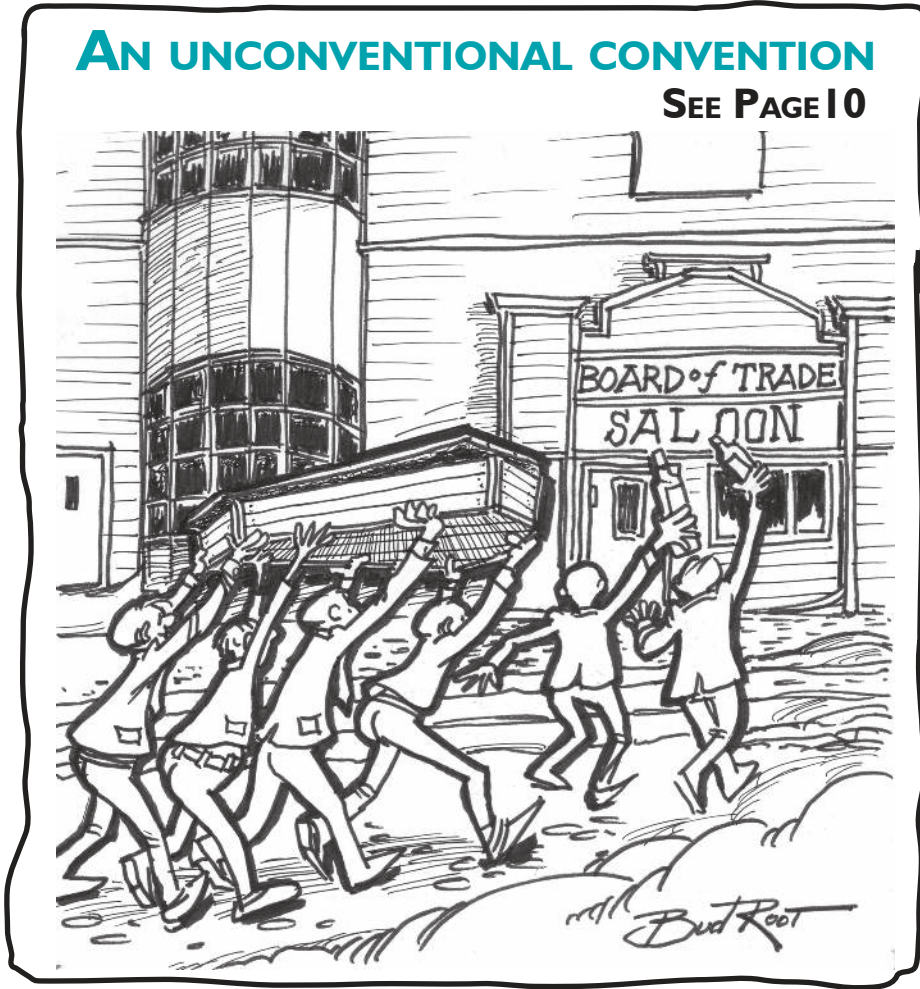


# The Alaska BAR RAG

Dignitas, semper dignitas

VOLUME 39, NO. 1 January - March, 2015

## AN UNCONVENTIONAL CONVENTION SEE PAGE 10



## Conduct rule changes related to new marijuana law proposed

The Board of Governors invites member comments regarding the following proposed amendments to Alaska Rules of Professional Conduct 1.2 and 8.4 as well as Alaska Bar Rules 28 and 30. Additions have underscores while deletions have strikethroughs.

**Alaska Rules of Professional Conduct 1.2 and 8.4.** Last November, Alaska voters approved an initiative legalizing the recreational use of marijuana. The initiative became effective Feb. 24, 2015, followed by nine months of regulation writing and the likely issuance of licenses in 2016.

However, the cultivation, distribution sale, and possession of marijuana remains illegal under federal law. Consequently, lawyers wishing to provide legal services to clients engaged in lawful state activity have a potential conflict under Alaska Rule of Professional Conduct 1.2(d) because a lawyer may not

“counsel or assist a client to engage

in conduct that the lawyer knows is criminal or fraudulent.” The Supreme Courts of Colorado and Washington have addressed this concern by adopting amendments to RPC 1.2 that recognize a lawyer’s ability to ethically counsel and assist a client in lawful state activities even though the activities may still be illegal under federal law. The supreme court of Nevada has a similar provision related to medicinal marijuana. Finally, the Oregon State Bar Board of Governors has a proposal under consideration.

At its Dec. 8, 2014, meeting, the Alaska Rules of Professional Conduct Committee considered these examples and voted to propose the adoption of an amendment to Alaska Rule of Professional Conduct 1.2(d) that allows a lawyer to counsel a client regarding Alaska’s marijuana laws and assist the client

*Continued on page 9*

## Conduct rules: Comments needed to stop this train wreck

By John Novak

Just when I thought the public’s perception of our profession could not get much lower, along comes the current proposal to amend Alaska Rules of Professional Conduct 1.2 and 8.4. The Board of Governors is seeking input from you, my fellow

members of the Alaska Bar, which will be considered at its next meeting in May, 2015. Absent your input, the proposed amendments appear to be on the fast track to enactment.

So exactly what is up?

ARPC 1.2(d) in its current form provides: “A lawyer shall not counsel or assist a client to engage in conduct that the lawyer knows is criminal or fraudulent, but a lawyer may discuss the legal consequences of any proposed course of conduct with a client and may counsel or assist a client to make a good faith effort to determine the validity, scope, meaning or application of the law.”

Is the current rule sound? Does it make sense? Does it instill public confidence? Yes, yes, and yes. The idea is that it currently is unethical for us lawyers to counsel or otherwise assist persons in committing crimes. In other words, the current rule makes it an ethics violation for us lawyers to aid and abet or conspire in the commission of crimes.

If you still are reading this piece, you may well be thinking what reasonable person could believe it to be a good idea to amend the rule to no longer make it an ethics violation for lawyers to aid and abet or conspire with persons in the commission of crimes? Well, that is the current proposal.

The reason for the current proposal is that some among our ranks

## Conduct rules: Changes related to new pot law should be adopted

By Bob Bundy

I write as a member of the majority of the Alaska Bar Association Rules of Professional Conduct Committee who voted to propose an amendment to Alaska Rules of Professional Responsibility (ARPC) 1.2(d) and the comment to ARPC 8.4 as those rules relate to provision of legal services to clients wanting to engage in activities lawful under new Alaska laws relating to marijuana. Bar Counsel provided our committee with a substantial amount of material from other jurisdictions, such as Oregon and Colorado, that have wrestled with the same issue and we carefully considered this matter over a good deal of time.

As every lawyer in Alaska should know, because of the recent initiative Alaska law is undergoing a major change with respect to the possession, use, transportation and manufacture of marijuana. An important purpose of our profession is to help members of the public understand how, in the face of a changing legal landscape, they might lawfully go about furthering their unique personal and business interests. Now, of course, that includes how individuals can meet the challenges posed by the adoption of Alaska’s new, complex marijuana laws. One of these challenges stems from the conflict between Alaska’s marijuana laws

and federal marijuana law. Activities that were previously unlawful under both federal and state law are now lawful under Alaska law while remaining unlawful under federal law.

As written, ARPC 1.2(d) could be interpreted to prohibit Alaska lawyers from advising members of the public about Alaska’s new marijuana laws since many activities recently legalized under Alaska law remain illegal under federal law. ARPC 1.2(d) currently provides:

A lawyer shall not *counsel or assist* a client to engage in conduct that the lawyer knows is criminal or fraudulent, but a lawyer may *discuss the legal consequences* of any proposed course of conduct with a client and may counsel or assist a client to make a good faith effort to determine the meaning, scope or application of the law. (Emphasis supplied.)

The ARPC Committee has proposed rule changes to clarify the circumstances under which a lawyer may provide legal services to clients dealing with Alaska’s marijuana laws without exposing the lawyer to the risk of discipline. The proposed changes are intended to provide Alaska lawyers with guidance on how to counsel and assist clients through the rapidly changing legal environment surrounding the com-

*Continued on page 8*

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## Fairbanks Bar convention a celebration of Alaska's lawyers and their service

By Geoffrey Wildridge

The Alaska Bar Association has proudly announced that our 2015 annual convention will occur in Fairbanks from May 12 through May 15. The Bar Association's pride in the location of this year's convention is, of course, entirely justified.

Like so many of Alaska's lawyers, I am a transplant from a place far away. Fairbanks has, however, been my home since 1981. As a long-time Fairbanks resident and a person with genuine affection for my community, I truly look forward to welcoming you to the Interior's "Golden Heart City."

I know that many of you have not yet had a chance to visit Fairbanks. (Studies have shown that at least 90 per cent of Anchorage residents haven't ventured this far north. Regrettably, this statistic includes Anchorage lawyers. Gather your courage. We'll assure your safety.) I hope the 2015 convention provides the impetus for you to expand your horizons, and to make what really is a very manageable journey to the jewel of Alaska's Interior. And I, of course, also look forward to seeing those hardy souls who have been lucky enough to have visited Fairbanks in the past. We're committed to providing all of you with a distinctive convention — and a very good time.

Needless to say, the opportunity to see and experience Interior Alaska should provide one powerful incentive for convention attendance. Fairbanks is an amazing place, providing visitors with a sense of what we humbly refer to as "the real Alaska." It is a historic city on a river, the home of the main campus of the University of Alaska, and so much more. And it is an especially magnificent place in the springtime. The sun has returned to the Interior by mid-May in all of its glory: There are more than 17 hours per day of sunlight at this time of the year. Foliage is bursting into bloom, and the people of the Interior are experiencing their post-winter rejuvenation. By convention time, temperatures in Fairbanks will surpass those in other parts of Alaska. The thermometer typically registers in the

60s here in May. By the time of the convention, our community will begin to display some of the near-perfect weather that typifies its summer.

Fairbanks is, in short, an ideal setting for the Bar Association's annual spring gathering. You're going to like it.

I particularly encourage those who have not regularly attended bar conventions to join our valued regular attendees in traveling to Fairbanks. Those involved in government service, criminal law practitioners, lawyers with an interest in Alaska Native Law, and attorneys engaged in assisting the underprivileged are often not well-represented at our annual gatherings. This year, convention planners have worked especially hard to provide an experience that will be relevant, interesting, and entertaining for all of Alaska's lawyers. The Fairbanks convention will be a remarkable celebration of Alaska's attorneys—and a celebration of our service to the people of our state.

Let's take a look at the impressive presentations and some of the great entertainment that will leave you with very fond memories of your stay in Fairbanks.

### Presentations at the Fairbanks convention: eclectic, relevant, inspiring

We are living in momentous and exciting times. Alaska's lawyers are often on the front lines of change, while holding firm to our commitments to the rule of law, the fair administration of justice, and public service. We share a proud history — and a need to live our lives in ways that are both exemplary and manageable.

The 2015 convention will reflect the breadth of our interests and concerns, and will include presentations on the following topics:

**Militias and hate groups:** We are grateful that Mark Potok, a senior fellow at the Southern Poverty



"As a long-time Fairbanks resident and a person with genuine affection for my community, I truly look forward to welcoming you to the Interior's "Golden Heart City."

Law Center and a nationally renowned commentator on militias and hate groups in America, has agreed to join us this year. Mr. Potok will be the keynote speaker at our May 14 annual dinner, where he will address "Hate, free speech and the battle against extremism." And on May 15, Mark will present a CLE on "The second wave: return of the militia movement." Events in Alaska and elsewhere in recent years are bound to make Mr. Potok's presentations of great interest.

**Criminal justice reform in Alaska:** This discussion will be hosted on May 15 by former Deputy Commissioner of Corrections Carmen Gutierrez,

an outspoken proponent of a shift of resources from prisons to community-based corrections models. Community-based reform currently enjoys widespread, bipartisan support in many "red" states; and it now has such support in Alaska. The Alaska Criminal Justice Commission was created by the Alaska Legislature last year, and is tasked with a broad-based evaluation of Alaska's substantive criminal, sentencing, and corrections laws. Issues related to the prospects for criminal justice reform in Alaska will be discussed during this session, against the backdrop of the significant progress made in other jurisdictions.

**The role of tribal sovereignty in Alaska:** a conversation with Heather Kendall-Miller of the Native American Rights Fund, University of Alaska Professor Willie Hensley, Lt. Gov. Byron Mallott, and Attorney General Craig Richards. This discussion will be moderated by Andy Harrington, the scholarly former executive director of Alaska Legal Services, on May 14. The presentation will address the history of conflicts between the state and Alaska's Tribes, and will explore the prospects for developing greater consensus on issues confronting these sovereign entities.

**Legislative attempts to re-**

**shape the Alaska Judicial Council:** The Judicial Council is the constitutionally mandated body principally responsible for the merit-based selection of Alaska's judges. Based upon its constitutional mandate, the Council is currently comprised of three lawyers and three non-lawyers, with the Chief Justice sitting as its *ex officio* chairperson. It has

**CORRECTION:** Due to an editing error in the October-December issue of the *Bar Rag*, the President's Column "In support of the Judicial Council," incorrectly stated that after review the council submits two names to the governor for consideration. That should have read "at least two names" as often more than two are submitted.

Continued on page 3

## The Alaska BAR RAG

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May 11 & 12, 2015

(Monday and Tuesday)

### Annual Convention

May 13 - 15, 2015

Westmark Hotel, Fairbanks

[Editor's Disclaimer: As with all *Bar Rag* articles, advertisements and letters, we do not vouch for, stand by, or support most of what we publish. Nor have we cleared any of this with either the FDA or the Department of Homeland Security (aka Interior Ministry). We sure as hell won't be responsible for your hurt feelings or misguided reliance on anything we publish].

## EDITORS' COLUMN

## A Bar association convention to remember and one to anticipate

By Meghan Kelly

This has been a strange winter; the mild temperatures and lack of snow have had me convinced that Spring is imminent for weeks now. I hesitate to even write as much, fearing that such optimism is likely to be rewarded by the sort of springtime blizzard with which I have become familiar over the last seven years. My fingers are crossed ... and just to be safe I'm keeping an eye on airfare deals to destinations south of 61° North.

Bar Association President Jeff Wildridge gives us a preview of the exciting schedule of events planned for the Alaska Bar Association Con-

vention taking place in Fairbanks in May. Reading President Wildridge's column I was struck by the enthusiasm and innovative effort being dedicated to producing this year's Convention — and thought immediately of another memorable gathering, the 1969 Alaska Bar Association's Convention. Retired Justice Erwin describes the happenings during that singular, Nome-based event in his delightful submission for this issue of the *Bar Rag*: A Bar convention to remember. I have great faith that our Fairbanks hosts



"...I'm keeping an eye on airfare deals to destinations south of 61° North."

will present an equally unforgettable occasion in 2015.

As the owner of a small dog I particularly appreciated columnist Dan Branch's recollections about walking a pre-sized pet in the wilderness of Alaska. My 14-year-old dachshund, Rebel, has been the subject of observation and measure as a potential meal many more times than he has been aware. We too caught the eye of a curious *Enhydra lutris* during an outing one sunny day in Kodiak.

Walk warmly.



## Fairbanks Bar convention a celebration of Alaska's lawyers and their service

*Continued from page 2*

fulfilled its obligations with remarkable success for over 50 years. A bill now being considered by the Legislature would, however, diminish the role of the Council's lawyer-members. Former Chief Justice Walter Carpeneti and Alaska Constitutional Convention Delegate Vic Fischer will speak to the issues associated with this legislative effort at our May 13 Law Day Luncheon.

**United States Supreme Court and Alaska Appellate Court updates:** The Alaska Bar Association is pleased to welcome back those perennial favorites, Dean Irwin Chemerinsky and Professor Laurie Levenson, who will provide their annual updates on United States Supreme Court and Alaska Appellate Court decisions. A comprehensive review of new developments and an amazing display of the presenters' analytical talents, which will occur on May 13.

**Overcoming accidental racism in insuring access to justice:** an interactive discussion aimed at addressing the unintentional but harmful effects of some of our interactions with those of different races, cultures, and religious backgrounds. This ethics CLE will occur on May 14, and will inspire discussion through the use of excerpts from well-known films.

**What every lawyer should know about judicial ethics:** moderated by Marla Greenstein of the Alaska Judicial Conduct Commission on May 13, this ethics CLE will feature Judge Margaret McKeown of the U.S. Court of Appeals for the Ninth Circuit. We are delighted to welcome Judge McKeown, who chairs the Judicial Conference of the United States Code of Conduct Committee, which is the ethics committee for the federal judiciary.

**Hot-tubbing of expert wit-**

**nesses:** the concurrent presentation of expert witnesses at trial. It is an honor to have Australian Justice Rachel Pepper as our guest speaker on this topic on May 14. Justice Pepper will inform you of the innovative, concurrent presentation of experts' testimony at trial in Australian courts. With a panel of Alaskan attorneys, Justice Pepper will also discuss the efficacy of the use of such an approach in our courts.

**Achieving a work-life balance:** it can be done: How can we insure that work-related demands and stresses don't overwhelm our personal lives? This panel discussion on May 14 will feature impressive women lawyers from around the state.

**Judge James Wickersham, territorial judge and adventurer:** Judge Wickersham's impact on the jurisprudence and development of Alaska, particularly Interior Alaska, is the stuff of legend. This is the centennial of Judge Wickersham's historic 1915 meeting with the Tanana Chiefs. A commemoration of this historic event will occur on May 13, involving Tanana Chiefs Conference President Victor Joseph, University of Alaska Professor Terrance Cole, and Chief Justice Fabe. In addition, at our May 14 luncheon, talented Fairbanks actor Steve Mitchell will portray Judge Wickersham in his one-man performance.

**Music at the Convention**

The Fairbanks convention will also feature unparalleled entertainment — some of which will involve unannounced surprises as the convention progresses. Events will, among other things, involve performances by musicians representing a variety of genres. Here are some highlights:

**The Convention Kick-Off Concert:** Pamyua performs for you: Plan to travel to Fairbanks on Tuesday, May 12, the day before the

formal convention opening, for the first-ever convention kick-off concert. That evening, thanks to the generous support of Doyon Limited and its wish to welcome Alaska Bar members to Fairbanks, the musical group Pamyua will perform.

Those who have seen Pamyua in concert will confirm that the group provides an unforgettable musical experience. Consisting of four very talented musicians from Southwest Alaska and Greenland, Pamyua's contemporary arrangements of traditional Inuit music have broad cross-cultural appeal. This concert has been organized with you in mind, and will be the great beginning of our several-day celebration of Alaska's lawyers and their service to the people of our state. A ticketed event open to the public, the Pamyua concert is being offered without charge to convention attendees.

