are planted long before an attorney begins practicing law. According to Hon. Robert L. Childers, a judge in the Circuit Court of Tennessee since 1984, who has served on the ABA Commission on Lawyer Assistance Programs (CoLAP) since 1999, substance abuse and mental illness often begin in law school. On the first day of law school, studies show that the average law student is "normal" in terms of their happiness, mental health and wellness. Within the first six months, early signs of psychiatric problems, such as depression, anxiety, hostility and paranoia, can be detected. After the first year of law school, as many as 40 percent of law students suffer from depression. Symptoms often persist through law school and into their later legal careers."⁵

Do I have your attention now?

Uncomfortable? You should be. It is alarming to think that this powerful drive we have to help others can potentially have a devastating effect on our minds and bodies.

For the most part, we lawyers are excellent at putting on a good show. We learn to exude confidence to attract and retain clients, and to be strong advocates in court to persuade judges and juries. We don't show weakness. But that's a tough call for any human being, and the resulting stress can manifest itself in the form of substance abuse, which can lead to depression and other issues. Recently, a federal judge in Louisiana was placed in an assisted living facility after being diagnosed with a brain disorder, Wernicke-Korsakoff syndrome, caused by severe alcohol abuse.⁶ In a 2017

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The Alaska BAR RAG

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EDITOR'S COLUMN

Mirrors, cameras, even chicken sellers get wrong picture

By Ralph R. Beistline

And speaking of pictures, when I got up this morning and looked into the mirror, there was my grandfather staring back at me. All I needed was a cigarette hanging from my lip and a cranky cough and it would have been a perfect match. What a defective mirror!

Then, to make matters worse, without even asking, I was offered the senior discount at Kentucky Fried Chicken. I mean, without even asking! The youth today can't even see what they are looking at, but I think that is largely due to their cell phone addictions.

And the cameras are worth-

less — they have my hairline halfway back on my head. Come on — my barber charges me as much for a haircut today as she ever did — so I am never really going to get an accurate picture.

I did make it to my 50th high school reunion last summer and some there did look pretty rough — but the rest of us looked fine — real fine. My wife was a witness.

Anyway, we have another great publication for you this month but continue to seek new blood. And how about some poetry. When Har-



"Anyway, we have another great publication for you this month but continue to seek new blood."

ry Branson ran the paper that was one of our mainstays. Where is the talent? I see the TVBA took a shot at it. Where are the rest of you? Remember this is a volunteer paper which is as good as our members make it. So we remain anxious for your input and your contributions because, believe it or not, we here at the paper can't stay young forever.

Talk again this summer.

Ralph R. Beistline is editor of the Bar Rag and a senior U.S. District Court judge.



Chief Justice Craig Stowers delivers the State of the Judiciary address before a joint session of the Alaska Legislature Feb. 7 in Juneau. The video of the address, as well as a transcript of the speech are available on the front page of the Alaska Court System's website: <http://courts.alaska.gov/index.htm> (Photo by Ben Manly/Legislative Information Office)

Hidden in plain sight: substance abuse in the legal profession

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story in *The New York Times Magazine*, the ex-wife of a high-powered Silicon Valley attorney investigated his sudden death and found a web of drug abuse in the legal profession.⁷ Closer to home, an article written by Anchorage attorney John Pharr in the July-September 2015 issue of *The Bar Rag* chronicled the struggles, relapse, decline and death of our colleague David Schlerf from alcoholism. I know of an experienced attorney who struggled for several years with alcohol abuse, before leaving the practice of law not long ago. I know a tremendous young lawyer who, following a DUI, stopped drinking before he obtained his law degree. Many of us who knew and admired the brilliant trial attorney Bill Bryson will carry his suicide in our hearts forever. This problem is real. "Not me," you might think. Maybe it won't be you, but in the course of your career, it's very likely that you will know someone who will be affected.

There is hope, however, and help is available. The Bar maintains a Lawyers' Assistance Committee, whose volunteer members offer free advice and support, and can discuss treatment options. The service is confidential, and the members will not identify the caller, or the person about whom the caller has concerns, to anyone. The members of the committee are listed in every issue of *The Bar Rag*, and on the Bar's website.

As attorneys, we are accustomed to solving problems, but in order to solve a problem, we first have to identify it. None of us wants to admit that we may have a problematic relationship with a substance. The Rules of Professional Conduct require that we not engage in conduct involving dishonesty with others,⁸ but nothing prevents us from being less than honest with ourselves. If you have any concerns about your own drinking or other substance use, PLEASE reach out

to someone. Call a member of the LAC. Call AA. Call your doctor. Call me, if you'd like, and I will meet you for a cup of coffee. Seriously, call me; I'll even buy.

We attorneys are also loathe to interfere with a colleague's personal business. Maybe that smell of alcohol is residual from the night before. Maybe those late arrivals to the office on Monday mornings are just a coincidence. Maybe those unhappy client calls are because the clients are just being unreasonable or demanding. It's extremely difficult to know what to do when one suspects that a fellow lawyer may be out of control, but we need to act before the situation rises to an act of professional irresponsibility—or worse. We have a duty to the public, and a duty to the profession. And we have a moral obligation to care about each other. Addiction is a disease; it can be treated, and people do recover. If you have concerns about yourself or a fellow lawyer, please call a member of the LAC. You might just save a career. Or a life.

Darrel Gardner is an assistant federal defender in Anchorage; he is a past president of the Alaska Chapter of the Federal Bar Association, and the current president of the Alaska Bar Association.

Footnotes

¹Alaska Bar Bylaws, Art. I § 3

²<https://www.psychologytoday.com/blog/sure-recovery/201707/drug-and-alcohol-abuse-in-the-legal-profession>

³https://journals.lww.com/journal-addictionmedicine/Fulltext/2016/02000/The_Prevalence_of_Substance_Use_and_Other_Mental.8.aspx

⁴https://www.washingtonpost.com/posteverything/wp/2016/03/24/the-most-terrifying-part-of-my-drug-addiction-that-my-law-firm-would-find-out/?utm_term=.c021cc9ee947

⁵https://www.americanbar.org/content/dam/aba/administrative/law_students/article-addicted.authcheckdam.pdf

⁶http://www.abajournal.com/news/article/federal_judge_was_diagnosed_with_brain_disorder_caused_by_alcohol_abuse_cou

⁷<https://www.nytimes.com/2017/07/15/business/lawyers-addiction-mental-health.html>

⁸Alaska R. Professional Conduct 8.4(c)

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Register @

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Alaska's 1964 earthquake, a perspective

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ferred damage to the corner I-beams on Fifth Avenue requiring substantial repairs;

13. A 30-foot fault line some 20 feet wide started near Third Avenue, went down K Street and angled across Eighth Avenue on to the Park Strip after collapsing houses and buildings along the way from Third Avenue and K Street to Ninth and passing under old Providence Hospital;

14. The entire side Fourth Avenue from E Street to Cordova Street sank 20-30 feet and destroying all the commercial buildings on the north side of the street;

15. The ground under the Turnigan residential sub-division liquefied and ran into Cook Inlet carrying a number of residences with it;

16. A number of warehouses in the railroad yards collapsed;

17. The downtown power lines, water lines and gas lines were damaged or destroyed at several points

cutting off water, electricity and gas from Ninth Avenue to Ship Creek and from L Street to Gamble;

18. Several generators at the city light and power plant were inoperable because their concrete bases had to be replaced and the natural gas lines to them were ruptured;

19. Almost all highway bridges between Anchorage and Portage were destroyed;

20. The jail was inoperable because of lack of water, electricity and heat;

21. Almost all large plate glass windows in downtown business were shattered and any stock on the shelves was scattered on the floor;

22. The hospitals were operating on an emergency basis with backup power and emergency water supplies.

All of this happened at 5:30 p.m. on a Friday afternoon before Easter while it was snowing and people were traveling home from work, going to church services or shopping. Further, most of the roadways in Anchorage were damaged and traffic stymied by debris and lack of power for street lights and traffic lights. Thus, families were separated without an ability to contact each other.

It is remarkable that only nine people died in Anchorage. These occurred at the locations as follows:

Two people died when the Aircraft Control Tower collapsed at the airport;

Two people died when the façade of JCPenney fell into the street crushing cars;

Three people died when the buildings collapsed the north side of Fourth Avenue from D Street to Cordova Street;

Two people fell into a fault in the Turnagin area and died when the fault closed.

However, all this was determined after the fact and was basically unknown because there were no communications except by the police and the radio stations that were still able to broadcast. It was cold: It was dark and it was snowing. People had to do what they could based on what they could see or hear.

My immediate reaction came from the fact I was the district attorney for Anchorage (actually for the entire third district) and was a focal point for what should be done given the chaos around us and the practical problems to be solved.

The initial problem was to secure downtown Anchorage to avoid any possibility of looting and to locate those injured or dead and to get them to a hospital or secure facility. The Army came to our aid with the transfer of the Eskimo Scout National Guard troops who were training at Fort Richardson — Several hundred soldiers were posted in an area from Gambell Street on the East to: K Street on the west and

between Ship Creek on the north and Ninth Avenue on the south.

The military also brought a soup kitchen and water trucks for the survivors. They aided in search efforts with the Anchorage police. They also brought

communication equipment so we learned the extent of the physical damage. Unfortunately, that also caused us to estimate 200 to 400 dead which later proved to be a terrible miscalculation but which triggered special efforts to search each damaged structure.

A number of citizens gathered at the Anchorage police station and volunteered to help fix a particular problem based on their particular skills. They ranged from electricians and heavy equipment operators, to federal, city and state employees.

The problems initially faced and their solutions suggested by these people were as follows:

1. One employee of the jail pointed out we had 75 to 80 prisoners without heat, light or water. He provided records to show previous history of an inmate, his present offense and suggested two thirds would not be a danger to the community if released with strict instructions of when to return to court when the court began to function again. He proved correct. I went to the jail with a district magistrate Jim Hanson and furloughed some 60 inmates (Those who were not charged with serious crimes or theft) with instructions to return to court in three week's time. Everyone returned to the court at the later time. Those who remained in jail could thus be cared for.

2. A city lights employee suggested a solution to getting both electricity and natural gas flowing again. He managed to get a crew of almost 150 people to excavate 1,000 feet of natural gas pipe and to pour



Subsiding land collapsed under homes in Anchorage's Turnagin subdivision. (USGS photo)

new concrete footings for the diesel generators to restore almost all power in a week's time.

3. A similar group attacked the water line problems and brought order to the water line breaks.

4. The Teamsters union borrowed heavy equipment from heavy equipment yards and removed debris and smoothed out streets and helped with water and gas line repairs

5. The radio stations (and particularly Genie Chance) unscrambled the separation of families by broadcasting continuously about separated family members and assuring people that separated people were safe and could get together

The police tirelessly worked to investigate each damaged building to see if there were injured persons. I personally helped investigate the seriously damaged JCPenney department store building which was three stories of dark places with clothes mannequins and merchandise causing heart-stopping investigations. No one was found inside but the memory will always be imprinted in my mind.

The Salvation Army and the military set up soup kitchens and water supply points on the park strip as soon as possible and the Red Cross joined as soon as Elmendorf Air Force base permitted incoming planes with emergency supplies.

There was only one case of looting and there were a couple of thousand volunteers helping in an area where everything was open for the taking.

There was damage at Fort Richardson and Elmendorf Air Force Base but they offered help to Anchorage while taking care of their own problems. Their assistance brought about a quick recovery from the destruction which affected everyone in the area.

As a lawyer I felt a little useless as the court was not able to function for some time. I did join with several members of the legal profession in making hundreds of sandwiches at the police station where someone had donated a 50-pound brick of cheese and half a truck load of bread.



A crack developed in this highway, believed to be near Portage. (USGS photo)

There were a few black spots which were generally addressed by these same citizens. The attempts to raise gas prices and the price of baked goods and bread were met with a firm "not on your life" by groups of citizens who promised post-earthquake damage if this occurred. They immediately backed down.

The two downtown bars that stayed open and produced post earthquake celebrations were requested to close. Their refusal to do so was met by a less polite request by public safety personnel with chain saws who suggested otherwise.

The wholehearted cooperation of 99.9% of the citizen of Anchorage who acted in the best interest of all can only be contrasted with the inability of the new breed of politicians today to cooperate over the most important of issues which affect all of Alaska's people.

Robert Erwin was admitted to practice in 1961 and had done over 200 appeals. He served on the Alaska Supreme Court from 1970 to 1977. He is the only lawyer in the state who has appeared before every Supreme Court justice appointed since statehood.

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Magistrate judge to retire; applications sought

From the federal Court System

U.S. Magistrate Judge Kevin McCoy will retire in May 2018, and applications for the position of federal Magistrate Judge will be accepted from March 14-April 6, Chief District Judge Timothy Burgess announced.

Judge McCoy was appointed to the bench in 2014, after serving more than 20 years as an assistant federal defender. He had previously served as a state public defender and as an assistant attorney general handling civil fraud matters.

"We will miss Judge McCoy's incredible work ethic, compassion and commitment to fairness. He has been a great colleague and even greater judge," Judge Burgess said.

Judge McCoy served as a part-time magistrate judge, however recently the Magistrate Judges Committee of the U.S. Judicial Conference approved the hiring of a full-time judge to replace Judge McCoy, in light of an increase in the criminal caseload. It remains for the Judicial Conference to approve that decision and the conference meets March 13, Judge Burgess said.

In Alaska, federal magistrate judges: (1) conduct most pretrial proceedings in criminal cases, including evidentiary hearings related to dispositive pretrial motions such as Motions to Suppress Evidence; (2) conduct all misdemeanor trials; (3) conduct civil settlement conferences; (4) conduct various civil pretrial matters; (4) conduct civil trials and motion practice resulting in the disposition of civil cases upon consent of the litigants; and (6) handle state habeas petitions and federal applications for post-conviction relief, according to Chief Magistrate Judge Deborah Smith. On occasion, the job also requires travel to conduct court hearings in Juneau and Fairbanks, she said.

Application forms and information on the position may be obtained from Lesley Allen, District Court Executive/Clerk of Court, United States District Court, 222 W. Seventh Ave., Box 4, Anchorage 99513-7564 or by downloading the documents from www.akd.uscourts.gov. All applications must be received by 5 p.m. April 6, 2018.

