

The Alaska BAR RAG

Dignitas, semper dignitas

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**BAR PRESIDENT NELSON PAGE ADDRESSES THE
ISSUE OF JUDICIAL INDEPENDENCE. SEE PAGE 2**



What if politicians had to follow lawyers' rules of conduct?

By Dan Branch

"The first thing we do, let's kill all the lawyers."

— Henry The Sixth, Part 2 Act 4, scene 2, 71-78

Shakespeare was not the first to suggest extermination of the legal profession, and he won't be the last. Present day politicians still find lawyer bashing a way to excite their base. But what would happen if our elected officials had to comply with the attorneys' Rules of Professional Conduct?

Since casting a ballot is basically a hiring decision, the voters are an elected official's client. (Alaska Rule of Professional Conduct 9.1(b): "Client" denotes a person ... or other entity, either public or private [that] receives professional legal services from [an elected official]). If the attorneys' conduct rules applied, each senator or congressman would be judged on whether he or she zealously defended the interests of us, the people. This means that in spite of pressure from lobbyists or special-interest groups, the elected official would have to, "pursue [all matters] on behalf of [the electorate] ... despite opposition, obstruction, or personal inconvenience." ARPC 1.3, Comment 1.

If politicians complied with our conduct rules, all elected officials would have to "act with commitment and dedication to the interests of [all his or her constituents]... with zeal in advocacy upon [their] behalf." (*Id.*). However this duty would "not require the use of offensive tactics or preclude the treating of all persons involved...with courtesy and respect." (*Id.*). Let's flesh this out with a hypothetical.

Constituents of the representative from a Western Alaska district ask him to introduce a constitutional amendment that would create a sub-

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Marijuana legalization: where the process stands now

By Jason Brandeis

A lot has happened in the world of Alaska marijuana law since the last issue of the Bar Rag.

At the beginning of July, Gov. Bill Walker appointed the first five members of the Marijuana Control Board (MCB), the state agency that

will be responsible for overseeing the production and sale of marijuana in the state. For now, the MCB's task is to continue to draft the regulations that will govern this nascent industry. Three sets of draft regulations have been released, public comments are being considered, and the final regulations must be completed and adopted by the MCB no later than Nov. 24, 2015.

As Alaska's marijuana regulations begin to take shape, public confusion is keeping pace. Those outside the legal community, and especially those who did not read the full ballot measure (for which they may or may not have voted), are wondering why, if marijuana is supposedly legal, there are so many local news stories about law enforcement crackdowns on marijuana businesses. There have recently been a number of reports about investigations of marijuana-related activities: search warrants served at a purported medical marijuana venue, a sting operation on a delivery service, vehicles and property seized from another such service, cease-and-desist letters sent to marijuana social clubs, thousands of dollars worth of marijuana found in luggage headed for Barrow at the Anchorage airport, and troopers raiding large home-grow operations in Nome and Wasilla.

Each of these reports offers a mix of constitutional law, criminal law and administrative law. No wonder

that heads are spinning. To better understand these current events and the current legal landscape, it helps to step back and unpack the initiative.

Ballot Measure 2, the marijuana law enacted by voters last fall, did not immediately "legalize" marijuana in the common conception of that term. Rather, the initiative laid out an incremental plan that would eventually create a highly regulated and taxed commercial marijuana industry while also allowing for individual use, possession and home cultivation. The timeline for full implementation of the protocols contemplated by the initiative extends to the spring of 2016.

The first change in the law occurred on Feb. 24, 2015, 90 days after the 2014 election results were certified. Ever since that date, personal use and possession of up to one ounce of marijuana and six plants (three of which may be flowering at a time) have been allowed in Alaska.

The next phase, currently under way, allows the MCB nine months from Feb. 24, 2015 to craft the aforementioned implementing regulations.

After the rulemaking process is complete, the application and licensing stage will begin. The MCB must start accepting applications for marijuana establishment licenses, including retail stores and cultivation, product manufacturing, and testing facilities, by Feb. 24, 2016 and issue

the first commercial licenses in May of 2016. That is when the actual "tax and regulate" plan will be in effect fully.

Yet even after the rulemaking process is complete and marijuana businesses begin to operate, marijuana in Alaska will be, to borrow a phrase from Erwin Chemerinsky, "legal-but-not-entirely-legal." That is because of the ongoing federal marijuana prohibition constantly lurking overhead and providing much risk and complication for those who enter the industry. But there are two things protecting individual users and mitigating risk for marijuana entrepreneurs. First, possession and use of small amounts of marijuana is not an enforcement priority for the federal government; the risk of investigation and federal prosecution for such conduct is low. Second, the "Cole Memo," a policy directive issued by the Department of Justice, announced that the federal government would allow state marijuana legalization experiments to continue, and would not interfere with state-level implementation, so long as states create comprehensive regulatory frameworks that comply with specific federal policies and engage in stringent enforcement and oversight.

This brings us back to the recent spate of stories about law enforcement cracking down on marijuana-

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Alaska isn't immune to the various attacks on judicial independence

By Nelson Page

"He has made Judges dependent on his Will alone, for the tenure of their offices and payment of their salaries."

— Thomas Jefferson, List Of Grievances against King George III, The Declaration of Independence.

Judicial independence has two components. First, we have a right to expect that judges are committed to the integrity of the legal system. Judges must owe their allegiance to the law and to justice, not to outside parties or interests. Second, once judges of integrity are sworn in, we have a right to expect that they will make decisions based on the legal and factual merits as they see them. Judges must be reasonably free from the pressure of public opinion and immune to attempts by political, economic, financial or other interests to tip the scales. It is easy to forget that in 1776 one of the major grievances against King George was that he refused to allow the colonies to have an independent judiciary. We need to be reminded. Across the country judicial independence is being threatened.

We are seeing unprecedented efforts to turn the courts into a political playground. Huge amounts of money are now spent to influence the outcome of judicial elections. There is no question that many donations to judicial campaigns are made by people who think that their money will influence the decisions that judges make when they are on the bench. The scandals regarding attempts to buy judicial elections have gotten so bad that the U.S. Supreme Court has finally stepped in

to make it clear that judicial contests must meet a different, higher standard than elections to partisan political office. The same court that threw out limits on monetary contributions in political elections has said that there are limits on how money and power can be used to purchase the election of a judge. In jurisdictions such as the federal courts, where judges are nominated by the president and then confirmed by the legislature, the battles between these two branches have gotten so bad that it is virtually impossible to fill judicial vacancies in the last two years of a president's term. The assumption now is that someone nominated for a federal judicial appointment is little more than a shill for whatever political party is in power. These problems create a disturbing public perception that judges are no different from any partisan politician and that the judicial system can be sold to the highest or most politically well-placed bidder.

Attempts to influence judicial decisions don't stop when judges are sworn in. In Kansas, for example, the governor and legislature were unhappy when the state supreme court held that their scheme for funding public schools did not meet constitutional standards. In a move reminiscent of King George, the governor and legislature retaliated by passing a bill that stripped the supreme court of administrative authority over the state court system. This new bill provided that the en-



"We need to be reminded. Across the country judicial independence is being threatened."

tire state judicial system would be defunded if the supreme court found any part of the new bill unconstitutional. The Kansas Supreme Court was thus given the option of committing suicide or surrendering at budgetary gunpoint to the partisan wishes of the legislature and governor. Kansas is also considering whether to change the constitution to allow for impeachment of judges for "attempting to usurp the power of the legislative or executive branches of government" or "attempting to subvert fundamental laws and introduce arbitrary power." In 2011 a review found that more judges had been subject to impeachment proceedings in that year than at any point in recent history. In all but two of these cases the primary reason for impeachment was that the judge had made a decision that upset members of the legislature.

These tactics are not harmless. Public faith in the integrity of our judges and our courts is the foundation of a workable legal system. We entrust some of the most important powers we have as a society to the courts. When political figures take steps to undermine the perception of integrity they do real damage. Like a rotting tree, that damage may not be apparent until the whole system is uprooted.

Alaska isn't immune. We have seen focused efforts by legislators in the last several years to change the makeup or nature of the Alaska Judicial Council, which has a role en-

shrined in the state constitution to safeguard the integrity and quality of our judges. We will undoubtedly see similar efforts again. Alaska has also recently witnessed something new to this state: the rise of well-funded, politically motivated campaigns seeking to remove judges when they stand for retention. These efforts are frequently based on uninformed or biased opinions about hot button political issues.

The arguments made in favor of these changes are always couched in neutral sounding terms. But, without intending to question the sincerity and motivation of the supporters of these efforts, the proposals seem to inject more, not less, opportunity for political game playing into the judiciary system. They have the practical effect of reducing, not enhancing judicial independence and competence.

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The Alaska BAR RAG

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EDITOR'S COLUMN

Vital issues addressed in this quarter's Bar Rag

By Meghan Kelly

You will likely be reading this in September. I can hardly believe this month has arrived. Yet, the berries are sparser and the salmon openers keep getting extended and so I know that fall is near.

This issue includes discussion of two very important, and very distinct, challenges facing our profession: judicial independence and mental health. Both of these issues impact our work as attorneys, often on a daily basis, and they warrant our vigilance.

President Nelson Page devotes his column this quarter to highlighting the ongoing political threats to judicial independence across the country. He notes that the public perception and belief in the integrity of our justice system is "[t]he foundation of a workable legal system" — truly a prerequisite to our ability to uphold our obligation to maintain the integrity of our profession as required by the Alaska Rules of Professional Conduct. President Page reminds each of us, as officers of the legal system, and, perhaps most importantly, as public citizens with special responsibility for the quality of justice, to reiterate to our communities that our process of judicial selection in Alaska has resulted in one of the most respected judiciaries in

the country. Talking with law school classmates practicing in other jurisdictions across the country has always made me proud of our system in Alaska. Our voices in support of the current judicial selection process are important ones in the ongoing debate unfolding in the public sphere.

Anchorage attorney John C. Pharr shares his experience of supporting and ultimately losing a colleague battling addiction. We have all seen countless articles about how the legal profession suffers from one of the highest rates of addiction, anxiety and other mental health related issues. These disorders can profoundly affect daily functioning. Who among us has not experienced, either personally or through a colleague's complaints, irritability, obsessive thoughts, feelings of inadequacy, difficulty concentrating, a sense of worry and impending danger, sleep disturbances, heart palpitations, sweating, fatigue or muscle tension? These are common side effects of anxiety and depression, but they are also familiar as our experience during an average week of trial preparation or in the days, hours



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and minutes before a motion for summary judgment is due.

Some attorneys withdraw from peers, friends and family or engage in "maladaptive coping behaviors," such as self-medicating with alcohol and other substances. Mr. Pharr's recent loss serves as a poignant reminder that such unhappiness and struggle is not something we should continue to accept as the norm.

There are resources available that we encourage you to share with your friends and colleagues: the Alaska Bar Association's Lawyers' Assistance Committee provides confidential assistance and referrals for members of the Bar, their families, colleagues, and clients affected by a member's mental health and substance abuse issues; and the Bar Association's website contains a list of referred providers for local psychiatric assistance. More thoughts and suggestions on this topic are contained in the July 2015 issue of the ABA Journal in an article by Leslie A. Gordon, *Stressed Out: How to avoid burnout and debilitating anxiety.*

Alcohol addiction claims a treasured colleague

By John C. Pharr

Attorney David Schlerf succumbed to his addiction Aug. 2, 2015. He was our friend and trusted colleague. May God help me find the words to try to help others avoid his fate.

Dave was in a bad way by early 2014. He had neither home nor office, living in his car after having been evicted from his office space. He had fallen on the ice, injured his leg, and was stumping around on crutches. Plus he got hit with a large fee arbitration award that he couldn't pay and was facing suspension.

Lance Wells and I had an extra office in our suite. We took Dave in with the intent to help him get back on his feet. He signed a simple handwritten lease that included a pledge to stay sober. There were a few months free, then low rent, with the intent that it increase as his practice increased. This was not strictly altruism. Of course we liked Dave, and wanted him to succeed, but we also wanted him to help us financially by sharing expenses, and in other ways with our practice. It was to be a two-way street.

The fee arbitration award was a source of considerable angst, and I helped Dave cut a deal for payments that got him reinstated after a brief suspension. To his credit, he made every payment on time and paid the award in full.

For the first year he lived up to the sobriety covenant. And he was lots of fun to be around, fun to talk smack with, giving as good as he took. His team advanced farther in the playoffs than mine and I had to wear a Ravens jersey. Dave was unique, different, eccentric in a good way; long hair, pony tail and earrings masked a libertarian viewpoint. His views on various topics and historical events were downright interesting, usually contrarian and provocative. He was a philosophy major in college and could quote from philosophers at length, particularly Nietzsche. He worked hard, arriving early and staying late, in the office on weekends. He worked his cases thoroughly, asking us for advice, practice pointers and forms. Dave was personable and down-to-earth. Clients liked him and he did his best for them. He was a huge help, covering hearings, paying more than we asked of the expenses. His faithful assistant Lisa and our secretary Sharon adored him.

Dave and I spent hours discussing sobriety-related matters and many other subjects. I told him to focus on the silver gull-winged Mercedes 500SL he was going to afford as his practice flourished. He wanted it in black. He was whip-smart and insightful and it was a joy to watch his life reinflate. Late in the year he was ecstatic to be able to do what is utterly routine for most people: rent an apartment and begin to populate it with furniture. He made a triumphant return to Baltimore to see his parents...

...But always there was the addiction, at the edge of consciousness,



David Schlerf and John Pharr in better times.

just outside the pool of light created by his life, with its burning red eyes, bared dripping fangs and hot stinking breath, salivating, waiting ... waiting. To banish or slay it, he would have had to change his basic approach to life, training his brain to accept things he cannot change, change the things he can, with the wisdom to know the difference. He would not undertake treatment though. I can stay sober on my own, he said.

In March the beast began to advance. It started with cough syrup, then cooking wine, then wine, then eventually the drink of choice for late-stage alcoholics: vodka. He began to show up in the office with alcohol on his breath.

With due sensitivity, we said things like, "We have to make sure there's no open flames in the office so your breath doesn't catch on fire." "Maybe Mythbusters will do an experiment to see if lighting someone's breath turns him into a human blowtorch." At first he tried to say maybe it was the shrimp cocktail, or that he forgot to brush his teeth. I left AA relapse literature in his office.

Dave's drinking became a topic of open discussion. Sobriety was right around the corner, would start the first thing tomorrow. Lance and I and many others begged him to undertake treatment. We will cover your stuff while you're gone. We did not deliver much in the way of warm and fuzzies. Life itself is harsh and the practice of law, beneath its patina of civility, is a brutal Darwinian world. No one cares about your issues. And nothing is more unlovable than a using addict.