**The Tanana Valley Bar Association hosts the "Acoustic Legal Jam" session, featuring Robin Dale Ford and Pat Fitzgerald:** Happily, there are many musicians included in our lawyerly ranks. The Tanana Valley Bar Association would like to give them a chance to enjoy themselves, while entertaining the rest of us, at this year's convention. Billed as the "Acoustic Legal Jam," this non-threatening jam session will be open to all. And great news: Fairbanks master-musicians Robin Dale Ford and Pat Fitzgerald have agreed to perform and lead this event. This acoustic jam will occur in the large hospitality room on May 13 — with there being some likelihood of a reoccurrence at other times. Bring your instruments and your voices. Let's see what you've got. This should be fun.

**World-class jazz guitarist Ron Veliz for your listening pleasure:** Fairbanks now lays claim to jazz guitarist Ron Veliz, a session

musician and recording artist with soaring talent. Ron will be featured during our annual dinner gathering on May 14. You will be astounded by his virtuosity.

**New convention pricing options promote attendance, public participation**

In the interest of better serving our membership and in recognition of our duty to serve the public, the Alaska Bar Association is taking innovative steps to provide less costly options for limited convention enrollment.

The Bar Association has just approved new fees for half-day and single-presentation convention attendance for Bar members.

Making convention presentations accessible to other potentially interested members of our communities is also a priority. As a result, the Bar Association is also finalizing reduced rates for attendance by the general public and students.

These new rates for attorneys and non-attorneys will be publicized by the Alaska Bar Association in the very near future. To learn more about this special pricing, please contact the Bar Association's Mary DeSpain. Her email address is: mary@alaskabar.org. Mary can also be reached by phone through the Bar Association at (907)272-7469.

**Join Us in Fairbanks**

The 2015 Alaska Bar Association Convention in Fairbanks will be a convention to remember. It will be a celebration of the importance of the rule of law and of our hopes for the future. A celebration of you, all of you, and of our profession's ongoing commitment to the people of Alaska.

Don't miss it. I'll look forward to seeing you in Fairbanks from May 12 through May 15. We'll do our very best to make sure you enjoy your stay.

## Pre-Convention Concert Featuring

**FREE**  
with your registration!

# Pamyua

Tuesday, May 12

7:00 – 9:00 p.m.

Westmark Fairbanks Hotel and  
Conference Center



L - R: Stephen Blanchett, Phillip "Ossie" Kairaiuak (back),  
Phillip Blanchett and Karina Moeller

Plan on coming to Fairbanks a day early and join us for a Free concert by Pamyua (bum yo-ah). Their music showcases drum songs from the Inuit cultures of Greenland and Alaska. Pamyua's vocalists bring "a blizzard of interlocking harmonies," says *Native People Magazine*. Pamyua reminds listeners to embrace relationships with honor, humility and tolerance.



## *In Memoriam*

# Remembering Judge von der Heydt – a legacy of grace

By David G. Stebing

A year has now slipped by since the death of Alaska pioneer Judge James A. von der Heydt in December 2013 at the age of 94. On Dec. 10, 2014, generous gifts by the Judge and his wife Verna to benefit the public in perpetuity were celebrated at the Anchorage Museum at Rasmuson Center. As longtime supporters of the arts in Anchorage, the couple gave \$1 million to fund museum collections and exhibitions. The gift funds the James A. and Verna von der Heydt curator position. They also donated numerous significant works of art they possessed, including originals by master painters Eustace Ziegler and Fred Machetanz.

It is not surprising that Verna and the Judge would leave a valuable legacy to the museum for the public's benefit. They both contributed over the years to the institution. Verna volunteered there for more than two decades. The Judge was among the founding members of the Anchorage Fine Arts Commission, and he served on the body for more than two decades. He also was the first president of the Anchorage Fine Arts Museum Association which has since become the Anchorage Museum Association, responsible for operations of the museum.

As the last survivor of the original appointed judges at the time of statehood in 1959, his passing was truly the end of an era. He and Verna had no immediate family members in Alaska to perpetuate his legacy. Both of their parents died long ago. Their recent gift provides a fitting moment for thoughtful reflection to pause and remember this widely beloved judge for the fruitful legacy of his long and distinguished life and career. The thoughts I share derive from a relationship that started with my employment in a two-year clerkship for him, which I had the good fortune to have grow over three decades into intimacy with a cherished friend and mentor.

Those who knew Judge von der Heydt will remember him as a disciplined man of superb intellect, meticulous with details, who characteristically maintained respect for all individuals and observed proper decorum. He was motivated by a generous spirit of public service throughout his career. The Judge was a counselor of sage advice and friend to many judges and attorneys, and will be remembered for his quick wit, always appropriately displayed. He truly made defining contributions to Alaska during its territorial days and in the seminal years of statehood. With a deep love for Alaska, he touched many lives while with us.

Coming to the Last Frontier in June of 1943 to fulfill his dreams, he disembarked in Valdez from the steamship Otsego with several hundred other construction laborers, whereupon he was employed in war efforts to carve the Alcan Highway. The Judge worked at a stretch of the road not far from Tok where a double cantilever steel bridge crosses the Tanana River. When that job was over, he moved to Nome to help build a military air base. He resided

in the Norton Sound Community for 15 years prior to statehood. After first coming North, except for attending law school at Northwestern University, where he maintained an unwavering commitment to return to Nome, the Judge never resided outside Alaska.

The Judge's pioneering contributions for Alaska in over a half century include service in the following positions: as a deputy U.S. marshal located in Nome; as U.S. Commissioner administering justices of the peace in a vast region that spanned from Hooper Bay to Barter Island on the Beaufort Sea near Canada; as U.S. Attorney in Nome appointed by President Truman; as Nome City Attorney for several years; as a member of the Board of Governors of the Alaska Bar Association followed by a term as president of the organization; as a legislator for the Norton Sound area from Nome in the last territorial House of Representatives; as the first superior court judge assigned to Juneau upon statehood appointed by Gov. Egan; and finally, as a federal judge at the district court appointed by President Lyndon Johnson.

The Judge was at the center of the rich historical period of territorial Alaska transitioning to statehood. As U.S. Commissioner, he often traveled by dog team, umiaq (native skin boat), or bush plane – whatever was necessary. During his years of private practice in Nome, he was the only attorney in town for a while and was assigned all the criminal appointments for the court. He sometimes received mail addressed simply to "Lawyer, Nome, Alaska." The Judge was able to pay some of his bills with fees from mail order divorces, occasionally involving parties in larger cities who sought to avoid prying eyes. It was our good fortune that he had a sense of history and generously contributed his efforts to the bar association's documentation of the territorial bar.

At the time Alaska achieved statehood, the Judge contributed with others in planning and helping to create a new constitution, and also in planning and executing the new state court system. He made the following succinct remarks upon being sworn in as a judge by Alaska's first governor, William A. Egan: "As each of you do, I am sure, I take great pride in our new state of Alaska. I am proud to be a member of the state judiciary and to take part in whatever measure in the continued building of this dynamic young state."

Judge von der Heydt was thereafter recognized for vigorously attacking the case backlog in the capital city. Addressing the contributions of Juneau's pioneer judges, former Alaska Supreme Court Justice Walter L. Carpeneti wrote the following in the January-March 2010 Alaska Bar Rag:

"With the work of people like Tom Stewart, John Dimond and Jim von der Heydt, we have a very different and much better system than the one we abandoned in 1959. We owe a great debt to these early Juneau pioneers. I hope we pause for a moment today, 50 years after our ad-



Judge James and Verna von der Heydt.

mission to the Union, and acknowledge our debts to these greats."

In 1966, President Johnson appointed the Judge to the federal bench where he served in Anchorage for nearly 3 decades. As a hardworking, detail-oriented person with refined people skills, the Judge was a capable administrator and served a stint as chief judge at district court for the longest tenure of anyone in that position.

In addition to his contributions to public service, he began painting while in Juneau, focusing on Alaska landscapes. Many of his paintings captured delicate hues of light on the ocean and mountains during the long, majestic dawns and sunsets of Alaska winter days. Some were given to the museum. In 1961, during a season of much growth for him in a new community more than 1,000 miles from Nome, in the capital of a new state with a new constitution and new institutions, he painted a portrait entitled "The Last Days." The painting was accompanied by a poem he authored about a peaceful homecoming, a theme he would return to in life. He gave the works to the First Presbyterian Church in Anchorage.

While living in the Norton Sound region, one of the Judge's chief avocations was the study of western Alaska bird life. Exhibiting a keen eye for detail in devoting himself to ornithology, he collected 156 scientific avian specimens under a Department of Interior permit. He performed his own taxidermy. Before moving from Nome, the Judge donated the collection to the University of Michigan museum system at

Ann Arbor.

The Judge was an engaging conversationalist and a precise craftsman with words. Well liked and not garrulous, he was the master of ceremonies for numerous bar functions. When he was active with the museum, he was always the M.C. when one was needed.

The Judge understood that as with a necessary pause of silence in music, what you don't say may be as memorable as what you do say. I remember him pointing out to me the economy of writing and that with words, less is more. I also remember the time he confided that with some counsel in particular, "get it in writing." The Judge published two books of fiction exalting life in Alaska. He also wrote delightful whimsical poetry full of optimism, most of it for his beloved wife Verna.

For me, the Judge was simply the closest individual to a Renaissance man that I have ever personally known. He would be quick to point out, however, that his marriage to and love for his devoted Verna was his noblest accomplishment in life. To those who knew them, the words "Judge and Verna" signified their strong authentic commitment to each other as life partners. I fondly remember him lovingly deferring to Verna with the soft words, "Yes dear." On those occasions when a future social event was under discussion with the Judge, I remember him saying: "I'll have to check with the chief judge." The reference was to Verna. It is notable that on the evening of his retirement celebra-

*Continued on page 5*



*In Memoriam***Remembering Judge von der Heydt – a legacy of grace***Continued from page 4*

tion, in a ballroom full of appreciative people present to honor him, the Judge characteristically chose to focus everyone's attention on Verna by reciting a poem he composed expressing his love for her. Always together, the Judge and Verna modeled civility and grace for us.

Over the years that I was favored to know the Judge, I made a point of inquiring of him regarding his upbringing and development as a young man, often over a relaxed lunch at Club Paris or some other downtown Anchorage eatery. Although he was a private individual by nature, he shared with me some of the formative and memorable events and decisions in his life. I determined to share some of them with others through this article that they may add further insight into the unique spirit of this man.

To start with, the Judge was born in Miles City, Montana, and raised in that state as a small child. Seeds of adventure were planted in him from his years as a youth in the Butte-Ramsay mining community. He had loving and attentive parents, and they set the stage for his success in life. Education was important. His father, who was born in Chicago of immigrant parents, was a successful dentist who graduated from the University of Illinois dental school, before moving west to the frontier on the high plains in order to seek his professional fortune. There, he met the Judge's mother in Miles City. She was an accomplished pianist and went east to college, where she graduated from the University of Cincinnati Conservatory of Music.

His mother's musicianship and the fact that his father sang in a quartet both contributed to nurturing the Judge's lifetime love of music. Over the years, the Judge often invited the Sweet Adelines ensemble in Anchorage to sing at proceedings at which he presided, including immigration swearing-in ceremonies. He especially liked the "Battle Hymn of the Republic," with its recurring refrain of God's inexorable justice and the truth marching on. As the Judge planned, the Sweet Adelines sang the hymn at his retirement party.

Judge von der Heydt had a remarkable gift of memory, and he confidently shared with me during lunch one day his first recollection in life. He actually remembered being baptized when he was six months old. His mother was reportedly skeptical of this claim. He assured her that he definitely recalled looking at his parents, seeing his brother nearby during the ceremony, and also crying at the identifying touch of water to his head.

He also shared with me other events he remembered from his childhood. His busy professional father not only took time to make young son "Jimmy" a kite, but importantly took the additional time to fly it with him. The Judge recounted the extreme weather near Butte through the fact that it snowed on a July Fourth while his dad was

shooting off fireworks for his sons. Our protagonist was experienced with out-of-the ordinary weather long before he came to Alaska.

I noted how late in the Judge's life, he had a clear abiding memory of his father's wonderful sense of humor. His dad left an impression by lightheartedly sharing with others the antics of his amusing, talented boy Jimmy – in his son's presence. The apple did not fall far from the tree.

The von der Heydt family moved from Montana back to the Chicago area, to Oak Park, for the Judge's high school years. This was mainly due to his father's professional ambitions, as he was a contributor to a pioneering orthodontia technique.

Museums played a big part in the Judge's life, and he took advantage of the many museums within Chicagoland. A generous curator at a local county museum where the Judge volunteered while in grade school introduced him to ornithology. At the impressionable age of 15, the Judge attended the 1934 Chicago World's Fair. The experience further fueled his strong passion for learning.

Like his father, the Judge acquired a unique personal interest in "life on the frontier." After graduation from high school, he and a high school buddy took an excursion and drove together to Montana. They visited Mount Rushmore along the way, shortly before the memorial was finished. Exhibiting the Judge's characteristic spontaneous sportive nature, a photo of him taken by his friend – before climbing on the monument was prohibited – shows the Judge surveying the panoramic view while standing on George Washington's head.

The Windy City and further formal education beckoned however. The Judge attended the small, highly regarded liberal arts school of Albion College in southcentral Michigan. In the summer of 1940, while an impressionable and idealistic youth, he saw President Franklin D. Roosevelt speak in Chicago Stadium at the Democratic Convention, where the president sought an unprecedented third term at an unparalleled time in history. The Judge also met Eleanor Roosevelt. These experiences left a lasting impression on him. Years later he was an Alaska delegate to the Democratic National Convention.

After graduation from college in 1942 and upon returning home to the Chicago area, the Judge volunteered at the Field Museum in the ornithology department. This life-changing experience increased his love for the natural world and also his sense of adventure. He was particularly fascinated by the far away Territory of Alaska. It wasn't long before he reached a pivotal point in life and went north to fulfill his dreams.

After coming north in 1943 to help open Alaska through construction of the highway and the airfield at Nome, the Judge's other talents inevitably emerged. He was employed in positions for the federal government in Nome for a few years. The Judge's love for Alaska

grew, and he saw the obvious opportunities in the fast-developing territory. With that vision in mind, he confronted another crossroads. Although he originally planned to become a doctor, he reconsidered during his years in Nome. He decided to go back to Chicago, where he enrolled at Northwestern University School of Law in 1948.

The Judge was a thorough planner. In stark contrast to this attribute, he actually met Verna on a blind date at a Christmas party while he was a law student. They hit it off well. He did not scare her away in sharing that he was from Nome and intended to go back. The two communicated in writing after the Judge returned to Alaska following graduation.

Reflecting on how the Judge knew the power of words and that he chose them with great care, he proposed to Verna in a letter from Nome while she still resided in Illinois. His skills as an advocate in this matter prevailed as he convinced Verna to leave comfortable Oak Park and a job in Chicago in exchange for adventure in Nome. By agreement, they met in Seattle for their nuptials. After getting married on a Wednesday at a church located on Queen Anne Hill, they departed for Nome the following Monday by Pan American Airways with a mix of colorful passengers stopping first at Juneau and Anchorage. One traveler was an inebriated sourdough who was awakened after the circling plane reversed direction and descended for Seattle right after takeoff due to a mechanical problem. He immediately exclaimed to amusement of the Judge and Verna "Shortest flight I ever had!" Alaska promised to be interesting.

The couple arrived in Nome on a classic midnight sun morning in the daylight, which Verna was enthralled with. They were met at the airport by friends. Initially, they rented a residence downtown. A couple years later, they bought a house "on the water" as the Judge lightheartedly described it. He hastened to add that it faced the Sound at the west end of Front Street, and that it was perched on a foundation

of 55 gallon drums welded together. Their mode of ground transportation in Nome was a pickup truck. The Judge and Verna were soon active members of the Nome community with the Judge serving as U.S. Attorney and Verna serving as president of the local library.

Reflecting their backgrounds and impeccable manners, the Judge and Verna were always consummate hosts wherever they resided. They and a group of Nome friends often played bridge together after a dinner party.

In the professional world, Alaska was a very small community during territorial days. While in Nome, the von der Heydts once had their dear friend Bob Bartlett join them for appetizers of breast of curlew. Other guests in Nome included their friends Territorial Gov. Ernest Gruening and his wife. When the Judge and Verna traveled to Anchorage in the early 1950s, Verna observed that many people said hello to them, casually referring to her husband with familiarity as "Jim."

Over the years, the Judge and Verna enjoyed spending time with their many friends, wherever they resided and traveled in Alaska. In addition to times in Nome and Juneau, they frequently entertained federal judges and their spouses from Outside when they visited the state.

Judge von der Heydt was an open-minded individual. While in Nome, he became a good friend of Inupiaq Eskimo leader Paul Tiulana, from King Island, an artist who made the umiaq currently on display at the Anchorage museum. When residing in Nome, the Judge once took a boat trip to King Island with Paul. It was on short notice and the Judge had no opportunity to prepare any food. His host provided muktuk for their sustenance. According to Verna, the Judge tried it without success and was unable to swallow it. That resulted in some friendly laughter. Years later in Anchorage, the Judge sometimes visited with Paul at the museum, conveniently located across the street

*Continued on page 6***PAUL COSSMAN****Freelance "Contract" Lawyer**

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## *In Memoriam*

# Remembering Judge von der Heydt – a legacy of grace

*Continued from page 5*

from the new federal courthouse.

It may be said about the Judge that, whatever he did, he did well. But, he did not shy away from sharing with me the unexpected results of an ice fishing experience he and a friend had on the frozen Norton Sound near Nome. The Judge's good humor showed through in this reminiscence. They were seeking, in his words – "Queen crabs." After much drilling on a day with frigid temperatures, they did not catch anything. When they departed for home and gained some perspective of their chosen location, it turned out that they had drilled their hole on a large hill of ice. Over 50 years later, the Judge joked with his companion from Nome when he visited Anchorage and asked him if he wanted to go ice fishing.

When the Judge became Juneau's first state judge, he maintained his humility. He shared with me a revealing snapshot of his thoughts on the occasion of his swearing in. According to him, as he reached for the doorknob to enter the filled courtroom while wearing a judicial robe for the first time, he recalled asking himself: "What have I gotten myself into?" In time, he and Verna as a team were reconciled to sharing their lives together in the search for truth and justice. The Judge and I sometimes traded jokes about how he was able to manage in Juneau without a law clerk. He was not confused about where ultimate jurisdiction resided and would soberly and good-naturedly speak

of being together with Verna some day in the "great courtroom in the sky." The Judge's actions, however, confirmed that he fully rested in the wisdom that you can be eternally united with your loved ones in life after death.