To qualify for appointment, an

applicant must be a member in good standing of a bar association, have practiced law for at least five years and be less than 70 years old. A merit selection panel composed of attorneys and other members of

To qualify for appointment, an applicant must be a member in good standing of a bar association, have practiced law for at least five years and be less than 70 years old.

the community will review all applicants and recommend the best qualified candidates to the district

judges for their consideration. The court will make the appointment following an FBI full-field investigation and an IRS tax check. An affirmative effort will be made to give due consideration to all qualified applicants without regard to race, color, age, gender, religion, national origin or disability. The term of office is eight years and the current annual salary is \$191,360.

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



U.S. Magistrate Judge Kevin McCoy

Hear authors Piper Kerman and Scott Turow

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**KEYNOTE
SPEAKER
SCOTT TUROW,**
Writer and Attorney

He is the author of eleven best selling works of fiction, including his first novel, Presumed Innocent (1987). His newest novel, Testimony, was published in May, 2017. He has also written two non-fiction books about his experiences in the law, and his novels have been the basis of several films, including the movie, "Presumed Innocent" starring Harrison Ford. His books have sold more than 30 million copies around the world.

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Overheard in the courtroom

From gavel2gavel.com

By Attorney: Did you ever stay all night with this man in New York?

By Witness: I refuse to answer that question.

Attorney: Did you ever stay all night with this man in Chicago?

Witness: I refuse to answer that question.

Attorney: Did you ever stay all night with this man in Miami?

Witness: No.

Mundane as it seems, proper filing is vital

“Jack would laugh if he knew, but she’s been in the system long enough to understand that it all comes down to documentation. Get your papers in order, with the right signatures and record keeping, and the charges will be dropped, money released, whatever. If you’re disorganized, you risk losing everything.”

—Christina Baker Kline, *Orphan Train*

By Nelson Page

I get calls about files all the time: What needs to be kept; what do I give to the client; when can I throw something away? File maintenance and management is one of the most basic parts of the practice of law. Many lawyers don’t do it very well. Here is a primer on the ethics of legal files.

Setting up: First, and this really should go without saying, a new file should be created for every matter that comes into the lawyer’s office. If you handle a lot of matters for one client you should create a new sub-file for each one of those matters. How your files are put together should be the subject of a standard process. A checklist is a good idea. Each new file or sub-file should include, at a minimum, billing and contact information, a list of all the parties involved in the matter for conflicts purposes, the results of the conflicts check, a copy of the retention/ fee agreement and all documents received from the client. Exactly how to set up a file depends on the nature of the work you are doing for the client. A litigation file, for example, will include pleadings and discovery, while the drafting of a trust will have different requirements.

You should have a central database where basic information about all files is kept. You need to be able to check the names of clients and adverse parties against all other clients and adversaries. This includes past matters as well, so that you avoid the embarrassing and possibly expensive problem of finding out about a conflict after you are well into a legal matter.

A decision should be made about how electronic communications will be handled. Will you make a hard copy of each email and put it in the file, or simply store them on your computer until the file is closed? Some lawyers will prefer to do away with paper files altogether. Ethics Opinion 2014-3 allows files to be stored in the “cloud” but this is subject to some very strict requirements. As that opinion makes clear, the lawyer’s duties of confidentiality and competence cannot be delegated: you will ultimately be responsible for ensuring the security and availability of file materials. “The server ate my homework” is not an ethically acceptable excuse for a lawyer who can’t access a client’s file. Ethics Opinion 2008-1 allows a lawyer to maintain business records in electronic form pursuant to the provisions of the Uniform

Electronic Transactions Act, AS 09.80.010-195 (2004). However, this does not apply to original documents supplied by the client. These must be retained in the form in which they were supplied by the client unless otherwise agreed with the client.

Maintaining the File: It is not enough to open a file. You have to maintain it. Again, there should be a standard policy covering how files are to be maintained. Use checklists. This is particularly important if more than one person is going to be touching a file. Multiple lawyers, paralegals, and other staff will need to understand what to do with documents as they are received or generated. This way the files have some internal logic and consistency that allows someone who has not previously been involved in the file to be able to work with it as the circumstances of the case require.

Filing needs to be done regularly. It does no good to have a file system that is not used. I can speak from personal experience: There is nothing more frustrating than having to search through the offices of several lawyers and paralegals to find the critical document that should have been in the file, but which somehow never made it off the piles on someone’s desk. Needless to say, you can’t bill for that kind of wasted time.

Files should be kept in some established order. Whether you number each new file sequentially or have a more complicated system for identifying a file, each file should be stored in a location and sequence where it can be found as necessary. Most of us are guilty of keeping files we are working on at our desks. If you are taking a file to your office to work on for a period of time, check it out — put a card in the file cabinet so people know where it is.

Don’t forget file security. We all tend to think of our offices as comfortable and familiar places, and subconsciously tend to relax. Confidential files on your desk are available to anyone — authorized or not — who has access to your office. Consider either locking your office at night or, at a minimum, making sure that people who have access to your physical space are cleared for being there. If office cleaning staff comes in at night, make sure that they have been apprised of the need for confidentiality. Consider whether a written commitment regarding security is necessary from anyone who will have access to your office spaces. Client files and papers should never be left in conference rooms or public spaces that others have access to. The exact level of effort will depend on the nature of the matter. Although every file needs to be protected, special precautions may be necessary for high profile or



“The way to deal with all of these issues is to be proactive about document retention. The client should be told at the time of engagement what the file retention policy is.”

especially sensitive client matters.

During the engagement the client has the right to access the entire file at any reasonable time. This includes the right to see virtually everything in the file, with a few exceptions.¹ Yes, “the entire file” includes attorney work product, such as drafts, research memoranda and the like. There may be some exceptions for “documents intended for internal law office review and use” such as “preliminary impressions of the legal or factual issues presented in the representation, that are recorded primarily for the purpose of giving internal direction to staff,” or on some occasions, the lawyer’s impression of the client.² The exceptions might also include information that would otherwise violate a duty of nondisclosure owed to third parties or which is otherwise protected by law.³ Although such documents may be withheld, the general default is that the client gets to see everything.

Closing the File: At the end of the engagement you need to have a process for closing the file. There should be a uniform approach regarding what gets done with the file, including what review is to be done by whom, where files are stored once they are closed, and what communications should be sent to the client. Again, checklists are a good idea. Every file is different, but there are some universals. A letter needs to go to the client announcing the end of the engagement and that no further work is being done. This should include discussion of what will be done with file documents, and, especially, any original documents received from the client. These issues should already have been discussed with the client and outlined in the initial engagement letter.

The client has paid for the work reflected in the file and is entitled to get the file back when the engagement ends.⁴ This is true regardless of whether the representation ended after a successful conclusion, or whether the attorney was unfairly fired.⁵ The client is entitled to the original file, not just copies. If the lawyer wants to retain a copy this must be done at the lawyer’s expense, not the client’s. It is unethical to make a client pay for the copying of the file at the end of an engagement.⁶ The “right” afforded an attorney to assert a lien against the client’s file for payment of fees is basically illusory and unenforceable. The Supreme Court and the Ethics Committee have made it clear that the client’s interests must come first: Withholding a file until fees are paid is likely to result in discipline as well as a malpractice suit if the client is damaged in any way as a result.⁷

This basic rule also applies to expert and investigative reports. Even if the client has not paid for such re-

ports, the attorney cannot withhold them. They are part of the client’s file, which means that they are the client’s property, which means that they cannot be withheld if doing so would prejudice the client.⁸

File Destruction: Documents in a closed file must be retained for a reasonable period of time after the end of the legal engagement. What is “reasonable” will depend on the circumstances and the type of document. Most documents can be safely destroyed after five years. Other documents may require retention for a longer period for any number of reasons. For example, it may be prudent to hold onto a copy of a settlement agreement for a minor until the minor has become an adult and any possible statute of limitations has run. Other documents have intrinsic legal significance and must be kept until there is no possibility that they may be required by the client. The most obvious and common of these documents are original wills, which can be the bane of a retiring lawyer’s existence. A lawyer holding an original will has no good way of ensuring that the will has not been superseded. If it has not been superseded, the original will remains an important document that could become critical at any time. By the time a lawyer is ready to retire there may be dozens of original wills in the office, with no way to contact the client and no way to know whether the will needs to be retained. Other examples of such documents with “intrinsic legal significance” may be original deeds, trust instruments, marriage and adoption certificates and stock certificates.

The way to deal with all of these issues is to be proactive about document retention. The client should be told at the time of engagement what the file retention policy is. When the file is closed a letter should go out specifically referencing how long the client has to pick up the file and what will happen if the file is not returned to the client. Regarding wills and other similar documents, the client should take custody of such documents, not the lawyer.⁹ If, after all of the above has been done, there remain documents that should not be destroyed they will have to be retained as long as possible.

Maintaining files and documents is a mundane and ever-present responsibility. But it has to be done right: File maintenance is like paying rent: if you don’t do it, you won’t be able to keep your doors open.

Nelson Page is the Bar counsel at the Alaska Bar Association, formerly of Burr, Pease and Kurtz and former Alaska Bar president.

Footnotes

1. Alaska Ethics Opinion 2003-3.
2. Id.
3. Id. See, e.g., AS 12.61.120(a); Crim.R. 16(d)(3).
4. Alaska Ethics Opinion 95-6
5. Id.
6. Id; Alaska Ethics Opinion 2011-1.
7. ARPC 1.16(d); Alaska Ethics Opinion 83-2; Alaska Ethics Opinion 95-6; *Miller v. Paul*, 615 P2d. 615 (Alaska, 1980).
8. (ARPC 1.16(d); Alaska Ethics Opinion 2004-1.
9. See AS 13.12.515 and Probate Rule 5, which provide for the depositing of wills with the court.

Don’t forget file security. We all tend to think of our offices as comfortable and familiar places, and subconsciously tend to relax. Confidential files on your desk are available to anyone — authorized or not — who has access to your office.

The way to deal with all of these issues is to be proactive about document retention.

Alaskan honored with ABA Spirit of Excellence award

The American Bar Association Commission on Racial and Ethnic Diversity in the Profession planned to honor Heather Kendall-Miller, an Alaska Native (Athabaskan) and a senior staff attorney with the Native American Rights Fund in Anchorage, with its 2018 Spirit of Excellence Award for her commitment to racial and ethnic diversity in the legal profession. The award was to be presented during a ceremony on Feb. 3, at the ABA Midyear Meeting in Vancouver, British Columbia.

The Spirit of Excellence Award celebrates the efforts and accomplishments of lawyers who work to promote a more racially and ethnically diverse legal profession. Awards are presented to lawyers who excel in their professional settings; who personify excellence on the national, state or local level and who have demonstrated a commitment to racial and ethnic diversity in the legal profession.



Heather Kendall-Miller holds her award.

The Spirit of Excellence Award celebrates the efforts and accomplishments of lawyers who work to promote a more racially and ethnically diverse legal profession.

“One of this nation’s most respected Native American attorneys, Heather Kendall-Miller has overcome great adversity and has gone on to lead a career promoting justice for Native communities in Alaska and throughout the United States,” said Will Gunn, chair of the com-

mission. “At the same time, she has helped those coming behind her by hiring, mentoring and inspiring law students and early-career attorneys from diverse backgrounds.”

Kendall-Miller is a graduate of Harvard Law School and has dedicated her career to public service. She was a law clerk at the Alaska Supreme Court and then served as a Skadden Fellow, where she worked as a staff attorney for the Alaska Legal Services Corpora-

tion representing indigent clients in court and in administrative hearings. During the second year of her fellowship, she worked for the Native American Rights Fund, where she continues her groundbreaking work.

With more than 25 years practicing in federal and state courts, Kendall-Miller has established foundational legal principles protecting Native American subsistence, tribal sovereignty and human rights. Her

activities outside the law include board memberships with the ABA Section of Individual Rights and Responsibilities, the Wilderness Society, the Alaska Native Justice Center, the Social Justice Fund, the Honoring Nations Governing Board and the Conservation Foundation. In addition, she serves on the Alaska Supreme Court Committee on Fairness and Access to the Judicial System and as liaison to the Ninth Circuit Court of Appeals.

Alaska Bar Association MEMBERSHIP BENEFITS GUIDE

Bar staff has compiled a detailed guide to benefits & services for members. Included in the guide are services, discounts, and special benefits that include:

- Alaska USA Federal Credit Union for financial services
- Alaska Communication wireless discounts
- Copper Services virtual conferencing
- OfficeMax partners discount
- Alaska Club health and fitness enrollment options
- Premera Blue Cross health and dental plans
- LifeWise group discounted term life insurance
- Hagen Insurance disability insurance discounts
- Avis and Hertz rental car discounts
- Professional Legal Copy ABA member pricing
- Kelly Services staffing services special pricing

Also included are Alaska Bar Association and partner services that include ALPS, the Casemaker legal research platform, Lawyers Assistance, Lawyer Referral Service, Ethics Hotline resources, the ABA Retirement Funds program, American Bar Association publication discounts, and Alaska Bar publications (Bar Rag, CLE-At-A-Glance newsletter, and E-News).

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AS 9.10.052 dissed, but just north of the Alaska Range

Peter J. Aschenbrenner

“So why not,” the Emperor Justinian addresses the assembly, “just toss pieces of the puzzle into the air?”

Governor Egan intervenes. “Apologies, me hearties,” he intones. *Reeves v. Godspeed*, Slip Op. No. 7219 was on the agenda. But it’s

“My job was to throw all of the pieces up into the air, scramble them good and proper on landing, and then put together a pretty picture. That’s the Corpus Juris Civilis.”

sure starting out slow.”

“Emperor, Attorney General, august members of the assembly,” Jemmy Madison shunts us over to the right track.

“Please, no formalities,” Tribonian assuages politesse. “Call me the Quaestor of the Sacred Palace,” he adds.

“So what is it you do for a living?” Dolley asks him.

“My job was to throw all of the pieces up into the air, scramble them good and proper on landing, and then put together a pretty picture. That’s the Corpus Juris Civilis.”

“It’s always this way with a new administration,” President Tyler explains. “Being the first accidental President I’m here to remind us how chaos theory works.”

“And that takes us north of the Alaska Range,” Jemmy signals Clet-

is The S-J Yokel. “And you can drop the regional accent.”

“The problem is reminiscent of *Dred Scott’s* case,” Cletis forges ahead. “Taney found a ‘due process violation if [a] law operates on a ‘citizen of the United States merely because he came himself or brought his property into a Territory of the United States ...’.”

“The solution was obvious,” Tribonian and Justinian agree. “Let Sandford join the United States as a third party defendant. Voilà.”

“So true,” The Tyler agrees. “Either the purported owner of the mobilia in question gets his chattel back or the federal treasury cashes him out.”

“That was Taney’s gripe. Suitably boiled down. It’s also resolvable as a matter of procedure,” The Sarah opines. “Professor?”