Dave was a different person under the influence. His personality changed. Gone was the fun, funny, capable, hardworking guy, replaced by manipulation, alcoholic grandiosity and mostly, and most prominently, denial. I am solid, have it under control, he said, no matter how obvious that wasn't true.

This wasn't Dave. The real Dave was absent. The deterioration accelerated. He showed up less and less, then not at all. We got frantic last-minute requests to cover hearings. Then the wheels came off. Weeks of nonstop drama. The monster clamped its jaws on his ankle and

wouldn't let go. At 4 a.m. on Sunday, Aug. 2, he gave up the fight.

Dave's family, loved ones, friends and colleagues are left to bind their psychic wounds and wonder: What if? What if I had been nicer? What if I had done an intervention? What if I had talked to him more effectively, given him more emotional support, listened more intently, what if...

Maybe there's no answer. That's disturbing. Ours is a helping profession, problem-solvers. There is no problem we can't solve for a client.

But the one lesson brought home to me is that this is a problem the solution to which lies exclusively within the addict. With the desire, the addict cannot fail; without it, the addict cannot succeed. No matter what one does, no matter what one says, if it has no impact, then you've done your best and there is nothing more to be done. But paradoxically we must continue to try and never give up.

Goodbye Dave. God rest your soul.

I have a rendezvous with Death

*At some disputed barricade,
When Spring comes back with rustling shade
And apple-blossoms fill the air —
I have a rendezvous with Death
When Spring brings back blue days and fair.*

*It may be he shall take my hand
And lead me into his dark land
And close my eyes and quench my breath —
It may be I shall pass him still...*

*But I've a rendezvous with Death
At midnight in some flaming town,
When Spring trips north again this year.
And I to my pledged word am true.
I shall not fail that rendezvous.*

— Alan Seeger

Judicial independence

Continued from page 2

Alaska will continue to wrestle with these issues over the next few years. As lawyers we have a particular interest in safeguarding the integrity of the courts. We should remind our neighbors and friends that our current system of judicial selection has given us one of the

most competent, professional and respected judiciaries in the country. Anyone who wants to change the system we use should be required to show what is wrong with what we already have.

Nelson Page is president of the Alaska Bar Association.

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A history of the Kodiak bench and bar over their first century

By Roy H. Madsen

Here, stitched together with the threads of memory, is one person's view of the evolution of the Kodiak Bench and Bar from its earliest documented history in 1895 to the year of 1996, and as Huck Finn says of the Adventures of Tom Sawyer:

"He told the truth mainly. There was things which he stretched, but mainly he told the truth."

Roy H. Madsen
Alaska Superior Court Judge
(Retired)

Writing the history of a bar association is somewhat analogous to the chronicling of the descendants of Noah's sons in the Book of Genesis. Hopefully it can be stitched together in a manner informative but not tedious, for as Holofernes, the schoolmaster in William Shakespeare's *Love's Labor's Lost* said:

"This is a gift we have, a foolish, extravagant spirit, full of forms and figures, shapes, objects, ideas, apprehensions, motions, revolutions. These we begot in the ventricle of memory, nourished in the womb of pia mater, and delivered upon the mellowing of occasion."

The earliest record of court proceedings in Kodiak deals with charges against one I.C. for Illicit Manufacture of Intoxicating Liquor. He appeared before U.S. Commissioner and Ex Officio Justice of the Peace Alphonso C. Edwards on April 8, 1895, entered a plea of guilty, and was fined \$40 plus \$3.20 in costs, 117 years ago. Judge Edwards was succeeded by Philip Gallaher in 1897, then F.D. Keelsey in early 1904. Joseph A. Silverman rose to the bench in 1907, and during his tenure jurors were paid \$4 per day and witnesses \$3. Then came Z.T. Halferty, probably founder or ancestor of the founder of Halferty's Packing Co., one of the old-time canneries in Kodiak and Cordova. Then there was Sid S. Bettman, in 1922, and A.G. Stowe from 1926 to 1931.

Judge Stowe was in office during my childhood and as I recall was a short, portly man always dressed in a gray suit. He had a glass eye he would occasionally lose on his nights out on the town and would then enlist assistance of local children to help him search for it with promise of a reward for the finder. I never found it myself. We also had a commissioner at one time who when his children came home from school for their lunch break, he would send one of them to the nearest watering hole with a two pound Silver Leaf lard pail for a "bucket of suds".

The Kodiak Bar probably came into being with the arrival of John

F. Coffey sometime around 1929. Mr. Coffey appeared before Judge Stowe as counsel for one L.O., charged with Larceny, a felony if the value of the goods was more than \$35 and that carried a penalty of not less than one year nor more than 10 years in a federal penitentiary. The misdemeanor sentence for this crime was not less than one month nor more than one year in a county jail. The complaint was filed July 5, 1929, defendant pled not guilty, trial was set for July 22 and commenced. The jury found the defendant guilty and he was sentenced to serve one year in the local jail. The commissioner received \$3 for swearing four witnesses and 16 jurors, or 15 cents each, and \$1.25 for issuing three subpoenas and administering the oath to four witnesses at 20 cents each.

Judge Stowe was succeeded by J. L. Waller (7/3/1931 to 12/26/1934) then came Charles C. Naughton (1/7/1935), who moved here from Cordova and whose sons opened a bakery which became quite well known for its Russian rye bread; several Naughton family members still live here and occasionally make that delicious bread. Then came Anna Mae Vokacek who had been Judge Tony Dimond's court clerk during the Floating Court Days. She remained in office until 1953 when she was succeeded by Gil Bubendorf. Anna Mae later moved to Anchorage with her husband Milt and became Clerk of the Superior Court. Gil W. Bubendorf was succeeded by Mabel Fenner who was our last U.S. Commissioner and our first District Magistrate. Judge Fenner served until her death in 1964.

Kodiak had been a typical fishing village until the beginning of the construction of the naval base nearby in the 1940s when the population more than doubled to around 1,000 residents. The town at that time, like the rest of the country, was suffering from the Great Depression. Salmon fishing was the only industry and fishermen received about one cent for each pink salmon. As a result, most people lived on credit from year to year and could not afford the services of a lawyer. Typical cases handled by the U.S. commissioners were bootlegging, disorderly conduct, assault and battery, etc.

The next lawyer to show up was Talmadge Smith, a Stanford graduate who had practiced mining law in Nevada until his arrival in Kodiak around 1936. In those days the town locals, including my father Charles Madsen and Smith, would sit around the pot-bellied stove in Brian Thorsheim's barbershop and spin yarns during the long winters. Warren Taylor was next to show up, moving here from Cordova around 1937 with his wife, daughter and son Warren William "Bill", who later graduated from law school and

went on to the Superior Court bench in Fairbanks (now retired). Bill and I went to high school together in Kodiak although he was a year or so younger than I. The town site was surveyed in 1940 and Kodiak incorporated in 1941. Much of the land in the town site was owned by the Russian Orthodox Church and leased to individuals, my family included, on 99 year leases.

Warren Taylor was actively involved with Jack Allman, a WWI veteran who established the American Legion Post here in Kodiak which then became the Jack Allman American Legion Post #17 (now known as the Bob Blair Post # 17). Taylor and Allman developed the first two subdivisions outside the Kodiak town site.

Taylor and Talmadge Smith were still here when I left Kodiak in 1941 and when I returned in 1946 Warren had moved to Fairbanks but Talmadge Smith was still here. My recollection of Smith during those days was that he lived up on the hill beyond where the Westmark Hotel now stands. He kept several Doberman pinschers penned in his yard and he had a deep baritone voice which could be heard from quite a distance when he was practicing his presentations to the court and jury. Smith always wore a double-breasted pin striped suit, a coonskin cap complete with tail, and was shod in tan and white calf-skin clogs. This in the days when Kodiak had no paved streets and still had board sidewalks.

Attorney John Hughes opened his office in Kodiak in 1947 after working on fishing vessels and passing the Alaska Bar in 1946. In contrast to Talmadge Smith, John's normal attire was a Pendleton shirt, bolo tie and an "Alaskan Tuxedo" (Filson jacket). John left Kodiak in 1951 for Anchorage to join Bill Renfrew and Ed Davis. He was followed by Paul Dupler who practiced in Kodiak until the mid-1950's then moved to Colorado. John Mansuy took over Dupler's practice and was still here when I moved back to Alaska from Oregon in 1961. Warren Tucker was Mansuy's law clerk.

When I was admitted to the Alaska Bar in 1962 Mansuy moved to Anchorage and set up a collection agency. For about a year and a half I was the only attorney in town, then George Vogt moved here from Fairbanks, followed shortly by Edith Glennon who moved to Kodiak from Anchorage. I remember an incident not long after Edith opened her office when she had not yet acquired much in the way of furniture. Edith asked me to come over for some reason and when I arrived found her sitting at her desk and a client lying on the floor with his head propped up on his elbow talking to her.

After the 1964 earthquake and tidal wave, rebuilding efforts began and Ely, Guess and Rudd began sending Dave Ruskin and Herb Soli to Kodiak on alternate weeks. Eventually Dave and I joined forces as Madsen and Ruskin which we continued until he moved back to Anchorage to join in practice with Bill Renfrew.

When I began my practice no Superior Court matters were heard in Kodiak, but a couple years later Judges Moody, Fitzgerald or Davis would come over to hold court every month or so. On those occasions all

attorneys, their clients, prospective jurors and defendants in custody were required to be personally present for calendar call. The courtroom, which had been used for federal court in territorial times, was jammed wall to wall with people. On one such occasion the clerk came, rapped the gavel and ordered everyone to rise. All present stood up except an old, Norwegian fisherman, a local character who had had quite a few bouts with the bottle in his day. Judge Moody entered, saw the old fisherman sitting on the front bench, and asked: "What's the matter with you?" His response was: "I stand for no man except God and the King".

Judge Moody then said "Fine that will be five days." The fisherman responded: "You can't speak to this Royal Norwegian face like that", to which Judge Moody replied: "Fine, that will be five more days." I doubt that a minute order was ever prepared and forwarded to the jail but the discussion got everyone's attention. Even if the sentence had been carried out it probably wouldn't have bothered the individual too much. The jail was like the kind portrayed in the Andy Griffith TV series. One inmate served so much time for DIP that he had his own cell, was always a trustee on the second day of his sentence, and the then-Chief of Police Jack Rhines was actually his guardian and doled out the man's social security payments on an as-needed basis.

The Bar members used to hold receptions for visiting judges after court sessions and on occasion I would take Judge Moody or Judge Fitzgerald out halibut fishing afterward. With Judge Fitzgerald we did quite well, catching nice 35-40 pound fish, but with Judge Moody we caught nothing and he accused me of bringing him along to hoist the anchor.

After Mabel Fenner's death Jim Hanson came over to fill in on an as-needed basis until an attorney by the name of McLane, whom I believe had been an airline pilot and was from Minnesota, took over. He was then succeeded by Mary LaFollette. John Mason was our district magistrate in the mid-1960's, he then moved to the District Court bench in Anchorage and was succeeded by Edith Glennon for a short while, then Hal Horton came on the District Court bench when Edmund Burke became our first resident Superior Court Judge. When Ed Burke and Hal Horton moved to Anchorage, Virgil Vochoska became our District Court judge.

At one time we had a district magistrate who was a lover of dogs and cats, readily apparent because of the dog and cat hair on the individual's clothing, including the judicial robe. There was a story circulated by a local wag that this individual was in court one day when the magistrate entered with a pet dog, whereupon one of the defendants present asked: "Which one is the judge?" We also had a magistrate who bore the nickname of "Batman" because he strode so fast coming into the courtroom it made his robe look like a cape.

George Yeager moved down from Fairbanks and joined George Vogt for a period of time. John Rankin, a

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Continued on page 5

A history of the Kodiak bench and bar over their first century



Here's a view of Kodiak in 1889, just four years after the first legal proceeding was recorded in the village.

Continued from page 4

retired Air Force JAG officer, opened an office in Kodiak around 1970 while Matt Jamin, John Vacek, Alan Schmitt and Steve Cole manned the Alaska Legal Services Office. Bill Mackey was our first local DA Prior to his arrival Tom Wardell served Kodiak out of the Kenai D.A.'s office. Dick Ray was Bill Mackey's first assistant, then I believe Gail Voigtlander, Louis Menendez, and Sue McLean. The Hartig, Rhodes firm opened an office here first staffed by Mike Sharon, then Walt Ebell and Mel Stephens. Jerry Markham left the AG's office and moved to Kodiak, eventually joined by Stan Fischer for a short while before opening his own office. Kurt LeDoux then joined Jerry Markham but left to open his own office when he and Gabrielle got married and partnered. Milton Souter also practiced here before going on the bench in Anchorage.

Ben Hancock took over my practice when I went on the bench in 1975 and Dennis and Lou Ann Nelson opened an office here after moving to Kodiak following graduation from Gonzaga. Steve Gray, Larry Keyes, Jerry Huber and Duncan Fields were some of those who gave up the fishing industry to study law, then returned to Kodiak to practice. Dan Ogg, Mike Wall, Jerry Huber and Duncan Fields were lawyer/fishermen. Chuck Winegarden was chosen as CEO of Koniag Inc. while he was in law school at Willamette, where he later returned to complete his studies and ultimately returned to Kodiak to open an office. John Eufemio, a local MD, left Kodiak to attend law school at UPS in Tacoma and returned to practice here.

The District Court seat occupied by Virgil Vochoska was transferred to Anchorage when I went on the Bench and I sat as both Superior and District Courts judge in Kodiak, Bristol Bay and the Aleutians, as well as Anchorage and Fairbanks at times for the Third Judicial District. One week out of each month I would travel to Naknek, Dilling-

ham, Unalaska, Sand Point or St. Paul, accompanied by the DA, PD, court clerk, probation officer, and sometimes a state trooper. We'd fly either in a state plane or charter Penn Air. We were fortunate to have separate sleeping accommodations and usually gathered together for meals as there ordinarily would be only one eating place. In Unalaska it was a cannery mess hall where we were fed three meals a day for \$9.00. When our schedules didn't permit us to travel as a group we had to go to Anchorage, then take a Reeve Aleutian flight to Cold Bay, then change to a smaller plane for Unalaska. The Flying Tigers, who hauled a lot of air freight to the Orient, used Cold Bay as a refueling stop and maintained the hangars (old WWII barracks) and a snack bar there for their ground crews and occasional wayfarers like ourselves who might be stranded. The doors to the rooms up and down the hallways were marked by those stranded to record the days spent there in a manner reminiscent of the markings of the pilots and air crews of WWII to mark downed enemy aircraft.