For his work on the federal bench, the Judge may be remembered for many of his seminal decisions interpreting the Alaska Native Claims Settlement Act, the Alaska National Interest Lands Conservation Act, the Fisheries Conservation Management Act, and other laws with particular effect in Alaska. But he also will be remembered for his gift to make others feel at ease. I saw it in his courtroom interactions, particularly when he spoke with jurors. Always patient and attentive, he understood the need to be sure they comprehended their valuable role in the trial process, and he gently impressed upon them the seriousness of the duty they had undertaken. I also saw it often in his communications with counsel during settlement conferences. He easily conversed with them, both the self-important silver foxes as well as the insecure greenhorns, finding a way to meet each where they were while treating all with proper respect. To add a little levity to the meetings, he kept wooden thumbscrews on his desk and would focus counsel's attention upon them at the appropriate time if needed.

Unfailingly friendly to all staff at the courthouse, he treated each person with dignity. When I worked for him as a clerk, it was not uncom-

mon for him when available to lead others in singing "Happy Birthday" along with personnel of the clerk's office. He provided the musical accompaniment with a lengthy plastic wind instrument that whistled as he swung it in a circle, buoyantly tapping his foot as he set the tempo. He was a picture of joy.

The Judge's personality contained a full palette of the good virtues. He personified the proverb "a merry heart doeth good like a medicine."

He studied for the bar exam in Nome and took it in Juneau. I was curious and asked him what the bar was like back then. He quickly responded with the full sweep of his arm "Well, it was very long!" The Judge then shared that in Alaska it was necessary to know maritime lien priorities, and that examinees learned results on same day as they took the test.

I remember him calling me on the phone to extend an invitation to one of the luncheons with current and former law clerks. The first words out of his mouth to me were the stern admonition: "This is the IRS." He also was known to jokingly tell invitees to a clerk's luncheon that we would be eating at Buckingham Palace – if someone other than he were hosting. Or, at Burger King when it was his turn to host. He once issued a mock subpoena to a law clerk in order to secure his attendance at a luncheon.

A few times when I was with him, he laughed so hard that he shed tears. One occasion involved his remembrance of a real property case he had in Nome involving a dispute where a building impinged on a parcel of adjoining property. The offending part of the building was the bathroom. The Judge referred to it as a case of "squatter's rights." That's when the unabated laughter started. Not surprisingly, he had a handkerchief close at hand in his jacket pocket to dry his cheeks.

In contrast to his tears of joy, I also recall his compassion one time when he stood behind his desk in chambers after a difficult trial proceeding, using his handkerchief to dab a few escaping tears. He had just completed the serious business of sending a man to prison. That unfortunate individual was a Little League coach who fell in with the wrong crowd and threatened a federal agent. Complying with sentencing guidelines that constrained him, the Judge also felt the tug of his heart strings toward the ongoing needs of the convicted individual's wife and small children who would be left behind.

There are many things that an individual who serves as a judge sees and hears that appropriately cannot be shared. Perhaps that is in part why the Judge wrote fiction. A short story he authored is contained in one of his books which he inscribed for one of my daughters. It is entitled "Going Home." Showing his strong sense of justice, it recounts a season of hardship in the life of a man wrongfully charged with multiple murders, who was subject to

public scorn for the crimes he did not commit. The truth eventually prevailed, and the accused was found not guilty. The story ends with an image of the man slipping into restful sleep at the start of a new beginning in his life. The Judge concisely closed the tale with these words: "He was home again, and at peace again, where he belonged."

Judge von der Heydt marveled at the length of time God gave him, although he sometimes struggled with the inexorable consequences of living into his 90s as the world around him shrank. I sent him a balloon bouquet for his 94<sup>th</sup> birthday, which helped to briefly lift his spirits. We can rest in the knowledge that after a life well lived, he left a rich and enduring legacy for us. This gentle man of wit, civility and charm showed us how to live both here and in that place of peace and perfect justice he envisioned.

The Judge understood that the measure of a man, his end, and his memory may have a multiplier effect. Therefore, in addition to living deliberately with purpose, he and Verna planned well in advance for his passing. By design, his obituary references the wise advice for attorneys that they not forget about forgiveness. It was not surprising that the Judge preferred a short unifying memorial service with classic elements. The ceremony included a soloist opening with "The Alaska Flag Song," prayer, brief eulogies, and it ended with Psalm 23 read in unison by those present. Notably, with a firm appreciation of how art may influence individuals, they predetermined that a final memory of him at the service for us should include the portrait he painted prominently displayed next to him.

I cherish my last memory of being with the Judge when he was alive. We said our goodbyes after one of my brief visits. That afternoon, I helped him get seated and put on his seatbelt in a friend's car that would be taking him to view the gravesite he and Verna chose in the pioneers section of the Anchorage Memorial Park Cemetery. After his death, when I later was able to view the monument they selected, I saw that the simple enduring words of love they had engraved on the memorial stone for observers to view in generations to come were "Always Together."

### Transition

*When one is young and free of load,*

*The whole big world's a wide wide road.*

*When one is young, the world's just right,*

*And life is lived at speed of light.*

*When time has passed and years have flown,*

*One finds in life a different tone.*

*But if one will, in spite of load,*

*The whole big world's a wide wide road.*

— James A. von der Heydt

*David G. Stebing was a law clerk for Judge von der Heydt (1981-1983).*

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## It's one adventure after another with Aki, and Juneau's wildlife

By Dan Branch

JUNEAU — Aki and I start every hike with a ceremony. The gray miniature poodle mix circles one way and then the other to prepare the snow and loosen her bowels. If a squirrel doesn't dash through her peripheral vision and no raven chants, she does her job. Before the drop, I usually turn away and prepare the plastic bag for capture of her product. On the morning of Aki's run-in with the otter at Fish Creek, I found her poop among many piles left by other dogs. To shift the karma balance in our favor, I bagged them all and grabbed an empty from the responsible dog owner poop bag dispenser. Even though the little dog has danced close to death many times in her eight years of life, I expected to scoop more poop.

When Aki was just 8 pounds of puppy, a bald eagle dived on her while she charged down the Auk Rec Beach. Only a detour into a picnic shelter to beg hot dogs saved her from a talon snatch. A few months later, she dashed up the Windfall Lake trail and pressed her nose against that of a porcupine. I found her butt up, tail a metronome as she tried to get the spiny guy to play. She walked away without a quill. The same thing happened a few weeks ago while we walked along Montana Creek.

She chased two bears out of our Chicken Ridge yard and another across the House of Wickersham lawn. The April before she twice broke through the ice on a moraine lake while responding to a series of beaver tail slaps. When the beaver dove, she started to run back to me until it slapped again.

I anticipated no trouble on the December day about which I write. There was no reason to expect danger on the planned walk to the mouth of Fish Creek. True, we had to pass along the shore of Fish Creek Pond where a young mother

and her 10-year-old son broke through the ice and drowned 14 years ago. But the pond ice was 3 inches thick and we had no reason to walk on it.

Fog clogged the air above Gastineau Channel but hadn't touched the delta wetlands. That changed when we reached the creek's mouth where I spotted what looked like an outhouse walking upstream. It turned into be a bird hunter burdened down with decoys. Downstream, fog moved in to block our view of the glacier. The flooding tide pushed the gray blanket over Smuggler's Cove and onto the mountainsides.

On the return trip, I stopped to photograph an open lead in the pond ice. Aki slipped onto the ice and nosed a recently disturbed patch of water in the lead. The little dog scrambled on shore when I called her. Fifty feet away a river otter eye-hopped and then extended its long neck over the ice. When half of his elongated body was on the ice the other half popped out of the water. Aki dashed back onto the ice after the otter chirped. I called her back but when she started to respond, the otter again chirped.

Otters had chirped to Aki the prior winter at the mouth of the Mendenhall River. From a rock above the high tide line, we had been watching three of them snatch Irish lords from the river, pull onto the beach, and chomp down the bony fish. I released Aki after they moved up river. One of the otters returned to hover just offshore of her and chirp. Aki, probably saved by her reluctance to swim, only walked chest deep into the water. I managed to snatch her before the otter coaxed her away.

The otter on the Fish Creek Pond ice could have been one of that Mendenhall River crowd. Aki had



**"When Aki was just 8 pounds of puppy, a bald eagle dived on her while she charged down the Auk Rec Beach."**

a hard time resisting its call. In a voice loud and a little desperate, I commanded the little dog to, "come." She started back until the otter chirped, then moved back toward it. She switched direction when I yelled her name. The dog pinged and ponged between the otter and me until she finally slunk up to me, perhaps shocked at the language I had used to demand her return. The

otter, tail in the water, four paws on the ice, unimpressed by my vocabulary, watched us walk back to the car.

While always available for lap-dog duty, Aki explodes out the door when we head out for a walk. The little dog and I both enjoy the domestic corridors that Juneau's trail system cuts through wild places. She rides in our canoe and kayak. Like any responsible dog owner, I keep the leash ready in case we encounter a wild animal. We avoid salmon streams during the spawn



**A curious river otter casts a wary eye toward intruders.** Photo by Dan Branch

and the wetlands in hunting season. We stay off the water on windy days. But, living on a thin strip of rain forest jammed between fjord and a wall of mountains and ice, I must acknowledge risk—from the Taku winds, sudden storms on the water and wild animals. Winter and the ocean can take the unprepared. We can't avoid meeting wild things even in our Chicken Ridge neighborhood. Most of Aki's run-ins with black bears have taken place within 100 feet of our front door.



**Aki spots a river otter in an open lead in the ice on Fish Creek Pond.** Photo by Dan Branch

## Law Library News

### Despite cutbacks, digital offerings continue to grow

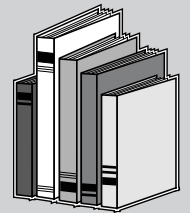
By Susan Falk

You don't have to spend much time reading the paper these days to know that times are tough and budgets are lean. The Alaska State Court Law Library is tightening its belt, along with the rest of your state government. But that doesn't mean you need to go without! The Law Library offers a wealth of electronic resources to bar members and the public at large, any number of which might help you through your own time of need.

Our newest electronic acquisition is Lexis's Digital Library. I used this space in the last issue to crow about Lexis eBooks, but this message bears repeating. Nearly every Lexis and Matthew Bender title the library has in print is now available as an eBook. Alaska Bar members may check out eBooks from their home or office, without needing to visit the Law Library. This means that all of you, wherever you are, have the same access to Lexis treatises. Anywhere, anytime, 24 hours a day, from the comfort of your own desktop or mobile device. Contact library staff to register and start exploring Lexis eBooks now.

While Lexis titles are available remotely, other electronic resources are available on public computers in law library locations around the state. We offer WestlawNext to all patrons, bar members or not, free of charge. (We also still have Westlaw Classic, though the older platform will be discontinued in the near future.) Our Westlaw subscrip-

tion includes case law, statutes, court rules, and regulations from all 50 states and the federal government as well as the entire AmJur library, including Pleading and Practice Forms and AmJur Trials. Last year we added a large swath of secondary sources, including the Restatements and hundreds of treatises and forms. You can also try Westlaw's latest product, Practical Law, which includes practitioner-authored black letter overviews, checklists, and forms for a variety of subjects.



HeinOnline is available free of charge on public computers in all law library locations. Hein adds content regularly and continues to be a fantastic source of legal information. In addition to law reviews and law journals, Hein offers the CFR and the Federal Register, the U.S. Code and U.S. Statutes at Large, federal agency materials, and a trove of other federal resources, all dating back to inception. Recently added Alaska material includes territorial compilations of law, session laws back to 1913, and attorney general opinions back to 1917. Hein also has Bar Rag issues since 1978. All of these titles are image-based PDFs, so they look just like they do in the source material.

Want to check out these digital resources? Contact library staff for access to Lexis eBooks or swing by your local law library to explore the material available on our public computers. And watch for the grand opening of our newly remodeled Anchorage Law Library sometime this April.



## Conduct rules: Comments needed to stop this train wreck

*Continued from page 1*

want it to be perfectly ethical to engage in conduct that constitutes federal felony offenses. Yes, you understand correctly. The conduct would violate federal law and could result in the imposition of incarceration for periods of years to decades. If the rules of professional conduct are changed as proposed, however, the convicted and imprisoned lawyer would not violate the newly minted professional rules of conduct.

The current proposal is to amend ARPC 1.2 to add a new paragraph (f) to provide: "A lawyer may counsel a client regarding Alaska's marijuana laws and assist the client to engage in conduct authorized by those laws. If Alaska law conflicts with federal law, the lawyer shall also advise the client regarding related federal law and policy." The current proposal also is to amend ARPC 8.4 to add the following new comment: "Although assisting a client under Rule 1.2(f) may violate federal drug laws, it is not a violation of Rule 8.4(b)."

The upshot is that the proposed amendments will make clear that we lawyers will be able, without subjecting us to professional discipline, to aid and abet or conspire with clients (accomplices/co-conspirators) to violate federal felony drug statutes. To state it another way, the proposed changes will make it clear that we Alaska lawyers can be prosecuted in federal court for conspiracy to commit marijuana trafficking offenses, but any such prosecutions and convictions would not subject us to professional discipline.

So, are there other areas beyond marijuana where conduct does not violate Alaska state law, but does violate federal law? You bet. To name just a few – firearm laws, foreign travel to have sex with young children, and income tax evasion. If it is to be okay for us lawyers to conspire to commit federal felony drug offenses, is it not logically consistent to also make it ethically permissible to conspire to conduct a business to sell firearms to persons prohibited from possessing firearms under fed-

eral, but not state law? How about making it ethically permissible to conspire to conduct a travel agency business to assist persons to travel to third world countries to have sex with 10-year-old children? And while we are at it, the rule can make it ethically permissible for lawyers to conspire to commit federal income tax evasion.

Please make the time to send an e-mail or letter to the Board of Governors to let them know that we members of the Alaska Bar Association care about this issue. You need to send your comments in care of Alaska Bar Association Executive Director Deborah O'Regan at oregan@alaska.bar.org on or before April 15, 2015. Absent your input, I the fear current proposal will be enacted in short order. I already can

hear the tavern discussion if the proposed amendments are enacted: "Hey Bob, I just served on a jury. The judge would not allow convicted felons to serve as jurors, but it was just fine for the lawyers and judge in the case to be convicted felons."

*John Novak has served as a State of Alaska and special assistant United States Attorney prosecutor beginning in 1990. He has served as the Alaska ethics liaison to the National District Attorney's Association and has provided input on the behalf the Alaska Department of Law to the Alaska Bar Association and Alaska Supreme Court regarding implementation of "Ethics 2000" as well as later rule amendments, including the recent amendment to ARPC 3.8. He has been a member of the Alaska Bar Association Rules of Professional Conduct Committee since 2011. He currently serves as a State of Alaska assistant attorney general, with his duties including providing counsel to the Alaska Police Standards Council regarding professional licensing of police officers. The views he expresses in this piece are his own and do not necessarily reflect the opinions of his employer – the State of Alaska, Department of Law – or any of the organizations he has been associated with in the past or currently.*

**Please make the time to send an e-mail or letter to the Board of Governors to let them know that we members of the Alaska Bar Association care about this issue.**

## Conduct rules: Changes related to new pot law should be adopted

*Continued from page 1*

plex issues raised by the changes in Alaska's marijuana laws. The proposed amendment to ARPC 1.2 would add a new subsection 1.2(f) which provides:

A lawyer may counsel a client regarding Alaska's marijuana laws and assist the client to engage in conduct authorized by those laws. If Alaska law conflicts with federal law, the lawyer shall also advise the client regarding related federal law and policy.

Does this issue affect you in your law practice? If you advise employers about the implications of Alaska's new marijuana laws on its employment policies, the answer is yes. If you advise or assist a client in a divorce who owns an interest in a business related in any manner to the marijuana industry, the answer is yes. If you advise financial institutions that provide accounts to businesses engaged in marijuana commerce, the answer is yes. If you advise and assist clients in forming or conducting business through organizations such as partnerships, LLCs or corporations for the purpose of engaging in "any lawful business" the answer is yes. If you advise and assist clients in business licensing or zoning matters that may implicate commerce related to marijuana, the answer is yes. If you advise and assist clients in real estate leases in which marijuana laws are implicated, the answer is yes. The fact is that Alaska's new marijuana laws will likely eventually be implicated in virtually every area of Alaska law on which attorneys may find themselves advising their clients.

As ARPC 1.2 now reads, a lawyer would be wise to steer well clear of counseling clients on matters, like those listed above, associated with marijuana for the simple reason that the distinction between "discussing the legal consequences of a proposed course of action" and "counseling" or "assisting" in this new legal environment is too difficult to draw. For example, if a client wants to lease a building to a marijuana-associated business, can a lawyer "discuss the legal consequences" of the lease provisions with the client, perhaps with a suggestion of alternate language,

or does that discussion amount to an "assist"? Under the current version of ARPC 1.2, the lawyer can't know; so the client goes unrepresented and risks entering into a lease that inadequately protects the client's interests.

The voters of Alaska, for better or for worse, decided to decriminalize the marijuana business. The Alaska Bar Association, as an instrumentality of the State of Alaska (AS 08.08.010), should support the Alaska legal community's efforts to become familiar with the emerging issues, challenges and opportunities raised by Alaska's new marijuana laws, and to provide sound and ethical legal counsel and assistance to the members of the public related to this emerging field of law.

The federal government, through the United States Department of Justice, has taken pretty much a hands-off approach to the prosecution of marijuana offenses in states that have partly or completely decriminalized the sale and distribution of marijuana. See, <http://www.justice.gov/opa/pr/justice-department-announces-update-marijuana-enforcement-policy>. Of course, that could change. But the licensing and discipline of lawyers practicing in Alaska are matters left to authority of the states, and the constitution and statutes of Alaska entrust the regulation of the practice of law to the Alaska Bar Association and the Alaska Supreme Court, including the adoption of the ethical standards expressed in the ARPC. The federal government plays no role in these matters and federal agencies, including the federal courts, are not attempting to do so in response to the many states decriminalizing marijuana.

Alaska should join the supreme courts of Colorado, Washington, Nevada and Oregon in ensuring that lawyers in their jurisdictions can provide quality legal services to their citizens in this new area of law. The ARPC Committee believes that an appropriate step in doing so is to remove the ethical constraints that might otherwise be felt by some of Alaska's lawyers under current ARPC 1.2.

*Bob Bundy is as a member of the majority of the Alaska Bar Association Rules of Professional Conduct Committee.*



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# Conduct rule changes related to new marijuana law proposed

Continued from page 1

to engage in conduct authorized by those laws. If Alaska law conflicts with federal law, the lawyer must advise the client regarding related federal law and policy. The committee also voted to propose a new paragraph 5 of the Comment to Alaska Rule of Professional Conduct 8.4(b) clarifying that although assisting a client under Rule 1.2(f) may violate federal drug laws, it is not a violation of Rule 8.4(b).