I mind my cue.

“So that would mean that the Platting Board of the not-yet-fore-said Fairbanks North Star Borough should have forced the owner of the servient estate to join the proceedings before that body.”

“In 2012 Reeves was granted plat approval to subdivide MS-1709. The plat memorialized Reeves’s plan to dedicate the easement through MS-1724 to public use as the access for the subdivision,” Slip Op. 1729, 4,” Cletis recites from memory. “Dirt road blocked. Suits fly,” he adds.

“But platting boards are advised by their counsel – nay, enjoined on this point – that they have no power to traffic in private easements,” Governor Palin recites the received wisdom.

“But the alternative permits

private owners to condemn private property without compensation,” I retort. “That’s this case,” I add.

“Here’s where I come in,” Dred Scott enters, arm in arm with the Chief Justice.

The assembly blinks.

“We’ve made up long ago,” they explain.

“The problem can be put this way,” Roger B. explains. “All are created equal. So if a would-be slave owner wants to use the courts to

“A law or decree must do no more than duplicate the result that could have been achieved in the courts — by adjacent landowners under the State’s law of private nuisance, or by the State under its complementary power to abate nuisances that affect the public generally, or otherwise.”

condemn a man to slavery he should have to pay the charges therefor.”

“Not for me,” Scott explains. “I’m free.”

“The charges for use of the Missouri or Alaska court system should be the same. In Missouri it would be the market rate for Scott here –”

“Over twenty years of my working life at a cap rate of 6% –”

“In Alaska it would be the ground rent for the easement in question paid over the ten year adverse possession interval.”

“Payable into the Alaska Court System’s pension fund,” Roger B. adds. “Naturally.”

“But nobody would bring these claims if they had to pay a market rate for judicial approval of private condemnation proceedings!” Tribonian objects. “I worked my tail off to make sense out of the CJC and now you’re throwing my life’s work out the window!”

“Hold the phone,” Cletis and Sarah interrupt proceedings. “We’ve been reading what’s left of the ‘civil’ code, you hi ‘falutin’ Greeks wrote. Adverse possession’s been abolished in Alaska. AS 09.10.52(a) provides that ‘possession of real property’ must go forward with the claimant operating under the ‘good faith but mistaken belief that the real property lies within the boundaries of adjacent real property owned by the adverse claimant’.”

Justinian unfurls the papyrus relevant to the argument.

“Whether in Law Greek or Law Latin,” they agree, “there was no case here. The servient owner knew there was an easement underneath their gold plant. The Supreme Court’s entire analysis turns on proclivities of miners to shamble their tents, teapots and sluice boxes about the entire property, with full

where-with-all and knowledge ap-purtenant.”

“It’s a clear case of bogus corpus,” Cletis opines, ignoring the assembly’s Latinate correction.

“We’ll do the vocab later,” Governors Palin and Egan assure the assembly.

“The miners – servient owners here – were operating their gold plant under the factually and legal correct belief,” Madison explains, “that they could occupy a portion of the easement. So they couldn’t destroy the easement by prescription.”

“‘Take’ is the word you want, dearie,” Dolley applies the marital corrective required.

“So they weren’t entitled to any compensation at all!” Dred Scott and Roger B. exchange fist bumps. “If the Supremes gave them a piece of the mining road, that’s what they would be getting! Private property without just and private compensation!”

“It’s nice to credit the Alaska legislature, as well,” Justinian shakes hands all ‘round. “AS 9.10.052 as amended and just in time. I mean, they do have a Senate. I am certainly partial to Senators. At least on the shores of the Sea of Marmara.”

“The real winner here is Justice Antonin Scalia,” Governor Palin explains. “Once a background rule of state law is established – Professor, take it away and forget the ellipses.”

“‘A law or decree must do no more than duplicate the result that could have been achieved in the courts — by adjacent landowners under the State’s law of private nuisance, or by the State under its complementary power to abate nuisances that affect the public generally, or otherwise.’”

Presidents Johnson ‘n’ Johnson concur. “505 U.S. 1003, 1029 (1992).”

“It’s not a private nuisance to build a gold plant,” Jemmy and Dolley agree. “So the owners couldn’t be under a mistaken belief that it was. Hence, their right to locate the plant was a ‘background principle[] of the State’s law of property’.”

“That sews things up and rather nicely,” Taney and Scott agree. “Since we have guests from across the Aegean, let’s dial up ‘Sirtaki’ on YouTube and smash some plates on the floor.”

“Did I ever tell you about my ride on the ferry from Irakleon to Piraeus with Anthony Quinn and Alan Bates? They were filming *Zorba the Greek*. The year was 1964 –”

But no one is listening.

Peter J. Aschenbrenner has practiced law in Alaska since 1972, with offices in Fairbanks (until 2011) and Anchorage. From 1974-1991 he served as federal magistrate judge in Fairbanks. He also served eight years as a member of the Alaska Judicial Conduct Commission. He has self-published 16 books on Alaska law. Since 2000 the Bar Rag has published 48 of his articles.

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TALES FROM THE INTERIOR

A class act brings out the best in everyone

By William R. Satterberg Jr.

It was a cold call from Judy Kleinfeld, Judge Andy Kleinfeld's wife.

"Bill, would you be interested in teaching an OLLI class?" Judy asked.

"What is OLLI?"

"OLLI stands for Osher Lifelong Learning Institution, Bill. It's a group of people who take classes about interesting stuff. You have to be at least 50 years old to attend. It's fun. You'll like it."

"Why me?"

"Because you are full of ... stories. Can you give it some thought? It's only four sessions of one hour and 15 minutes each. You can pick your own topic."

My initial reaction was "no." After all, I am a bashful person. But Judy can be quite persuasive. So I relented and decided to give it a shot. I chose as my topic, "Practical Law." I would teach four sessions consisting of: (1) the practical aspects of hiring counsel and legal ethics; (2) contracts; (3) torts; and (4) criminal law.

On the first day, I walked into the class ready to launch directly into substance, disregarding the one delay tactic a friend suggested: to burn an hour having everyone introduce themselves. In retrospect, it might not have been a bad idea. To my immediate surprise, two students sitting in the front of the class were well known to me. Nancy and Bill

Mendenhall. I recognized that I had gone full circle. Bill had been the professor of my first University of Alaska freshman class in 1969, "Introduction to Surveying." Bill had been an excellent instructor, constantly referring to pesky government regulations as "those Mickey Mouse things." Because of Bill's tenure at the university, the campus elevations had been mapped many times. Virtually every square inch of real estate was known. And now, instead of Bill teaching me as an impressionable freshman, I was teaching Bill as a wizened elder. Nancy and Bill's daughter, Susan, like myself, had chosen law instead of surveying as a career, attesting to Bill's influence on careers.

After I was introduced by the OLLI Director, Sarah, I started my first lecture. I shared how the Code of Ethics affected the practice of law and the duties that pertained to lawyers. I disclosed how to hire and

fire a lawyer and how to best communicate with counsel. The 75-minute session was over in what seemed like scant minutes rather than the eternity I initially expected.

The second class was about contracts. I was well prepared but made a mistake. I asked if anyone had any questions about the first session. One hour and 14 minutes later, with one minute left in that afternoon's session, I announced that the third session would now deal with contracts.

I also decided that, for the third session, I would not ask if anyone had questions. There were only two class sections left. I still had a lot of material to cover.

Before the third session, I received unexpected feedback. The OLLI director called me and apologized for having to report that a written anonymous complaint had been received. The complaint stated that my presentations were entertaining, but I was telling too many war stories. The student wanted me just to get down to teaching law and to skip the rabbit trails.

I was hurt and saddened. I began to question my self-worth. My self-esteem plummeted. Fortunately, one of the office staff had brought in a box of glazed donuts that day. Several calories later, I was back

to my old self. Arrogance apparently can sometimes be a virtue, especially at leadership levels. As such, I decided to stay on course. My class was a sell-out class of 35 students. I would not let one complaint change my game plan – even if I did not have a game plan. I tweeted my opinion to all, including some chubby kid with a bad haircut in Asia.

There were no more complaints that session. Rather, on the last day, the OLLI director actually asked if I would teach another session that spring. I figured that the program had already had enough of my shtick, especially given the scathing complaint that had been received from my anonymous benefactor. Nevertheless, I accepted. It's nice to be wanted, unless one happens to be a prospective criminal defendant.

The spring class was essen-



"I would simply teach four sessions and talk about whatever I desired. Satterberg unplugged."

tially a repeat, without the second class request for questions. After all, I had learned at least that lesson of not opening the door.

Amazingly, I again got a similar "war story" complaint. Moreover, the complainant had done a remarkable job in disguising their handwriting to masquerade as someone else. Still, it had to be the same person. My stories were too good.

So I responded the same way. I stuck to my established non-existent game plan. But I also developed a strategy to avoid complaints in any future classes, should I ever be asked to teach again. I would simply do a change-up in my class syllabus. As expected, I was asked to teach a third class. OLLI was obviously desperate.

Anticipating another revolt, I changed the title and description of the third class to "Satterberg's Law." I would simply teach four sessions and talk about whatever I desired. Satterberg unplugged. Moreover, when the class started, I made that quite clear to my once again sold-out class. No one had a right to complain since I still had no game plan. And it worked. No complaints were lodged. The class seemed pleased. In fact, all those classes I had taught by then had waiting lists. Waiting lists were necessary because the building's fire code limited the size of the class. Because fire science classes were being taught in an adjacent classroom, the rules had to be followed.

After a hiatus of one semester, I taught a fourth class. This fourth class was not a total sellout. Rather, it was three-quarters full. But it was still well-populated.

As with every class, I received a class roster. The fourth time, however, I noticed some familiar names. I questioned why someone would want to take my class more than once. To gain a better understanding of the class makeup, I asked my OLLI director if she could disclose the number of "repeat offenders" in the fourth session. I was told that over half of the class had taken the course at least one time before, with several taking the course all four times. Clearly, I had a fan club.

Still, I was conflicted. How could I teach a class that had already been essentially taught three times previously? The old timers likely would want new material. Yet the new "kids" would justifiably want the basic materials and would be short-changed if I skipped the basics.

In the end, I decided to again stick with the basics, while still trying to spice things up a bit. I had two reasons for this decision. First of all, realizing that many of my students were of advanced age, I figured that just maybe the material seemed like new material to them. And, secondly, like my associate, Tom Temple commented, "Bill, have you ever watched a movie more than once just because you liked it?" I recalled my college fascination with the famous movie, "Deep Throat." I had attempted to watch that classic several times. I understood Tom's analogy quite well in that context.

So I taught my fourth class. I may even elect someday to teach even a fifth session. The classes are fun, and I have been advised by several students to do stand-up comedy when I retire. As additional incentives, OLLI supplies us with stale Oreo cookies and coffee, and I usually get applause at the end of each class. I respond well to applause, since it is hard to get open applause in the courtroom.

In fact, I have only seen courtroom applause happen once at a trial in Tok, Alaska, over washing machines and dryers stolen from Alyeska Pipeline Company by two locals. Judge Van Hoomissen presided when the young assistant district attorney wisely decided to dismiss a clearly loser of a case. After the announcement, the jury actually began to openly clap. But, in that case, the defendants were two modern day Tok Robin Hoods, selling needed appliances for a song to the townspeople. And it was in 1978. Times have changed. Now I have to get my appreciation outside of the courtroom from a gaggle of geriatrics who really still do seem to enjoy and appreciate my act – an act which has taken well over 40 years to develop, and which even I have a hard time remembering.

Admitted to the Alaska Bar in 1976, William R. Satterberg Jr. has a private, mixed civil/criminal litigation practice in Fairbanks. He has been contributing to the Bar Rag for so long he can't remember.

The complaint stated that my presentations were entertaining, but I was telling too many war stories. The student wanted me just to get down to teaching law and to skip the rabbit trails.

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Marijuana legalization: Can you bank on it?

By Jason Brandeis

Over the past few years, nearly every article or discussion about marijuana legalization has invoked the Cole Memo. The Cole Memo contains an Obama-era Department of Justice policy that de-prioritized the enforcement of federal marijuana laws in states that had some form of marijuana legalization. It was a key legal underpinning that supported the ability of states to create commercial marijuana industries. The Cole Memo is no more.

In early January of this year, with a memo of his own, United States Attorney General Jeff Sessions rescinded the Cole Memo, providing the latest development in the ongoing tension between federal marijuana prohibition and state marijuana legalization. At this early stage, the full impact of the decision to rescind the Cole Memo is not known. This article briefly explains the role of the Cole Memo, examines the content of the memo that rescinded it, offers some preliminary considerations for businesses and regulators operating in a post-Cole Memo world, and provides insight into what may occur in the long run.

What was the Cole Memo and why was it significant?

Though the Cole Memo was the part of the foundation upon which many states based their marijuana legalization efforts, its long term applicability was always tenuous. The memo itself contained guidance issued by the Department of Justice (DOJ) in August 2013. It was not a statute or a regulation, and could therefore be easily amended or rescinded. The Cole Memo did not change the status of marijuana as a controlled substance prohibited by federal law, nor did it alter the DOJ's authority to enforce federal marijuana laws. Prior to the Cole Memo, marijuana was prohibited under federal law, and it remained so after the memo was issued.

Substantively, the Cole Memo provided direction to the United States attorneys (the prosecutors tasked with enforcing federal marijuana laws) on how to handle the tension between state legalization and federal prohibition. Under this

guidance, U.S. attorneys were urged to de-prioritize enforcement of federal marijuana laws against individuals acting in compliance with valid state marijuana legalization laws, unless their actions implicated a specifically identified federal enforcement policy (e.g. selling marijuana to minors, selling marijuana across state lines, using the proceeds of marijuana sales to support other criminal enterprises or gangs, driving under the influence of marijuana, etc.).

The Cole Memo did not set any binding requirement on U.S. attorneys' prosecutorial decisions. But since it was a top-down policy directive, there was significant pressure on U.S. attorneys to adhere to this guidance. The Cole Memo thus established a "fragile truce" between the states and the federal government with respect to regulating commercial marijuana industries.

What is the Sessions Memo and what did it say?

The Memorandum For All United States Attorneys issued on Jan. 4, 2018 by Attorney General Jefferson B. Sessions III on Marijuana Enforcement (the "Sessions Memo") did three things. First, it re-confirmed Congress' view that marijuana is a dangerous drug and that the cultivation, distribution and possession of marijuana is a serious crime. Second, it rescinded previous Obama-era Department of Justice guidance memoranda relating to marijuana enforcement. These memos estab-

lished nationwide policies regarding the enforcement of federal marijuana laws following the passage of legalization ballot

measures in Colorado and Washington. The memos then subsequently guided the actions of state and local regulators, marijuana businesses and employees, marijuana users and patients, and numerous others with a connection to the marijuana industry, as commercial marijuana markets developed in those states and others, including Alaska. Third, it specifically left the power of prosecutorial discretion in place with respect to enforcing federal marijuana laws.