After completing a trial in Unalaska for Assault with a Deadly Weapon, we took the state's amphibian to King Salmon, flying along the west coastline of the Alaska Peninsula. The defendant, who had been found guilty and was being transported to Anchorage by the trooper, served as our tour guide, showing various points of interest along the way during the flight.

Another rural, extreme weather-related incident occurred after we had completed a trial in Unalaska. We had boarded a plane to Cold Bay, being buffeted by strong winds to a point where one of the female passengers became hysterical and had to be calmed by the stewardess. Landing at Cold Bay and walking from the airplane, the winds were so strong we held on to each other to keep from being blown over. On reaching the terminal we noticed its exterior walls were moving as if they were breathing in and out. I

went into the men's room and while standing at the stall heard the parole officer in one of the stalls next to me let out an agonized cry. Part of the terminal's roof had collapsed, causing a cascade of icy water to drench him at his station. Life on the Circuit Court was always interesting.

Brigitte McBride was the magistrate when I went on the bench in 1975, she later moved to Kenai and was succeeded by Dennis Nelson, who later moved to Washington state and became a tribal judge for the Puyallup Indian Tribe. Nelson was succeeded by Anna Moran and Don Hopwood was appointed to the Superior/District Courts vacancy in Kodiak when I retired in 1990.

To the best of my recollection and with my apologies if I have overlooked anyone, the DAs who served in Kodiak have been William Mackey, Dwayne McConnell, Susan McLean, Nathan Callahan, Peter Gamache and Steve Wallace. Their Assistants have been Dick Rav, Gail Voigtlander, Louis Menendez, Susan McLean, Greg Razo, Bruce Roberts, Carmine Clark Weeks, Roger Romm, Robert Anderson and J. Michael Gray.

The public defenders and their

assistants have been Steve Cole, Mike Wall, Michael Karnavas, Barbara Brink, Michelle Hall, Rachel King, Maria Bahr, Philip Pallenberg, Greg Ohlesen, Allen Thielen and Susan Cole.

The Alaska Legal Services attorneys have been Matt Jamin, Dave Snyder, Steve Cole, John Vacek, Joel Bolger, Craig Howard, Jeff Wilddridge, Kevin McCoy, Alan Schmitt, Jim Robinson, Jana Stewart, Don Bauermeister, Gloria Hansen, Cecilia Barnett, Mike Parisi and Nancy Griffith. The local ALSC Office and the DA's Office were on the ground floor of the court building for a number of years and they (ALSC) had, and I understand may still be in the possession of the Jamin, Ebell, Bolger and Gentry Law Firm, Mel Stephens or Andrew Ott, what was known as the "Fried Egg Tie", a necktie with a big yellow sun on it that looked like a fried egg, available for all members of the Bar who might arrive for a court appearance without a tie.


POSTSCRIPT: Aug. 1, 2012

The Kodiak Bar has never existed as a formal body. The local Bar first began meeting in the 1960's when we'd gather together when a Superior Court judge came to town. As the senior established attorney in town I became the spokesman. When I went on the bench, Ben Hancock took over the position, and when Ben retired, now Superior Court Judge Steve Cole, took over. Judge Cole was succeeded by Jill Wittenbrader who continues to schedule luncheons and other gatherings which usually include the Clerk's office, probation officers, city chief of police and State Troopers, including the Coast Guard JAG officer. Hopefully Judge Cole will be able to bring this history current from the time of my retirement, November, 1990.

Among my law clerks during my tenure on the bench (1975-90) the first was Vernon Halter. He moved to Unalaska to become magistrate there and later became an Iditarod dog musher for many years and currently is running for mayor of the Matanuska-Susitna Borough. My law clerks who chose to stay and live in Kodiak for a time (or remain) are Mike Wall, Jerry Huber and Greg Razo, going into private practice here, and Allan Thielen who went into the PD's office first in Barrow, then returned to Kodiak.

Roy H. Madsen is a retired Alaska Superior Court Judge

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Comments sought for proposed rule for military spouse waiver

ALASKA BAR RULE 43.4 WAIVER TO PRACTICE LAW FOR ATTORNEY-SPOUSES OF ACTIVE DUTY MILITARY PERSONNEL STATIONED WITHIN THE STATE

1. Due to the unique mobility requirements of military families who support the defense of our nation, an attorney who is a spouse or a registered domestic partner of a member of the United States Uniformed Services (“Servicemember”), stationed within this jurisdiction, may obtain a license to practice law pursuant to the terms of this rule.

2. Eligibility.

(a) To be admitted to the practice of law in Alaska, an applicant under this rule must:

- i. have been admitted to practice law in another U.S. state, territory, or the District of Columbia;
- ii. hold a J.D. or LL.B degree from a law school approved by the Council of the Section of Legal Education and Admissions to the Bar of the American Bar Association at the time the applicant matriculated or graduated;
- iii. establish that the applicant is currently a member in good standing in all jurisdictions where admitted;

- iv. establish that the applicant is not currently subject to attorney discipline or the subject of a pending disciplinary matter in any jurisdiction;
- v. establish that the applicant possesses the character and fitness to practice law in this jurisdiction pursuant to Rule 2(1)(d);
- vi. demonstrate presence in Alaska as a spouse of a member of the United States Uniformed Services pursuant to military orders;
- vii. pass the Multistate Professional Responsibility Examination at any time by obtaining a scaled score of 80;
- viii. file an affidavit as required by Bar Rule 64 stating that the applicant has read and is familiar with the Alaska Rules of Professional Conduct and attend a presentation on attorney ethics as prescribed by the Board prior to taking the oath prescribed in Rule 5, Section 3;
- ix. comply with all other ethical, legal, and continuing legal education obligations generally applicable to attorneys licensed in this jurisdiction;
- x. take the oath prescribed in Rule 5, Section 3.

(b) Within 60 days after completion of the requirements stated in subparagraphs (a)

(3), (6), and (7) of this Rule, an applicant must file with the Alaska Bar Association the forms provided by the Board, formally accepting membership in the Association and an admission to the practice of law in Alaska.

3. **Application.** The Board of Governors may require such information from an applicant under this rule as is authorized for any applicant for admission to practice law – except any information specifically excluded by this rule – and may make such investigations, conduct such hearings, and otherwise process applications under this rule as if made pursuant to this jurisdiction’s rules governing application for admission without examination. Upon a showing that strict compliance with the provisions of this section would cause the applicant unnecessary hardship, The Board of Governors may in its discretion waive or vary the application of such provisions and permit the applicant to furnish other evidence in lieu thereof.

4. **Approval.** If after such investigation as the Board of Governors may deem appropriate, it concludes that the applicant possesses the qualifications required of all other applicants for admission to practice law in this jurisdiction, the applicant shall be licensed to practice law and enrolled as a member of the bar of this jurisdiction. The Board of Governors shall promptly act upon any application filed under this rule.

Except as provided in this rule, attorneys licensed under this rule shall be entitled to all privileges, rights, and benefits and subject to all duties, obligations, and responsibilities of active members of the bar of this jurisdiction, and shall be subject to the jurisdiction of the Board of Governors and agencies of the jurisdiction with respect to the laws and rules of this jurisdiction governing the conduct and discipline of attorneys, to the same extent as members of the bar of this jurisdiction.

5. **Duration and Termination of License.** The license and authorization to perform legal services under this rule shall be limited by any of the following events:

- (a) The Servicemember is no longer a member of the United States Uniformed Services;
- (b) The military spouse attorney is no longer married to the Servicemember;
- (c) A change in the Servicemember’s military orders reflecting a permanent change of station to a military installation other than Alaska, except that if the Servicemember has been assigned to an unaccompanied or remote assignment with no dependents authorized, the military spouse attorney may continue to practice pursuant to the provisions of this rule until the Servicemember is assigned to a location with dependents authorized; or
- (d) The attorney is admitted to the general practice of law under any other rule of this Court
- (e) The attorney is suspended or disbarred in any jurisdiction of the United States, or by any federal court or agency, or by any foreign nation before which the attorney has been admitted to practice.

In the event that any of the events listed in subparagraph (a)-(e) occur, the attorney licensed under this rule shall promptly notify the Board of Governors in writing, and upon such notification, the license and authorization to perform services under this rule shall terminate six months after the date upon which the event occurs.

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Board of Governors action items May 11 & 12, 2015

- Approved the results of the February 2015 bar exam and recommended 39 people for admission; recommended the admission of 13 reciprocity applicants and five applicants by UBE score transfer.
- Approved four Rule 43 waivers: Joshua Fleshman, Clinton Scott, Adele Young, & Lacey Peterson.
- Approved the renewal of the contract with ExamSoft to provide the service and security for bar exam applicants to type their exams.
- Approved a request for special accommodations for a separate room for an applicant for the July 2015 bar exam.
- Adopted a stipulation for discipline for a suspension of two years, with 180 days to serve, with conditions for reinstatement.
- Rejected the recommendation by an Area Hearing Committee for a public censure in a discipline matter and recommended that the Supreme Court impose a six-month suspension.
- Voted to adopt amendments to the Standing Policies of the Board of Governors which would allow for alternative CLE programs: a "bare bones" CLE with minimal expenditures, and in which the registration fee would cover the costs of recording and webcasting; and a provision in which Sections could put on their own free CLE programs. The amendments also provide that Sections must receive Bar approval before attaching its name to an event sponsored by another organization; and the Bar will include in E-News notice of free CLE events in Alaska, which are sponsored by ABA accredited law schools with a presence in Alaska.
- Voted to accept recommendations of a board subcommittee regarding personnel.
- Voted to send to the Supreme Court a proposed amendment that would require discipline notices only in a newspaper of general circulation serving the community in which the discipline attorney maintained his or her practice, on the Bar's website, and as is currently done, in the *Bar Rag*.
- Established a board subcommittee to explore adding a disclosure requirement in Bar Rule 28 for notice to clients that a reinstated lawyer had been suspended: Gordon (chair), Granger, Chupka, Farley.
- Voted to adopt the Findings, Conclusions and Recommendations of the Area Hearing Committee that Mark Rosenbaum be suspended for 42 months with conditions on reinstatement.
- Considered the Alaska Supreme Court's decision in the Disciplinary Matter of Deborah Ivy, in light of the remand on the question of sanctions. The Board voted to adopt the same sanctions as the original proposal.
- Adopted the ethics opinion, "Does a lawyer have an obligation to hold client documents or property delivered to the lawyer unsolicited?"
- Adopted the ethics opinion, "May a lawyer post bail for a client?"
- Requested that the court's Access to Justice Committee take action on the proposal to add nonprofit legal services organizations (approved by the Board) to the Rule 43 waiver to practice law.
- Voted to publish a proposed amendment to Alaska Bar Rule 43.3 as a waiver to practice law before Alaska National Guard courts-martial and all subsequent appeals.
- Voted to send proposed amendments to ARPC 1.2(f) and 8.4 to the Supreme Court regarding a lawyer's counsel and assistance to a client regarding Alaska's marijuana laws.
- Watched the winning videos in the Youth Law Guide video contest.
- Voted to make the following appointments to the ALSC Board of Directors: 2nd district regular – Erin Lillie; 3rd district regular and alternate – Marc June and Tina Grovier.
- Voted to approve the January 29, 2015 and April 1, 2015 board meeting minutes.
- Voted to approved the Mediation & Arbitration Section's request to post a list of mediators on the Bar's website, with a disclaimer that the Bar does not license or certify mediators; and to have some obvious ways to designate the lawyers.
- Voted to renew the Casemaker contract for three years.
- Voted to send a letter of support for ALSC's proposal for a joint project with UW's Law School to start a Pro Bono Training Academy.
- Determined which applicants the board will interview for the Bar Counsel position and scheduled a special meeting on June 8 for interviews by the board.
- Voted to recommend to the membership the following slate of officers: president-elect – Susan Cox; Vice President – Darrel Gardner; Secretary – Gene Gustafson; Treasurer – Bill Granger.

Comments sought for proposed rule for National Guard waiver

Alaska Bar Rule 43.3

The Alaska National Guard (ANG) is currently working with the Alaska Legislature to adopt legislation that would create a military justice system for the ANG.

This new rule would permit lawyers with court-martial experience who are not admitted in Alaska, but admitted in another jurisdiction and certified under the Uniform Code of Military Justice, to appear in ANG courts-martial and all subsequent proceedings. The rule would increase the number of lawyers available to participate in this limited area of practice.

This rule is patterned after Bar Rule 43.1 which permits military lawyers not admitted in Alaska to practice under a United States Armed Forces Expanded Legal Assistance Program. This program is designed to meet the needs of military clients and their dependents as well as pro bono clients in Alaska.

Rule 43.3.

Waivers to Practice Law Before Alaska National Guard courts-martial and All Subsequent Appeals.

Section 1. Eligibility. A person not admitted to the practice of law in this state may receive permission to practice law before Alaska National Guard courts-martial and all subsequent appeals if such person meets all of the following conditions:

(a) The person is a graduate of a law school which was accredited or approved by the Council of Legal Education of the American Bar Association or the Association of American Law Schools when he or she entered or graduated and is an attorney in good standing, licensed to practice before the courts of another state, territory, or the District of Columbia, or is eligible to be admitted to practice upon taking the oath of that state, territory, or the District of Columbia;

(b) The person has been certified to practice before courts-martial under Title 27 of the Uniform Code of Military Justice; and

(c) The person has not failed the bar exam of this state.

Section 2. Application. Application for such permission shall be made as follows:

(a) The Staff Judge Advocate of the Alaska National Guard shall apply to the Board of Governors on behalf of a person eligible under Section 1;

(b) Application shall be made on forms approved by the Board of Governors; and

(c) Proof shall be submitted with the application that the applicant is a graduate of an accredited Law School as provided in Section 1 of this rule and is an attorney in good standing, licensed to practice before the courts of another state, territory, or the District of Columbia, or is eligible to practice upon taking the oath of the state, territory, or the District of Columbia.

Section 3. Approval. The Board of Governors shall consider the application as soon as practicable after it has been submitted. If the Board finds that the applicant meets the requirements of Section 1 above, it shall grant the application and issue a waiver to allow the applicant to practice law before Alaska National Guard courts-martial and all subsequent appeals. The Board of Governors may delegate the power to the

Executive Director of the Bar Association to approve such applications and issue waivers, but the Board shall review all waivers so issued at its regularly scheduled meetings.