Regarding federal law, the Department of Justice has issued an Aug. 29, 2013, update to its marijuana enforcement policy. Of particular note in the DOJ announcement is this paragraph:

For states such as Colorado and Washington that have enacted laws to authorize the production, distribution and possession of marijuana, the Department expects these states to establish strict regulatory schemes that protect the eight federal interests identified in the Department's guidance. These schemes must be tough in practice, not just on paper, and include strong, state-based enforcement efforts, backed by adequate funding. Based on assurances that those states will impose an appropriately strict regulatory system, the Department has informed the governors of both states that it is deferring its right to challenge their legalization laws at this time. But if any of the stated harms do materialize — either despite a strict regulatory scheme or because of the lack of one — federal prosecutors will act aggressively to bring individual prosecutions focused on federal enforcement priorities and the Department may challenge the regulatory scheme themselves in these states.

The Aug. 29, 2013, policy memorandum identified the eight federal interests:

- 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 other 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 en-

vironmental dangers posed by marijuana production on public lands; and

- Preventing marijuana possession or use on federal property.
- The United States Department of Justice's announcement and a link to the revised policy memorandum may be found at: <http://www.justice.gov/opa/pr/justice-department-announces-update-marijuana-enforcement-policy>.

## Rule 1.2 Scope of Representation and Allocation of Authority Between Client and Lawyer.

(d) Except as provided in paragraph (f), a lawyer shall not counsel or assist a client to engage in conduct that the lawyer knows is criminal or fraudulent, but a lawyer may discuss the legal consequences of any proposed course of conduct with a client and may counsel or assist a client to make a good faith effort to determine the validity, scope, meaning or application of the law.

(f) A lawyer may counsel a client regarding Alaska's marijuana laws and assist the client to engage in conduct authorized by those laws. If Alaska law conflicts with federal law, the lawyer shall also advise the client regarding related federal law and policy.

## Rule 8.4. Misconduct.

### COMMENT

[1] Lawyers are subject to discipline when they violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so or do so through the acts of another, as when they request or instruct an agent to do so on the lawyer's behalf. Paragraph (a), however, does not prohibit a lawyer from advising a client concerning action the client is legally entitled to take.

[2] A lawyer may refuse to comply with an obligation imposed by law upon a good faith belief that no valid obligation exists. The provisions of Rule 1.2(d) concerning a good faith challenge to the validity, scope, meaning, or application of the law apply to challenges of legal regulation of the practice of law.

[3] Lawyers holding public office assume legal responsibilities going beyond those of other citizens. A lawyer's abuse of public office can suggest an inability to fulfill the professional role of lawyers. The same is true of abuse of positions of private trust such as trustee, executor, administrator, guardian, agent and officer, director, or manager of a corporation or other organization.

[4] This rule does not prohibit a lawyer from advising and supervising lawful covert activity in the investigation of violations of criminal law or civil or constitutional rights, provided that the lawyer's conduct is otherwise in compliance with

these rules and that the lawyer in good faith believes there is a reasonable possibility that a violation of criminal law or civil or constitutional rights has taken place, is taking place, or will take place in the foreseeable future. Though the lawyer may advise and supervise others in the investigation, the lawyer may not participate directly in the lawful covert activity. "Covert activity," as used in this paragraph, means an effort to obtain information on unlawful activity through the use of misrepresentations or other subterfuge.

[5] Although assisting a client under Rule 1.2(f) may violate federal drug laws, it is not a violation of Rule 8.4(b).

## Alaska Bar Rules 28 and 30.

Alaska Bar Rules 28 and 30 require the Bar Association to provide notices of public discipline and disability transfers to various entities. In addition, Rule 28(g) and Rule 30(e) require these notices to be published in newspapers of general circulation in Anchorage, Fairbanks and Juneau. For many years, the Bar has also included publication in Ket-chikan.

In addition to disciplinary and disability notices, the Bar publishes notices of reinstatement from disciplinary suspension or disbarment as well as from disability inactive status.

The cost of a display ad in these newspapers is significant: The Bar's controller noted that \$13,988.36 was spent in 2013 and \$7,922.56 in 2014. While lawyers may have clients in cities other than where their practice is located, the most important public notice would be in the lawyer's home community.

The Bar already provides online notice of its public meetings, so adding a requirement that notice of public discipline or disability transfers be placed on the Bar's website

has minimal financial impact.

## Rule 28. Action necessary when Attorney is disciplined.

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

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

(2) an official Alaska Bar Association publication; and on the Alaska Bar Association's website; and

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

## Rule 30. Procedure: disabled, incapacitated or incompetent attorney.

(e) **Notice to Public of Transfer to Disability Inactive Status.**

The Board will cause a notice of transfer to disability inactive status, whether imposed after hearing or on an interim basis, to be published in

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

(2) an official Alaska Bar Association publication; and on the Alaska Bar Association's website; and

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

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

Please send comments to: Executive Director, Alaska Bar Association, P.O. Box 100279, Anchorage, AK 99510 or e-mail to [info@alaskabar.org](mailto:info@alaskabar.org) by April 27, 2015.

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Lawyers Assistance Committee  
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# Nome bar convention featured coffin, surprised sponsors and a milk man

By Robert Erwin

In 1969 the Alaska Bar Association held its convention for the first and only time in Nome Alaska. Approximately 150 members attended with the host being the single private attorney in Nome, Neil Kennelly, and the optimistic officers and the Board of Governors of the Alaska Bar Association.

The featured speaker was to be the national president of the American Arbitration Association who was intrigued to be provided travel to the gold rush city of Nome in the furthest reaches of America.

Kennelly was to provide the civic welcoming committee from Nome and several social events were to be arranged by local businessman and promoters; namely Jim West, who was the proprietor of the famous watering hole, "The Board of Trade."

The initial welcoming breakfast got off to a stuttering start when no one could locate the Nome mayor or councilman to bid the members welcome to Nome. Subsequently the vice president of the local rotary club was substituted to say a few words.

A delegation of attorneys then went to the Nome airport to welcome the president of the American Arbitration Association who was subsequently wined and dined non-stop for three days.

The initial cocktail reception took place in the vacated downtown office of Wein Airlines and the cocktails were attributed to them, until it became apparent that Wein Air-

lines was totally unaware of the use of their facilities or their supposed contribution to the welfare of the Bar Association. The donor went unidentified.

The weekly edition of the "Nome Nugget" then hit the streets with a full page ad from a local chef touting the good fortune of the Bar Association to hire him to present his famous talents. There was at least one dinner and one lunch where he would demonstrate his "talent" of being able to slice a roast with a sword. The dinner had been paid for but the chef was a bonus, and he paid for his own newspaper ad.

The next glittering social event was a cocktail party in the lobby of the Alaska Airlines Hotel. The only problem was that no one from Alaska Airlines was aware that the event was to take place and had no permit for the serving of beverages in the lobby. A search for the event organizer did not turn up anyone who would admit responsibility. No bill was presented to the Bar Association.

Subsequently, another event took place at the Beltz Boarding School cafeteria with a similar lack of sponsorship or payer for the lunch or use of the facilities.

The next highlight was the transportation (by school bus) to King Island Village (on the outskirts of Nome) for traditional Eskimo Dancing. No one was able to determine, again, who provided the bus services (or who was to pay for these). The highlight of the evening was watching Alaska's last territorial attorney general join in the dancing with an

energetic style all his own.

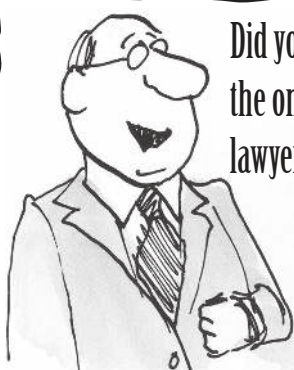
There were still highlights to come. The final banquet and the speaker from the American Arbitration Society was to be a cap to the Nome convention.

At that dinner the president of the American Arbitration Association arose and started his speech with five minutes of praise for the hospitality he had received and stated he had not been so finely treated in his whole life. He then paused and after looking over the whole room he stated: "For the life of me, I cannot understand why a bunch of lawyers wanted to hear a speech from a milkman!" The uproar the resulted can only be imagined. Apparently the president of the American Arbitration Association had stepped off the plane in Nome, and one look around and got back on the plane and left. The "milk salesman" was the only passenger in a coat, tie and overcoat so the welcoming committee assumed he was the one they had been sent to greet. He was enjoying himself so he never pointed out their mistake.

In the "You-Can-Never Top-This" category was the final night of revelry which was enjoyed by a number of conventioners at the Board of Trade bar. The district attorney at Nome for the previous few years had been old-timer Fred Crane who had arrived in Alaska in the late twenties. Fred was mentor to a number of attorneys (including this writer) and was highly thought of for his practical advice and his willingness to help young lawyers, even if they were on the other side of the case.

Fred had died in the winter and his casket and remains had been stored pending the spring thaw which would permit a proper burial.

After having a few cocktails and telling a few war stories about Fred's colorful past, the group decided to bring Fred to the Board of Trade to toast his life and demonstrate their appreciation for his efforts in the past. The result was a



Did you hear the one about the lawyer who ...?

Published in the Salt Lake Tribune from actual court records.

Q: What happened then?  
A: He told me, he says, "I have to kill you because you can identify me."  
Q: Did he kill you?  
.....  
Q: She had three children, right?  
A: Yes.  
Q: How many were boys?  
A: None.  
Q: Were there any girls?  
.....  
**The Bar Rag welcomes contributions to this new feature sent to mkelly@gci.com**

revelry of gigantic proportions and several toasts to Fred which ended with closing down the Board of Trade and a respectful return of the casket to the site to await the final peaceful resting place with a few tears.

A Bar convention to remember! One final comment is in order: It was one of the few Bar conventions that actually made a profit until the pipeline increased the number of lawyers by a factor of 10. Old Alaska was fun, or at least unpredictable or maybe a touch unbelievable.

Robert Erwin is a retired justice of the Alaska Supreme Court and was the only Alaska-born justice to sit on the court until 2007.



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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 some one in your local legal community:

Fairbanks: Aimee Oravec, aimee@akwater.com  
Mat-Su: Greg Parvin, gparvin@gparvinlaw.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, frequent flyer miles, transportation, medical community contacts and referrals, and a myriad of other possible solutions through the thousands of contacts through the Alaska Bar Association and its membership.



## TALES FROM THE INTERIOR

## Search for the rare deodorant leads to some insecurity problems

By William Satterberg

Lawyering is stressful. Collateral damage regularly occurs. One collateral damage often is "B.O." – body odor. Two things are difficult for clients to endure in court while sitting next to their attorneys. One is bad breath. The other is body odor. Fortunately, both have potential solutions. We have all sat next to the person with a hygiene problem. Ordinarily, the offender can be quickly identified. And, if the person cannot be identified, it is probably yourself.

Over the years, I have experimented with various deodorants. In high school, I used the tried and true classic, "Right Guard." Right Guard was cheap. It came in a gold can. Girls were said to love it. Another lie. With time, I found that Right Guard was not that effective, as I walked the West High hallways blowing air under my armpits to lure the girls.

Deodorants, like perfumes, are reportedly keyed to body chemistry. Axe is a prime example. Despite the many advertisements showing females frantically trying to ravage the Axe user, Axe does not play well with me. Still, I use Axe because it is cheap. On the other hand, European deodorants work well for me. As such, when in Europe, I stock up.

Several years ago, I found a brand in Luxembourg which worked well. As expected, the company ceased manufacture. Apparently, my body chemistry was one of the only chemistries that liked the stuff. Fortunately, I had stocked up on a bunch of the antiperspirants before the company closed. I had nothing to sweat about, at least for a while. Eventually, my cabinet ran dry. Either that, or Brenda had tossed the stash along with my Right Guard.

Later, I was lucky to find that another deodorant had become available in Holland. This gave me a perfect legal excuse to travel to Amsterdam. The latest aerosol was Etos. Like my Luxembourg deodorant, Bac, Etos was inexpensive, sold in cheap drug stores throughout Holland. As such, in 2012, I stocked up on a supply of Etos. Again, I thought I was set for life. But, hot weather and trials being a factor, in 2014, my Etos was rapidly becoming DOA.

In September of 2014, Brenda, and I had to travel again to Luxembourg. Recognizing that my stash of Etos was diminishing, I wisely routed my itinerary through Amsterdam. I would visit the Etos drug store in the Schipol Airport for replenishment. But it was not to be that easy.

In Seattle, our connecting flight to Amsterdam was cancelled. I was told that we would not arrive in Luxembourg for two more days. Fortunately, Delta Airlines routed us on British Airways via London. London, unfortunately, did not have my deodorant available. Etos was only sold in Holland at Etos brand stores. I was in crisis.

Two weeks later, we returned to the United States via Amsterdam. This time, our schedule called for a two and one half hour layover. We had more than sufficient time to exit the gate area, go to the airport drug

store and purchase valuable Etos.

In Amsterdam, in order to avoid complications of passing back through security, we stuffed our luggage in a luggage locker. We were proud of our relatively smart idea, although there would be unforeseen complications. Clearing security, we next went directly to the drug store. The shelves were bare. Apparently, my favorite Etos deodorant had been discontinued. The clerk advised me that she understood what I was looking for, but that she had not seen cans of the product on the shelf for several months. I was now in a panic. Sweat began to form on my brow. As we left the drug store, some unseen force caused me to look down at the travel notions. It was a miracle! Several miniature-sized cans of Etos were available.

Previously expecting success, Brenda and I had already brought along two airline-sized plastic toiletries baggies. Ignoring the curious stares from other shoppers, we eagerly stuffed both baggies full of the deodorant.

Once we cleared airport security, we would be home free. After security, we simply planned to combine our deodorant stash with our other already screened plastic baggie toiletries and stolen hotel soaps and lotions.

Having eaten only Italian food for one week, Brenda was starved for a hamburger. At a terminal Burger King, we shared two Junior Whoppers. We next briefly visited a terminal delicatessen and wandered the aisles, aimlessly shopping, since we still had over an hour before the jet would leave. That seemed to be more than enough time to clear security and passport control and stroll leisurely to our gate.

Shopping done, we went through passport control, effectively leaving the European Union. However, once through immigration, I had an immediate sense of dread. I could not find our luggage locker. Panic approaching, I contacted an information counter to ask where our locker was located. I was told that the locker was "back in Amsterdam." Yet, we had already cleared passport control and had formally left the European Union. If we wanted to access our locker, we would first have to re-enter the European Union and re-clear security.

The line to enter the European Union was long. Notwithstanding my Delta frequent traveler status, it still took valuable time to clear back through immigration. We then had to re-clear security to enter the local departures side of the terminal. That line was also long, which led to my normal OCD uncontrolled line jumping response.

Finally clearing formalities, now abandoning any sense of decorum, Brenda and I dashed to our locker. Fortunately, the electronic combination actually worked. The locker snapped open to reveal our secure luggage. But, we were still far from complete in our escape.

We next had to go once again



**"We have all sat next to the person with a hygiene problem. Ordinarily, the offender can be quickly identified."**

through passport control. As I once again approached the counter, the immigration officer looked skeptically at my passport. With a smirk, he commented that it looked like both myself and my wife "like Amsterdam a lot," while stating that to me "do you know you have been back and forth three times within the last hour?" In reply, I promised him that, if he allowed us to leave just

one more time, we would be "gone for a while." I then explained that I had frantically been in search of deodorant. He smugly replied that it certainly looked to him like I needed it. Following that subtle Dutch insult, he then chuckled to himself and graciously stamped our passports one last time. We were once again on the departure side of the European Union.

By then, the gate sign was quickly flashing for all passengers to "proceed to boarding." Before, it had been a solid signal. Clearly, time was running short.

Once again, racing through the terminal, we finally arrived at the Delta Airlines flight bound for Seattle. As we approached the gate, another problem arose. I saw that there was another full security system set up. Not only that, but official, uniformed agents were seriously questioning all passengers. It became apparent that security was at an all-time high.

I realized that we had another problem over the amount of deodorant that I had purchased. Between the plastic bags of our normal toiletries, coupled with the recent purchases of 14 cans of miniature Etos deodorant, we were clearly beyond the legal toiletries bag requirements. Most likely, we would be labeled as a terroristic threat to security. The only option was to lighten the load and to jet-tison our excess cosmetics.

As we were hastily repacking our contraband, preparing to discard our American bought toiletries, a kindly person approached us. She was a Delta Airlines "Red Jacket." Her job

was to assist confused passengers. It was obvious that we were clearly qualified. I explained that Brenda and I had barely made the gate. We had been on a quest for Dutch deodorant. I lamented about our many trips in the past hour to and from the European Union, the delays at security, and only to finally be at the gate and about to lose my stash. ("Stash" was probably a poor choice of terms in Amsterdam.) I tearfully pleaded that I could not lose my deodorant, now being so close to smuggling it back to America.

Sensing my high anxiety, as well as likely my nervous sweat, the agent asked what type of deodorant was "so special." I confessed that it was Etos deodorant. Raising an eyebrow, she told me that Etos was "one of the cheapest brands in Holland," but that she liked Etos products, as well. She would help us. As the conversation turned to odors, she shared that her husband liked some cheap product out of the America called "Guard." I told her that it was Right Guard. I offered that, in fact, I probably still had a whole bunch of cans left over from high school that I could give to her if Brenda had not pitched them yet.

As boarding time was drawing short, a conference hastily occurred between two Red Jackets and the security personnel. Remarkably, they agreed to load my deodorant on the plane in a separate, five pound carry-on bag which would be checked baggage. The ordinary price for an extra checked bag would be \$100, but Delta generously waived the charge.

The problem solved, Brenda and I finally boarded the flight. Ten hours later, we landed in Seattle. During the journey, we had the entire row to ourselves, which was an unexpected benefit most likely related to the earlier stress of the day. Moreover, after clearing United States immigration, I was pleased to find that my small carry-on bag with my fourteen miniature cans of smuggled Etos antiperspirant was one of the first items on the belt. My precious deodorant had arrived unscathed. In retrospect, this was fortunate, since there was no question that I clearly needed it by then.

**Over the years, I have experimented with various deodorants.**

**During the journey, we had the entire row to ourselves, which was an unexpected benefit most likely related to the earlier stress of the day.**

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## Andreyevich and the Alaska genesis of parliamentary procedure

By Peter J. Aschenbrenner

"Is it really true," TJ asks the assembly, "that the Library of Congress lists 700 entries under call letters 'JF 515'?"

"And this was after the British burned the library," the Governor points out.

"For the *Second* War for American Independence, the British left their Germans at home," I point out. "Still, the destruction was even worse in 1814."

"There must be some consolation in this mess. I was in Monticello at the time, so I have an alibi."

"You appointed Wm. Hull to serve as Territorial Governor," Jimmy reminds his predecessor in office. "The year was 1808."