The Cole Memo was the most prominent among the rescinded memos. By rescinding this guidance, DOJ removed the special con-



siderations given to marijuana law enforcement, and stated that decisions about whether or not to pursue enforcement of federal marijuana laws will be governed by the existing "well-established principles that govern all federal prosecutions." These preexisting principles require federal prosecutors, in deciding which cases to pursue, to consider many factors, "including federal law enforcement priorities set by the Attorney General, the seriousness of the crime, the deterrent effect of criminal prosecution, and the cumulative impact of particular crimes on the community." By reverting to the default prosecutorial guidance, all U.S. attorneys are effectively left free to exercise their own discretion and priorities over state-licensed marijuana businesses within their jurisdictions.

Immediate Impact: Greater discretion for U.S. attorneys

The Cole Memo provided a measure of assurance that the federal government would not take action against those acting in compliance with valid state marijuana laws, provided guidance to states on important factors to include as they created regulatory frameworks, and was crucial to establishing the commercial marijuana industry that exists today. The attorney general's decision to rescind the Cole Memo is therefore a significant change and has caused much confusion and concern in the states that currently allow marijuana to be bought and sold for adult recreational use (Alaska, California, Colorado, Nevada, Oregon and Washington), the states scheduled to allow such activity later this year (Maine and Massachusetts), and the nearly two dozen other states that have legalized use and possession of marijuana for medical purposes. However, even with the Cole Memo in place, the legal status of marijuana in all of these states was still muddled, as the tension between state legalization and federal illegality hung over all business and regulatory decisions.

The immediate impact of the Sessions Memo is that it removes the consistent, nationwide approach to federal marijuana enforcement that had been in place since August 2013. Instead, as described above, each U.S. attorney can now determine how to most effectively use their office's resources with respect to the marijuana industry. There are 93 U.S. attorneys in the country, one in each federal district. Thus, though far-fetched, there is the possibility of potentially 93 dif-

ferent federal marijuana enforcement policies throughout the nation.

Following the decision to rescind the Cole Memo, the Anchorage Daily News and the Alaska Journal of Commerce reported that Bryan Schroder, the U.S. attorney for Alaska, issued a written statement in which he wrote that: "The U.S. Attorney's Office for the District of Alaska will continue to use the long-established principles of federal prosecution to determine what cases to charge." The statement did not elaborate on what or how "long-established principles" would be applied in the context of Alaska's marijuana industry. It went on to broadly explain that one of those principles is following federal law enforcement priorities, particularly with respect to violent crime and drug trafficking:

One of the key principles is to follow federal law enforcement priorities, both at the national and local levels. The highest priorities of the U.S. Attorney's Office in Alaska are consistent with those of the Justice Department nationally: combating violent crime, including as it stems from the scourge of drug trafficking. Consistent with those priorities, the U.S. Attorney's Office released an Anti-Violent Crime Strategy in October of the past year. We will continue to focus on cases that meet those priorities.

What these statements actually mean, in practical terms, remains to be seen. Schroder's statement is vague, especially when compared to the statement issued by the U.S. Attorney for Colorado, who announced that his office would continue the status quo:

Today the Attorney General rescinded the Cole Memo on marijuana prosecutions, and directed that federal marijuana prosecution decisions be governed by the same principles that have long governed all of our prosecution decisions. The United States Attorney's Office in Colorado has already been guided by these principles in marijuana prosecutions — focusing in particular on identifying and prosecuting those who create the greatest safety threats to our communities around the state. We will, consistent with the At-

The Cole Memo was the most prominent among the rescinded memos.

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Continued on page 11

Marijuana legalization: Can you bank on it?

Continued from page 10

torney General's latest guidance, continue to take this approach in all of our work with our law enforcement partners throughout Colorado.

Other U.S. Attorneys have issued similar statements which appear to suggest that the Cole Memo policies will remain in place as guiding principles, even if the official Cole Memo itself is no longer a touchstone.

Likely Impact: Diminished access to banking services

Limited access to banking services has been an ongoing problem for the marijuana industry. According to industry reports, a number of banks across the country have been serving marijuana businesses. These banks rely on DOJ and Department of Treasury guidance issued in 2014 that were designed to simplify the reporting requirements for banks working with state-licensed marijuana businesses. These policies eased their concerns and provided them with a roadmap for handling marijuana clients.

But the DOJ Guidance Regarding Marijuana Related Financial Crimes was specifically rescinded by the Sessions Memo, and the DOT Financial Crimes Enforcement Network ("FinCEN") Guidance on Bank Secrecy Act Expectations Regarding Marijuana-Related Businesses relied heavily on the now-rescinded Cole Memo. Under these circumstances it is questionable if that FinCEN guidance will remain in place. It is therefore likely that some banks will now retreat from servicing marijuana clients and others may abandon planned pilot programs designed for this industry.

If DOT withdraws the FinCEN guidance, it could make banking even more elusive, and could cause a ripple effect in other areas, such as a government's ability to track tax payments and ensure that cash from marijuana sales are not used for other illicit purposes.

Possible Impact: Congressional Action?

The Sessions Memo triggered an immediate bi-partisan backlash from state and federal lawmakers. A number of senators, representatives and state governors have spoken out against the change, including all three members of Alaska's congressional delegation. Alaska Rep. Don Young was particularly forceful, calling the Sessions Memo "a direct violation of states' rights."

Though a number of bills aimed at bridging the gap between state and federal marijuana laws have been introduced recently, the United States Congress has not taken much formal action on any of them. But the decision to rescind the Cole Memo could spur Congress to act. A congressional response could take several forms. First, Congress could prohibit DOJ from spending any

money to prosecute those who comply with state recreational marijuana laws. There is precedent for such a move as Congress has done this with respect to medical marijuana for the past several years through the Rohrbacher-Blumenauer (formerly Rohrbacher-Farr) Amendment. Or Congress could reschedule marijuana or repeal the federal ban and leave the question of legalization completely up to the states.

Outlook for marijuana businesses

The attorney general's decision to rescind the Cole Memo is certainly cause for concern for marijuana businesses. In the immediate future, this will likely make everything marijuana businesses seek to do more difficult. For example, access to property to house facilities may be more difficult to procure, ancillary businesses may be hesitant to provide their services, and local governments may enact stricter regulatory protocols or opt out of allowing marijuana establishments in their communities. However, it is not clear that there will be any immediate changes from the way federal marijuana laws are cur-

rently enforced in Alaska, and in the long term, the decision to rescind the Cole Memo may spur congressional action that would benefit the marijuana industry.

Certainly, the risk of criminal prosecution did not decrease with the rescission of the Cole Memo. However, there is no indication as to whether, or by how much, the risk of federal criminal prosecution has increased. At this point, the worst case scenario for a licensed marijuana business would be that a U.S. attorney takes some action against such a business, which could be either a criminal prosecution or asset forfeiture.

Most analysts do not think either one of those scenarios is very likely. This is due to a mix of practical, political and public relations factors. Decisions to prosecute marijuana businesses, users, or ancillary service providers will be impacted by numerous logistical considerations. For instance, most U.S. attorneys do not have the resources to wage an effective campaign against the marijuana industry. In Alaska there are more than 150 licensed marijuana businesses, and dozens of ancillary businesses and landlords spread over a large geographic region. Commencing legal action against all of those entities would be a daunting task and would butt up against public opposition which has historically favored marijuana legalization in this state.

Outlook for marijuana regulators

The decision to rescind the Cole Memo did not add any clarity to the role of state and local regulators with respect to the marijuana industry. As explained above, rescinding the memo removed the consistent nationwide federal enforcement priorities with respect to the mari-

juana industry and instead put enforcement discretion more squarely in the hands of individual U.S. attorneys.

While this ultimately may not result in any changes to federal marijuana enforcement in Alaska, there are a few important considerations. First, the Cole Memo's delineation of specific federal enforcement priorities provided some guideposts that state and local regulators could use to develop their own regulatory programs. Though the Cole Memo was rescinded, that does not mean that those priority areas were misplaced or inappropriate. Absent further guidance from the U.S. Attorney, it remains good practice to continue to regulate the marijuana industry closely and in accord with the specific Cole Memo priorities in mind:

- Preventing the distribution of marijuana to minors;
- Preventing revenue from the sale of marijuana from going to criminal enterprises, gangs and cartels;
- Preventing the diversion of marijuana from states where it is legal under state law in some form to other states;
- Preventing state-authorized marijuana activity from being used as a cover or pretext for the trafficking of illegal drugs or other illegal activity;
- Preventing violence and the use of firearms in the cultivation and distribution of marijuana;
- Preventing drugged driving and the exacerbation of other adverse public health consequences associated with marijuana use;
- Preventing the growing of marijuana on public lands and the attendant public safety and environmental dangers posed by marijuana production on public lands; and
- Preventing marijuana possession or use on federal property.

To further ensure that local regulatory priorities are in line with any changes at the federal or state level, it is important for regulators to be aware of the decisions of the local U.S. attorney, as well as those of the state government, with respect to marijuana enforcement. As explained above, at this time, there is limited information regarding the likelihood that the U.S. attorney for the District of Alaska will shift course and institute a crackdown on marijuana businesses operating in accordance with state law. As for the State of Alaska, state officials, including Gov. Bill Walker and Attorney General Lindemuth, have issued statements expressing their plans to continue to uphold and implement state law. State legislators have also announced their support for the state's right to regulate marijuana absent additional federal intervention.

Conclusion

The January 2018 Sessions Memo formally rescinded the Cole Memo and other Obama-era marijuana enforcement policies employed by the Department of Justice. But the Sessions Memo itself was short and lacked specifics. It did not include a directive ordering U.S. attorneys to

begin prosecuting marijuana businesses. Nor did it require any specific changes in enforcement policy. On its face, the memo was quite simple. It basically said that having a separate policy for marijuana law enforcement is redundant because there already were guiding principles of enforcement in the U.S. Attorney Manual, which directs how prosecutors should prioritize their cases and marshal their resources. But looking deeper, it is clear that under the Cole Memo, there was greater pressure on U.S. attorneys to comply with the Memo's policies. So, even though U.S. attorneys technically had broad prosecutorial discretion under the Cole Memo, and they will continue to have the same level of discretion now that it has been rescinded, the consequences for exercising that discretion are different. As one authority on marijuana law enforcement put it: "With no guidance, it basically takes the dog off the leash." Whether those proverbial dogs will bite, or will maintain the status quo, remains to be seen.

For now, the gap between state and federal marijuana laws that existed before the Cole Memo was rescinded still exists. Even in the Cole Memo era, the federal government still had the legal authority to crack down on state-authorized marijuana businesses. However, that risk was tempered by the specific parameters set out in the Memo. In a post-Cole Memo world, that risk has increased, but it is not yet clear by how much. At this time the prevailing sentiment is that there does not seem to be a strong push to prosecute state-legal marijuana industries out of existence. The initial statements issued by the U.S. attorney offices most affected by the Sessions Memo do not indicate that any crackdown is imminent. Additionally, state and federal officials in states that have recreational and medical marijuana markets have spoken out against the decision to rescind the Cole Memo and have encouraged DOJ to reconsider its decision. Legislators are also discussing ameliorative measures that may be implemented by Congress to forestall any changes to federal marijuana enforcement.

Jason Brandeis is an associate professor of Justice at the University of Alaska Anchorage and is of counsel at Birch Horton Bittner & Cherot, where he advises clients on marijuana law and policy matters.



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Attending the installation ceremony from left are: Magistrate Judge Suzanne Cole, Judge Marjorie Allard, Chief Justice Craig Stowers, Judge Kari McCrea, Judge Pamela Washington, and Judge William Morse

Judge joins Anchorage District Court

Judge Kari L. McCrea was appointed to the Anchorage District Court by Gov. Bill Walker Sept. 17, 2017. She is the mother of Kaci Eileen McCrea, a graduate of Mt. Edgumbe High School and currently in her fourth year at the University of Minnesota.

Judge McCrea was born and raised in Minnesota. She received a B.A. from the University of Minnesota in 1998 and a J.D. from Mitchell Hamline School of Law in 2001. Thereafter, she clerked for Federal Magistrate Judge John M. Mason in U.S. District Court, District of Minnesota, before accepting a position as a trial attorney with the Minnesota State Board of Public Defense.

In 2006, she moved to Bethel to accept a position with the Alaska Public Defender Agency. She lived in Bethel for nine years; working as a trial lawyer and eventually a supervising attorney with the Alaska Public Defender Agency. In 2015, Judge McCrea moved to Anchorage to serve as a magistrate judge and standing master with the Alaska Court System. She is a member of the Alaska Superior Court's Fairness Diversity and Equality Committee and chair of the Cultural Competency Committee.

My Five



This edition of My Five is brought to you by three hard working members of the Law Related Education Committee. Ryan Fortson and Adolf Zeman are founding volunteers for the Youth Law Guide; Bryan Schroeder is the newly appointed U.S. Attorney for Alaska.

Ryan Fortson

"Map Song" — Super Saturated Sugar Strings (played live at his wedding by SSSS!)

"Serial Killer" — Lana Del Rey

"Georgia On My Mind" — Willie Nelson

"Hallelujah" — Leonard Cohen

"Enjoy the Silence" — Depeche Mode

"Believer" — Imagine Dragons (bonus song)

Adolf Zeman

"Paul Revere" — Beastie Boys

"Beautiful People" — Rusted Root

"Suspicious Minds" — Elvis Presley

"Ophelia" — Lumineers

"Brandy (You're a Fine Girl)" — Looking Glass (learned and played live at his NOLA wedding band)



Alaska US Attorney Bryan Schroeder sworn into office on March 1, 2018 by Chief Judge Timothy Burgess at the Alaska Native Heritage Center.

Bryan Schroeder

"Hejira" — Joni Mitchell. I'm a big Joni fan, and this song best captures one of her most central themes, the dichotomy of grieving a lost romance, while looking optimistically toward the next one.

"Introduction" — Chicago. My vote for greatest rock album of all time is "Chicago Transit Authority," Chicago's first album. This is the first cut, giving jazz fans a reason to listen to rock and roll.