Section 4. Conditions. A person granted such permission may practice law only as required in Alaska National Guard courts-martial and all subsequent appeals and shall be subject to the provisions of Part II of these rules to the same extent as a member of the Alaska Bar Association. Such permission shall cease to be effective upon the failure of the person to pass the Alaska Bar examination.

Please send comments to: Executive Director, Alaska Bar Association, P.O. Box 100279, Anchorage, AK 99510 or e-mail to info@alaskabar.org by Oct. 16, 2015.

RAINMAKING FOR THE NEW SOLO

By Monica Elkinton

Monica Elkinton is still on maternity leave with her new baby. Her column will resume with the winter issue of the *Bar Rag*.

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Alaska rural practice – the challenges are part of the rewards

By Matt Mead and
Leslie Mead

Did you ever think that your first client meeting would involve missing a flight, narrowly avoiding a small plane crash, frantically purchasing warmer clothes in a regional hub, and hanging on for dear life on the back of a snowmachine for 20 miles to arrive slightly worse for wear at a village meeting? Well, these are just some of the unexpected adventures that could be packed into a single evening when you advocate for clients in rural Alaska.

Who needs a relaxing tropical vacation when you can escape from the hustle and bustle of the office by simply traveling to meet your clients in a remote corner of the State? We all know that the best way to connect with a client is face to face. And the best way to understand the issues facing your client is to observe them firsthand, which can be a truly unique experience in Alaska.

While lawyers in the Lower 48 schedule rental cars, hotels, and din-

ners out when they travel on business, we attorneys in Alaska know to call ahead to see if a client (or a relative or friend of that client) can meet us at the airstrip with a snowmachine or atv to get into town. And we're accustomed to the occasional cold and windy (or wet and buggy) walk from the airport to the village. Lodging usually means an available room in camp housing, floor space in the school gym, or, if you're lucky, maybe even a B&B. And dinner is something remarkable in the home of a generous community member. These logistics are foreign to the Outsider.

Recently, we fielded a call from a bank located somewhere east of the Mississippi River. The banker, naive to the circumstances, suggested, casually, that our client—a village corporation for a remote village — “only” needed to come into the nearest branch and sign the signature cards for the account. A simple errand requiring an afternoon and a driver's license. Being familiar with travel in remote Alaska, we pulled up the

flight schedules for the village and returned the call. Turns out, the banker had not bothered to look into the village's actual location and was unaware that, if the client could catch one of the few helicopter flights a week into a nearby town, catch a flight to a hub city, and then fly into Anchorage or Fairbanks, they would still need to obtain a driver's license, having no need for one in a village without improved roads.

By a show of hands, how many readers know which of your clients must be notified ahead of time when you send a document for review because they juggle between plugging in the phone or the fax to receive correspondence? One can virtually guarantee this is not a common topic of conversation at your law school reunion.

Logistical challenges aside, those lucky enough to represent clients in rural Alaska know the rewards. Clients with unique needs who value dedication, a sense of humor and an understanding of rural needs. There

is nothing quite like viewing a capital project, years in the making, in person. The quiet of the Yukon or Kuskokwim Rivers in the winter. Or shaking hands with thankful clients. How many attorneys practicing in the “States” can say their clients hug them when they walk through the door? And the conversations, sometimes challenging over the phone, are fuller than you could imagine once you observe the non-verbal communication carefully placed among the comments made aloud.

Ah, we truly have it good here in the Great Land. The annoyances of Internet and phone connectivity are never far out of mind, but the rewards of practicing in rural Alaska far outweigh the challenges. We're not in Kansas anymore. And, after all, that's why each of us stays.

Matt Mead and Leslie Mead are attorneys at Landye Bennett Blumstein LLP who enjoy the fruits of a practice that affords them the opportunity to counsel clients in rural (and urban) Alaska.

Succession planning: Protect clients before unthinkable occurs

From the Alaska Bar
Ethics Committee

The Alaska Bar Ethics Committee was asked to provide guidance and a reminder on the importance of succession planning for solo and small-firm practitioners.

In looking at this topic, one of the committee members recalled when some friends were rebuilding their house. The project was going ahead full steam, with the roof off and the walls stripped to studs, when the contractor dropped dead of heart failure. “Everything was in his head,” the friends found out—subcontractors, payments made, materials bought, building permits and plans. Winter was approaching, it was a horrible mess, and it took more than a year and buckets of money and heartache before they could move back in.

Now, imagine you're a lawyer's client, embroiled in messy litigation, a complex transaction or a lengthy probate — the biggest, ugliest legal problem of your life — when your lawyer departs from the scene as suddenly as that contractor. And it happens. Whether by illness, accident or disability, a number of Alaska lawyers unexpectedly leave the practice of law every year. If the departing lawyer “had everything in her head,” the client will be in just as bad a spot as the committee member's friends were when their contractor died: left scrambling for the legal equivalent of blue tarps and duct tape as the litigation storms approach. Not a good situation, and particularly bad for the unfortunate client of a solo practitioner who has passed on to the great courthouse in the sky, leaving no contingency plans in place and no other lawyers to step in and save the day.

It's not easy to contemplate one's own demise. Given the chance, most of us will avoid any opportunity to do so. The Alaska Bar Association, however, recognizes that we are mortal and considers the inevitable even though we, as individuals, might prefer to avoid the topic. The lawyer's duty of diligence to clients,

the Alaska Rules of Professional Conduct state, “may require” making plans:

To prevent neglect of client matters in the event of a sole practitioner's death or disability, the duty of diligence may require that each sole practitioner prepare a plan, in conformity with applicable rules, that designates another competent lawyer to review client files, notify each client of the lawyer's death or disability, and determine whether there is a need for immediate protective action. — ARPC 1.3, Comment [5].

The sharp-eyed, prospectively immortal and congenitally procrastinating practitioner will quickly note that the comment says “may require” a contingency plan, not “shall prepare” a plan, implying that taking care of your clients should you be hit by the proverbial bus is an aspirational goal and not a mandatory duty. Increasingly, other state bar associations and court rules are *requiring* solo and small-firm practitioners to have plans in place to handle transitions to new counsel resulting from the lawyer's death or disability. Malpractice carriers are taking note of whether a lawyer has a succession plan when making coverage decisions and setting premiums. And, regardless of the current wording of RPC 1.3 Comment 5, as Alaska lawyers we owe fiduciary duties to our clients of diligence, loyalty and competence, which includes anticipating events or circumstances that may adversely affect the representation, including death, disability or other unexpected exits from the practice of law.

So, what to do? The Alaska comment to RPC 1.3 sets out a simple formula for the solo or small-firm practitioner: (1) prepare a succession plan that (2) designates “another competent lawyer” who will (3) “review client files, notify each client of the lawyer's death or disability, and determine whether there is a need for immediate pro-

TECTIVE ACTION.” The lawyer chosen should agree to take on the task, the designation should be in a writing easily located in the event it is needed, and the designation should be updated if the prospective successor for any reason is no longer in a position to take on these duties. These steps are the minimum that every solo and small-firm practitioner should aim to accomplish, as a matter of good business practice and diligence, regardless of whether the current rule absolutely requires them.

For the lawyer who dies without a succession plan, Alaska RPC 31 allows Bar Counsel to petition the Superior Court to appoint a trustee counsel to exercise “all the powers of a personal representative of a deceased under the laws of the State of Alaska insofar as the unavailable attorney's practice is concerned,” and wind up the lawyer's practice. For the deceased lawyer's family, this means having a stranger asking questions and being involved in their affairs, making an already sad situation worse. The deceased lawyer's clients will be forced to deal with a stranger who has no history in their case, and may not be able to take on their case at all. Switching lawyers in mid-case is never easy, and all the more difficult when the former counsel is not available to assist in the transition.

Those brave souls who have served as the trustee counsel for a solo practitioner who had made absolutely no plans whatsoever for the sudden and permanent end to his or her practice will attest that it is hugely difficult for a new lawyer to come in cold in these situations. Whether the successor is an appointed trustee counsel or a volunteer designated successor counsel, a clearly defined succession plan is an infinite help — and not just for the successor counsel, but for all concerned.

Happily, there are many helpful resources readily available to assist developing a succession plan, and no need to reinvent the wheel. Most of

the advice given for succession planning is simply good practice for all lawyers, but it takes on additional importance in this context. ALPS has a fine and thorough CLE presentation on succession plan that they will be pleased to send you on request (contact lchurchman@alpsnet.com). The Oregon State Bar's excellent “*Planning Ahead: A Guide to Protecting Your Clients' Interests in the Event of Your Disability or Death*,” http://myshingle.com/wp-content/uploads/2012/05/succession_planning-ahead.pdf (2009) is readily available, as is the New Mexico Supreme Court's “*Succession Planning Handbook for New Mexico Lawyers*,” <http://www.nmbar.org/NmbarDocs/forMembers/Succession/SuccessionHandbook.pdf> (2014). The Washington State Bar Association's “Checklist for Lawyers Planning to Protect Clients' Interests in the Event of the Lawyer's Death, Disability, Impairment or Incapacity,” http://www.wsba.org/~media/Files/Resources_Services/LOMAP/CHECKLIST%20FOR%20LAWYERS%20PLANNING%20TO%20PROTECT%20CLIENTS.ashx (2012), and the American Bar Association's “*Being Prepared: A Lawyer's Guide for Dealing with Disability or Unexpected Events*” <http://shop.americanbar.org/eBus/Store/ProductDetails.aspx?productId=214455> (2008) are very good resources.

In sum, while nothing can keep the Grim Reaper from a lawyer's door forever, with a succession plan in place the lawyer can at least hope to be fondly remembered by clients, family and colleagues—rather than as having caused chaos and financial terror for the poor survivors!

The Alaska Bar Association Ethics Committee thanks Dick Monkman for his work on this article. This is an educational and, we hope, informative article from the Ethics Committee to members of the Bar. This is not a formal Ethics Opinion and has not been approved by the Board of Governors.

Hey, Judge! Need cash fast? Taney can help where others failed

By Peter J. Aschenbrenner

The Governor mops her brow. “Well, that’s that,” she sighs. “This reorganization gig is over and done.”

“Are we,” Governors Egan and Hammond gulp, “intact? Gubernatorially, that is?”

“The Alaska Department of Tourism, the Judicial Conduct Commission and the Ukraine,” Governor Palin explains, “have been merged into the Alaska Supreme Court.”

Roger B. Taney heaves into the assembly and drops anchor.

“You did explain to your Russian counterpart that, ‘There is certainly no power given by the Constitution to the Federal Government to establish or maintain colonies bordering on the United States or at a distance, to be ruled and governed at its own pleasure ...’”

“60 U.S. 393, 446,” I ahem the citation. “The infamous day was March 6, 1857, unless you count the publication date as Roger’s disclosure of the court’s forthcoming decision to incoming-President Buchanan.”

“I was carried away by the inauguration day festivities,” Taney chortles. “Prince Albert was scheduled to appear on March the Fourth.”

“The received pronunciation,” we all gasp.

“But why didn’t you give it back?” Roger asks Sarah. “Alaska can’t own colonies any more than the United States can do so.”

“When I looked deep into Vladimir’s soul, he asked me, ‘Has it been overruled?’”

“That’s a bit literal,” Governor Egan rubs the chin apothecarial. “I didn’t realize Communists were such sticklers for textual fidelity.”

“I asked him if the Civil War counted,” The Palin sighs. “But that went nowhere. Anyhoo, there are upsides to everything. We’re now minting lawyers all over the United States.”

The assembly gathers ‘round to hear the good news.

“I traded the Ukraine (reserving the NBA draft rights for five years) for –”

“A handful of beans?” I guffaw.

“For a mess of Boalt, actually. There was a law school giving up on its name. Down at Barclay. So I

took it off the Regents’ hands. The name and rights appurtenant, that is. I thought it would sound good up here.”

“Isn’t it pronounced Berkeley?” I ask, “as in Berkeley Law?”

“They abandoned the existing trade name,” an unnamed justice of the Supreme Court intervenes, “without taking the protective step of buying the rights to the business name in Alaska.”

“‘Westward the course of empire takes its way,’ George Berkeley here.”

We shake hands.

“Call me George, just George,” the newcomer in frock-coat and sword assures the assembly. “And yes, it’s pronounced Barclay. Founding a college in Rhode Island was my dream. Hope your law school in Alaska goes better than mine did.”

“Perhaps a couple of zesty mottoes. ‘No one from Boalt Hall has ever had to take the state bar exam.’”

“Boalt! Our legal education is superior to that of any other law school in Alaska!”

Egan and Hammond are shushed into silence.

“Here’s the deal,” The Palin retakes the floor. “The Supreme Court, not you guys, the other guys, just made a terrible decision. I refer to *Williams-Yulee v. Florida Bar Association* (2015) 135 S. Ct. 1656, which upheld (Fla. 2014) 138 So.3d 379.”

“States may prohibit judicial candidates (in states holding elections for these offices) from personally shaking down lawyers for campaign cash.”

“How shameful!” Mr. Whitecheese drops the mood into Liszt’s *Totentanz*. “Why, getting that phone call from your favorite judge is the high point of a legal career. ‘They’re out to get me,’ the strangled voice gasps the fatal words. ‘I need cash. Fast.’”

“Florida honored the Fourteenth Amendment’s protection for judicial elections,” Jay Hammond adds, “by ratifying said amendment.”

“On June 9, 1868,” Bill Egan adds. “Alaska hasn’t and is therefore exempt from its scope. For now.”

“In this case a lawyer filed her papers for office, declaring her candidacy for a low-level judgeship.”

“Didn’t she read the rules?” Bill Egan asks The Palin. “Or maybe she said to herself, ‘I can catch up on my

rule-reading in my copious free time on the bench.’”

“It was illegal for Williams to post her willingness to take cash from all comers,” Palin waives the interruption. “This amounted to the prohibited one-on-one shakedown.”

“That makes no sense at all,” Taney declares. “I was the one who said that slave-owners should be able to sue the federal government in a takings case if Dred Scott won his freedom suit. And this was right after Congress set up the Court of Claims to handle cases like that! That alone made me sound like a boob!”

“Thanks for the preamble,” Mr. Whitecheese relibates one and all. “But what’s your point?”

“Getting money from Internet solicitations – financing your ambitions most electoral through Rogerslist (a ten dollar referral bonus, ladies and gents, don’t be shy!) – is anonymity personified. Donor can even use fake names. That’s what my list recommends. It’s more secure than WikiCash, by the way.”