"And he surrendered Detroit," Dolley points out. "In 1812!"

"Could he see Canada from Michigan?" TJ asks. "Now that's a scary thought. It might explain everything."

"His nephew captained the *Constitution*," Governor Palin explains, "when he captured the *Guerrière*, three days later. Oops, the Royal Navy omits the accent grave. Make that *Guerriere*. Warrior maidens are fussy about matters orthographic."

"There you have it!" TJ brightens up. "Political appointments do pay off, at least those sporting avuncular connections."

"Van Rensselaer's uncle launched the aimless attack on Queenston Heights across the Niagara River," I interject, "and Governor Winder's nephew lost the

Battle of Bladensburg."

"Usually," Jimmy sniffs, "people blame my Secretary of Defense, John Armstrong."

"You rang? I was in Alaska at the time."

The Secretary studies the menu, while Mr. Whitecheese tinkles the ivories.

"No crab cakes. What's the deal?"

"Did you notice the mudflats?" the Governor asks. "This is Anchorage, Alaska, not Annapolis, Maryland."

**"Everyone thinks that parliamentary procedure has something to do with order. It's like the Roman columns on Constitution Avenue. That's all you ever read about in hundreds of manuals on the subject."**

"What are you doing here?" Dolley asks.

"After serving in the Jefferson administration as Minister to France," Armstrong warms to his topic, himself, "I translated the leading French military treatise into English. Or paraphrased it. Shamelessly, of course."

"Naturally," Governor Egan agrees.

"So, it being August 1814, I thought I would see what Alaskans were doing in the way of founding parliamentary science."

"That you could claim credit for," Jimmy declares. "And to think that I pardoned Governor Hull after the court martial sentenced him to be shot for surrendering Detroit!"

"That would have started the War of 1812 with a real bang," Dol-

ley guffaws.

"So," Governor Egan asks, "how were we doing in 1814? I mean, the capital was located in Sitka at the time you dropped in."

"And you would have to speak Russian," I add.

"The legislators spoke French," Armstrong corrects me.

"They could have put Jeremy Bentham's plan for parliamentary science into place," Dolley suggests. "Baranov, Bentham. There's a natural link there."

"That's exactly what did happen. Jeremy Bentham roamed the world offering his rules to anyone who would listen. And no one did until the provincial legislature in Sitka adopted everything he had. Lock, stock, fish-barrel."

"More crabs, fewer fish," Gov. Egan corrects the Secretary of 'Make No War Before Its Time.'

"This is where the story gets interesting," Armstrong continues.

"We're on the edge of our chairs," Dolley enthuses.

"Everyone thinks that parliamentary procedure has something to do with order. It's like the Roman columns on Constitution Avenue. That's all you ever read about in hundreds of manuals on the subject."

"This is true," Mr. Whitecheese assures us. "I've built a carport out of these books-in-boards."

The Governors scowl.

"Hey! I'll pay the fines someday."

"Do the phrases 'accuracy in business,' or 'economy of time' ring a bell?" the Secretary asks us.

Palin expounds, "find no easy reception in American jurisprudence."

"You're missing the point," Sally Hemings comes to TJ's defense. "Everybody knows that chartered organizations run on order. It's like oxygen. If you have rules people have to follow when they're arguing with each other in public, then you have imposed order on chaos. You'd think that General Robert would have more sense."

"Here's what I was really getting at," TJ declares.

"You did say this in your Inaugural Address, didn't you?" I ask.

"Con permeso, maestro," TJ signals Mr. Whitecheese and picks up his Guarneri *del Gesù*. "Allow me to lay on the *arco*."

"The Last Rustle of Spring," Mr. Whitecheese sighs.

"What's wrong with talking about efficiency as a virtue?" TJ declares. "And as for economy, Adam Smith published his *Wealth of Nations* in 1776. Need I say more?"

"It's quite obvious," Armstrong pleads the brief Jeffersonian to the assembly. "While everyone who was anyone in JF 515 has been nattering on, and at length, about 'order, regularity and uniformity' in procedures, the hard work is getting things done better faster."

"Bentham suggested dozens of rules to move matters along," The Sarah explains. "I'm surprised the French didn't adopt his program."

"Was this the one where legislators served time in jail cells under public view?" Governor Egan asks. "Just asking."

"Bentham wanted legislators to vote by raising their hands. Big deal," TJ explains. "And he wanted the assembly to meet in a room nearly circular. But I designed double ovals into the Rotunda at the University of Virginia."

"My common-law husband wrote

**"To sum up: Honoring equal protection yields efficiency in business and time."**

"That's from my *Manual on Parliamentary Practice*, which I collected from the printer on Feb. 27, 1801. Ten days after I won the election and five days before I was sworn in. As I recall, the weather was cold —"

"That's my cue," John Adams arrives. "Come along, Abigail. Jefferson owes me an apology."

"You were riding in a closed carriage through Maryland on Inauguration Day," Abby snorts. "My husband," she declares to the assembly, "is the only President to skip the festivities of his successor in office."

"Death was the alternative!" Adams replies to the marital taunt. "And seemed preferable, frankly."

"You could have removed yourself to Alaska," Governor Egan explains. "Up here people live forever."

"So it would seem," Baranov winks at Dolley Madison.

"Lighten up," Dolley replies. "That was directed to my husband. Pour it on, Alexander Andreyevich."

"I outlasted your husband in office," the former Governor of the former Russian America declares his undying passion to The Dolley, while keeping his shirt on. "True, only by a year."

"A year here, a year there," Dolley studies her nails. "It all adds up."

"The phrases in question," Gov.

(in his First Inaugural address) that "the will of the majority is in all cases to prevail, that will to be rightful must be reasonable; that the minority possess their equal rights, which equal law must protect, and to violate would be oppression," Sally recites.

"It sounds terribly American," Governor Egan agrees.

"Gen. Robert and his vaunted 'rules of order' drop out of the analysis," Governor Baranov drops another olive in Dolley's Martini.

"Let us, then, fellow-citizens, unite with one heart and one mind," Sally concludes. "That's my favorite line. It always makes me tear up."

"This is weird," I say aside to The Sarah. "Are we being played for chumps?"

"Welcome to Alaska, my friend," she replies.

*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 43 of his articles.*

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## Top four financial tips for the one-person legal practice

By *Monica Elkinton*

Probably the biggest thing that solos need to figure out is the finances for their business. Here are three financial tips for when you start your practice.

**1. Get an Alaska Airlines Credit Card for your practice.** Whether you want to start your practice in debt or whether you've saved up to start your practice, it's a good idea to start keeping your business expenses separate from your personal expenses, even before you have income or bank accounts. Getting a separate credit card is a great way to do this, and you get the miles. Whether to pay it off in full every month from savings or run a balance is up to you. Even before you start making money, you're networking, you're attending CLEs, and you're buying lunches/pints/cups of coffee for more experienced lawyers and solos as you ask them for advice. Putting all those purchases on your business credit card is an easy way to keep them separate. The application process for a business is not difficult, and my card was issued long before I had any income. (Remember that if you apply while on a plane ride, you get even more miles!)

For anything financial in your business, you should use an Employer Identification Number (EIN) instead of your personal Social Security number. You can apply for an EIN quickly on [www.irs.gov](http://www.irs.gov). You'll have to note which kind of business entity you are. Most solos start out as sole proprietorships until they and their CPA figure out what's best for their situation.

**2. Open operating and trust bank accounts.** You'll need a bank account. If you'll be billing hourly, you'll also need an IOLTA account. The bank will require your EIN and may also require a business license. You can apply for that online too, at the State of Alaska Department of

Commerce's website.

Not all bank tellers know how to open a trust or IOLTA account. Don't worry – the bank as an institution still knows how to handle it. Tell them it's a special account for lawyers, and ask them to look it up in their list of special accounts with special things they need to do. They may call over the manager, but eventually they'll look it up in their list of special accounts that tells them what to do.

Pay attention to Alaska Bar Rule 15.1! This rule came into effect starting April 15, 2014. The bank where you have your IOLTA account must be on the approved list of banks with the Alaska Bar. To find the list, go to the "For Lawyers" page of the Alaska Bar website, and click on "Bar Rule 15.1." There's also a webinar on that page offered by Steve Van Goor to explain the rule, and I highly recommend watching it. Basically the rule requires the bank to notify the Bar if there's ever an overdraft. Your IOLTA or trust account must also be labeled "escrow," "trust" or "IOLTA" with your bank. The bank must file their Overdraft Notification Agreement, and you must file a Waiver of Confidentiality with the Bar. The banks on the list have already filed their Overdraft Notification Agreement.

Some solo practitioners choose to have their trust and operating accounts in separate banks to make sure the funds stay separate. Some choose to have checks printed in two different colors for the same reason. It probably seems outdated in 2015, but I prefer to actually write checks out to my office's operating account from my trust account, rather than doing electronic payments. Having the physical check helps me keep my bookkeeping straight. Whether you are comfortable with using electronic payments out of your trust account is up to you, but keep in mind how important your trust account is in terms of your professional duties.

**3. Get a CPA and ask them what to do.** As I've previously written in this column, having the assistance of a CPA is invaluable as you start your practice. Everyone's situation is different, so you want to make sure you can figure out with your CPA what will work for you. They'll assist you with business entity advice and formation, advise you on how to keep your records and bookkeeping so that tax time is easier, when and how to pay quarterly self-employment taxes, and answer all kinds of other important questions.

**4. Accepting credit cards as payment.** Once you're up and running, do you want to accept credit cards? There are lots of ways to do it, and several pitfalls to be aware of. First, you want to avoid "charge-backs" or refunds out of your trust account. If you're accepting a credit card payment into your trust account and a client decides they don't want to pay any more, they could call up MasterCard or Visa and tell them they had a problem with you. The credit card company can refund the client's credit card, drawing that refund straight out of your trust account. This is a terrible thing if you've already invoiced the client and their money is no longer in your trust account, or you've issued a separate refund already. If you're using a merchant service account through Costco, Paypal, or Square to accept the credit card payments, make sure they won't issue refunds straight

out of your trust account.

Another pitfall is merchant fees. Most merchant services take their fee (typically 2-5%) out of the account into which they deposit funds. You certainly want to watch out and make sure client funds aren't taken for this purpose. The Alaska Bar has said that attorneys may keep a small amount of money in their trust account intended to cover these fees without it being considered co-mingled.

I prefer to just have a merchant services account that pulls my fees from my Operating Account regardless of whether I'm depositing into trust or operating. There are two competing services that do this, LawPay.com and LawCharge.com. Both have been around quite a long time and are trusted by Bar Associations and attorneys nationwide.

*Monica Elkinton started her solo practice in 2011. She practices statewide criminal defense, family law, and other civil litigation for individuals such as small claims and FED. Her website is [www.elkintonlaw.com](http://www.elkintonlaw.com), and you can follow her on twitter at @elkintonlaw. She is co-chair of the Alaska Bar Unbundled Law Section and serves on the Alaska Bar Pro Bono Services Committee.*

**Possible Future Topics in this series:** What kind of insurance do I need (Health, Malpractice, Vehicle)? When should I hire staff? If you have a suggestion for an article topic, email [monica@elkintonlaw.com](mailto:monica@elkintonlaw.com).

### LOTS FOR SALE — DENALI STATE PARK, ALASKA

Buyers Creek Landing is located near Mount McKinley at the intersection of the Chulitna River and Byers Creek in Denali State Park on Parks Highway.

Only 60 parcels of private land holdings are within the 324,240 acre Denali State Park. Lots start at \$25,500 and go up to \$44,500 with the terms \$1,000 down and payments are 1% of the purchase price with 8% interest and the closing cost of \$150.

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### 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).

For details on these benefits & services and how to access them, download the full Member Benefits Guide at [www.alaskabar.org](http://www.alaskabar.org).

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## Should a graduate school of legal studies be established in Alaska?

*This is the third installment in a series of three exploring the state of the Bar and the possibility of establishing an Alaska law school.*

By John Havelock

### Parsing the future of legal education

The global winds of social and economic change blow stronger than ever. Education and commerce are rocked by new technologies. Considering the cycle of bureaucratic creation, the institutional innovation under consideration, which for convenience we call a law school, must include planning for a student population now in K-12, and for Alaskans not yet born. There are no guarantees but without the added creative energy, education, and individual opportunity promised by a law school, the economy will also fall behind. If we accept the proposition that the leadership cadre of Alaska society provided through the legal community will always consist of those educated outside Alaska, this ultimate colonialism, which so far has been so much a part of Alaska's fate, will continue. Alternatively, we can take some chances on building a stronger Alaska educational and institutional setting with an economic growth potential.

In the South 48, everywhere that we see strong educational and research institutions, we also see a ring of economic growth and innovation in surrounding areas. Alaskans should stop thinking that they can "diversify" Alaska's economy without that kind of draw.

Several trends suggest that Alaska could move forward with forms

of advanced legal research and education, becoming in fact an international center for excellence in specified fields. The world is rapidly becoming more global. International agreements multiply and international institutions are formed to administer them. The world of "NGOs" has grown apace. Hundreds of thousands of skilled people are needed to administer functions which abet world trade, world health and world peace. Alaska once touted itself as the "air crossroads of the world." Nothing in prospect seems likely to change the reality of that designation. Rather it will become more so. An educational institution that is also a center of international law can both teach and, through research and policy recommendations, simplify, clarify and standardize the legal requirements governing international activity, and will bring in hundreds of students and scholars from across the globe. Students will be prepared to pay substantial tuition fees as the reputation of the Alaska institute grows. Alaska's role in the world's economy will expand through personal interconnection.

Alaska remains a huge territory with unmeasured natural resources. Again an old saw remains relevant. Alaska is an "untapped warehouse" of natural resources, particularly from mining. As third world resources are tapped out and as more countries discover that lack of environmental regulation is destroying living values, we can expect resource development in Alaska to

pick up substantially. Is this growth to be managed by the pick of lawyers brought in by external developers or by sophisticated graduates of an Alaska education? The University of Alaska Fairbanks has a solid petroleum engineering program but it is designed simply to produce industry employees. There is no international, socio-legal wrap as described above.

A quick glance at the history of Texas offers the possibility that as Alaska production of oil and gas tapers down, it will reach a plateau where smaller, new discoveries and enhanced technology bring a steady flow lasting much longer than standard predictions, even though the boom days are gone. Cook Inlet production, for example, was scheduled to have disappeared 20 years ago.

Oil and gas development must happen within a legal environment. A temporary plunge in global oil prices does not change this requirement. Trained lawyers are needed to protect the state's interest in safe continued production, "fair share" analysis and a myriad of contractual relationships within the industry. As with most forward looking legal education, the major must be combined with other old or emerging disciplines.

Alaskans inhabit a unique legal environment. Among its important features are consideration of Alaska Native and Indian law, custom and subsistence. Alaska Native corporations are our largest landowners and, as business corporations, do billions of dollars' worth of investment and management and provide millions of dollars in dividends to shareholders. The relations between Alaska Natives and the immigrant population provide rich analogies to relations among ethnic and political groups internationally. Legal and sociological training is essential to an understanding of these relationships and inter-group and intra-group management with global analogies.

These are just a few of the major trends that are close on the Alaska horizon. Most readers will identify additions or take a more sophisticated view of those mentioned. All these possible developments suggest that an Alaska law school is not only feasible but is essential if Alaska is to break out of its colonial history.

### Conclusions from Part 1 and 2

In two previous Bar Rag postings, the tentative conclusion was reached that annual immigration of law students will preserve the Bar at its present size. It was also concluded that adding the estimated number of Alaska college graduates who are now prevented from going to law school to the number who can afford to go to and have gone to a law school outside Alaska would produce enough students to start a small Alaska law school, using a median LSAT score. In 2010, 126 Alaskans applied to law school. This number is down to 73 in 2014, which is understandable considering the adverse publicity generated recently. Annual tuitions run from \$27,000 regionally to \$40,000 for the exceptional schools. In the current atmosphere, application enthusiasm is hard to gauge but for an Alaska school, application num-

bers should easily double. Some Alaska college graduates would still leave but at least as many outside and foreign students would choose Alaska. An exciting, future-oriented program will bring in many more. A reasonable tuition, much more than Alaskans are used to at the college level, can be charged, meeting most of the operating expenses, even with a healthy scholarship program. It is also reasonable to conclude that graduates of an Alaska law school would be far better Alaska lawyers than most graduates of outside law schools.

A consortium of existing West Coast law schools is already addressing the issue of Alaska's short supply of opportunity by organizing a third year of law school in Alaska, with an emphasis on internships, under the imprimatur of the law school where the students spent their first two years. The ABA has already approved this arrangement. Commendable as these ventures may be, they still leave the Alaska resident paying tuition and the personal and economic costs of living outside for two years, missing the flavor of a total Alaska-based education and the unique course collection that would be provided by an Alaska-designed three-year curriculum.

### 1. Changes in the national legal education landscape.

As you may have heard, legal education has taken a beating over the last few years. A boom in law school establishment, adding a sea of newly minted graduates, not all of whom were first rate, was bound to be followed by a sink. This sink was accompanied by an unusually heavy, scurrilous description of the legal personality. On top of these changes, the country experienced an economic downturn with unemployment figures that did not omit law school graduates. As a result, law school applications dropped considerably. Some schools have lowered admission requirements. Waves are an inevitable part of our capitalist system. Ironically, this bottoming out is the best time to establish a law school. There is no direction but up.

### Changes in the Alaska economy

The arrival of the oil economy "changed everything." Box stores replaced small business. Professionalization and specialization became dominant features of law as well as medicine. Though subsidiaries of multi-state or multi-national corporations are the "big business" of Alaska, ANCSA has given Alaska many unique features unknown outside the state which carry unique legal and social complications. Of the top 50 Alaska corporations, measured by gross income, 20 are either ANCSA regional corporations or large village corporations. The regional corporations alone enjoy \$8.5 billion dollars in annual revenue; that's right – billions, each year. Patterns of tribal business and relationships dot the landscape. The effect of all this is that legal education in Alaska is in a position of trying to catch up. Both by organization and content, the time lag is substantial.

*Continued on page 15*



**As an attorney, you're a member of a professional association; your office manager should be too.**

The Association of Legal Administrators, Alaska Chapter, is looking for local managers. Is your manager a member? If not, your firm is missing the following benefits:

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It's time to get connected!  
For more information contact Mary Hilcoske at (907) 334-5608 or maryh@mb-lawyers.com

[www.alaskaala.org](http://www.alaskaala.org)



## Should a graduate school of legal studies be established in Alaska?

Continued from page 14

Catching up in Alaska is done only through CLE programs sponsored by the bar association. These are commonly very good programs but they are not compulsory.

Those who have lived through it will also note major changes in the landscape of legal service demand and delivery, a landscape in which both styles of delivery and legal education have had some trouble in keeping up, a subject for discussion under another title.