"Feeling Good Again" — Robert Earl Keen. There are plenty of songs about being up, and even more about being down. This is the only song I know about someone who was clearly down, but now on their way back up, a unique angle. Also, I wanted to include a song from one of the long line of Texas troubadours, *hear also*, Lyle Lovett, Nanci Griffith, Guy Clark, Jimmy Dale Gilmour, Townes Van Zandt, and John Hyatt (honorary).

"Down to the Nightclub/You're Still a Young Man/What is Hip" — Tower of Power. A little bit of Oakland from the "Live and In Living Color" album. I know I'm cheating a bit with three songs, but this is the best back to back set of live songs I've ever heard. I never listen to just one.

"Fly Me to the Moon" — Frank Sinatra. Sinatra at the Sands album. I'm a Las Vegas kid, and grew up in the Rat Pack era. For all his many accolades, Sinatra doesn't get enough credit for being a great jazz singer. It really comes out on this album because the great Count Basie Orchestra pushes him. You'll never hear a band swing any harder.

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FEDERAL BAR ASSOCIATION UPDATE

Association meetings offer information on a variety of subjects

By Darrel J. Gardner

The Alaska Chapter of the Federal Bar Association (FBA) is now running smoothly under the leadership of chapter President Andrea Hattan, who started her term Oct. 1, 2017. We have already had three lunchtime meetings, including a “primer” on Section 1983 cases presented by District Judge Sharon L. Gleason in September. Gleason’s program was designed as an introduction for attorneys interested in participating

the reality of a new courthouse is still many years away, the process has nevertheless started. The current courthouse, built within a general federal building, has numerous issues, including no private access for judges entering the magistrate courtrooms, and no secure passage for in-custody defendants, who now walk through the district judges’ private hallway



Darrel J. Gardner

the free holiday social to be held at Williwaw on the evening of Dec. 14. The event is co-hosted by the Anchorage Bar Association, and non-members may attend for \$20.

Other federal court news includes the installation of former Assistant U.S. Attorney Yvonne Lamoureux as Alaska’s

newest Superior Court judge, with chambers in Anchorage. Judge Lamoureux has practiced law for 14 years, and graduated from the University of Virginia’s School of Law in 2003. She clerked for U.S. District Court Judge Christopher F. Droney in Connecticut for two years, and then for Alaska Superior Court Judge Morgan Christen from 2004-2006. She worked in private practice at Stoel Rives LLP before being appointed to her current position of assistant U.S. attorney for Alaska.

Following the change in administration earlier this year, former U.S. Attorney Karen Loeffler has been officially replaced by Bryan Schroder, who had been the acting U.S. attorney since Loeffler’s discharge. On Nov. 21, 2017, Schroder took the oath of office from Chief U.S. District Judge Timothy M. Burgess. Schroder was nominated by President Donald Trump on July 21, 2017, and confirmed by the U.S. Senate on Nov. 9, 2017. Prior to becoming U.S. attorney, Schroder

served as the first assistant U.S. attorney and chief of the Criminal Division. He has served in the U.S. Attorney’s Office for more than 12 years, prosecuting a variety of cases including violent crimes, drug distribution, gun crimes, fraud, tax evasion, environmental crimes, and fisheries and wildlife offenses. He is a retired captain in the U.S. Coast

Our third meeting, “Law Firm Cybersecurity: Protecting Your Data,” was held in early December and featured FBI Supervisory Special Agent William “Bill” Walton, a cyber security and counterintelligence expert.

Guard, having served for 24 years. He graduated from the U.S. Coast Guard Academy in 1981 and the University of Washington School of Law in 1991.

For more information, or to join the Federal Bar Association, please contact Andrea Hattan (andrea.w.hattan@usdoj.gov) or visit the Alaska Chapter website at www.fedbar.org; like us on Facebook at “Federal Bar Association – Alaska Chapter;” and follow us on Twitter “@bar_fed.”

Darrel Gardner, assistant federal public defender, is a past-president of the Alaska Chapter of the FBA, and current national vice president of the FBA for the Ninth Circuit.



From left are: Judge Sharon L. Gleason, FBA President Andrea Hattan, Chief Judge Tim Burgess

in the court’s *pro bono* program, to provide limited legal representation to *pro se* litigants pursuing civil rights litigation involving prisoner treatment and excessive force issues. If you are interested in federal *pro bono* opportunities, a one-day video training program is available on DVD from the federal court and the Alaska Chapter of the FBA. Please contact Catherine Rogers at the court: Catherine_Rogers@akd.uscourts.gov.

In October, Chief Judge Tim Burgess presented a “state of the court” briefing. Burgess reported that Alaska has received one of the highest priority ratings for a new federal courthouse by the Government Services Administration. Although

when brought to court by the U.S. Marshals. The current setup also necessitates that members of the public pass through two different security checkpoints in order to get to the courtrooms. A dedicated federal courthouse would much more efficiently meet the needs of judges, attorneys, litigants and the public.

Our third meeting, “Law Firm Cybersecurity: Protecting Your Data,” was held in early December and featured FBI Supervisory Special Agent William “Bill” Walton, a cyber security and counterintelligence expert. Alaska-FBA noontime meetings include lunch and are free to FBA members; non-members may attend for \$15, payable at the door. Members are also invited to

Board of Governors solicits new-lawyer liaison

The Alaska Bar is now accepting applications for the new-lawyer liaison position. All eligible new lawyers are welcome to apply.

The new-lawyer liaison is appointed by the Board of Governors and sits on the Board as a non-voting member. The position is open to attorneys who are within their first five years of practice when they start on the Board. Terms are two years. Board members who live outside of Anchorage are reimbursed for travel to meetings.

The Board of Governors meets about four times a year. The Board deliberates on issues including admissions; dues; the bar’s budget; CLEs and *pro bono*; sections;

bar rules and rules of professional conduct; Lawyer’s Fund for Client Protection claims; and attorney discipline proceedings. Past meeting agendas and action items are available on the Bar’s website www.alaskabar.org under For Lawyers/ Board of Governors, and they can give a feel for the content of the board meetings.

The Board will make the appointment at its meeting on May 7 & 8, 2018. Interested applicants should send a resume and a letter of interest by April 13, 2018 to the Alaska Bar’s executive director Deborah O’Regan at oregan@alaskabar.org.

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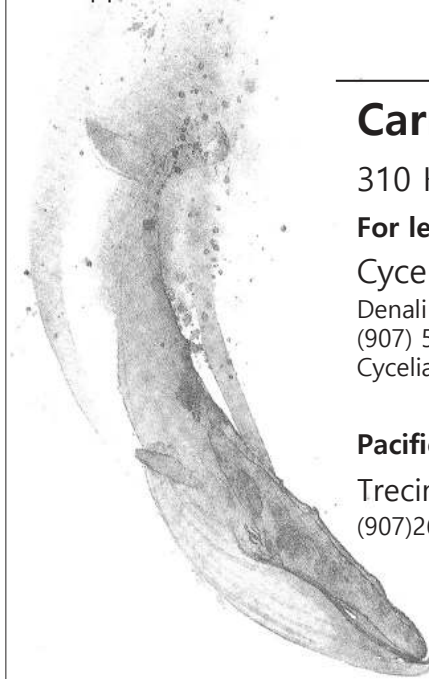
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2017 Tax Act necessitates notice to clients

By Steven T. O'Hara

The recent 2017 Tax Act requires us to defer discussion of other topics and consider giving notice to clients about the act. Below is a letter I sent to clients. Consider it a starting point for your own letter.

Dear Client:

This is a reminder to sit down with your advisors and determine how the 2017 Tax Act affects you and your family. The 2017 Tax Act fundamentally changes significant assumptions on which you may have made decisions.

Your documents — including any Will or trust you have made

— may need updating in light of the 2017 Tax Act. It may make sense for you to consider making significant gifts now or in the near future, including to an Alaska Irrevocable Trust of which you are a beneficiary. The incentive for making significant gifts is scheduled to sunset Dec. 31, 2025; indeed, the law could change sooner with a change in Congress. And tax apportionment — the provisions in a Will that state who pays what tax — may need updating.



"Your documents — including any Will or trust you have made — may need updating in light of the 2017 Tax Act."

Tax apportionment may be affected by significant gifts.

It may make sense for you and your family to consider step-up-in-tax-basis opportunities, which may include amending or reforming a trust or closing down a family limited partnership or family limited liability company.

You may decide to restructure your assets to capture the new 20 per cent deduction from taxable income. Remarkably, the deduction is equal to 20 per cent of certain income from partnerships, S corporations, and sole proprietorships. And you may take a hard look at C corporations and the new 21 per cent flat corporate federal income tax rate.

You or a family member may decide to pay off a home equity loan. A family member may decide to accelerate or slow down negotiation on alimony. Charitable giving may be bunched into one year rather than over several years. The list of possible areas in which the 2017 Tax Act may affect you and your family goes on and on.

Your particular facts and circumstances will determine what

affirmative planning is worth considering for you and your family.

We recommend you schedule appointments as soon as possible to sit down with your team of advisors, including your lawyers, your accountants, your investment advisors and your insurance professionals.

This letter is general in na-

The list of possible areas in which the 2017 Tax Act may affect you and your family goes on and on.

ture because the extent to which the 2017 Tax Act affects you is based on your particular facts and circumstances, which would need to be analyzed before any advice could be provided.

This letter also confirms we will not, on our own initiative, review any document we have prepared for you or any family member for any change of law or fact that might defeat intentions. We will undertake a review only upon request, after you update us with facts and circumstances.

In private practice in Anchorage, Steven T. O'Hara has written a column for every issue of The Alaska Bar Rag since August 1989.



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ECLECTIC BLUES

Taxing calories could help reduce state's budget deficit

By Dan Branch

Thanks to our Legislature, Alaska is finally number one in the nation. No, we aren't tops in lottery winners, Elvis impersonators or even bearded men. Our little state has the highest governmental budget deficit of any in the union. Alaska's \$2.7 billion (that's "billion" with a "b") shortfall is higher than California, Kansas or any other of the sun-sodden-states sweltering beneath the 49th parallel. If the Legislature could have balanced this year's budget, the money saved would have been enough to purchase the Golden State Warriors or two or three of the cheaper NBA teams.

Fellow Alaskans, after briefly glorying in this fiscal achievement, you might question whether it wouldn't be better for our state to lead the nation in a more positive category like the highest per capita consumption of ice cream during the winter months.

The shoebox called the Constitutional Budget Reserve, once believed by greatlanders to be as self-replenishing as Elisha's jars of oil and flour, is almost empty.

The shoebox called the Constitutional Budget Reserve, once believed by greatlanders to be as self-replenishing as Elisha's jars of oil and flour, is almost empty. If Steinbeck's Joads lived in Alaska, they would be loading granny on top of the Model T and heading to a place that isn't about to go bankrupt.

As long as silver salmon can still be caught in the North Pass and Bullwinkle's sells pizza, I want to stay an Alaskan. But rather than self-funding co-operative associations for snow plowing, police protection, and the other state services that we aren't now paying for, I'd like to propose a money-raising plan to dig us out of our hole. If you are also worried about the state running out of money, join me in developing strategies to stanch the bleeding.

Let's ignore the obvious fixes that work so well in the Lower 48 like income tax or a statewide sales tax. Our Legislature refuses to dole out doses of such political castor oil. In the great socialist state of Alaska, where we consider it our right to receive state services without paying for them and see yearly cash payouts as each resident's right, I am pessimistic that the Legislature will tap the earnings of the Permanent Fund Dividend program. We need some new ideas.

Sin taxes have gotten some traction here in the past. The prices of cigarettes, booze and marijuana have all been inflated by state taxes. But in order to increase sin tax revenues, the Legislature will have to tax more sins, like lust. That would mean taking a page from the great State of Nevada and legalizing prostitution, which would provide another way of milking the one million plus cruise ship tourists that make our summers so interesting. But I can't get behind brothels even if legalizing them might lessen

the need to raid the Permanent Fund. We can't legalize the exploitation of the men and woman who would be servicing tourists in such a personal way.

Gluttony, another of the seven deadly sins is a better target for the taxman. Taxing overeating might also offset recent losses in revenues from tobacco taxes. According to a survey reported in the Feb. 8, 2018, edition of the Anchorage Daily News, gluttony is up and cigarette use is down in the Great Land. The survey reports that the percentage of Alaska adult smokers declined from 24 to 20 percent since 2007. This still places Alaska ahead of the nation. Outside of our state only 17 percent of adults still smoke.

Binge drinking in Alaska is also down, but only from 19.5 to 18.2 percent. Nationwide only 16.9 percent of adults binge drink so we are



"Gluttony, another of the seven deadly sins is a better target for the taxman."

still ahead in this category. Since each binge by a man results in tax being paid on at least five drinks, four for women, the remaining bingers' contribution will still be significant.

While booze and cig use are down, obesity is on the rise, making it a good potential source for much needed tax revenues. The number of Alaskans with obese-level body-mass-indexes is now at 31.1 percent. It shouldn't be too hard to fashion a tax that targets unhealthy overeating. Fast food restaurants already provide calorie counts for each item on their menu. All the Legislature has to do is target foods that most contribute to obesity.

When considering a gluttony bill, say H.B. 1696, a bill to raise revenues by making it more expensive to buy gelato, high fructose fizzy drinks, greasy hamburgers and oth-

er fast foods, and pizza, and having an effective date, committee members could take testimony from dietitians, physicians, and the authors of those "eat healthy" cookbooks that many buy but few use. If they can withstand pressure from the lobbyists (pizza, fast food, ice cream, soda pop, candy, sugar and purveyors of

Taxing overeating might also offset recent losses in revenues from tobacco taxes.

school lunch programs), committee members might fatten the state coffers while reducing public health costs and our obesity levels. It would be still be more effective to pass a statewide broad-based tax like those adopted by non-socialist states in the Lower 48.

Dan Branch, a member of the Alaska Bar Association since 1977, lives in Juneau. He has written a column for the Bar Rag since 1987. He can be reached at avesta@ak.net

2018 NINTH CIRCUIT CIVICS CONTEST

The 14th Amendment - 150 Years after Ratification -

What Does Equal Protection Mean to Students?

For more information visit:
<http://www.ca9.uscourts.gov/civicscontest>



An essay and video contest for high school students in the western United States and Pacific Islands. Entries accepted beginning February 1, 2018. Deadline for entries is **April 1, 2018**.

Contest rules, entry instructions and more information will be available January 2, 2018, at

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1st place: \$2,000* 2nd place: \$1,000 3rd place: \$500

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In Memoriam

Judge Roy Madsen



Judge Roy Madsen

Former Superior Court Judge Roy Madsen died Jan. 26 at the age of 94. Judge Madsen was the first Alaska Native to become a Superior Court Judge in Alaska and served from 1975-1990.