“Aside from the difficulties raised by the course you propose,” Wendell Kay joins the assembly, “which are too tedious to mention, the point is that lawyers want the judge and the public to know that they’ve contributed to the judge’s campaign fund.”

“And if the fund is oversubscribed,” the equally legendary Roger Cremona adds, “if I may reference AS 15.13.040, titled ‘Contributions, expenditures, and supplying of services to be reported,’ and subsection (g)(1) thereof, there is the glorious prospect of public pay-back.”

“Counsel here and, eminent in

statute,” Mr. Whitecheese intervenes, “if I may polysyllabilise the phraseology, hereby concur. *Williams-Yulee* is all wet. Judicial candidates should hoof on down to the Alaska Public and Judicial Offices Commission and do their postings on *that website*, pick up their cash and trade campaign gests and gaffes with other denizens of the hustings.”

“But judges can still write the socially obligatory (and perfectly ethical, we hope!) thank you notes,” Egan and Hammond blurt. “Right?”

“In my hour of need,” Roger intones, “and via this certificate of gratitude suitable for framing, YOU WERE THERE FOR ME. /s/ Judge Throckmorton B. Benchbreath’.”

“News flash here!” I exclaim. “North Dakota’s gone broke.”

“Calmez-vous,” the nation’s fifth (or sixth, your choice) Chief Justice comes to the rescue. “I’m slathering the globe with mass emails. ‘Spare change for the Forty-Ninth state. Dig deep!’ That does have the ring of verisimilitude, doesn’t it?” he adds.

“A law school diploma from Boalt Hall,” the former Governors hoist away, “with every hundred dollar contribution. Spare change forever!”

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 44 of his articles.

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entering into a law partnership with a nonlawyer,
advertising that she was authorized to practice
when she was not, and misrepresentations of
material facts in connection with a disciplinary matter.
She must meet conditions for reinstatement.

Published by the Alaska Bar Association,
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A history of minimum legal fee schedules in Alaska

By Leroy Barker

The amount lawyers charge for their professional services has always been controversial. There are currently discussions of several approaches to the question of what would be the most reasonable. In addition to contingent fees there have been discussions of flat fees, capped fees, holdback fees and blended fees. Currently in Alaska the issue of standards of reasonable professional fees is codified in Rule 1.5 of the Alaska Rules of Professional Conduct. (Formerly the Alaska Code of Professional Responsibility.) Until June 16, 1975, most states and local bar associations promulgated minimum fee schedules. The United States Supreme Court in *Goldfarb v. Virginia*, 421 US 773 (1975) declared these fee schedules illegal price-fixing in violation of the Sherman Act. I thought it might be of interest to follow the 76-year history of these schedules in Alaska.

The first known written record of an annual meeting of the Alaska Bar Association was in Juneau on Nov. 25, 1899. Members had met previously Nov. 9, 1897, but there is no known record of that meeting. On Nov. 25, 1899, the group adopted a revised and amended Constitution. It provided in Article VI:

“The board of Directors shall prepare, and may from time to time, modify, enlarge or amend

a schedule of the minimum fees to be charged by members for such professional services as it is proper to establish a uniform rate of charge for.

“Such schedule and every amendment thereto before it can become established shall be approved by a three-fourths vote of a meeting, and every member shall be furnished by the Secretary with a copy of such schedule and every amendment thereto when so approved.

“A departure from the schedule by any member shall be cause for suspension or expulsion from membership.”

Subsequently, the Anchorage Bar Association had several minimum fee schedules. The first Alaska State Bar schedule was developed in December 1970 and was based on the Michigan Bar’s minimum fee schedule. We only have a rough draft of that schedule that was promulgated in March 1971. It is 18 pages in length and very comprehensive – in fact many of the factors listed in Rule 5.1 of the current Alaska Rules of Professional Conduct are contained in this 1971 schedule. The schedule’s introduction provides in part:

This schedule of suggested minimum fees for Alaska lawyers was prepared by the Economics

of Law Practice Committee of the Alaska Bar association.

It should be borne in mind that the fees established in this schedule are a result of the committee’s study and effort to set forth the minimum compensation required for the attorney to maintain his office, meet the overhead expenses and provide a proper living standard for himself and his family. In no way is this schedule of fees to be considered a maximum schedule.

The document then goes on to state in part: “The problem of the establishment of proper and reasonable fees is never a simple one. Many factors demand consideration before the attorney determines his charge to the client.”

The Michigan schedule upon which the Alaska schedule was based is much more expansive. It contains interesting statements such as “All a lawyer has to sell is his time ... he cannot give his time away if he is to practice his profession, maintain his standard of living, provide a proper basis for retirement for himself, maintain his office equipment and library and compensate his employees and associates properly.”

Michigan devotes a full page to a suggested list of 24 items to be considered in “Law Office Costs.” The range for operating a law office was estimated to be 30% to 40% of gross income and the estimate for annual “chargeable hours” is 1,200. The schedule goes on to recommend determining the costs per billable hour and includes a discussion of invested capital and return of capital.

The final part of the Michigan schedule narrative spends a full page discussing “Rural Lawyer vs. Urban Lawyer.” There is a detailed outline of the enhanced costs of practicing in rural areas. The text notes: “The rural lawyer is known in his community. He fails to have the protection during office hours that is provided for the urban attorney by his receptionist and office staff. The rural lawyer is subjected to far more time consuming visits by local persons who drop into the office to discuss matters of civic interest, personal non-legal matters, etc.”

In my opinion the Michigan narrative provided a very helpful analysis of the fees a lawyer should charge.

Only a handful of the minimum fee schedules utilized in Alaska are still in existence.

The following is a comparison of some of those fees. All of the fees are from the Anchorage Bar Association

except those from 1899 and 1971; the latter two are taken from the Alaska Bar Association.

WILL (simple will)
1899 \$25
1947 \$20
1957 \$50
1966 \$70
1969 \$84
1971 \$75

LEASE
1899 \$3.50
1974 \$15
1957 \$50
1966 \$50
1969 \$60
1971 \$60

ARTICLES OF INCORPORATION
1899 \$100
1947 \$250
1957 \$500
1966 \$500
1969 \$600
1971 \$600

MORTGAGES
1899 \$3.50
1947 \$15
1957 \$75
1966 \$75
1969 \$90
1971 \$75

HOURLY RATE (only four of the schedules had an hourly rate)
1957 \$25
1966 \$35
1969 \$42
1971 \$35

After the *Goldfarb* decision, the U. S. Department of Justice announced it would vigorously prosecute any bar association that attempted to maintain its minimum fee schedule. As a result, a resolution was introduced at the Anchorage Bar Association’s weekly meeting at the Captain Cook declaring the bar never had a minimum fee schedule and had never heard of such a thing. The resolution was adopted by a unanimous vote.

I would like to thank Marilyn May and Barb Hood who encouraged me to write this article, Nancy Tileston who researched the bar archives to locate the old Minimum Fee Schedules and Rob Rubin for reviewing my draft and providing me with his editorial comments.

Leroy Barker was admitted to the Alaska Bar in 1963 and served as chair of the Alaska Bar Historians Committee for 18 years.

Letter to the Editor

To the Editor:

In the April – June *Bar Rag*, Jason Brandeis writes that “Kramer did a great job of bringing the *odd* history of Alaska’s marijuana laws to life ...” (emphasis added). I agree, for Kramer brings to life what is surely the oddest fact about *Ravin v. State*. Kramer actually illustrates what should have been the dispositive fact in *Ravin*: Irwin Ravin possessed marijuana in a motor vehicle, not in the privacy of his home.

I find it ironic that a cartoonist notes that Ravin’s possession of marijuana occurred in a car, while there is no mention of it in the *Ravin* decision. Of course, even Chief Justice Rabinowitz might have been reluctant to decide that Alaska’s right of privacy permitted possession of marijuana in the home, while acknowledging that the case before him had nothing to do with a home.

Instead, after spending several

pages reaching the conclusion that art. 1, sect. 22 of Alaska’s Constitution permitted possession of marijuana in one’s home, the Chief Justice contented himself with observing: “The record does not disclose any facts as to the situs of Ravin’s arrest and his alleged possession of marijuana. In view of these circumstances, we hold that the matter must be remanded to the district court for the purpose of developing the facts concerning Ravin’s arrest and circumstances of his possession of marijuana.”

While *Ravin v. State* may be a “high” for all of Alaska’s marijuana users, it is a dismal low for all who prefer that appellate courts confine themselves to deciding the actual case before them rather than issuing an advisory opinion. The Chief Justice should have ordered the remand before writing his lengthy opinion.

– James L. Hanley, Ocala, FL

NOTICE TO THE PUBLIC

By order of the Alaska Supreme Court,
entered August 12, 2015

ALLEN VACURA
Member No. 9506033
Fairbanks, Alaska

is transferred to disability inactive status
effective August 12, 2015.

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Defense lawyers association marks fifth anniversary with conference

By Darrel J. Gardner

The Alaska Association of Criminal Defense Lawyers will celebrate its sixth anniversary on Nov. 30, 2015. Since its creation, AKACDL has had more than 200 members join the organization. In keeping with the goals of its mission statement, AKACDL usually presents at least two criminal defense oriented CLE programs per year, and in addition, an annual two-day summer conference held at the Alyeska Resort in Girdwood. This year marked AKACDL's fifth conference, held July 9 -10. The goal of the aptly named "All*Stars Conference" is to bring high-powered, nationally noted criminal defense lawyers to Alaska to speak to the criminal defense bar. Most of the presenters have been instructors at the National College of Criminal Defense (NCCD), the National Institute for Trial Advocacy (NITA), or both.

This year's presenters included: Marissa Bluestine, legal director of the Pennsylvania Innocence Project since its inception in 2009; Marvin Schechter, recently appointed to the Accreditation Subcommittee #2 of the National Commission on Foren-

sic Science which is charged with making recommendations to the attorney general of the United States regarding the governance of forensic laboratory accreditation; Rene Valadares, federal public defender for the District of Nevada (2011-present)); and Jeff Weiner, who has argued trials and appeals throughout the country including *Florida v. Jimeno*, a major Fourth Amendment search and seizure case before the United States Supreme Court.

This year's All*Stars Conference was once again very well attended, with well over 100 participants. A large number of public defense attorneys were present because the Alaska Public Defender Agency and the Office of Public Advocacy have experienced inadequate funding to provide a similar level of in-house training. AKACDL commends Public Defender Quinlan Steiner and Public Advocate Rick Allen for their unwavering support of the Association in its mission to provide high quality Continuing Legal Education to the Alaska criminal defense bar.

At the lunch event on the first day of the conference, AKACDL presented its annual Alaskan Champion of Liberty Award. The award, a large engraved decorative gold pan, is based on nominations from the membership and is given to an attorney who has demonstrated exemplary legal skills and dedication in achieving a successful case outcome in the preceding year.

This year there were two awards given. Public defender John Bernitz and private attorney Wally Tetlow, both from Anchorage, received the prestigious award. AKACDL Board Member Cindy Strout presented

Wally's award, and described how he won across the board "not guilty" verdicts in the sexual assault trial of a Glennallen dentist, and then went on to obtain an acquittal in a Kenai DV assault trial. Dan Lowery, who received the award last year, presented John's award and recognized his tremendous efforts in winning two juvenile waiver cases, both involving murder charges. Other nominees for the award included federal public defender Cara McNamara; Andy Pevehouse, a private criminal defense attorney in Kenai; and Jeff Bradley, a public defender in Palmer. Congratulations to all of these outstand-

ing practitioners.

The Alaska Association of Criminal Defense Lawyers is a non-profit organization and the only professional association of criminal defense lawyers in Alaska. The members of AKACDL include both private attorneys and state and federal public defenders who provide criminal defense for individuals accused of crimes in all of courts of Alaska. For more information or to join AKACDL, please visit our website at www.akacdl.org

Darrel Gardner is an AKACDL board member and served as its president in 2014. He is an assistant federal public defender and the current vice-president of the Alaska Bar Association.

"The goal of the aptly named "All*Stars Conference" is to bring high-powered, nationally noted criminal defense lawyers to Alaska to speak to the criminal defense bar."



Marvin Schechter speaks to the conference.



Liberty Award winners Wally Tetlow and John Bernitz display their gold pans.



Attendees listen to a presentation at the conference.

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A proposal for efficient, effective procedures in divorce cases

By Mary Jane Sutliff

The current process

Divorce is a financial transaction where property owned by the parties should have all the protections of due process. Property owned by both parties should not be allowed to be dissipated which is a taking without due process. It comes as no surprise to family law attorneys that one party will often attempt to hide or transfer assets or accumulate debt sometimes before and often after the divorce is filed and before the separation process is complete. For marriages of any duration this process can take more than two or three years. Court procedures and practices provide little protection of assets during the period after the divorce is filed and before the separation occurs. The results of this oversight are increased court system costs, excessive attorney fees, injustice and often financial abuse.

The usual course of a divorce starts with a protective order against the dissipation of assets and calls for the release of documents relating to assets. The release of documents is prepared by the parties' attorneys. Noncompliant parties usually use this point in the process to issue short term releases. In addition, the original court order to provide documents relating to assets held by the parties is mostly ignored by non-compliant parties. A non-compliant party will supply incomplete records, hide assets, transfer assets or fail to respond

for inordinate lengths of time to the request for records resulting in a series of costly motions to compel. The larger the estate, the more stressful and expensive this period of the divorce becomes to the benefit of the non-compliant party. This non-compliance is used by the non-compliant party to force a settlement that favors them by exhausting the compliant party's assets which they have access to.

During the delay the marital assets of the compliant party which are held by the non-compliant party remain unknown, inaccessible or subject to dissipation. This is particularly true where one party has retirement accounts, savings accounts or property in one name (for estate planning purposes which may be held in trust) wherein all the taxes were paid with marital assets. Such assets may not be known or accessible to the compliant party. Also, transfers to a revocable trust can and do occur during the period one party is planning to initiate a divorce. These trusts may be in the name of children, a new girlfriend or a friend.

It may also be the case that the noncompliant party will plead for a legal separation now and separation of assets in the future. Fortunately courts usually deny this request. It is a tactic used by the noncompliant party to avoid complete discovery and the separation of assets. Attorneys know that if this request for severance is granted it should be immediately appealed, resulting in more court costs and additional ex-

penses for the compliant party.

Current court practices do little to protect marital assets even after their existence becomes known. Tax consequences of the sale of IRA assets and the transfer of those assets are often unknown, or if known, ignored during the distribution. Transferring annuities between formerly married parties can affect (and shorten) the termination date of the annuity to the detriment of the party receiving the annuity. Requiring the sale of such a marital asset will usually result in a substantial loss of guaranteed income over a long duration in exchange for the sale which will be substantially less than value. Although it is known that half of Social Security benefits earned from a marriage of 10 years duration can be claimed by a divorced spouse, currently courts do not take into account this guaranteed retirement benefit of the higher earner.