With this preliminary sketch of the background, in the always changing Alaska legal landscape, let us return to some of the original questions.

### “What does a law school usually do?”

Looking back, the usual stated purposes and styles of legal education now seem quaint. The model came from Harvard's Professor Langdell early in the twentieth century. Socratic dialogue was actually a pretty good approach to enhancing critical thinking as well as a way of teaching distinctions among cases. Instruction in interpretation of precedent and highly groomed appellate argument was the rule and survives in the core of legal education now. But today the common law is buried under a tangle of statutory and regulatory rules. Finding and interpreting these rules is a larger part of legal practice. Against the need to control costs of the average Alaska client, the perfectionism suggested by law school instruction seems unreal. Trial practice was a marginal activity under the Langdell rule.

### The socio-economic future of Alaska

Any discussion of the need and purpose of an Alaska graduate school of legal studies must start with a look at the long-term trends in Alaska society and economy, trends recited, perhaps a bit too inspirationally, in the opening section of this issue's discussion. All lawyers still need to study contracts, torts, legal procedure, and research methods. The Alaska society will still need lawyers capable of drafting contracts and resolving disputes regarding commercial matters, domestic divisions and other disputes. Given the very high percentage of cases that do not go to trial but still involve appallingly expensive litigation, one would hope that both legal education and judicial management would strengthen dispute settlement skills. The law could usefully pay more attention to the medical model of legally defined professional specializations and delegation of select functions to specialists who are not required to complete daunting qualification requirements. The English model of separation of the courtroom specialist and the legal advisor and drafting specialist deserves another look.

Conclusion. Alaska could have a great energy law school, a great fisheries and sea law center, a great natural resource development school, a magnet institution for the law of international institutions and trade, in every case, centers of study fed by multi-disciplinary concern. The undergraduate justice curriculum should be integrated with grad-

uate studies which include specific occupational objectives with legal content. The new graduate school is not entering the academic community to compete with schools of business or the arts and sciences but to collaborate in building both.

Given the current economic climate, most readers would say that a law school now is unrealistic. State help is improbable though advocates for the new Anchorage engineering center didn't deem it so. In any case, “now” means a planning start that could take a few years. That oil price dip is not forever. The degree with which Alaska Pacific University may be willing to participate with land, classroom and office space is a hole card. Law school tuition is an unparalleled factor in APU self-sufficiency.

The legislature and the public have often talked about bringing alternative economic activities to Alaska but have seldom noted that in today's world, high tech and new technology industries build around centers of learning. Alaska is a natural.

At this time, as Alaskans are inundated with numbers showing a near catastrophic drop in oil tax and royalty income, the proposal that Alaska establish an institute of legal learning seems like a pipe dream. But not withstanding these projections, money does seem to emerge for popular causes. Despite these doleful projections, sums much greater than required for this purpose, for example, are about to be allocated to buy a system to move natural gas to Fairbanks, easing the

cost of energy for area residents. Also, as argued above, this institute will generate funds approaching self-sufficiency in operations, unlike any other function at the university and promote related activities generating economic growth. A recent announcement of the prospect of tens of millions of dollars to be raised from the sale of lands administered by APU suggests another possible resource. Where there's a will, ways seem to emerge.

Lastly, what has been sketched in these articles is just an introduction to the subject. Thought, planning and research, engaging the interest and time of members of the communities of lawyers, education, public policy and politics, including the state's congressional delegation, and other experts within and outside the state, will precede the financial package and green light for action. It will take a few years, not a few months to put it together. The stakes for Alaska are high. The job is complicated. But banking on knowledge industries opens doors for the future of Alaska and its people, opportunities that oil and gas alone, developed at the direction of multinational corporations, do not.

*About the author: John Havelock has served as a member of the Board of Governors and a delegate to the American Bar Association. For a few years in the sixties, he was paid, under a part-time contract, to serve as the executive director managing the Alaska Bar Association, including admissions and discipline. Times change.*

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# Federal Bar welcomes eight new members, sets plan for 2015

By Darrel J. Gardner

The Alaska Chapter of the Federal Bar Association is pleased to announce that we have experienced a growth surge under President Brewster Jamieson with the addition of eight new members: Larissa Hail, C. Maeve Kendall, Bryan Schroder, Hans Huggler, Lee Baxter, Molly Nixon, Dan Poulson and Matt Claman. Our organization works across the nation to promote the administration of justice in and practice before our federal courts. The membership cost is modest, but the benefits — from the *Federal Lawyer*, to the Annual Alaska Chapter Conference, to our monthly meetings featuring interesting and relevant speakers — are many and substantial. We wel-

come our new members and hope that other federal practitioners will join us soon.

FBA-Alaska finished 2014 with a bang by hosting an evening holiday social Dec. 11 at the Performing Art Center's Sky Bridge above Fifth Avenue. The fun event included hors d'oeuvres furnished by The Bridge restaurant, holiday lights, refreshments, a festive mood, and good company. About 30 people attended, including Chief Judge Ralph Beistline and Senior Judge James Singleton. Magistrate Judge Deborah Smith was also on hand and se-



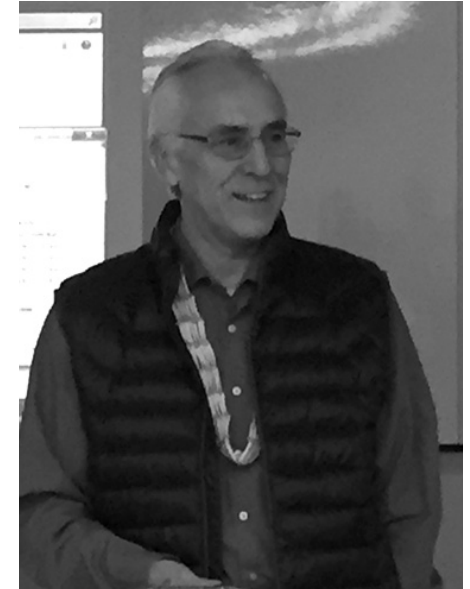
"FBA-Alaska finished 2014 with a bang by hosting an evening holiday social Dec. 11..."

lected the winning entry in a drawing for an iPad that was offered to new members who had recently joined the FBA. The lucky winner was Dan Poulson, who had just joined the Federal Public Defender's office a month earlier as its Research and Writing Attorney. FBA-Alaska extends its thanks to the firm of Lane Powell for donating the iPad, and also thanks to the District Court Fund for co-sponsoring the gala. (Just for the record - no part of Court Fund funds were used for the purchase any adult beverages.)

The First Alaska Federal Bar Conference held last August was a great success, and the Second Annual Alaska Federal Bar Conference has now been set for Aug. 21, 2015. Although it is still in the early organizational stages, the conference promises to be an even better event with more varied presentations that will have broad appeal for all federal practitioners. We also have a commitment from Matt Moreland, this year's national president of the FBA, to attend our conference, so please save the date.

Our first gathering of the year was held on Jan. 8, 2015, in the Executive Dining Room at the Federal Building and Courthouse. FBA-Alaska hosted a lunchtime meeting with special guest speaker, Will Mayo. FBA-Alaska president Jamieson welcomed everyone to enjoy free pizza, and then introduced Mr. Mayo, who flew in from Fairbanks specifically for the event. Mr. Mayo has been active in the Alaska Native community in various capacities since the 1970's. Mr. Mayo is a former president of the Tanana Chiefs Counsel (TCC) and its current executive director of tribal government. Mr. Mayo spoke on the origins, history, present, and future of the Tanana Chiefs. We were also extremely fortunate to be among the first viewers of a new video produced by the TCC documenting its origins and history. The video was particu-

larly informative regarding the contentious legal, social and cultural issues that arose in the Interior during the period of early oil exploration and development, including the construction of the Trans-Alaska Pipeline. After the 20-minute video Mr. Mayo answered numerous questions from the highly engaged audience.



Tanana Chiefs past-President Will Mayo.

Upcoming meetings are planned to include Senior Judge H. Russel Holland speaking about his experiences with the Katie John case, and immigration guru Margaret Stock presenting an update on the ever-changing immigration landscape.

For more information (especially on upcoming meetings), or to join the Federal Bar Association (which includes a free subscription to *The Federal Lawyer* magazine), please contact Brewster Jamieson directly at jamiesonb@lanepowell.com. You can also visit the Alaska Chapter website at www.fedbar.org; friend us on Facebook at "FBA Alaska Chapter;" and follow "Fed Bar Alaska" on Twitter "@bar\_fed."

Darrel Gardner is the immediate past president of the FBA's Alaska Chapter, and a current member of the Alaska Bar Association's Board of Governors.



FBA members listen to speaker Will Mayo at the January 2015 meeting.



Jamie McGrady and Cara McNamara flank Chief Judge Ralph Beistline at the holiday social.

**The First Alaska Federal Bar Conference held last August was a great success, and the Second Annual Alaska Federal Bar Conference has now been set for Aug. 21, 2015.**

## NOTICE OF PUBLIC DISCIPLINE

By order of the Alaska Bar Association  
Disciplinary Board,  
entered January 29, 2015

**JOSEPH E. WRONA**  
Member No. 9211112  
Park City, Utah

is publicly reprimanded  
based on the public reprimand  
imposed by the Third Judicial District of the State of Utah  
for providing advice to an unrepresented person  
other than advice to secure counsel,  
effective January 29, 2015.

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

## NOTICE OF PUBLIC DISCIPLINE

By order of the Alaska Supreme Court,  
Entered December 8, 2014

**THERESA L. WILLIAMS**  
Member No. 9706024  
Fairbanks, Alaska

is suspended from the practice of law until  
further court order effective December 8, 2014  
for noncompliance with the current recommendation  
of the Lawyers' Assistance Committee relating  
to her conviction for driving under the influence  
of alcohol and related probation violation.

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# Bar People

## Ryan Fitzpatrick joins Manley and Brautigam

Ryan W. Fitzpatrick has joined Manley & Brautigam, P.C. as an associate attorney. His practice emphasizes state and local tax, business planning, and probate and estate planning matters. Ryan earned his bachelor of science degree in finance from American University in Washington, D.C., graduating *magna cum laude*. While in D.C., he also worked for U.S. Senator Ted Stevens. He attended Loyola Law School in Los Angeles, CA, and worked as an attorney for six years in Anchorage prior to joining Manley & Brautigam.



Ryan Fitzpatrick

## Nathaniel Parr joins Wohlforth, Brecht, and Cartledge

Wohlforth, Brecht, & Cartledge, announces the addition of Attorney Nathaniel Parr to the firm as an associate. Mr. Parr's practice will focus on real estate transactions, municipal law and commercial law. The law firm of Wohlforth, Brecht & Cartledge, A Professional Corporation, was founded in 1967 and has built a diverse and comprehensive practice in the areas of public finance, business, securities, banking, commercial, environmental, real estate, labor, employment, municipal and state agency law, and civil litigation. With our offices based in Anchorage, Alaska, we are vitally interested in, and maintain keen awareness of, the current status of Alaska law and economic and governmental conditions.



Nathaniel Parr

The firm is nationally recognized for its municipal and public finance practices and has deep roots in Alaska. Clients include banks, trust companies, investment banks, securities issuers, corporations, various enterprises, non-profit corporations, rural Alaska communities, municipalities, and state agencies. Our members have served as commissioner of Revenue, director of Banking, Securities and Corporations, chair of the Alaska Permanent Fund Corporation and other Alaska governmental positions.

Representation is comprehensive. The firm has an active trial and appellate civil litigation practice, and regularly appears before numerous state and municipal administrative

## Two shareholder members join, two retire from Faulkner Banfield

The law firm of Faulkner Banfield, P.C. announces that two of its current shareholder members are retiring this year, and it is welcoming two new ones. After each practicing law with the firm for more than 30 years, Ann Gifford and Eric Kueffner retired from the firm as of Jan. 1. Lael Harrison and Chris Walker joined the firm as shareholders on the same date.

Mr. Walker received his undergraduate degree from Gonzaga University and his law degree from the University of Washington in Seattle. He began practicing law in Juneau in 2008. He practices primarily in the areas of estate planning, probate, trust administration and business law.

Ms. Harrison grew up in Juneau and graduated from Juneau Douglas High School. She received her undergraduate degree from Yale University. She also received her law degree from University of Washington. Ms. Harrison joined Faulkner Banfield in 2009, after spending a year as a clerk to former Alaska Supreme Court Justice Walter "Bud" Carpeneti. She has a general civil practice including real estate, business, employment, contract and education law.

This year also marks the 100-year anniversary of the Faulkner Banfield law firm. Herbert Faulkner began practicing law in Juneau in 1914. Norman Banfield joined him in 1935. Alumni of the firm also include former Alaska Attorney General Avrum Gross, Alaska Supreme Court Justice John Dimond, and Alaska Supreme Court Justice and later Ninth Circuit Court Judge Robert Boochever.

## Law firm splits into two

After many years of beneficial association, the law firm of Bliss Wilkens Clayton & Diemer became two separate firms effective Feb. 1. Al Clayton Jr. and Peter M. Diemer will continue in private practice as Clayton & Diemer, LLC, at their current location of 500 L St. in Anchorage. Ronald L. Bliss and James K. Wilkens will continue in private practice as Bliss Wilkens and maintain an office at 310 K St. in Anchorage.

## Attorney moves

Anchorage attorney Jim Parker has relocated with his wife to Asheville, N.C. He had lived in Anchorage for many years and was licensed to practice law.

## An interview with Fisheries Entry Commissioner Benjamin Brown

By Mamie S. Brown

Benjamin Brown is a commissioner on the Alaska Commercial Fisheries Entry Commission (CFEC) where he contributes to the long-term economic health of Alaska's commercial fisheries. He was appointed to his seat at CFEC by Gov. Sean Parnell in 2011, and was recently re-appointed by Gov. Bill Walker. He serves on the Alaska Bar Association's CLE Committee & MCLE Subcommittee and as co-chairman of the Administrative Law Section. He also serves as the chairman of the Alaska State Council on the Arts, board secretary of the National Assembly of State Arts Agencies, and on the board of directors of Alaska Public Media Inc.



Benjamin Brown

**Traits Ben admires in other attorneys:** preparedness and being even-tempered.

**The best part of Ben's job:** knowing that the Alaska Commercial Fisheries Entry Commission (CFEC) continues to be successful in managing limitation of entry into Alaska's commercial fisheries and providing thoughtful decisions regarding the issuance and transfer of limited entry permits.

**A unique memoir Ben recommends to everyone:** Broadway and film star Frank Langella's book, "Dropped Names: Famous Men and Women as I Knew Them." According to Ben, "Every chapter is a little vignette about one of the most famous people of our time."

**Someone whose opinion matters to Ben:** the Honorable Larry Weeks, former Juneau Superior Court Judge. Ben described retired Judge Weeks as "as good a boss as I ever had; even a better friend."

**Ben's most memorable theatrical role to date:** Bernard in Perseverance Theatre's production of *Death of a Salesman* during which he got to meet the playwright Arthur Miller.

**One theatrical role Ben would not have passed up (10 years ago):** Leo Bloom in the Broadway production, "The Producers." During our interview he joked, "Now, I'm more of a Max Bialystock."

**People Ben would like to invite to a dinner party:** David Cameron, prime minister of the United Kingdom and leader of the Conservative Party; Petro Poroshenko, president of Ukraine; David Hyde Pierce, who played Vanya in *Vanya and Sonia and Masha and Spike* which role Ben recently played; and Lisa Murkowski; United States senator.

**Ben's all-time favorite American pop music duo:** Sonny and Cher.

**Best advice from the fictional character:** "Well, life is hard for everyone, I guess." – Vanya from Christopher Durang's comedy *Vanya and Sonia and Masha and Spike*.

**Absolutely the best 80s cover band Ben wants to play at every party:** Rock Lobster.

Recounting his early work as a legislative aid, Ben is most proud of his role in the passage of SB 105 (1998), an act relating to legislative and executive branch ethics, to campaign finances for candidates for state or municipal office, to the conduct and regulation of lobbyists with respect to public officials, and to the filing of disclosures by certain state employees and officials. This bill was sponsored by the House Rules Committee by request of the Legislative Ethics Committee. Despite a road fraught with political peril, the bill was finally signed into law effective July 15, 1998.

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Mamie S. Brown is an associate at Clapp, Peterson, Tiemessen, Thorsness & Johnson LLC. Her practice consists primarily of professional malpractice defense. She enjoys spending time with her fellow Rotarians and her family. She can be reached at 907-479-7776 or [msb@clplaw.com](mailto:msb@clplaw.com).

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## What Alaska could do legally to address the fiscal challenge

One of a series of columns on the Ted Stevens case

By Cliff Groh

The deep slump in oil prices since the summer of 2014 has exposed and exacerbated underlying structural problems in the State of Alaska's fiscal system. These problems include:

- (1) The dominant role of oil in the state budget—taxes and royalties from oil production account for more than 85 percent of the State of Alaska's Unrestricted General Fund revenues (the Unrestricted General Fund is what most people mean when they say "the state budget");
- (2) The long-run decline in oil production that has left the Trans Alaska Pipeline System (TAPS) carrying less than a quarter of the oil it was carrying in the late 1980s;
- (3) Increasing costs of producing that oil on the North Slope; and
- (4) Partly because of (2) and (3) above, the unlikelihood of oil prices rebounding enough to bail Alaska out of this dilemma.

With revenues sharply down, matters are complicated by the desires many Alaskans have for more state spending in various areas.

Add it up, and you have an ugly picture. The budget this year (Fiscal Year 2015—or FY2015—which runs July 1, 2014-June 30, 2015) balances at oil prices of about \$117 per barrel. Oil prices are below \$50 per barrel as of this writing, and the Alaska Department of Revenue has reduced its oil price forecast to \$65 for the rest of FY2015 and \$66 for FY2016. With an approximately \$6 billion state budget and revenues looking likely to be approximately \$2.5 billion this year, the budget deficit at current oil prices and production would be close to \$3.5 billion in FY2015. This means that the state would have a budget deficit of more than 50 percent in the current fiscal year.

What follows is an attempt at a comprehensive catalogue of the steps the state could take to address the fiscal challenge. This is an exercise in description, not prescription. No endorsement of any course of action is intended, and there is no discussion here of the many pros and cons of these approaches, whether philosophical, practical or otherwise. Some of these items are obviously far less politically or practically possible than others.

Note also that although the list below includes dollar estimates for amounts possibly gained or saved regarding some of the items listed, not all of the fiscal impacts are easily predictable.