“Judge Madsen led a life of service, leadership, and honor, and Alaska is a better state because of his service,” Gov. Bill Walker said as he ordered flags lowered to half staff Jan. 30. “Lt. Governor Mallott, Donna, Toni, and I extend our sincerest condolences to his family and community, and join them in mourning the loss of a great Alaskan.”

Judge Madsen was born in Kanatak on the Alaska Peninsula in 1923, and his family moved to Kodiak when he was four. He received degrees from Oregon State College and Lewis and Clark University. Judge Madsen held many jobs before joining the bench, including working in his father’s hunting camp, serving in the Navy on a patrol torpedo boat in World War II, as a commercial fisherman in Bristol Bay, and working in the district attorney’s office in Clackamas County. He also served on the Board of Regents at the University of Alaska, and helped establish a community college in Kodiak where he served as the first president and taught business law. Judge Madsen also worked on the passage of the Alaska Native Claims Settlement Act in 1971. He is survived by his Linda Madsen, his children and many grandchildren.

Standing committee established for Bar scholarship program

The Board of Governors voted to establish a scholarship program, which would award law school scholarships to first- or second-year law students who demonstrate a commitment to return to Alaska.

Bar volunteers will solicit funds from law firms, local bar associations, corporations and other individuals. Contributions will be made via the Alaska Bar Foundation, a 501(c)(3) organization.

The amount and number of scholarships will be determined by the amount of money in the scholarship fund.

To implement this program, the board has recommended the establishment of a new standing committee under the Bar Association bylaws.

Article VIII. Section 1(a). Standing Committees.

(a)(10) the Scholarship committee, a committee responsible for implementation of the scholarship program. At least one member of the committee will be a member of the Board of Governors.

Submit comments to Deborah O’Regan at oregan@alaskabar.org by April 30.



Friends and colleagues gather in Ketchikan to toast former Ketchikan Assistant District Attorney and Juneau District Attorney James Scott who died in November 2017. (Photograph by Hall Anderson.)

James Terrell Scott (1965 - 2017)



James T. Scott

James Scott, Juneau district attorney until recently, died Nov.11, 2017.

Scott was born at Decatur, Il, Sept 21, 1965. He attended public schools at Highland Illinois where he excelled at literature, history and good humor. He competed in high school football, cross-country and track and field, and served as class president of the Highland High School Class of 1983. He received a bachelor’s degree with honors in Political Science from Illinois State University and his law degree from Saint Louis University School of Law, where he served as an editor of the Law Review and graduated at the top of his class.

Prior to his appointment as Juneau district attorney Scott served for 14 years as an assistant district attorney in Ketchikan; prior to that in private practice in Bellville, Il, with Donovan Rose Nester P.C.; and as a deputy prosecuting attorney for St. Clair County Illinois.

Scott is preceded in death by his older brother Max and by his mother Mary Helen Frederick Scott; James is survived by his beloved wife Shari Moenster Scott and daughter Emma Mary Scott.; two brothers, his father Leslie Maxwell Scott of Forrest, Park, Il; and countless friends made everywhere he went.

A memorial account at Wells Fargo banks has been established. Anyone can make a donation at any Wells Fargo branch. If you choose to make a donation, tell a clerk you would like to make a donation to the “James Scott Memorial Account,” or provide the teller with account #7957526242.

No memorial services were scheduled.

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Bar People

Outlook Law LLC introduces new associate

Outlook Law, LLC, is pleased to announce the addition of **Ashley Mahoney**. Prior to joining Outlook Law Ashley had a distinguished clerkship with the residing Superior Court judge for the Fourth Judicial District in Alaska. She is an award-winning legal writer from Seattle University School of Law where she studied, *inter alia*, government contracting and SBA programs. As a law student, Mahoney assisted in writing the winning brief in front of the D.C. Circuit Court of Appeals, *Rothe Development, Inc. v. Department of Defense, U.S. Small Business Association*, which the U.S. Supreme Court recently denied a Writ of Certiorari without a justice dissenting. She enjoys hunting and fishing with her active duty military husband and they have made Alaska their permanent home.



Mahoney

Delaney Wiles names shareholder

The law firm of **Delaney Wiles Inc.** is pleased to announce the promotion of **Whitney Traeger** to shareholder. Traeger joined the firm in 2012 and enjoys a varied practice, from counseling businesses on day-to-day legal matters to specializing in litigation at both the trial court and appellate levels. Prior to joining the firm, Traeger was law clerk to the Honorable Andrew Guidi at the Anchorage Superior Court. She earned her B.A. from the University of Idaho and her J.D. from California Western School of Law in 2011.



Traeger

Three fill positions at Landye Bennett Blumstein

Jennifer M. Coughlin joined **Landye Bennett Blumstein** as a partner on July 1, 2017. Coughlin focuses her practice on civil litigation, appellate law, administrative law and employment. She received her Bachelor of Arts from the University of California, Riverside and her law degree from Boalt Hall, University of California at Berkeley. Coughlin is a member of the Alaska Bar Association, Washington Bar Association, United States District Court of Appeals, Ninth Circuit, and the United States District Courts for Alaska and Western Washington. She has been listed in "Best Lawyers" for Alaska since 2009, and "Super Lawyers" since 2007.



Coughlin

Michelle L. Boutin joined Landye Bennett Blumstein on Dec. 4, 2017. focuses her practice on bankruptcy, collections and creditor's rights, civil litigation, and construction law. She received a Bachelor of Science (with honors) from the University of Alaska, Fairbanks, and a Juris Doctor from Hamline University School of Law. Boutin is a member of the Alaska Bar Association (current chair of the Bankruptcy Section), the Anchorage Bar Association (past officer and president, and current member of the Real Estate Section), and past attorney representative to the Ninth Circuit Judicial Conference. She is admitted to practice to the Alaska State Bar, Federal District Court, District of Alaska, and the Ninth Circuit Court of Appeals.



Boutin

Leslie R. Need became a partner with Landye Bennett Blumstein on Jan. 1, 2018. Need joined LBB as an associate attorney in 2013. She previously clerked for U.S. Magistrate Judge John D. Roberts and Alaska Superior Court Judge Vanessa White and worked at the Alaska Attorney General's Office in the Child Protection Section. Need focuses her practice on municipal, Alaska Native, environmental, and natural resources law. She represents business and individual clients in litigation, both plaintiff and defense. Need received her B.S. from Kansas State University and her Juris Doctor from the University of Tulsa College of Law. She is a member of the Alaska Bar Association, American Bar Association, and Anchorage Bar Association. Need serves on the planning committee for the Alaska Bar Association's Martin Luther King, Jr. Day of Service and previously served as the New Lawyer Liaison to the Alaska Bar Association Board of Governors.



Need

From LawyersWeekly.com...



One day in Contract Law class, the professor asked one of his better students, "Now if you were to give someone an orange, how would you go about it?"

The student replied, "Here's an orange."

The professor was livid. "No! No! Think like a lawyer!"

The student then recited, "Okay, I'd tell him, 'I hereby give and convey to you all and singular, my estate and interests, rights, claim, title, claim and advantages of and in, said orange, together with all its rind, juice, pulp, and

seeds, and all rights and advantages with full power to bite, cut, freeze and otherwise eat, the same, or give the same away with and without the pulp, juice, rind and seeds, anything herein before or hereinafter or in any deed, or deeds, instruments of whatever nature or kind whatsoever to the contrary in anywise notwithstanding..."

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ALASKA BAR ASSOCIATION ETHICS OPINION NO. 2018-1

E-mail Correspondence with Opposing Counsel While Sending a Copy to the Client ISSUE PRESENTED

Under what circumstances, if any, may a lawyer “cc” or “bcc” the lawyer’s client in e-mail correspondence with opposing counsel? What are the ethical responsibilities of opposing counsel in responding to an e-mail where the e-mail includes a “cc” to opposing counsel’s client?

SHORT ANSWER

A lawyer who copies a client on e-mail communications with opposing counsel risks waiver of attorney/client confidences. A lawyer who responds to an e-mail where opposing counsel has “cc’d” the opposing counsel’s client has a duty to inquire whether the client should be included in a reply. A lawyer may “bcc” the lawyer’s own client on electronic communications, however the better practice is to forward the communication to the client to avoid inadvertent responsive communications by the client to opposing counsel.

ANALYSIS

Several attorneys have inquired whether it is ethically permissible to “reply all” to e-mails that may include represented opposing parties in the “cc”. There are few

opinions from other jurisdictions addressing this issue.¹ The ethical rules implicated are Rule 1.6 (a) (duty to protect client confidences and secrets), Rule 4.2 (prohibiting communicating about the subject of representation with a person the lawyer knows to be represented by another lawyer), and Rule 4.4 (b) (receiving a document relating to the representation of the lawyer’s client that was inadvertently sent). This opinion will examine both the duties of the sending lawyer in choosing to “cc” or “bcc” the lawyer’s client and the duties of the receiving lawyer when choosing to “reply all”.

Duty to Protect Client Confidences & Prohibition on Communicating about the Subject of the Representation with a Person the Lawyer Knows to be Represented

Recognizing the obligation to protect a client’s secrets and confidences, it is not advisable for a lawyer to “cc” their client in a message to opposing counsel concerning the subject of the representation or any other matter that may give rise to a response that could reveal a client confidence or secret.

It should be obvious as well that a lawyer cannot “cc” opposing counsel’s client in a communication without the consent of the opposing lawyer. What is less obvious is any duty an opposing lawyer may have when receiving a communication where the sending lawyer has “cc’d” their

own client. North Carolina’s 2012 formal ethics opinion 7 provides a thorough analysis that we adopt here.

The North Carolina opinion notes that Rule 4.2 does not permit communication with the opposing represented party without consent. A lawyer who copies their client in an e-mail communication with opposing counsel is not, merely by copying the client, giving consent to the receiving lawyer. The easiest and most direct way to determine whether the receiving lawyer can ethically “reply all” is to ask the sending lawyer. The North Carolina opinion also recognizes that there may be circumstances where the sending lawyer has given implied consent to “reply all”. Factors to be considered in determining whether there is implied consent include:

- (1) how the communication is initiated;
- (2) the nature of the matter (transactional or adversarial);
- (3) the prior course of conduct of the lawyers and their clients; and
- (4) the extent to which the communication might interfere with the client-lawyer relationship.

Notwithstanding the above factors, by including the client’s e-mail in the “cc” of electronic communication, the lawyer is risking violating Rule 1.6 (a) and Rule 4.2 in the ongoing electronic communications or “conversation.” E-mail addresses often do not obviously indicate the identity of the person behind the address. A lawyer who “replies all” may therefore be unaware that the “cc” includes a represented party. So too, e-mails can often include a long list of “cc’d” recipients, once again making it difficult to discern if a represented party has been included in that list. Inadvertent communications with represented parties can easily occur even with reasonable care exercised by the recipient of the e-mail.

The rules only apply to the subject of the representation or other client confidences or secrets however. So it is likely not problematic to “cc” a client on electronic communications regarding scheduling or other purely administrative matters.²

The Committee recommends that lawyers establish early on in a relationship with another lawyer whether they may “reply all” in communications concerning a representation. We also recommend that lawyers not “cc”

their clients on electronic communications with opposing counsel, but instead, forward the communication to the client. The ease of “reply all” increases the risk of unauthorized communication with a party who has been “cc’d” on the electronic “conversation”. While all lawyers must be vigilant in following the ethics rules in e-mail correspondence, the primary responsibility lies with the lawyer who has chosen to “cc” the lawyer’s own client.

Dangers in “Bcc” to a Client

A separate question relates to the use of “bcc”. The New York State Bar has addressed whether a lawyer may “bcc” the lawyer’s own client in correspondence with opposing counsel (NYSB Ethics Opinion 1076). A client who receives an e-mail as a “bcc” may “reply all” and inadvertently communicate directly with opposing counsel. An unsophisticated client may not realize the effect that the communication may have on disclosing matters that otherwise would be confidential. A case cited by the New York opinion apparently found that blind copying a client gave rise to a foreseeable risk that the client would respond to all recipients. (*Charm v. Kohn*, 2010 WL 3816716 (Mass. Super. Sept. 30, 2010)).

Consequently, we recommend that attorneys not “cc” or “bcc” their clients in correspondence with opposing counsel relating to the matter of the representation or that may give rise to a response that could reveal client secrets or confidences. Care should be used if “cc” or “bcc” is used for scheduling or other administrative matters and when permission appears to have been given for ongoing communication. Prudent lawyers will agree to a protocol for “reply all” with opposing counsel.

Approved by Alaska Bar Association Ethics Committee on November 9, 2017.

Adopted by the Board of Governors on January 18, 2018.

Footnotes

¹North Carolina’s opinion directly addresses these issues and we agree with that opinion’s rationale and conclusions (see NC 2012 Formal Ethics Opinion 7). New York has addressed the issue of blind copying a client in e-mail in NYSB Ethics Opinion 1076.

² There may be some instances where disclosure of an e-mail address may, in itself, violate a court order or other confidentiality requirement (i.e., if there is a protective order or if the fact that the person is represented is confidential).



DO YOU KNOW SOMEONE WHO NEEDS HELP?

If you are aware of anyone within the Alaska legal community (lawyers, law office personnel, judges or courthouse employees) who suffers a sudden catastrophic loss due to an unexpected event, illness or injury, the Alaska Bar Association’s SOLACE Program can likely assist that person in some meaningful way.

Contact the Alaska Bar Association or one of the following coordinators when you learn of a tragedy occurring to someone in your local legal community:

Fairbanks: Aimee Oravec, aimee@akwater.com

Mat-Su: Greg Parvin, gparvin@gparvinlaw.com

Anchorage: Michael Walsh, walshlawak@gmail.com

Through working with you and close friends of the family, the coordinator will help determine what would be the most appropriate expression of support. We do not solicit cash, but can assist with contributions of clothing, transportation, medical community contacts and referrals, and other possible solutions through the contacts of the Alaska Bar Association and its membership.

ATTORNEY DISCIPLINE

Bar counsel admonishes Kenai attorney

Bar Counsel opened an investigation following a referral from the Fee Arbitration committee which identified concerns about Attorney X. Investigation revealed facts supporting a finding that Attorney X violated Alaska Rule of Professional Conduct 1.5 because he failed to have a written fee agreement and Alaska Rule of Professional Conduct 1.15 because he failed to send his client a bill timely at the end of the representation to show the fees earned and costs incurred throughout the representation.