In addition, a noncompliant party has often signed a short-term release requiring more court costs, court system expenses and additional time for the non-compliant party to dissipate marital assets. These increased costs to the compliant party are ignored by the courts. Rarely, if ever, are costs and attorney's fees associated with the non-compliant party's behavior granted to the compliant party during divorce.

For a marriage of a longer duration or with assets gained over a number of years, the complexities of the case increase for judges, resulting in more court time and costs.

For due process to truly be served in these cases judges must be aware of tax consequences of asset transfers. For example, instead of holding stocks in a 401K it is currently common for 401K funds to be funneled into a retirement home as the asset held in the 401K. This kind of a transaction given to one party in the division of 401K has enormous financial benefits.

Couples who own a business require special consideration. Business records are often not produced even during long term marriages. The sale of family businesses in these situations needs an evaluation of assets – i.e. fishing boats, licenses, fishing gear, good will, etc. Even though both parties may participate in the running of a marital business, courts often leave management to one party which may result in the dissipation of assets. During this period of time all records of all marital businesses should be available daily to both parties.

Divorcing parties, especially those with retirement assets, need time and resources to determine the best way to transfer the assets. The difficulty of acquiring financial documents exhausts financial resources to the breaking point. The emotional and financial abuse suffered at the whim of a noncompliant party wears on those who work diligently to sever the financial ties of marriage. Often by the time the documents are received more time and costs are needed to recoup or at

Continued on page 13

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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 sixth installment we highlight the top-fives of: Nelson G. Page of Burr, Pease and Kurtz; and Monica Jenicek who practiced insurance defense law in Anchorage with Tim Stone, Stone and Jenicek, for 24 years. She ended her legal career as an assistant attorney general and special assistant to several recent attorneys general in the Alaska Department of Law. She retired in 2012 to ride her bicycle across the United States and to learn to improvise jazz piano. She plays keyboards in a seven-piece amateur jazz band with two other lawyers, Paul Paslay, guitar, and Julie Webb, percussion. About her selections she says, "The New Standards do a dynamite version of Elvis Costello's 'Watching the Detectives.' Way better than the original, in my estimation. That got me thinking about covers and how in telling another person's story, it is entirely possible to make it your own. These are five very different interpretations of an old Jimmy van Heusen song.

Monica Jenicek

1. "Like Someone in Love" – Ella Fitzgerald https://www.youtube.com/watch?v=O_z9eLnoR3k
2. "Like Someone in Love" – Bill Evans <https://www.youtube.com/watch?v=QFoapxPvZy4>
3. "Like Someone in Love" – John Coltrane <https://www.youtube.com/watch?v=bBpa3UGSZ0s>
4. "Like Someone in Love" – Esperanza Spaulding <https://www.youtube.com/watch?v=Is20sd5rDUY>
5. "Like Someone in Love" Bjork – <https://www.youtube.com/watch?v=lGWBx51eda8>

Nelson G. Page

1. "Ain't no Sunshine" – Bill Withers
2. "Fields of Gold" – Sting
3. "Baker Street" – Gerry Rafferty
4. "Let go" – Frou Frou
5. "Waiting on a Friend" – Rolling Stones

Alaska Supreme Court selects next Chief Justice

Members of the Alaska Supreme Court unanimously selected Justice Craig Stowers in early June to serve as Chief Justice commencing July 1, for a three-year term. Justice Stowers follows Chief Justice Dana Fabe, whose third three-year term as Chief Justice expired June 30.

Under Alaska's Constitution, the Chief Justice is selected from among the justices of the supreme court by majority vote of the justices. The Chief Justice serves as the administrative head of the judicial branch of government, presides over Supreme Court arguments and conferences, appoints presiding judges for all judicial districts, and serves as the chair of the Alaska Judicial Council. A justice may serve more than one three-year term as Chief Justice but may not serve consecutive terms in that office.

Justice Stowers has served on the Supreme Court since December 2009. Justice Stowers was raised in Yorktown, Va., and received a

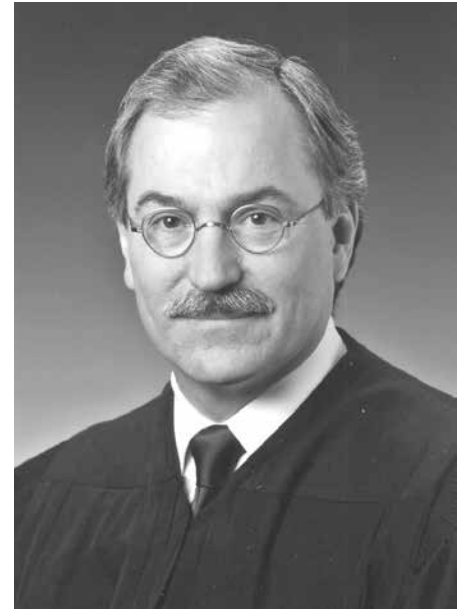
bachelor's degree with honors, with a major in biology, from Blackburn College in 1975. Before attending law school, he was park ranger at Colonial National Historical Park in Virginia. In 1977, he transferred to Denali National Park where he served first as the East District naturalist and then as the West District ranger.

He earned his J.D. in 1985 from the University of California Davis School of Law (Order of the Coif). While in law school, he was employed for two years by professor Daniel Fessler and the Alaska Code Revision Commission to research and prepare drafts of what became the Alaska Corporations Code, the Alaska Nonprofit Corporations Code and the official commentary to those acts.

He served as a judicial law clerk for Judge Robert Boochever of the United States Court of Appeals for the Ninth Circuit in Juneau and for Justice Warren Matthews of the

Alaska Supreme Court in Anchorage. He was a partner with Atkinson, Conway & Gagnon, and subsequently co-founded the Anchorage-Fairbanks law firm of Clapp, Peterson & Stowers. His law practice included trial practice, medical and attorney malpractice defense, business and insurance law, and complex civil litigation. He was appointed to the Alaska Superior Court in Anchorage by Gov. Frank Murkowski in 2004 and to the Alaska Supreme Court by Gov. Sean Parnell in 2009.

During his legal and judicial career, he has served on various Alaska Bar Association committees, including the Law Examiners Committee, and various Alaska Supreme Court committees, including as chair of the Child in Need of Aid Rules Committee. He also serves as chair of the court's Security and Emergency Preparedness Committee and as a member of Alaska's delegation to the Uniform Law Commission. He also has served on sev-



Chief Justice Craig Stowers

eral nonprofit corporation boards, including terms as board president of the Alaska Natural History Association (now known as Alaska Geographic) and board president of Christian Health Associates. He is married to Monique Stowers.

A proposal for efficient, effective procedures in divorce cases

Continued from page 12

least evaluate the dissipation.

Harm as a result of financial abuse

It took years for the court system to develop a way to handle the recalcitrant behaviors of absent parents. The system has developed ways to address the issue of child support. However, the financial fallout from noncompliance in the process of discovery of financial documents has not been addressed.

Noncompliant parties are usually addressed by court-ordered Motions to Compel. These orders are partially complied with or ignored because there are currently no consequences for noncompliance. Currently the resource provided by the system to enforce such orders is a contempt order and the threat of issue of a warrant and/or penalties. This does not happen and noncompliant parties quickly become aware of the lack of enforcement of these orders. Those with assets (i.e. bank accounts, property, utility bills, etc.) may delay production of the documents, access to accounts and other necessary transfers of information thereby making the lives of compliant parties impossible. If the utilities are held in one party's name and the noncompliant party refuses to add the other party's name, a compliant party will be charged reconnection fees for all utilities.

We as a society are aware that women fare poorly after divorce. The assumption is that women are not the primary wage earner. The true reason for women's financial loss is probably found in the fact that the setbacks in the transfer of marital assets take a long time to recover from. A divorcing person needs to assess his or her financial situation and adjust living accommodations, life style, insurance needs, etc. No person can do this without a realistic picture of what their complete assets are and what they will be. Even the most financially responsible parties cannot budget without knowing their projected income. If a home was owned, arrangements for moving, adding a roommate, or selling cannot be addressed. This expense alone carries with it costs in excess

of need that quickly can exceed a single earner's income -even without the complexity of adding in the expenses associated with offspring.

Noncompliant parties use this period of time to force the compliant party to lose credit ratings and sometimes the marital home. Alaska courts do not use the tool of contempt, nor do they issue orders for attorney's fees in favor of the compliant party each time a noncompliant party uses a tactic of frivolous delay in the production or release of documents to compound a compliant party's attorney's fees. This is just plain wrong.

Proposal for changes in procedures

There is a better, faster, less expensive and more humane way to handle a noncompliant party to a divorce. A primary question is "What is the value of the estate?" Courts can and should require an affidavit signed by either party attached to the original filing for the divorce giving notice to the judge of the anticipated value of the marital estate. If the parties differ on the value of the estate, the highest value should be used by the court to set a timeline for the duration for the release of records order. This order can be attached to the original protective order.

A standard timeline for the duration of the release of records document could be determined by the court after a review by the court administrators or judicial council of the time it takes to resolve divorce cases involving marital estates of varying values. Procedure can then require that the release of documents order issued by the court be terminated in the final order granting the divorce.

Family Law courts could also designate judges to hear only cases that involve assets in excess of a certain amount. These judges should have additional training on financial considerations including tax consequences in the division of marital estates. It may be wise for the Anchorage court administrator to have training from an attorney who has handled a case for a high profile actor or athlete. A review of

these kinds of case files could provide some much needed guidance to the Alaska courts.

The unchecked noncompliance of one party by signing short-term releases wastes court time and money. More importantly, failure to give a party access to property through drawn out and messy court procedures robs parties of their assets, sometimes their homes, and often their health. The process as it currently stands denies due process in the loss of assets.

The abuses of this messy system need to be addressed not only to increase the fairness of the process but also to provide some credibility and integrity to the system.

Moveable assets (money, investments, boats, planes, etc.) of these marriages create their own problems. I do not know if liens have been or can be placed on bank accounts. I do know that some United States Attorney offices file subpoenas to all financial institutions in a state on cases they handle where they feel this is necessary. Protection of marital assets requires that the court issue an order for freeze and a release of all financial, property and tax documents and records in the name of the parties that apply to all financial institutions in the state.

The release order proposed here

would include a provision that all withdrawals from any account held in either party's name require a signature by both parties. Once the assets are frozen in this fashion, a hearing could be held to distribute a portion of an account to both parties equally. These funds could be transferred to accounts held in each party's name with an order listing those newly created separate accounts by number and excluding them from the order to freeze assets. Yes, this does require court time, but it would be far less time and expense than the costly two and three years it takes to acquire documents from noncompliant parties for marriages of longer duration.

Marriages of shorter durations with fewer assets are often handled by the parties *pro per* and do not require the extensive filings and expense required for marriages of longer duration.

If financial abuse is to stop, the courts need to take control of the unwieldy system created by the failure of process which results in financial rape of a compliant party during divorce.

Mary Jane Sutliff is a former Alaska attorney who is a member of the California State Bar and she is a Master Gardener.

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What if politicians had to follow lawyers' rules of conduct?

Continued from page 1

sistence preference for rural residents. Polling shows that the majority of people in Anchorage's Strip Mall District support the proposed amendment because it would mean a return of state management of fish and game from the federal government to the state. If the rules of professional conduct applied, the strip mall representative would have to support the proposed amendment. She could demand that in exchange for her vote, the Western Alaska representative would vote for more bike paths to deliver customers to a new shopping center. (Horse-trading designed to benefit the electorate would be allowed under the ARPC.). Neither representative could use rude words to describe anyone who voted "no" on the amendment.

The professional conduct rules would require a politician to "subordinate the interests of others to those of the [electorate]." (Comment to ARPC 4.4). But, the elected official could not further the electorate's interests by using means, "that have no substantial purpose other than to embarrass, delay, or burden a third person..." (ARPC 4.4(b)). President Donald Trump couldn't impugn Sen. McCain's war record or brand Hispanics as rapists without violating Rule 4.4.

If the rules applied, the elected official, like the attorney, would be required to keep the client elec-

torate informed and "promptly comply with reasonable requests for information." (ARPC 1.4(a)). An official's "regular communication with [the electorate would] minimize the occasions on which a client [would] need to request information concerning the representation." (Comment to ARPC 1.4). This could make the Alaska Legislature transparent and encourage more trust in the system. Nothing like a spate of closed caucus meetings to bank the fires of distrust and start people assuming the worst about their elected officials.

Because an elected official's client is the electorate, the rule preventing an attorney from revealing a client's confidential information would not apply. (ARPC 1.6). But politicians would have to comply with ARPC 1.7, which bans conflicts of interest. This would prevent politicians from favoring the interests of special interest groups or well-financed individuals over those of the general electorate. We the people could remind politicians could that "loyalty and independent judgment are essential elements in the [elected officials'] relationship to [the electorate]." (Comment to ARPC 1.7).

The professional conduct rules allow attorneys to advertise their



"Polling shows majority of people in Anchorage's Strip Mall District support the proposed amendment..."

services so nothing in the rules would prevent politicians from campaigning for our votes. Alaska Rule of Professional Conduct 7.1 could have a positive impact on campaign rhetoric, however. It would prevent a politician from making promises or statements that contain, "a material misrepresentation of fact..." or making promises that are, "likely to create a

reasonable but unjustified expectation about the results the [politician] can achieve..." If the opinion of the electorate is a good tool for measuring integrity, application of ARPC 7.1 to members of Congress could not come soon enough. According to a 2012 Gallup poll, only 10% of those polled considered members of Congress to have high or very high ethical standards. Only car salesmen received a lower rating for honesty. Almost twice as many of those polled attributed high ethical standards to lawyers.



Allen Bailey received the American Bar Association Commission on Domestic and Sexual Violence 20/20 Vision Award Aug. 1, 2015, at the annual ABA meeting in Chicago. This award celebrates trailblazers who played an instrumental role in mobilizing the legal profession against domestic and sexual violence by either creating, supporting, advancing or advocating for the Commission on Domestic and Sexual Violence or Violence Against Women Act over the past two decades.