The items below can be grouped into four categories, with a more detailed list following:

1. Change spending
2. Collect more revenues
3. Use our savings accounts and/or money generated by or in the Permanent Fund
4. Get someone else to pay
  - I. Change spending
    - A. Reduce the budget as compared to the previous year's spending (Notable facts about the budget include: 1. The State of Alaska's budget is widely understood to be No. 1 in per capita spending among the states; 2. Roughly two-thirds of the budget is composed of three items—K-12 education, Medicaid, and retirement assistance; 3. The capital budget is only about 10 percent of the budget; 4. Cuts could either be targeted or across-the-board.)
    - B. Re-allocate unspent and/or lapsed appropriations in the General Fund
    - C. Impose another constitutional amendment limiting spending (Alaska has had a constitutional spending limit since 1982)
      1. Limit spending as a percentage of revenues somehow defined
      2. Limit spending as a percentage of savings somehow defined
  - II. Collect more revenues
    - A. Adopt a broad-based tax paid by individuals (Alaska is the only state in the union without either a general statewide sales tax or any form of a state income tax paid by individuals. Alaska had a state individual income tax until it was repealed in 1980; Alaska has never had a statewide sales or property tax paid by individuals. Note that a deficit of \$3.5 billion works out to more than \$4,500 per Alaskan, including children. According to Professor Scott Goldsmith of the University of Alaska, Anchorage's Institute of Social and Economic Research, U.S. Department of Commerce figures show that combined state sales and income tax per capita averaged \$1,812 for the U.S. as a whole in 2010.)
      1. State income tax (A 2010 legislative report estimated that an individual income tax in Alaska taxing 2.8 percent of adjusted gross income on a flat-tax basis would generate \$500 million annually. This estimate was based on 2006 IRS data for Alaska residents and thus does not count income that could be collected from non-residents working in Alaska.)
      2. Statewide sales tax (The same 2010 report estimated that a state sales tax of 3 percent without exemptions would bring in \$450 million a year.)
      3. Statewide property tax
      4. Others
    - B. Expand and/or increase selective sales and/or excise taxes
      1. Alcohol



2. Tobacco
3. Fuel
4. Marijuana
5. Others
- C. Adopt other taxes, such as head tax or estate tax
- D. Increase fees
- E. Increase petroleum taxes
- F. Impose and/or increase taxes on other industries
  1. Fisheries
  2. Mining
  3. Tourism
  4. Others
- G. Increase the intensity of auditing of tax and/or royalties returns filed by petroleum producers
- H. Increase the rate of return on the state's savings
- I. Promote economic development that allows the collection of additional revenues under existing taxes
  1. Increase petroleum production
  2. Arrange for gasoline/LNG export project to go into service
  3. Others
- III. Use our savings accounts
  - A. Spend easily spendable savings—the Statutory Budget Reserve and Constitutional Budget Reserve contain together more than \$10 billion as of January 2015, and the Legislature could spend all of that money in the budget
  - B. Spend funds or accounts outside the General Fund, the Statutory Budget Reserve, the Constitutional Budget Reserve, or the Permanent Fund
  - C. Use Permanent Fund earnings in the budget in significant amounts (The Permanent Fund holds as of this writing more than \$51 billion in assets. Of that more than \$51 billion, the Permanent Fund Corporation's most recent balance sheet (November 30, 2014) posted on its website shows \$38.2 billion in the constitutionally protected principal (also known as the "corpus contributions and appropriations") and another amount of more than \$5.9 billion "not in spendable form—unrealized appreciation on invested assets." More than \$1.19 billion of Permanent Fund earnings are being distributed in Permanent Fund Dividends this year, and more than \$660 million is reserved for inflation-proofing this year. Another sum of more than \$5.55 billion is "assigned for future appropriations," with \$4.55 billion of that amount in realized earnings and the rest in unrealized appreciation on invested assets. The Permanent Fund's principal is constitutionally protected and can only be spent by a vote of the people, while the earnings are as a legal matter available for legislative appropriation. The earnings of the Permanent Fund have traditionally been used almost entirely for the payment of Permanent Fund Dividends and inflation-proofing the Permanent Fund itself, with a fraction being used in the budget for functions related to the payment of dividends.)
    1. Reduce share of earnings going for Permanent Fund Dividends
    2. Reduce share of earnings going for inflation-proofing
    3. Adopt a version of a Percent of Market Value (POMV) approach through a constitutional amendment that would both change how the Permanent Fund is protected against inflation and also change the allocation of Permanent Fund earnings in a way that would allow spending of significant amounts of Permanent Fund income in the budget
  - D. Amend the constitution to allow spending of Permanent Fund principal in the budget
- IV. Get someone else to pay
  - A. Shift responsibilities from the state to local governments
  - B. Shift responsibilities from the state to the federal government
  - C. Borrow more money, perhaps through collateralization or from the Permanent Fund itself
  - D. Securitization, perhaps by selling shares in the revenues from a gasoline/LNG export project

There are variations on these basic steps. Some of the most frequently discussed variations are:

1. Pump up the Permanent Fund's principal to facilitate a slide into explicit rentier status, where the state would finance its operations entirely or almost entirely through the use of Permanent Fund income (the word "Norway" has become shorthand in Alaska for this approach, apparently from a misunderstanding of Norway's fiscal system)
2. Keep the Permanent Fund Dividend while bringing back the individual income tax
3. Guarantee some level of Permanent Fund Dividends in the constitution as a trade for using some Permanent Fund income in the regular budget
4. "Cash out" part or all of the Permanent Fund principal in lump-sum payments to all Alaskans as a trade for using Permanent Fund income in the regular budget
5. Cap the Permanent Fund Dividend to reduce the amount of money distributed each year so that the money not paid out can be used in the regular budget; such capping could occur either as a percentage of Permanent Fund income or as a hard dollar cap on either the size of the Permanent Fund Dividend or the amount of Permanent Fund income going annually to the Permanent Fund Dividend

Continued on page 19



## You might not want that truck: Taxes and the Super Bowl MVP

By Steven T. O'Hara

Kenneth C. Kirk, a long-time volunteer of the *Alaska Bar Rag*, has dedicated himself to other volunteer work at this time. Since his articles were often fictional, I thought I would offer some fiction while thanking him for his service to the *Bar Rag*.

You know how bilingual people dream in a second language? Tax lawyers who are sports fans dream in tax or sports or both.

Suppose it is the evening of Feb. 1, 2015, the day of the Seattle Seahawks vs. New England Patriots Super Bowl. Suppose you cannot sleep. You toss and turn and finally fall asleep. Now suppose you are dreaming that you are at the office and a couple of football players call. As crazy as football and taxes are, this dream might unfold thusly:

Surreal Tax Lawyer ("STL"): *Good to hear from you. What's up?*

Imagined Football Player ("IFP"): *Hey, I hope you're not too sore over the game. I have you on the speakerphone because I'm sitting here with my teammate ... [undecipherable].*

*Anyway, we have a couple of quick questions. You still pro bono?*

STL: *This conversation is not pro bono.*

IFP: *Understood. Anyway, they named me player of the game and gave me a \$50,000 truck. I want to give it to my teammate.*

STL: *That's an interesting transaction. To cut to the chase, you guys will find the taxes on that deal could exceed the value of the truck.*

IFP: *No way. What are you talking about? I hope you make better calls than ... [undecipherable].*

STL: *Let me explain.*

IFP: *I'll give you less time than the Packers gave the Seahawks. Hurry up if you're on the clock.*

STL: *Okay. I believe it's straightforward under federal tax law. You'll need to call your other lawyers for state and local tax issues.*

IFP: *First, you pay income tax on the truck you won. As I recall, you're in the 39.6% federal income tax bracket. So that's \$19,800 in federal income tax you owe, being 39.6% times*

*\$50,000, the value of the truck.*

*Next, if you make the gift, you'll need to file a federal gift tax return. Let me ask you, do you make the maximum gifts you can make each year tax free as I have advised?*

IFP: *Yeah, I believe so per my Delaware attorneys.*

STL: *Remember I offered my two cents that Alaska trusts are better than Delaware trusts. After all, Delaware has just been copying Alaska in this area.*

IFP: *In Delaware they say Alaska trusts are sort of like West Coast offenses. I'm not saying but I'm just saying.*

STL: *Whatever that means.*

IFP: *You were going to talk about gift tax. I think I can anticipate what you're going to say.*

STL: *There's a way to deflate the value of the gift for gift-tax purposes.*

IFP: *I wouldn't use the word "deflate."*

STL: *The point is, assuming you make no other gifts to your teammate in 2015, your gift of the \$50,000 truck to him can be reduced by the \$14,000 annual gift tax exclusion. So you will owe federal gift tax at the 40% rate on \$36,000. That's \$14,400, and it'd be due April 15, 2016.*

IFP: *That's nuts. I owe \$19,800 in federal income tax and would owe \$14,400 in federal gift tax for a total of \$34,200 to the IRS?*

STL: *That's not all, gentlemen.*

*We don't represent your teammate so he'll need to retain his own tax professional. I believe he'll find that because the gift is work-related, he'll also have \$50,000 of income to report.*

*Let's assume he's in the 39.6% bracket for 2015. If so, that's \$19,800 in federal income tax he owes, too, being 39.6% times \$50,000, the value of the truck. There's actually a 1960 United States Supreme Court case on point. It's Commissioner v. Duberstein. You guys can read it on the internet.*

*So let's see. If you owe \$34,200 to the IRS on this deal, and if your teammate owes \$19,800, that's a total of \$54,000 in taxes on a truck worth \$50,000.*

*And then we need to double-check the rules under the 40% generation-skipping transfer tax. You know you're not getting any younger. Look at the ages of the rookies nowadays.*

*Hello? Can you hear me? Hello? Are you still there?*

*Oh, well. They must have hung up. Now that's deflating.*

With that baloney fresh in mind, you wake up to tackle head-on tax season while looking forward to NCAA March Madness.

Nothing in this silly article is legal or tax advice. Non-lawyers must seek the counsel of a licensed attorney in all legal matters, including tax matters. Lawyers must research the law touched upon in this fictional article.

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## What Alaska could do legally to address the fiscal challenge

Continued from page 18

The long-term decline in Alaska oil production—now compounded by the recent sharp drop in oil prices—poses tough questions for Alaska. Those questions are made tougher by the effects that the journey down the "Prudhoe Bay Curve" will have on the economy as well as the government, given that the oil industry accounts—directly or indirectly—for approximately one-half of all the jobs in the state. Alaskans need to think deeply and carefully about the implications of the various steps we could take to address these questions.

Cliff Groh is a lifelong Alaskan and a lawyer and writer. Groh authored a chapter for the 2012 book *Exporting the Alaska Model: Adapting the Permanent Fund Dividend for Reform around the World* (Palgrave Macmillan, 2012), and some of the material in this essay overlaps with that chapter. That chapter was one of four chapters Groh authored or co-authored for that book or for the 2012 book *Alaska's Permanent Fund Dividend: Examining its Suitability as a Model* (Palgrave Macmillan 2012). Groh was involved in the creation of the per capita Permanent Fund Dividend Alaska has today while serving as an assistant to the Alaska Legislature in 1982. Groh was also Special Assistant to the Alaska Commissioner of Revenue in 1987-1990 and a delegate to the Conference of Alaskans in 2004. A board member of Alaska Common Ground for almost two decades, Groh became that organization's chair in May of 2014. Analysis of the cases arising from the federal investigations into Alaska public corruption will continue as the fiscal chal-

## My Five

Asking people to name their top five favorite songs presents a uniquely difficult challenge. It also provides insight (if you consider yourself an amateur psychologist) into the personalities of the various members of the Alaska Bar. In this fourth installment we highlight the top-fives of: Kirsten Kinegak-Friday, Anne Helzer and Cheryl McKay.

### Kirsten Kinegak-Friday

1. "Sugar" – Maroon 5
2. "Can't Go For That" – The Bird and the Bee
3. "Missing" – Beck
4. "Egg Man" – The Beastie Boys
5. "Sure Thing" – Miguel

### Anne Helzer

1. "Valley Winter Song" – Fountains of Wayne
2. "Everybody's Changing" – Keane
3. "My Funny Valentine" – Ella Fitzgerald
4. "Ave Maria" (Chanticleer version) – Franz Biebl
5. "Rhapsody in Blue" – Gershwin

### Cheryl McKay

1. "Once Upon a Dream" – aka The Sleeping Beauty Waltz, Disney version, based on Tchaikovsky's ballet: perhaps the first song I ever knew all the words to
2. "Rhapsody in Blue" – by George Gershwin: a challenging, complex piece that I used to play on the piano for my Dad
3. "All That Jazz" – from the musical Chicago by John Kander and Fred Ebb: the song that started my first career in musical theater
4. "Rock This Town" – written by Brian Setzer and performed by The Stray Cats: the defining tune from my rockabilly years
5. "The Iditarod Trail Song" – Hobo Jim: Alaska's rollicking winter party song

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# To summary judgment or not to summary judgment

By **Kevin Clarkson**

Last issue, we took a look at the Alaska Supreme Court's decision in *Christensen v. Alaska Sales & Service, Inc.*, 335 P.3d 514 (Alaska 2014), issued in October, 2014. In that decision the Court reaffirmed the traditional summary judgment standard that Alaska's courts are to apply under Alaska Civil Rule 56. The Court described this standard as being exceptionally lenient to non-moving parties and "more protective" of "the right to have factual questions resolved by a trier of fact." *Id.* at 520-521.

Following *Christensen*, and consistent with *Tesoro Alaska Company v. Union Oil Company of Cal.*, 305 P.3d 329, 336 (Alaska 2013), when a party moves for summary judgment the nonmoving party will create a genuine issue of material fact if they present "more than a scintilla of evidence" on a material issue and if the evidence they present is not (1) "too conclusory," (2) "too speculative," (3) "based entirely on unsupported assumptions and speculation," and (4) "too incredible to be believed by reasonable minds." *Christensen*, 335 P.3d at 519-520.

This issue, I thought it might be interesting to examine how the Court has resolved summary judgment cases since *Christensen*. After *Christensen* the Court has thus far been presented with only one summary judgment case that has involved potential genuine issues of material fact. That case is *Becker v. Fred Meyer Stores, Inc.*, 335 P.3d 1110 (Alaska 2014), which was decided just one week after *Christensen*. Although *Becker* involved some specialized questions of employment law, an analysis of the Court's ruling that summary judgment was improvidently granted in that case due to the existence of genuine issues of material fact is revealing. *Becker* reveals that the Court appears determined to follow *Christensen* because it is consistent with *Christensen* and appears to follow its dictate, albeit silently.

Because *Becker* involves a specialized area of employment law—whether an employment manual forms a part of an employee's contract of employment so as to prohibit the termination of his employ-

ment "at will" or without just cause—we will need to analyze Becker's predecessors on that issue. But, that rabbit trail aside, my primary intention in this article is to focus on the Court's summary judgment analysis.

In *Becker*, Fred Meyer had terminated a 17 year employee from his job as a loss prevention manager—a loss prevention manager is one of those guys who roams the store incognito looking for shoplifters. Becker spotted someone who removed security wrap from a stereo system and then picked it up and walked toward the store exit. Becker identified himself and told the man to stop. The man dropped the stereo and ran from the store. Becker pursued the man outside into the parking lot. The man slipped, fell, and dropped his cell phone. Becker picked up the phone, the man demanded it back and then, rather than give it back, Becker threw the phone onto the store's roof. The man got in his car and fled. Becker retrieved the phone and the man was identified using information contained in the phone. The man was arrested by police and charged with theft-related crimes. *Id.* at 1111-1112.

Fred Meyer fired Becker shortly after the incident because his conduct had violated multiple company policies. Becker filed suit against Fred Meyer in Superior Court claiming breach of contract, breach of the implied covenant of good faith and fair dealing, and wrongful termination. Becker claimed that Fred Meyer's policy manual was part of his employment contract and that Fred Meyer had breached the contract when it terminated his employment without notice. Becker also claimed that Fred Meyer had breached the objective component of the implied covenant of good faith and fair dealing by treating him more harshly than other employees who committed policy violations similar to his own. *Id.* at 1112.

Fred Meyer's policy manual contained detailed procedures for the conduct of its loss prevention employees and also set forth a progressive disciplinary process for violations. The manual identified some forms of misconduct that the



Clarkson

company considered more egregious and listed them as reasons for immediate termination. The manual also identified other forms of misconduct that the company considered less egregious and made allowance for lesser forms of discipline, such as warnings and suspensions. *Id.* at 1113-1115. The manual did state that "termination

of employment is always an option when the judgment of the individuals involved and their actions are so grievous and severe, that it places Fred Meyer at increased risk of civil liability." *Id.* at 1115. But, the manual did not contain language indicating that the company could decline to follow its disciplinary procedures as it pleased. *Id.*

*Becker* is consistent with the Alaska Court's past decisions on employment policy manuals. The Alaska Court has held that "employee policy manuals may modify at-will employment agreements." *Jones v. Central Peninsula Gen. Hosp.*, 779 P.2d 783, 788 (Alaska 1989). An employer "is bound by the representations in the manual when the manual's provisions create the reasonable expectation that employees have been granted certain rights." *Hoendermis v. Advanced Physical Therapy, Inc.*, 251 P.3d 346, 355 (Alaska 2011). "[W]hether a given manual has modified an at-will employment agreement must be determined on the particular facts of each case." *Jones*, 779 P.2d at 786. "[I]t is generally . . . a question of fact whether the manual did modify the employment agreement," and courts should answer that question as a matter of law "[o]nly if reasonable minds could not differ in resolving this issue." *Holland v. Union Oil Co. of Cal.*, 993 P.2d 1026, 1031 and n. 28 (Alaska 1999).

But, *Becker* is inconsistent with the Civil Rule 56 aspects of these past employment policy manual cases. In every prior case involving the question of whether a policy manual modified an employee's otherwise "at will" employment contract, the Alaska Court had resolved the question "as a matter of law." In *Jones*, the Court ruled "as a matter of law" that a manual with 85-pages of detailed policies, rules, regulations, and definitions did form a part of an employment contract even though it contained a one-sentence disclaimer to the effect that the manual was not a contract and did not form any part of a contract. 779 P.2d at 788. In *Parker v. Mat-Su Council on Prevention of Alcoholism and Drug Abuse*, 813 P.2d 665, 666-667 (Alaska 1991) the Court ruled "as a matter of law" that a policy manual that identified numerous disciplinary actions including verbal warnings, probation and involuntary termination and defined specific causes for termination, did become part of an employment contract. In *Holland* the Court ruled "as a matter of law" that a policy memorandum that established a system of progressive discipline following investigation did not modify an employment contract primarily because it contained no representation that termination would be only "for cause." 993 P.2d at 1030-1032. And, in *Hoendermis*

the Court ruled "as a matter of law" that a policy manual setting forth a system of progressive discipline did not modify an employment contract primarily because the manual reserved to the employer the "unlimited discretion" to decide "when and if progressive discipline will be used" and to immediately discharge in "extraordinary circumstances." 251 P.3d at 349.