To determine the appropriate sanction for the misconduct, Bar Counsel considered the breach of duty to Attorney X’s client, the harm that occurred, the lawyer’s mental state, and aggravating and mitigating factors. Bar Counsel recommended that Attorney X receive a written private admonition and agree to complete six hours of continuing legal education on the subjects of trust accounts and law office management to reduce the likelihood of future violations arising from poor office management practices.

An Area Division Member for the Third Judicial District reviewed the file and approved the issuance of a written private admonition from Bar Counsel for the misconduct. Attorney X accepted the admonition.

NEWS FROM THE BAR

Should there be a mechanism for reduced bar dues?

By Sharon Barr

At its January meeting, the Board of Governors discussed a proposal to have a reduced bar dues structure based either on years in practice (being a “new” lawyer), or type of practice and income (practicing public interest/public service law and having an income under a threshold amount). The proposal was made based on concerns that bar dues have a disparate impact on these groups. New lawyers often have substantial debt, and public interest/public service lawyers often make substantially less money than other attorneys.

Reducing bar dues based on either criteria, years in practice or type of practice and income, however, comes with administrative difficulties. For instance, many lawyers, although new members of the Alaska Bar, have been practicing for years in other states, or have their dues paid by the law firms that employ them. And it was difficult to determine a mechanism to automatically reduce dues based on income and type of practice.

One proposal was to expand Article III, Section 1 (e-g) of the Bar Association’s bylaws, which allows the Bar to waive payment of a member’s annual dues upon a sufficient showing of hardship. This bylaw

could be changed, for example, to allow the Bar to reduce bar dues based for lawyers who have been in practice for under a certain amount of time, and/or practice public interest/public service law, pay their own bar dues, and make less than a target amount. The decision whether to reduce bar dues would then be made on an individual basis.

It is unclear how much this would cost and whether it would lead to increased bar dues for other members. There was a suggestion that any increased cost could be balanced by increasing the bar dues of active members who are over 70 years of age (these members currently pay half of the total amount of active bar dues), or by withdrawing funds from a long-term capital reserve fund.

As expanding this bylaw could financially impact the membership, it was suggested that the board seek comments from the membership about this. The proposal, along with any comments received, would be discussed at the next Board of Governors meeting.

The board invites members to comment on this proposal. Please email comments to Deborah O’Regan, executive director at oregan@alaskabar.org.

Sharon Barr is a member of the Board of Governors and a P.D. in Anchorage.

Board of Governors action items January 18 and 19, 2018

- Voted to send to the Supreme Court proposed Bar Rule 36.1 which allows Bar Counsel to provide ethics guidance, and Bar Rule 5, which modifies the oath of attorney into “plain English.”
- Voted to recommend to the Supreme Court the admission of six reciprocity applicants, and nine applicants by UBE score transfer.
- Voted to approve Rule 43 (ALSC) waivers for Taylor Murphy and Rebecca Rogstad; Rule 43.1 (staff judge advocate) waivers for James Jordan IV and Graham Lanz; and the first Rule 43.4 military spouse waiver for Jessica Bjerke-Owens.
- Voted to approve the special testing accommodations requests of additional time for two applicants for the February 2018 bar exam.
- Voted to accept the status change request of a Bar member; and formed a committee (Bennett, Chupka & Sebold) to review the Board’s bylaws and policies on status changes.
- Voted to adopt the ethics opinion 2018-1, “E-mail correspondence with opposing counsel while sending a copy to the client.”
- Voted to adopt the proposed policies and forms for law student scholarships; and to publish a proposed addition to the bylaws, adding a scholarship committee for implementation of the program, to include one member of the board.
- Voted to approve the October 2017 board minutes as amended.
- Directed the Executive Director to advertise for the New Lawyer

- Liaison position, and request a personal statement and resume.
- Appointed Stone, Brown and Cox to the board awards subcommittee.
- Voted to appoint Geraldine Simon to the Alaska Judicial Council.
- Voted to reimburse the Alaska Bar Association from the Lawyers’ Fund for Client Protection for \$10,720.13 for costs of storage and destruction of files and a temporary employee to review the files.
- Directed the Executive Director and controller to have the president, president-elect and treasurer review their decision regarding the staff’s 401K plan.
- Voted to accept the stipulation for discipline for a suspension for two years and a day, with conditions for reinstatement.
- Reviewed an online “Find a Lawyer” service which would utilize the Bar’s roster, allowing Bar members to opt-in, and directed staff to get more information about costs and modifications.
- Discussed the concept of tiered dues; Barr will write a Bar Rag article stating that the board is discussing options, and asking for input from members.
- Heard a presentation from two graders and the Executive Director on the bar exam process.
- Voted to accept the Findings of Fact, Conclusions of Law and Recommendations of the Area Hearing Committee in the Reinstatement of Dawn Austin, and denied her petition for reinstatement.

Board awards nominations sought

The Alaska Bar Association Board of Governors is soliciting nominations for awards to be presented at the annual convention. Send your nomination letter to oregan@alaskabar.org. The deadline is March 23.

The **Professionalism Award** recognizes an attorney who exemplifies the attributes of the true professional, whose conduct is always consistent with the highest standards of practice, and who displays appropriate courtesy and respect for clients and fellow attorneys. The Professionalism award has traditionally been presented to an attorney in the judicial district where the convention is being held.

The **Layperson Service Award** honors a public committee or Board member for distinguished service to the membership of the Alaska Bar Association.

The **Robert K. Hickerson Public Service Award** recognizes lifetime achievement for outstanding dedication and service in the State of Alaska in the provision of pro bono legal services and/or legal services to low income and/or indigent persons.

The **Judge Nora Guinn Award** is presented to an individual Alaskan who has made an extraordinary or sustained effort to assist Alaska’s rural residents, especially its Native population, overcome language and cultural barriers to obtaining justice through the legal system. See the Bar website for the nomination form.



Nora Guinn



Robert K. Hickerson



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Book Review



Q responded enthusiastically to the offer to participate in the story.

‘Business and Commercial Litigation in Federal Courts’

Thomson Reuters has released *Business and Commercial Litigation in Federal Courts, Fourth Edition* in a joint venture with the American Bar Association Section of Litigation. Among the 296 principal authors of the 153 chapters in the Fourth Edition there are 27 judges and many of the best known commercial litigators in the United States.

By Gregory S. Fisher and Q

Has it been five years? The latest edition of *Business and Commercial Litigation in Federal Courts* is now published. Robert L. “Bob” Haig (who is the very soul of patience) remains the editor in chief. Bob recruited a distinguished list of judges and practitioners to tackle the fourth edition. I missed the cut again. But, hey, they called to see if I’d do a review. Will I? Read 14 volumes? Please. Hold my beer.

In my gathering dotage, I work from home a lot these days so our three-year old Parson Russell terrier “Q” agreed to help. Let’s get at it.

Me: This is a remarkably useful treatise that provides a soup-to-nuts practice guide with commentary, explanations, citations and checklists. It covers both substantive and procedural issues.

Q: Aryaphgrh (indiscriminate terrier vocalization . . . could signify assent).

Me: General and particular subjects are discussed, as are specific legal fields. For example, there are general chapters covering case investigations, discovery strategies, oral arguments, motion practice, case management, civility and ethical issues in commercial cases (to name just a few). Yes, I am reading the civility section.

Q: Arf! (he’s happy)

Me: There are also particular chapters addressing topics such as tax, court-awarded attorneys’ fees, mergers and acquisitions, e-commerce, collections, franchising, white collar crime, and others.

Q: Gowwroyah? (some hard to understand interrogative, might be Welsh?)

Me: The treatise additionally

includes chapters exploring specific fields such as SEC regulatory litigation, antitrust, employment discrimination, labor law, and the False Claims Act (and many more).

Q: Woahoo! (car just drove by on the street without permission)

Me: Each chapter is uniformly organized, with a discussion of claims, considerations for plaintiffs’ or defense counsel, jurisdictional issues, pretrial and trial procedure and practice aids (including checklists and sample pleadings).

Q: Yaph! (how ‘bout that snack now?)

Me: Citations? Sure, you betcha. Enough citations to satisfy any tech editor and hopefully the judge you are arguing before.

Q: Adarphhowrrowr (frustrated)

Me: You get a library of procedure, trial advocacy, substantive law and advice written by practicing attorneys and judges.

Q: Ap!

Me: Basically, it combines strategy and risk-planning. Like do you eat Aunt Lucy’s holiday fruitcake after it’s been on the shelf for a few weeks?

Q: Arbuowrrouth! (definitely looking at the fruitcake now).

Me: Pricey? Okay, yes. But it’s well worth the time you save, and they have affordable payment options.

Q: At! Atarf!

Me: For more information, call the publisher toll free at 1-800-344-5009, or check out the webpage: <http://legalsolutions.thomsonreuters.com/law-products/Treatises/Business-and-Commercial-Litigation-in-Federal-Courts-4th/p/104363759> Feel free to call me and drop by my office at 188 West Northern Lights if you’d like to thumb through the hard copy.

Q: Buy the damn thing already so I can take the old man for a run, okay? Honestly, you people . . .

Me: You . . . talk?

Q: (pause). Woof!

Gregory Fisher practices general and complex commercial litigation with an emphasis in appellate litigation, labor and employment law, business torts, trade secrets, restrictive covenants, and computer security litigation.



Samantha Slanders

Advice from the Heart

Dear Samantha,

I am a reasonably successful torts defense lawyer worried that his best spouse hunting days are almost behind him. My demanding caseload prevents me from utilizing the normal methods for finding someone to love. After a heavy day of drafting interrogatories, I don’t have the energy to drop in at the gym or show up at open contra dances. Even if I had the time or energy for Karaoke night at the Blue Fox, I freeze up each time I hold a microphone. Internet dating sites scare me. How can I find the one?

Sincerely,
Desperately seeking someone

Dear Desperate,

You sound like a retro guy. Why not try a retro approach? Take out a classified ad in your local newspaper. It should be safe enough if you use a nom d’amour and direct that all responses be sent to a drop box. Hire the Sam Spade Private Detective Agency to screen respondents. They can also have someone sit discreetly at a nearby table during your first meet for coffee in case your blind date turns out to be a psychopath. But what’s the chance of that? Be brave and persevere. You aren’t getting any younger.

Samantha

Dear Samantha,

Why do Alaska men look so scruffy? They aren’t turned away from social events even if they show up with bed hair, untrimmed beards and wrinkled shirts. Don’t they know that Nordstrom has a men’s section?

Sincerely,
Dismayed

Dear Dis,

Today’s young Alaskans are upholding a tradition that predates Statehood. Men have always outnumbered women in the great land, but then as now, while the odds are good for women, the goods are odd.

Samantha

Dear Samantha,

I just moved to Juneau and am trying to fit in. The men and women I work with are nice if a little standoffish. My problem might be clothing. When I wear my navy blue suit to court even the judge makes me feel overdressed. On casual Fridays, I wear a button down Hathaway shirt and pressed pants. Everyone else pads around in trainers, jeans and comfortable pullovers. They all walk to work wearing an odd sort of rubber boot. Any hometown fashion advice?

Sincerely,
Clueless in Juneau

Dear Clueless,

The rubber boots are the key here. They are called XTRA TUFFS. Everyone in Juneau owns one pair for summer and another for winter. Unknown to their wearers, these rubber boots contain a chemical that they absorb through their feet. After one walk on the wetlands dike trail the owner is hooked. The chemical also causes self-delusion, making the owner believe that the boots make him or her look as cool as a hipster in high tops.

Samantha

Dear Samantha,

I stock up at Trader Joe’s each time I visit my cousins in Possum Puff, Tennessee. My supply of gluten-free cookies is about to run out. Is there a TJ in the Anchorage area? If not, why not?

Sincerely,
Looking for a Source

Dear Looking,

You are just going to have to make do with Walmart, Target, Natural Pantry or one of the many fine grocery stores in the Anchorage bowl. The nearest Trader Joe’s store is in Bellingham Washington, a three-day ferry ride from Haines. I wish I could tell you why Possum Puff rates a Trader Joe’s while Anchorage and its surrounding environs do not. We must not have enough dependable fruit and nuts consumers.

Samantha



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ANDVSA recognizes pro bono stars

By Siraj Ahmed Sindhu

For young attorneys, building a network of colleagues can be instrumental in providing the support needed to get started on a career. For more established attorneys, solidifying one's existing professional network while continuing to branch out into new opportunities can keep things fresh and exciting. Connecting with others in the legal profession can be simple if you live and work in an urban area, but for the rest of the state, building those networks often takes more effort. Regardless of location, programs that offer attorneys opportunities to connect while building their skills and doing good work are immensely valuable. The Legal Program of the Alaska Network on Domestic Violence and Sexual Assault (ANDVSA) is this sort of nexus, where legal professionals of all ages, occupations and regions of Alaska coincide.

The ANDVSA Legal Program connects volunteer attorneys from around the state with low-income people in need of legal representation or assistance in civil law cases involving domestic violence or assault. Applicants are referred by ANDVSA's 24 statewide member programs and affiliates, which are generally shelters and community centers for women and children. Often, these applicants are seeking legal assistance with cases involving divorce, custody of children or protection orders against abusive partners. Christine Pate, director of the Legal Program, says, "Providing legal assistance is one of the most effective things we can do to ensure the safety and security of survivors, so the work these volunteers do is crucial."

Attorneys and legal professionals who volunteer with ANDVSA receive many opportunities for engaging with colleagues and building their network. Volunteers are invited to attend ANDVSA's annual CLE Conference for free. At this year's 20th anniversary CLE Conference, attorneys will learn from national experts about technology use and abuse in family law cases, with time to learn best practices from each other and share advice. Volunteers are also encouraged to connect with each other as mentors and mentees. Pate arranges for volunteer attorneys who are experienced in family law to assist those less familiar with the field. "Many of our longtime volunteers not only work passionately for clients, but also provide essential support to newer volunteers. We are grateful that experienced volunteers make sure that younger attorneys who decide to take on a case aren't left to manage on their own."

For attorneys who do not normally practice in the field of family law or handle cases involving violence and abuse, volunteering to take the cases of ANDVSA clients may seem difficult. However, ANDVSA provides many resources to attorneys who are interested in volunteering, including an extensive Family Law Manual, an online database of sample pleadings, and mentorship from more experienced volunteer attorneys. And for those who cannot handle cases but would still like to volunteer in some capacity, there is the opportunity to staff ANDVSA's bi-monthly Information and Referral Hotline, during which victims of domestic violence call in to ask questions and receive information about their possible next steps.