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A birth on April Fool's Day foreshadows a lifetime of pranks

By William Satterberg

I was born on April 1, 1951. Dad's birthday was March 30, 1921. I have always secretly suspected that Mom and my Dad had engaged in some long-range planning nine months previously, hoping that I would land on Dad's birthday. After all, I bear the same name as Dad. Having a similar birthday would have been exciting. But they missed it by two days. As such, rather than being a birthday present to my father some 30 years after his birth, I instead showed up exactly at noon on April 1st. Mom later told me that she did everything she could either to accelerate or to delay the labor. But I apparently was having nothing of it. Nope, noon, April 1, 1951. So now I play the part. I give and receive jokes, especially on April Fools' Day.

One year, now Court of Appeals Judge David Mannheimer, who was then a young Fairbanks assistant district attorney, conspired with Mark Wayson, a local police officer, to pull off a spoof on me. I was a young assistant attorney general at the time. Good pranks take advance planning and this was a good one.

Four months earlier, I had come into the office complaining about a date I had where I felt that the lady simply had the goal to try to marry me. The one date being over, the issue was soon forgotten. Or so I thought. On April 1, Mark came into my office and closed the door, asking if he could speak with me privately. Mark then apologetically served me with a paternity suit seeking child support for the "unborn child of Candy Barr." He then quietly left me to myself, telling me as a fellow bachelor how he could understand my plight. I sat in stunned silence for more than 10 minutes. Outside of my closed door, little did I realize that the entire staff had gathered to help me celebrate my new fatherhood, complete with candles and a birthday cake. When I finally did emerge from my hideout, I realized it was a joke.

Another year, after I had entered private practice, my office staff dumfied up an authentic appearing letter from a labor union. That letter even bore the signature of the local business agent. The letter advised me that my office had unanimously voted to unionize. I was warned that any attempts on my part to frustrate the process would be a serious violation of federal labor law. So I obediently never spoke to anyone about it for days. In the end, the joke backfired as the staff waited for a reaction that never came on my birthday.

But I have also played some jokes on the local populous. One of the best jokes was conjured up several years ago by Ralph Seekins, another April Fools' baby, and myself. Ralph is the father of Fairbanks District Court Judge Ben Seekins. Where Ben is outwardly quite serious, although possessing a wry sense of humor, Ralph, on the other hand, has always been game for a good April Fools' joke.

Approximately 10 years ago,

Ralph and I had approached local radio talk show host Michael Dukes to pull an April Fools' prank on his show. At the time, it seemed like a good prank. In fact, in retrospect, it was downright diabolical. I had conceived of it after reading an article in the local newspaper where the University Park Elementary School had been left vacant. Neighborhood residents were complaining about the lack of utilization of the facility.

As such, on April 1 Ralph and I went on the Michael Dukes show. We proudly announced that we had been able through political connections to obtain a federal grant through the National Institute for Modification of Behaviorally Impaired Youth (NIMBY) to purchase the University Park Elementary School for conversion into a rehabilitation center for convicted sex offenders. The phones immediately began ringing off the hook. Soon, the switchboard was fully lit. One particularly irate caller asked what we intended to do with the convicts who were in the facility. No problem. We had a pilot program called "Take an Offender Home." Under that program, parents could take an offender home to babysit their children while they were away on extended trips. It was part of the federally approved rehabilitation process. We felt that it would work quite well, since it purportedly already had a 90 percent success rate. When the Michael Dukes show ended, the phone lines were still angrily buzzing.

The following day, Ralph and I made a retraction. Apparently, many Fairbanksans had taken the matter quite seriously. Moreover, because we had tied the University of Alaska into the project, as well, stressing that university students could gain special credit by working in the program, the chancellor of the university was now concerned about public image. So Ralph and I appeared on television standing in front of the school University Park Elementary School, looking much like Laurel and Hardy, shamefully apologizing for our prank while the title "Local Pranksters" and our names scrolled across the screen.

One year when Anchorage lacked snow (much like this past Spring) the Iditarod was reset to leave from Fairbanks to Nome. Following the successful start of the Iditarod, I announced on the Dukes show that an agreement had been negotiated by me with the Iditarod Trail Committee and the Yukon 800 Riverboat Race Committee to provide that the Iditarod would start in Fairbanks every other year. As self-proclaimed attorney for the Yukon 800 Committee, I revealed that, on every off year, the riverboat race would, in turn, start in Talkeetna and run up the Susitna River to the Tanana River to the Yukon River and return. There were a number of takers on this concept, notwithstanding



"The best joke of all, however, was that people actually still believed that I was the new local district attorney for weeks afterward."

the fact that the Alaska Range separates the two river systems.

And, on another year, I announced that the Permanent Fund had been used to fund a purchase agreement for Alaska to buy the Province of Magadan from Russia. After all, precedent already existed in the purchase of Alaska from Russia. That joke, too, although received, did not catch on like the University Park joke. People were now on to my stunts and actually expected them. So I decided to keep my head low for a number of years.

Then it happened. In March of 2015, Fairbanks District Attorney Michael Gray was appointed on short notice to fill the Bethel District Attorney's position. A search was on for a Fairbanks replacement. This time, however, I decided not to spring my joke on the community only on April Fools' Day. Rather, a build-up had to take place. Good jokes take good planning.

Three weeks prior to my birthday, I asked my staff to spread the rumor to known Fairbanks gossips that I had surreptitiously submitted my application to be the new Fairbanks district attorney. And, for credibility, I actually did submit a letter of application to longtime Deputy Attorney General Richard Svobodny. On its face, the letter most likely did not garner much support, since I have yet to receive a reply, let alone a request to interview.

Under the plan, once the word leaked out that I had applied for the job, the follow-up was for my employees to next call their targets up in a panic and state that they made a tremendous mistake in breaching my trust. Their very jobs were in jeopardy. This confession was then capped off by the plaintive plea of "Please don't tell anybody!" That desperate request, alone, virtually guaranteed that gasoline had now been dumped on the fire.

For the next two weeks, the rumor spread like wildfire. At one point, I even received an email from an assistant district attorney indicating that he would not negotiate with me because "rumor had it"

that I had applied for the district attorney's job. Another ex-employee, whose husband is a police officer, confided to one of my "leaks" that the Fairbanks Police Department was concerned, but that she personally thought that I would be a great at the job.

The plan was approaching its climax. But more was needed. One week before April First, Craig Compeau, a co-conspirator of mine, announced at a lunch that he heard that I was now one of three finalists for the appointment. A state trooper was in attendance at the affair. Predictably the rumor grew more.

On the Saturday before April First, I again was a guest on the Michael Dukes show. This time, I talked about issues of interest with the local district attorney's office. When asked what I would do if I were "DA for a day," I disclosed my support of enhanced interrogation techniques, drone surveillance and allowing employees to smoke joints during the lunch hour so long as they did not smoke weed in their office, now that marijuana was legal.

And, on Wednesday, April 1, 2015, we dropped the bomb. Craig and I crafted up a press release, complete with a picture of me casually sitting at a bar with a glass of wine, proclaiming that I had been appointed as the new Fairbanks district attorney. The article looked like the real thing, even if it was an expensive paid advertisement. Tongue-in-cheek quotes from various personalities, including Bernie Karl, Frank Turney and ex-state Rep. Al Vezev were included. The best joke of all, however, was that people actually still believed that I was the new local district attorney for weeks afterward. I later learned that Craig Richards, the state's attorney general (whom I had informed in advance of the prank), had met with his staff and threw my name out for discussion, as well. After letting the attorneys squirm a bit, Craig then announced that it was an April Fools' joke. But, to be candid, I actually was offered the job of Fairbanks district attorney. And it was Craig who made the offer. No, not Craig Richards, Alaska's attorney general, but Craig Compeau, local recreational vehicles dealer. And that was enough for me, for at least I can now say that I politely declined Craig's offer.

Contract Attorney
Meredith Ahearn

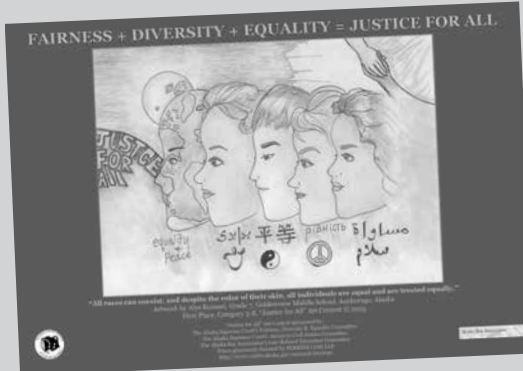
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Student winners in 'Justice for All' art contest announced

The "Justice for All" Art Contest asked students to submit two-dimensional artworks on the theme "Fairness, Diversity, Equality: Our justice system depends on them. What do they mean to you?" The contest received entries from K-8 students from all across Alaska. Finalists were selected by members of the court system's appellate staff, representatives from the Alaska Bar Association's Law-Related Education Committee, and members of the Alaska Supreme Court's Fairness, Diversity & Equality Committee and Access to Civil Justice Committee. The contest sponsors would like to extend special thanks to Perkins Coie LLC for donating the contest prizes. We also wish to congratulate the contest winners, and to thank all of the entrants for their wonderful works of art, which inspire us to ensure that fairness, diversity and equality continue to be vital values of our justice system. The competition was sponsored by the Alaska Bar Association's Law-Related Education Committee, the Alaska Supreme Court's Access to Civil Justice Committee, and The Alaska Supreme Court's Fairness, Diversity & Equality Committee.



Alys Korosei, first place, right; and Madeline Goolie, second place, middle, seventh graders at Goldenview Middle School in Anchorage, receive awards from Mara Rabinowitz, communications counsel, Alaska Court System.



Ian Smith, second grader at Delta Junction Elementary School, with his award winning poster. He won First Place in the K-4 Justice for All Art Contest. (Photo courtesy Carole Haas, Delta Wind Newspaper)

DO YOU KNOW SOMEONE WHO NEEDS HELP?



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

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

Fairbanks: Aimee Oravec,
aimee@akwater.com

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

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.

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Test your fiscal and economic knowledge — win prizes

By Cliff Groh

Wondering why the University of Alaska has implementing budget cuts? Remember the Legislature's drawn-out efforts to pass a state budget? Tracking what's happening in the oil industry? If you answered "Yes" to any of these questions, you are warmed up for even more fiscal and economic questions (and the possibility of a free lunch).



Cliff Groh

- At currently projected oil production levels, what would the price of oil need to average during the current fiscal year (July 1, 2015-June 30, 2016) for the State of Alaska to balance its budget?
 - \$42 per barrel
 - \$86 per barrel
 - \$109 per barrel
 - \$146 per barrel
- What have prices for Alaska North Slope crude oil been since July 1, 2015?
 - Between \$31 and \$48 per barrel
 - Between \$50 and \$62 per barrel
 - Between \$78 and \$91 per barrel
 - Between \$122 and \$159 per barrel
- Recent trading in contracts for crude oil in September of 2020 imply that oil prices will then be:
 - Between \$35 and \$40 per barrel
 - Between \$45 and \$75 per barrel
 - Between \$90 and \$120 per barrel
 - Between \$130 and \$160 per barrel
- What would Alaska oil production need to average for the rest of this fiscal year at current oil prices for the State of Alaska to balance its budget?
 - 700,000 barrels per day
 - 850,000 barrels per day
 - 1.2 million barrels per day
 - 1.6 million barrels per day
- How much oil has Alaska produced since July 1, 2015?
 - Between 400,000 and 530,000 barrels per day
 - Between 750,000 and 900,000 barrels per day
 - Between 1.1 million and 1.3 barrels per day
 - Between 1.4 million and 1.5 million barrels per day
- At the current rates of spending and projected revenues under current law, what fiscal year does the Alaska Legislative Finance Division project that the State of Alaska will run out of savings outside of the Permanent Fund?
 - 2017
 - 2018
 - 2019
 - Never
- What year did the CEO of Royal Dutch Shell ("Shell") identify in July of 2015 as the year that Shell plans to start offshore oil production in Alaska?
 - 2018
 - 2019
 - 2022
 - 2030
- What is the earliest year that revenues could come to the State of Alaska from the operation of the Alaska Liquefied Natural Gas project (also known variously as "AKLNG," "the big gasline," or "the gasline")?
 - 2018
 - 2020
 - 2024
 - 2028
- When the multiplier effect is included, how many jobs did the University of Alaska Anchorage's Institute of Social and Economic Research (ISER) estimate in February 2015 that a \$1 billion cut to the State of Alaska's budget would cause to be lost in the Alaska economy?
 - 3,000
 - 6,000
 - 9,000
 - 15,000

ANSWERS TO FIRST QUIZ:

- c (\$109 per barrel – Gov. Bill Walker, presentation to the Anchorage Economic Development Corporation, July 29, 2015)
- b (between \$50 and \$62 per barrel – Alaska Department of Revenue website)
- b (between \$45 and \$75 per barrel – CME Group website accessed Aug. 10, 2015; note that these are futures for West Texas Intermediate (WTI) crude, which has recently been running \$4-\$7 less a barrel than Alaska North Slope crude)
- d (1.6 million barrels per day – Gov. Bill Walker, presentation to the Anchorage Economic Development Corporation, July 29, 2015)
- a (400,000 barrels to 530,000 barrels per day – Alaska Department of Revenue website)
- b (Fiscal Year 2018 (July 1, 2017 - June 30, 2018) personal communication from Alaska Legislative Finance Division, Aug. 10, 2015)

d (2030 – Danica Kirka, Associated Press reporter, "Shell axes 6,500 jobs worldwide to cope with long period of cheap oil," CBC News website, July 30, 2015: "Looking into the future, Shell is betting on offshore oil fields in Alaska, which [Shell CEO Ben] van Beurden described as having the potential to produce more energy than the biggest projects in the Gulf of Mexico. The company has committed resources to develop the long-term potential of the fields over the next two years and plans to start production in 2030, van Beurden said at a news conference.")

- c (2024 – Michael Pawlowski, deputy commissioner of Alaska Department of Revenue, "Alaska LNG: Fiscal Implications and Potential Cash Flows," Oct. 4, 2014, posted on Alaska Common Ground website at www.akcommonground.org on the Internet.)
- c (9,000—Memorandum from Gunnar Knapp, director of ISER, to State Rep. Mark Neuman, "Preliminary analysis of impacts of budget cuts on Alaska's economy," Feb. 2, 2015. This memorandum also states that "State spending could have major indirect effects on the economy in other ways that the economic impact estimates shown above don't capture at all. For example, cuts could affect economic confidence, investment, and real estate prices." (Emphasis in original.))

So now you have learned that it would take roughly a doubling of oil prices or roughly a tripling of oil production to balance the budget this year (using the conventional definition of the budget as the Unrestricted General Fund). You have also learned that the much ballyhooed development possibilities seem unlikely to save us from hitting the wall and that Alaskans need to think seriously about the future direction of the economy. So what do you do? You take the Bonus Quiz, because the possibility of prizes could cheer you up.