In *Becker*, however, the Court did not resolve the policy manual question "as a matter of law." Instead, the Court found that "there is a triable issue of fact whether a reasonable person would believe that the provisions of the loss prevention manual are binding." 335 P.3d at 1116. The "triable issue of fact" existed apparently because the Court concluded that Becker's case fell "somewhere between" the past precedents. *Id.* at 1115. Fred Meyer's policy manual did contain an exception for immediate termination where the employee's actions were "grievous and severe." *Id.* at 1115. But, it did not "include language indicating that [the company] may decline to follow its disciplinary procedures as it pleases." *Id.* According to *Becker*, when a policy manual is extremely detailed, any language suggesting that the manual is not legally binding "would need to be very prominent to be effective." *Id.* Unfortunately, *Becker* does not explain and it is unclear from the decision whether by "effective" the Court meant that a "prominent" disclaimer in a detailed manual would "as a matter of law" negate modification of the employment contract. *Id.* It is also possible to read *Becker* to mean that a jury should be instructed that they must find that a disclaimer is "prominent" in order to be effective in negating what a "reasonable person" would otherwise believe about the binding nature of a detailed policy manual. *Id.* at 1115-1116.

With respect to the implied covenant of good faith and fair dealing, the *Becker* decision is squarely consistent with *Christensen*. The Court found that Becker had established the existence of genuine issues on this claim by presenting general evidence regarding other employees who committed similar or more egregious violations but who were not terminated. Becker was not required to present detailed and precise evidence of an exact situation in order to establish a genuine issue on his implied covenant claim. *Id.* at 1116-1117.

Employment lawyers are scratching their heads trying to figure out when and how a summary judgment motion is appropriate in their policy manual case. But, one thing is clear—the days of litigation by summary judgment in Alaska state court have for the most part come to an end. And, thus was born the substantial advantage, or disadvantage—it all depends upon your perspective—of federal jurisdiction. Get that removal paperwork filed on time.

Kevin G. Clarkson is a civil litigator with the law firm of Brena, Bell & Clarkson, P.C. in Anchorage. In his over 28 years of practice, Mr. Clarkson has acted as lead counsel in cases in both state and federal trial and appellate courts throughout Alaska as well as other jurisdictions.

## Alaska's Territorial and Senior lawyers schedule dinner

Alaska's Territorial and Senior lawyers are already planning their annual get-together dinner for 2015. It is scheduled for 6 p.m. June 4 at the Coast International Inn, 3450 Aviation Ave., Anchorage.

Originally open only to those who practiced law in Alaska prior to statehood, over the past two decades the group has met at least annually for dinner, fellowship and camaraderie. In recent years, due to the passing of many territorial practitioners, the group has expanded to include all lawyers who have practiced law in Alaska for 40 years or more. As a result, the fellowship and camaraderie have continued unabated.

If you began practicing law in Alaska in 1975 or earlier, mark your calendar for June 4 for a good dinner and a fun evening. Plan on meeting some of the legends of the Alaska bar. (If you have practiced that long, you are probably one yourself.) Hope to see you there.

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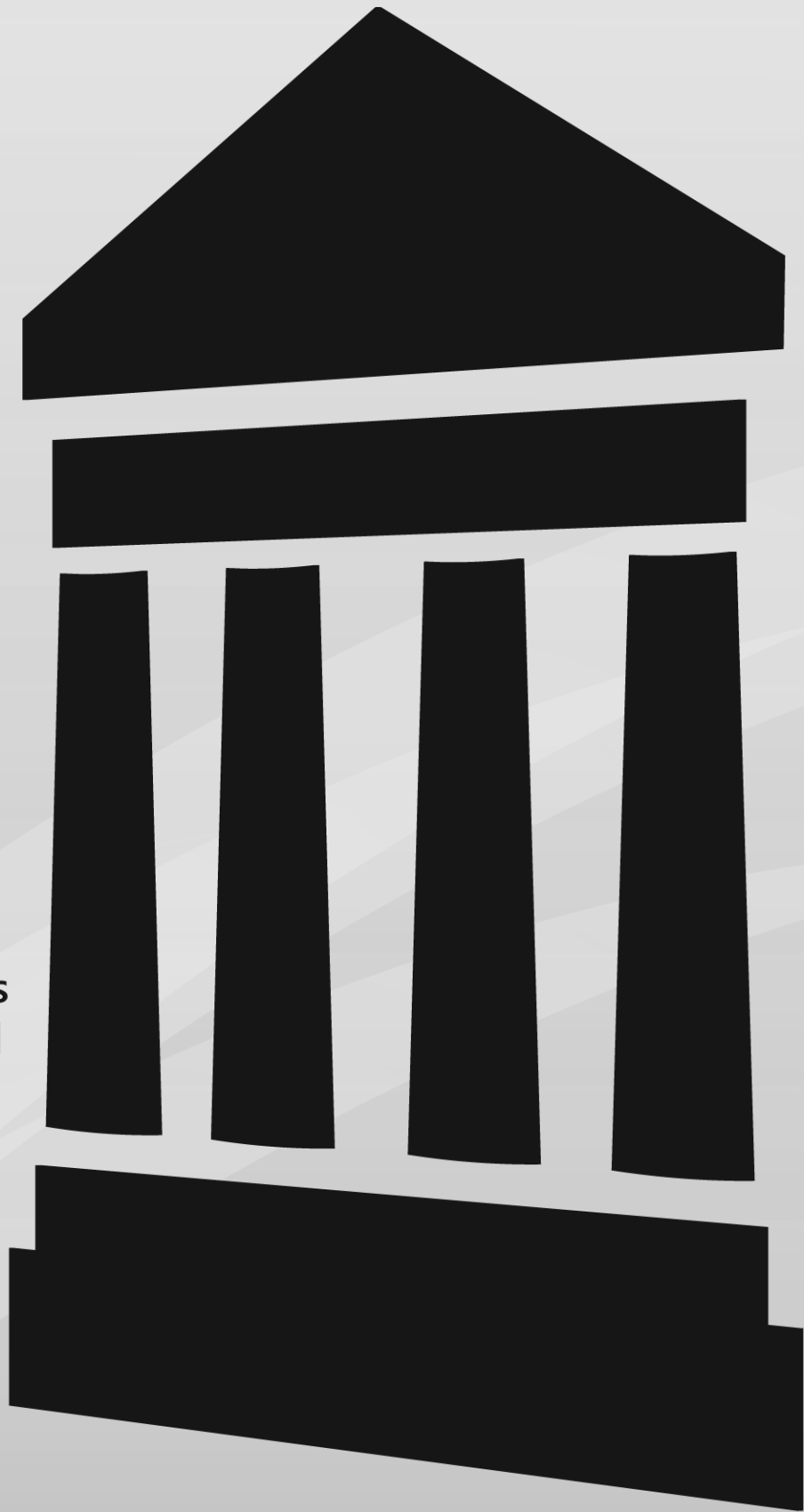
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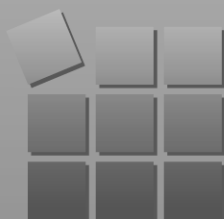


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**Floor team:** Volunteers Andrew Tonnelli, Leslie Need, Catherine Rogers, Russell Johnson, and Carina Uraiqat strategize client management and seating at MLK Day 2015 in Anchorage. Photo by Jamie Lang Photography.



**Long table view phone bank:** Nine volunteers embarked on a new addition to MLK Day 2015 to offer legal advice by phone thanks to our friends at Alaska Public Media. Photo by Jamie Lang Photography.



**Hallway:** Clients waiting for intake at MLK Day 2015. Photo by Jamie Lang Photography.

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Justin Eschbacher  
Kristin Fairleigh  
Alexandra Foote-Jones  
Josie Foxglove  
Tiffany Gaines  
Molly Gallagher  
Ann Marie Garber  
Karen Gaylord  
Jason Gazewood  
Mary Gramling  
Adam Gulkis  
John Haley  
Andy Harrington  
Loren Hildebrandt  
Sarah Horton  
Bob Hume  
Karla Huntington  
Ed Husted  
Leslie Jaehning  
Robert John  
Janice Jones  
Marc June  
Gail Kawakami-Schwarber  
Meghan Kelly  
Grace Lee  
Cameron Leonard  
Melony Lockwood  
Wendy Lyford  
Zach Manzella  
Stacey Marz  
Don McClintock

Mary Alice McKeen  
Allison Mendel  
James Merritt  
Maria Miller  
Judi Miller  
Mike Moberly  
Bruce A. Moore  
Kathy Murphy  
Leslie Need  
Bob Owens  
Dan Pace  
Helen Poitra Chalmers  
Blake F. Quackenbush  
Andrew Rawls  
Colleen Ray  
Chelsea Ray Riekkola  
Jeanine Reep  
Mark Regan  
Brian Riekkola  
Valene Robancho  
Catherine Rogers  
Jan Rutherford  
Jackie Schafer  
Will Schendel  
Karen Schmidt  
Kirk Schwalm  
Krista Scully  
Zerek Selby  
John Sherman  
Roseann Simko  
Meg Simonian  
Elizabeth Smith  
Diane Smith

Yana Smith  
Larry Snider  
Lauren Sommer  
Robert Sparks  
John Spitzberg  
Mike Stepovich  
Miranda Strong  
Amy Tallero  
Matthew Tallero  
R. Scott Taylor  
Jeff Thompson  
Richard Thorpe  
John Tiemessen  
Andrew Tonnelli  
Nelson Traverso  
Carina Uraiqat  
Rachel Van Patten  
Erik Vang  
Christy Varden  
Kate Vogel  
Tom Wagner  
Foster Wallace  
Deana Watson  
Wayne Watson  
Kathy Weeks  
Joe West  
Geoffrey Wildridge  
Dayvn Williams  
Joan Wilson  
Russ Winner  
Jon Woodman  
Meg Zaietel  
Adolf Zeman

*Every volunteer is important to us. We apologize if anyone was missed in the creation of this list.*



# Alaska lawyers serve in the Alaska State Defense Force

By Brigadier General Roger E. Holl

The Alaska State Defense Force is one of four organized state military services of the State of Alaska, Department of Military and Veteran's Affairs. See A.S. 26.05.010(b)(1), 100. It is a reserve military unit in which personnel volunteer their service for training one weekend a month, supporting community events and military exercises. The Alaska State Defense Force augments the Alaska National Guard to respond to natural disasters and other emergencies, but always stays in Alaska for the protection of Alaska citizens. As such, the ASDF is part of the military response to the needs of Alaskans. Past activations have been in response to the safety of Alaskans during fires, floods and the response to 9/11.

The concept of the citizen soldier was exercised very well in World War II by the Alaska Territorial Guard. The Alaska State Defense Force carries on that volunteer tradition under legal authority of 32 USCA 109, the Military Code of Alaska in A.S. 26.05, and NGR 10-4.

The Alaska State Defense Force prepares the soldier in basic soldier skills for military support, but also attracts professionals such as accountants, physicians, dentists, engineers, IT personnel and attorneys. Those interested in communications, such as ham radio, HF, UHF, VHF and satellite communications are needed to communicate throughout the Alaska during disasters. All of these professional competencies are important for the support of operations. Likewise, personnel such as nurses, EMTs, paramedics, legal assistants and those with clerical skills and prior military service are very important to the smooth running of military operations.



This image is the Alaska State Defense Force patch.

No prior military service is required; however an Officer Candidate School is required for the first six months of monthly drills. Likewise a Non-commissioned Officer Academy is provided for non-commissioned officers.

For years, lawyers have added value to the people of Alaska through service to the Alaska State Defense Force. Service in the Office of the Staff Judge Advocate General is an important role for providing legal counsel to staff officers and commanders and to individual soldiers. JAG officers advise on issues such as personnel matters, civil matters, risk management, military operations, wills and discipline.

Because I am a lawyer myself, I also believe that the law can be a "helping profession" For example, military lawyers can assist in many roles by serving to facilitate community events such as Wounded Warrior events, Special Olympics or providing legal advice to homeless veterans in Operation Stand Down.

The Alaska State Defense Force serves as an opportunity for lawyers to provide pro bono work by taking on legal matters for military personnel and members of the Alaska State Defense Force. JAG officers and their staffs can be extremely important to disaster victims and Alaska families in a community support role in times of disaster.

The main qualification a lawyer needs is an attitude of service to the people of the state. Some lawyers in the ASDF have left the Office of the Judge Advocate General to become staff officers or field officers. The ASDF has its headquarters at Alcantra Armory in Wasilla. Other units are in Fairbanks, Juneau, Kenai and Valdez.

Lawyers are well-educated professionals, whose life experience,



Brigadier General Roger E. Holl is the commanding general of the Alaska State Defense Force.

skills and an attitude of making a contribution to society, can contribute greatly to the protection of Alaskans. Others may have prior military experience and may wish to put on the uniform and serve once again. For more information about the Alaska State Defense Force call (907) 862-0336 or go to <http://dmva.alaska.gov/asdf>.

Brigadier General Roger E. Holl is the commanding general of the Alaska State Defense Force. He is president of the State Guard Association of the United States and a member of the Alaska Bar Association.



## Alaska State Court Appeals 101

Wednesday, March 25, 2015 | 8:30 a.m. - 12:00 p.m. | Snowden Training Center

CLE# 2015-041 | 3.0 General CLE Credits

Registration: Free - Please register by March 23

Co-Sponsored by the Alaska Appellate Courts and The Alaska Bar Association

- Appellate Strategies: Issues to Consider Before Putting Pen to Paper
- Appellate Rules: How to Smoothly Navigate the Appellate Process
- Tips from Appellate Practitioners: How to Approach Brief Writing and Oral Argument
  - Appellate Judges: The Dos and Don'ts of Appellate Advocacy

## Trials of the Century II

Friday, April 17, 2015 | 8:30 a.m. - 4:00 p.m. | Anchorage Marriott Downtown

CLE# 2015-014 | 5.0 General and 1.0 Ethics CLE Credits

Registration Fee \$194 | Earlybird Registration Before April 11 \$169

New Lawyers Section Member Fee \$154 | Before April 11 \$129

Sponsored by the New Lawyers Section



Your success as an attorney usually depends on getting "facts" by asking the right questions, in the right way, in the right order. Learn effective deposition and questioning techniques by watching world-class examples. Watch entertaining top courtroom drama from the century's most famous trials. Learn techniques for examining, deposing and interviewing witnesses in deposition and trial. Observe world-class attorneys showing how to question a witness – and how not to. Learn from the century's greatest trial attorneys and adopt their examination techniques.

Todd Winegar builds on the success of his popular Trials of the Century program with more great trials, more actual video and transcripts – all illustrating techniques to examine and depose witnesses – THE major part of an attorney's practice.





# Alaska Bar Association Annual Convention

## Fairbanks, Alaska • May 12 -15, 2015

**Welcome Reception, Wednesday, May 13 • 5:30 – 8:30 p.m.**

You'll participate in the Taste of Alaska, tour the beautiful building, and watch Alaska Native youth dancers accompanied by renowned Gwich'in Athabascan Fiddler Bill Stevens. This event will also feature a presentation commemorating the centennial of Judge Wickersham's historic 1915 meeting with the Interior's Tanana Chiefs—a meeting which reflected a desire for continuing dialog between cultures with often-conflicting interests.

Head across the river to the Chiefs Court in the beautiful Doyon Limited Building, where you'll have plenty of time to connect with old friends and meet new ones.

### CONVENTION SPEAKERS



Erwin Chemerinsky



Laurie Levenson



Michael Kahn



Judge M. Margaret  
McKeown



Justice Pepper



Mark Potok

### CONVENTION INFORMATION, register online at [www.alaskabar.org](http://www.alaskabar.org)

#### HOTEL

A block of rooms has been reserved at the Westmark Fairbanks Hotel, 813 Noble Street Fairbanks, AK 99701. Make your reservations by calling 1-800-544-0970 or online at [www.westmarkhotels.com](http://www.westmarkhotels.com) using group code: ABAC051015. Rates are \$79 per night for a standard room. Make reservations by April 13, 2015 for discounted rate.

#### MEETING SITE

Convention Registration, CLE programs, luncheons and Thursday night's dinner/dance will be held at the Westmark Fairbanks Hotel.

Wednesday's Opening Reception will begin at the Morris Thompson Cultural & Visitors Center at 101 Dunkel Street and continue at Doyon Limited across the Chena River at 1 Doyon Place.

#### Free CLE Certificates:

Free CLE Certificates do not apply to the convention.

#### CAR RENTAL

Avis provides the Alaska Bar Association a discount rate by using the Avis Worldwide Discount (AWD) number, A677400. Enrollment into Preferred Service is FREE! [www.avis.com](http://www.avis.com) 1-800-831-8000

#### AIR TRAVEL TO THE CONVENTION

Alaska Airlines has provided a 5% discount on all travel to Fairbanks. Make your reservation online at [www.alaskaair.com](http://www.alaskaair.com) and provide discount code ECMW026.

#### MCLE ALASKA

The 2015 Alaska Bar Convention provides a total of 15 CLE Credits. Depending on your choice of concurrent session, you may earn a maximum of 6 Ethics CLE Credits. Attend all three days of the convention and fulfill ALL of your MCLE Rule mandatory ethics and voluntary hours of approved CLE for the 2015 reporting period.

#### REGISTRATION FEES\*

\$349 .....	3 Day access to all CLEs
\$249 .....	1 Day access (Wed. or Thurs.)
\$129 .....	1 Day access (Friday)
\$129 .....	Half-day access (Wed. or Thurs. am/pm)
\$69 .....	90-minute session
50% Off.....	Non-attorneys
70% Off.....	Students
\$50 .....	Hard copy of course materials

\*Ticketed events are not included in registration fees.

There is a \$50 cancellation fee on your registration. No refunds can be made for cancellations after Friday, April 24.



#### Registration Offer

Any new lawyer admitted to the Alaska Bar five years or less can pair with another new lawyer OR a more experienced lawyer to attend convention CLEs for just ONE registration fee. The "2 for 1" offer does not apply to ticketed events. Registrants must register together and payment must be made with one check or credit card.

#### QUESTIONS?

Call the Alaska Bar office at 907-272-7469/fax 907-272-2932  
Or e-mail [info@alaskabar.org](mailto:info@alaskabar.org) for more information.

Check the Bar website at [www.alaskabar.org](http://www.alaskabar.org)

#### Register Online in 3 easy steps .....

- 1 Go to <http://goo.gl/W5oKtv>
- 2 Click on REGISTER
- 3 Log in to your account.  
If you haven't logged in before:  
Username: Bar# and last name, e.g. 920254smith  
Password: first three letters of last name & DOB e.g. smi03171965

2 for 1 registrants must register together under one login and payment must be made with one credit card or check.