Pate estimates that on average, about half of the applicants who meet the criteria for receiving pro bono representation are not served because the volume of applicants outpaces the availability of volunteer attorneys. But some star attorneys set an example by regularly volunteering their time and energy to provide legal representation and assistance to those in need. Here are profiles of three attorneys who have recently been named the ANDVSA Volunteer Attorney of the Month.

Be on the lookout in future issues of the *Bar Rag* for more features on attorneys who are dedicated to pro bono work for victims of domestic violence and sexual assault. Remember — the next profile could be about you. If you are an attorney interested in volunteering with ANDVSA, please see www.andvsa.org/volunteer-now. You can also email Christine Pate, director of the ANDVSA Legal Program, at cpate@andvsa.org for more information.

Michael O'Brien, associate general counsel at the University of Alaska Fairbanks, has been volunteering since 2009 and has handled about 10 volunteer cases in that time. O'Brien's experience working with survivors of domestic violence began during his time as a public defender: he represented victims of abuse who had been wrongfully charged in disputed cases. As a volunteer, he has been a passionate supporter of those caught in cycles of violence.



Michael O'Brien

O'Brien finds pro bono work fulfilling because of the pivotal role he can play in his clients' lives. "Often, the people I am working with have never gotten a break and they feel like nobody has ever stood up for them.

When I step in and stick up for them, and it works in court, it can be a transformative experience for my clients. Their lives completely turn around." O'Brien adds that the experience of extricating children from detrimental circumstances is "especially rewarding, because children are key to breaking the cycle of violence."

To other attorneys thinking about volunteering in domestic violence cases, O'Brien says, "It's a mutually beneficial relationship. The work you put in is sometimes a lot, but it is still far smaller than the positive impact you can have, especially on children. The work is inherently rewarding for attorneys and has far-reaching positive impacts on the clients."

O'Brien lives in Fairbanks and serves on the local school board. He enjoys backcountry skiing, running and spending time with his family outdoors.

Kim Colbo, a partner at Hughes White Colbo Wilcox & Tervooren, LLC, was the December 2017 Volunteer Attorney of the Month. Since she began

volunteering in 2010, Colbo has handled about six ANDVSA cases. Though her first field of practice was insurance law, Colbo began practicing family law around 2010. She became increasingly familiar with the field of family law with support from the ANDVSA's resources, and began doing the pro bono work which, as she says, she had long wanted to do.

"When I started practicing family law, I developed the knowledge to take on pro bono domestic violence cases. It was a wonderful feeling, because I can really make a difference for people who need the help," she says. "It's fulfilling to work on behalf of my pro bono clients. They're incredibly grateful."

To attorneys who don't yet volunteer with the ANDVSA, Colbo says: "Go ahead! Jump in and

do it. What I didn't realize is that are so many resources available from ANDVSA to help attorneys train themselves to handle domestic violence cases. If I had known more about those resources, I would have started volunteering earlier. Even if you're in a totally different field of law, you should take advantage of ANDVSA's annual CLE training and webinars, and start handling some cases."

In her free time, she enjoys travel, golf, and rooting for her alma mater USC Trojans.

After she began her private practice in 2009, **Shana Theiler** began representing ANDVSA clients. Previously, she worked for the public defenders' agency in Kenai, where she began the journey to providing knowledgeable legal representation to survivors of domestic violence.

"I see domestic violence from the survivors' perspective now, as well as from the perspective of the children and the family as a whole." Theiler's understanding of the lasting impact that domestic violence has on the lives of survivors is part of her motivation to volunteer. "You can get all the training in the world, but until you witness how pervasive the after-effects of domestic violence are in someone's life, you can't fully understand how deeply it affects people. With my training and experience, I feel like I have a duty to help others."

Theiler, who has two sons, emphasizes the broad impact of her volunteer work in transforming a culture of violence into a culture of respect. "Educating boys and men about respect is essential. As a parent, I'm all about teaching my boys to have the internal constitution to be empathetic and see things from their partners' perspective. To take it further, we need to educate boys to speak up when they see or hear their friends saying or doing disrespectful or violent things. We need boys who will say, 'No, this isn't right.' I want my kids to be open-minded and to see the world in kind ways."

To other attorneys who may be considering taking pro bono DV cases, Theiler says, "You will get back far more than you give in ways that you could never have imagined. Pro bono DV work will teach you things that you will use in private cases three, four even five years in the future. Plus, you'll build a network of people to connect with and ask questions. Volunteering is a great way to connect with other attorneys around the state, who can be resources for you later on."

In her free time, Theiler enjoys fishing, hiking, cross-country skiing, and going to the hockey rink with her sons.

Siraj Ahmed Sindhu is an ANDVSA Legal Program fellow



Shana Theiler

The ANDVSA Legal Program connects volunteer attorneys from around the state with low-income people in need of legal representation or assistance in civil law cases involving domestic violence or assault.

For attorneys who do not normally practice in the field of family law or handle cases involving violence and abuse, volunteering to take the cases of ANDVSA clients may seem difficult. However, ANDVSA provides many resources to attorneys who are interested in volunteering.

CLE at *S F A*
2018



Kim Colbo

Good times with the Juneau Bar Association

Minutes for Feb. 2, 2018:

Prepared by Madeline Soboleff Levy

The meeting began with an announcement that the JBA was screening "My Cousin Vinny" at the Gold Town Nickelodeon Theater on Feb. 7 at 7 p.m., pizza and beverages to be served, plus the possibility of being seen with an Alaska Supreme Court Justice in the flesh! (Update ... The Justices were invited but none showed. The consensus was that they missed out on what was possibly the most fun activity happening in Juneau on Wednesday night in February.)

Following announcements, a lively debate regarding the weekly lunches at the Baranof ensued. The JBA Officers explained that weekly lunches were going to be a challenge to implement going forward because the Baranof now insists it will not make a buffet for less than 20 people, and several times over the last six months there were literally two or three people who attended the bar lunch.

Things de-railed quickly, over a debate as to whether the JBA is in fact governed by Robert's Rules of Order. If so, the consensus was that acting like British Parliament was entirely in order, and wigs would be ordered to be passed out for future debates. Alternatively, if not, general lawyer decorum still governed, which meant that chaos was in order. (Come to today's meeting if you'd like to know whether Robert's Rules in fact applies.)

The problem with going forward with weekly lunches was summed up variously. Perhaps it's the Baranof's fault, why should it want a financially viable arrangement? Perhaps it's the membership fault, three quarters of the lawyers in town do not seem to attend any meetings (PDs and DAs, I'll note there were some pointed looks in the direction of your offices ... we welcome you anytime.)

The question was raised, what do folks want out of these lunches? To which some answered, a miscellaneous lunch buffet from the Baranof. Others responded, time with my colleagues to break bread and maintain the collegiality of our local bar. (DAs and PDs, what would make you come and feel more welcome?) Several stated that the lunch speakers were a big draw.

The JBA Officers reviewed the results of survey, which revealed that as much as we all love each other, almost no one wants a weekly lunch. In counterpoint, if there's no weekly lunch, people may still only attend a percentage of the meetings such that low attendance might persist. In further counterpoint, once the weekly gathering is lost, it will likely never return, and may be the beginning of the end. Case and point, Ketchikan used to have daily coffee, and once it was decreased to weekly it completely fell apart. In other words, is the JBA prepared to take what might be the first steps toward our own demise?

After that cheerful note, the discussion turned to solutions. It was proposed that weekly lunch should continue, but the format should change. The current suggestion is to alternate weeks with speakers and weeks without speakers (for the breaking of bread and socializing). Weeks without speakers will not be located on the Baranof (because we want the change in scenery Baranof, not because you want us to go ...). Weeks without speakers will occasionally be located in the valley (gasp!), maybe once a quarter (whew ... that's bearable). Weeks without speakers may be brown bags, lunch in the jury room (with or without pizza), or may be lunch at Bullwinkles.

TVBA minutes take a holiday tone

December 22, 2017

"Twas the week before Christmas, and over on Second,
Pizzas and salads and other fare beckoned.
Glasses were laid on the table with care
In hopes that the lawyers soon would be there.
Four ventured out, not chained to their desks,
"I wanted some meatballs," one finally confessed.
One wore a sweater and holiday cap,
Another said "Humbug — I hate Christmas crap."
When out on the deck, there arose such a clatter,
They all dropped their forks and said, "Gee, what's the matter?
Away to the windows they flew like a flash,
Business cards ready, in case 'twas a crash.
But sun on the breast of the three-day-old snow
Showed no sign of income on the deck or below.
When what to their wondering eyes did appear --
A plate full of cookies (but no dark craft beer).
The cute little waitress (how sexist is that?)
Carted off plates while the four still did chat.
She passed out some pens and some credit card slips
Wondering if four only meant not much in tips.
Then away they all flew like the down of a thistle,
Probably to read some legal epistle.
And one did exclaim, as she drove out of sight,
«No Christmas for me, I've a brief to KeyCite!»

By Anonymous TVBA Past President, Sec. Pro Tem

A committee was formed (thank you parliamentary procedure, for always having an answer, and thank you Mark Choate, Hanna Sebold and Tom Wagner). The Committee will explore these options while the JBA Officers try to pin down what alternatives to the lunch buffet are at the Baranof. (They're a squirrely bunch that Baranof.)

With a path forward settled, your JBA officers beseech you to put the JBA website (<http://www.juneaubarassociation.com/>) on your favorites bar, make it your homepage, memorize its web address or just start checking the webpage every now and then. Not only does it contain useful information, like who has paid their dues for this year so you can start needling your colleagues who haven't (re)joined our esteemed organization, but you can conveniently see who are the upcoming speakers.

Upcoming speakers are ... Larry "everything you wanted to know about the gas line" Persily (TODAY), our dear friend and colleague Bill "that's right I'm back" Cummings (Feb. 16), the judicial candidates forum (no commentary out of respect for the position) (Feb. 23), Sharman Haley and Bev Churchill (citizens united against Citizens United) and First Lady Donna "don't forget I'm a lawyer too" Walker. (If Mrs. Walker reads this the JBA officers have nothing but respect and admiration for her, but I'd already bowed out of commentary on the judicial candidates forum so it had to be done.)

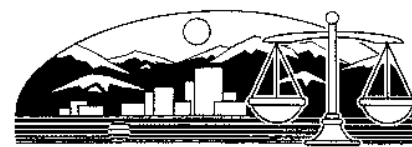
See you all today!

Legal tweets

HUMOROUS LAWYER] @HumOrousLAWYER 2 Jun 2014

More

You cannot live without the lawyers, and certainly you cannot die without them.



Anchorage
Bar Association, Inc.

ANNUAL

St. Patrick's
Day

CELEBRATION

Thursday, March 15, 2018

5:00 - 7:00 p.m (or until the keg is dry!)

PERFORMING ARTS CENTER

(South Entrance - across from Humpy's)

DOOR PRIZES!!

Free for Anchorage Bar members and a guest

\$25/person for extra guests

"Irish" meal, Beer, Wine, Irish music

Come one and all and enjoy a "wee bit" of Irish merrymaking!

Membership sign-ups taken
at the door



www.anchoragebarassociation.org info@anchoragebarassociation.org

U.S. Attorney's Office joins others to combat opiate crisis

Continued from page 1

accessible, and can both result in overdoses and death.

Following a screening of "Chasing the Dragon," each event entails: (1) remarks from a panel of local experts who see heroin and prescription opiate addiction on a daily basis through their respective professional lenses; and (2) Q&A with the audience. Panelists include a federal prosecutor, an FBI or DEA agent, state and/or local law enforcement, a medical provider and in most cases a behavioral health professional or someone in long-term recovery. In addition to the support of the FBI, DEA, the Alaska State Troopers, and local law enforcement, many physicians, behavioral health providers, and other community partners continue to generously volunteer their time and participate in these events. Without these partners' commitment, this initiative would not be the success it is.

This outreach project began with a \$5,000 funding award from the Department of Justice, which enabled the U.S. Attorney's Office to travel to seven rural Alaska communities in September 2016 – namely, Utqiaġvik (formerly Barrow), Kotzebue, Nome, Bethel, Kodiak, Petersburg and Ketchikan. Since then, the United States Attorney's Office has continued to hold school and community events in Fairbanks and Anchorage, and has also done presentations at several statewide conferences, including the Alaska Federation of Natives – Nation-



Participants at a presentation in Bethel are from left: Jerry Evan, Alaska State Troopers; Andrea Hattan, assistant U.S. attorney; Amy Davis, detective, Bethel Police Department; Eric Pavil, officer, Bethel Police Department; and Marlin Ritzman, Special Agent in Charge, FBI Anchorage Division.

al Congress of American Indians (AFN-NCAI) Tribal Conference, the Bureau of Indian Affairs Tribal Providers Conference, and the Alaska



Students at the Northwest Arctic Bureau's Young Leaders conference Sept. 1, 2016, in Kotzebue view the video "Chasing the Dragon."

Substance Abuse Help

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 Lawyers 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 anyone else.

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306-3527

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Canterbury
276-8185

Shannon Eddy
360-7801

Serena Green
777-7258

Megyn A. Greider
269-5540

David S. Houston
278-1015

Mike Lindeman
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Suzanne Lombardi
770-6600

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McLaughlin
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Valerie Therrien
388-0272

Juneau

Yvette Soutiere
465-8237

Kenai

Liz Leduc
283-3129

Arizona

Jeffrey A. Gould
520-808-4435



**Lawyers' Assistance Committee
Alaska Bar Association**

Association of Student Government spring conference for 300 students, representing 45 high schools.

These events are having an impact. For instance, a regional hospital reports that the "Chasing the Dragon" event held in its community in September 2016 helped facilitate some critical changes to their prescribing practices and, as a result, they have seen a 40% reduction in the rate of opioid dispensing.

"Chasing the Dragon" and its discussion guide are free and available here: <https://www.fbi.gov/news/stories/raising-awareness-of-opioid-addiction>. The U.S. Attorney's Office encourages every family to view this film and to start a conversation about just how dangerous opiates

are, how quickly one can become addicted, and why, as a patient, it is important to ask about alternatives to prescription opiates and, in any case, ask to be placed on those drugs at as low a dose as possible for as short a time as possible.

Additional "Chasing the Dragon" events are scheduled for this spring. If you are interested in having an event scheduled in your child's school or in your community, please contact the United States Attorney's Office at 907-271-5071.

Andrea Hattan is an assistant U.S. attorney in the Criminal Division of the U.S. Attorney's Office in Anchorage. She designed, organized, and moderates the U.S. Attorney's Office "Chasing the Dragon" events.