BONUS QUIZ (WITH PRIZES)

- What are the estimates released by the Anchorage Economic Development Corporation in August of 2015 for the population of Anchorage in 2016 and 2017?
 - A 2.0 percent decline in 2016 and a 3.5 percent decline in 2017
 - A 0.75 percent decline in 2016 and a 0.75 percent decline in 2017
 - No increases or decreases in either 2016 or 2017
 - A 1.5 percent increase in 2016 and a 3.0 percent increase in 2017
- How much marijuana taxed under state law would each Alaska adult have to smoke in a year to balance the budget given this year's budget?
 - Four ounces
 - 14 ounces
 - Two pounds
 - More than six pounds
- Which Alaskan said this, and in what year?

"As long as the price of oil continues to stay in the mid-20's or above, things are going to go pretty well. If we stay at \$25 or \$26 or have some spikes ... it quickly infuses the system."

 - Gov. Jay Hammond, 1978
 - Gov. Tony Knowles, 1998
 - State Sen. Lyda Green, R.-Mat-Su, 2002
 - Gov. Bill Walker, 2015

PRIZES:

The first three people giving the correct answers to the bonus quiz to the author at cliff.groh@gmail.com before 5 p.m. Thursday, Sept. 17, 2015, get their choice of either:

- A free lunch at the Forum on Alaska's Fiscal and Economic Future set for Saturday, September 19, 2015 at the University of Alaska Anchorage's Wendy Williamson Auditorium from 9 a.m. to 4 p.m.; or
- A free lunch with the author and the Director of ISER

Even if you don't get a prize, you should consider attending this free public forum on September 19, which will be unusual in multiple ways. One way is that citizens will be putting forth comprehensive, clear, and specific proposals to address the actual scale of the State's fiscal challenge based on the actual range of options available to the State. This event will also feature (1) policy-makers and expert commentators discussing the institutional and political factors in addressing the fiscal challenge and (2) a compelling one-on-one debate on the future of Alaska's economy and the fiscal choices that could affect our economic future.

NOTE: You come for the history of the cases arising out of the federal investigations into Alaska public corruption, and you stay for the analysis of Alaska's money problems. More on the Ted Stevens trial in the next edition.

Cliff Groh is chair of Alaska Common Ground. He was the principal legislative assistant working on the legislation adopted in 1982 that created the Permanent Fund Dividend we have today and the special assistant to the Alaska Commissioner of Revenue in 1989 during the consideration and adoption of the legislation revising the oil severance (production) tax's Economic Limit Factor (ELF).

In Memoriam

The long and remarkable life of Douglas L. Gregg

By Keith B. Levy

The long and remarkable life of Douglas Larson Gregg came to its earthly end July 21, 2015, at the Juneau Pioneers Home. I will be forever grateful to have known him. Doug, who was my father-in-law, was a tremendous mentor to me, not just in the law, but in life. We shared office space from 1994 until he retired in 1999. He didn't often tell me what to do. Rather, he modeled how to be a lawyer and a human being: honest, thoughtful, respectful. As I have been told by many of the lawyers who practiced with and against him, and the judges before whom he practiced, Doug was a class act.

Because Doug seldom gave advice, two occasions when he did stand out in my mind. In 1994 I

he had loved his law practice over the years. And the only advice he gave me was, "you should do what makes you happy." It seems simple, but it really opened the door to the choice I made and it changed my life. I knew which of the two options would make me happy. But what made it possible to turn down a steady job with health and retirement benefits

was approval from this man for whom I had so much respect.

The only other advice I remember Doug giving was when he poked his head into my office and said "By the way, don't take divorce work. And if you do, get the money up front."

What follows is the obituary written by Doug's daughter, Susi Gregg Fowler:

Doug was born in Marshalltown, Iowa, Jan. 6, 1927, to James and Inez (Larson) Gregg. When he was young, the family moved west, following work for his musician father. In Seattle, Doug grew to love the water and the distant mountains. He also early on fell in love with the guitar, which he continued to play all his life.

A gig playing music on a steamship brought the senior Gregg to Juneau, and soon Doug and his mother followed. Doug always described Juneau in the late '30's as a paradise, and he never really changed his opinion. He described his childhood as an incredibly happy one, fishing, hunting, and always playing music, and his loving relationship with his parents was a touchstone of his entire life.

Toward the end of World War II,



Douglas L. Gregg

Doug dropped out of high school — where he'd been elected senior class president—and joined the Merchant Marine. He traveled to the East

Coast, to Germany, and the Philippines, eventually returning home and finishing high school. He fell in love with another high school senior, Lily Ann Maurstad, and shortly after graduation, they

left for Seattle and were married on Sept. 13, 1947. Doug began playing in clubs around Seattle. Jobs weren't easy to come by, but he and his jazz guitar style enjoyed some successes. He played back-up guitar for performers coming through Seattle, including Sammy Davis Jr. and was friends with the young Ray Charles, known as RC in those days. Doug was the first white musician to play at Seattle's Black and Tan Club.

Shortly after the birth of their first daughter, Susi, Doug and Lily returned to Juneau where Doug worked a variety of jobs, from pumping oil to commercial fishing, eventually getting on with Pan American World Airways ending up as their field manager. He still worked nights at gigs at different venues around Juneau, sometimes playing with his dad, sometimes with other musicians.

The chance gift of a book on the law and literature inspired Doug with the beauty and power of the law, and he set himself a new goal. With no college background, and with a full time job and a family which now included two more children, Jan and Walt, the idea of becoming a lawyer might easily have seemed an impossible dream, but Doug was determined. He "read for the law," in the tradition of Abraham Lincoln as well as many notable Alaska attorneys in "the old days." He studied nights while working full time and was eventually able to leave Pan American Airlines to work as a full time law clerk, first for Howard Stabler and his wife Gladys and eventually moving to the territorial Attorney General's Office. He took the bar exam in 1958, passed it, and on Feb. 2, 1959, was sworn into the Alaska Bar.

Doug was the first person in Alaska to know that President Eisenhower had signed the Alaska Statehood Act. The signing happened on the weekend, and when Sen. Bob Bartlett's office couldn't get through to the governor's office with the news, they called the attorney general's office where Doug was working and asked him to carry the message. Although by the time Doug reached the governor's office, the call had gone through, he was invited to stay for Bill Egan's swearing in as governor of the new state

of Alaska.

Doug's reputation as an attorney was sterling. When he retired after 40 years of legal practice, then presiding Judge Larry Weeks remarked, "If more attorneys practiced law the way Doug Gregg has, the profession would be in a lot better shape and the people would be much better served." Many attorneys with whom he practiced over the years either as partners or other colleagues, have echoed Judge Weeks' remarks.

Lily and Doug celebrated their 45th wedding anniversary before her death in 1992. In 1994, he married Anne Chase of Gustavus and they lived together until her move to the Juneau Pioneers Home in 2011. He remained at home until August 2014 when he, too, moved there.

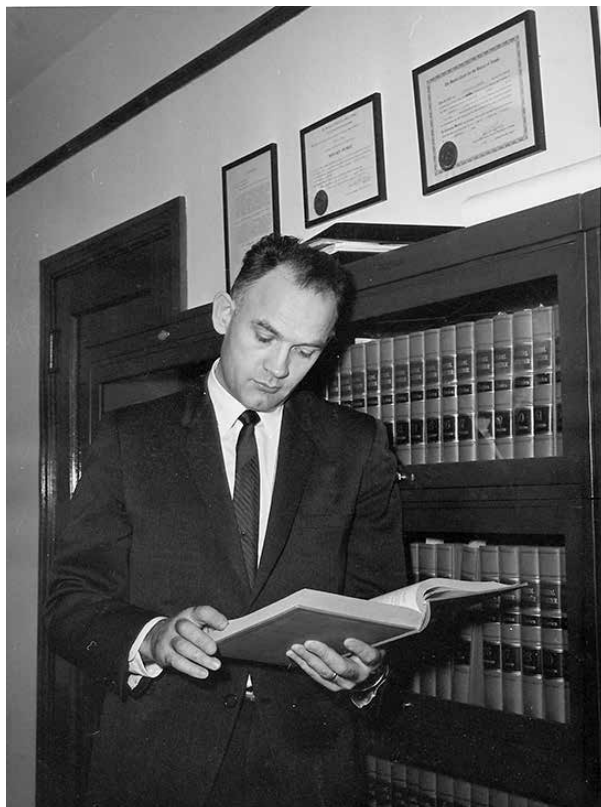
Well into his eighties, Doug continued as guitarist with the Thunder Mountain Big Band. When the schedule became too much for him, musician friends included him in their Saturday afternoon Dixieland band sessions at "Big Blue." When he wasn't playing music himself, Doug was usually listening to it. Jazz and old standards were his particular passion, but he also loved classical works. He loved the Juneau Symphony, the Thunder Mountain Big Band, the annual Gospel Choir sponsored by the Juneau Arts and

Humanities Council, the Juneau Jazz and Classics events, and listening to the musical explorations of his kids, grandkids and great-grand-

children.

Doug was predeceased by his parents, Jim and Inez Gregg and his first wife Lily. He is survived by his wife Anne Gregg; his children Susi Gregg Fowler (Jim), Jan Gregg Levy (Keith), and Walter Gregg; his grandchildren Jacob Soboleff, Nathan Soboleff (Angie Wright), Madeline Soboleff Levy (Trinidad Contreras), Abraham Levy (Mikaela), and Micaela Fowler, all of Juneau, and Angie Fowler Williams (John) of Brooklyn, N.Y.; and great grandchildren Callahan, Cedar, Hayden, Riley, Cora, Sofia, Elijah, Jillian, and Chava, and his little dog Cassie. He is also survived by his sister-in-law Harriet Maurstad Klein (Jim) and family, brother-in-law John Lite (Margo) and family, many cousins around the country, and by his wife Anne's children Sylvia Petersen (Doc), Gloria Chase, Don Chase, and Robert Chase (Mary Ann), all of Gustavus, and their children and grandchildren, along with many dear friends.

Doug lived his last 11 months in the Juneau Pioneers Home. While he continued to have daily visits from family members, the Pioneers Home staff became another family — treating him with love, tenderness and respect, and embracing his family as well. While dementia may have dimmed his memory, his open heart only grew, and his generosity of spirit and graceful acceptance and gratitude humbled and taught us.



Doug Gregg early in his legal career.

was thinking about starting my own law practice when I was offered a job with the Department of Law. I spent quite a bit of time agonizing about what to do. The weekend before I had to make a decision on the job I had a long talk with Doug about it. He never said which choice he thought I should make. But he waxed eloquently about how much

his mother followed. Doug always described Juneau in the late '30's as a paradise, and he never really changed his opinion. He described his childhood as an incredibly happy one, fishing, hunting, and always playing music, and his loving relationship with his parents was a touchstone of his entire life.

Toward the end of World War II,

The chance gift of a book on the law and literature inspired Doug with the beauty and power of the law, and he set himself a new goal.

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A tribute to Anchorage Probate Master John E. Duggan

By Steven T. O'Hara

Probate Master John E. "Jack" Duggan has retired from the bench. Since he did some boxing at one time, words from fistiana come to mind.

The Greatest. The real McCoy. The nonpareil. One of a kind. Will be missed. Sweet. Scientific. Patient. Probing. Looked for a tell. Gentle Giant. Courteous. Humble. Big shoes to fill. Inestimable. Specialist. Mr. Title 13 of Alaska Statutes. Street smarts.

Street smarts is "common sense which ain't too common, and judgment." So said my father, and Master Duggan demonstrated street smarts time and time again.

When you received a Judicial Assignment Order for the Third Judicial District at Anchorage and saw the name John E. Duggan, you said "Great!" His gift is his ability to go straight to the heart of a matter.

Under the Uniform Probate Code, especially as modified in Alaska, parties are meant to have generous access to the court for guidance and assurance. See, as examples, AS 13.16.625 (Court instructions generally available), AS 13.36.100(b) (Court approval of accounting reports), and AS 13.12.530 (Court approval of Wills before death).

You certainly felt welcomed in Master Duggan's courtroom.

In public settings as appropriate both in and outside his courtroom, Master Duggan provided guidance. I still have my notes from a couple of his appearances before the monthly bag-lunch meetings of the Alaska

Bar Association's Probate Section.

One session was Aug. 15, 1995. Here are my notes (and any inaccuracy is mine):

- *Master Duggan's office will soon be taking over calendaring. If you set up a hearing, normally a half hour will be scheduled. If an evidentiary hearing is requested, then that has to be explained with the calendaring person. He said the standing order by Judge Card is that if the hearing will take one-half day or more, then the hearing will go before the Superior Court Judge assigned the case. If it is a shorter hearing, then the Probate Master will handle it.*
- *Master Duggan said if it is going to be an evidentiary hearing, then file the following within 10 days before the hearing:*
 1. *A witness list.*
 2. *A pre-hearing memo with facts and allegations.*
 3. *Supporting affidavits, to cut down on the witness time at the hearing. Here the hearing will basically be a cross-examination of the witnesses who gave the affidavits.*
 4. *A list of exhibits to be submitted to the Court. Master Duggan emphasized do not forget to move to enter into evidence the exhibits given to the Court at any hearing. Master Duggan said if the attorney-client privilege is going to be asserted, then*



"... Master Duggan demonstrated street smarts time and time again."

this issue needs to be resolved before the hearing. He said get the other side to waive the privilege or have a separate hearing on that matter.

- *Master Duggan also said that unless all parties agree, he will not order monthly meetings before him to resolve an estate.*

Going back farther my notes indicate on April 8, 1992, before the same group, Master Duggan reminded us we may petition to have the Superior Court judge assigned the case – not the probate master – hear an issue. Master Duggan shared that Judge Andrews was assigned the even-numbered cases and Judge Reese was assigned the odd-numbered cases. Master Duggan said he has his recommendations walked to the judges.

Whenever Master Duggan appeared before the Probate Section or other groups, he always encouraged and allowed full and frank discussion.

In his courtroom he went out of his way to make sure all had their say. Even if you were not sitting at counsel table, if he noticed you in the back of the room he asked if you had anything to add to the proceeding. Such is his due diligence in coming to a just and reasonable decision.

At the conclusion of adoption hearings, he is known for coming around

the bench and handing out Tootsie Pops to the children present.

Probate Master Duggan's works do follow him into the workaday lives of so many people in and outside Alaska. Long into Master Duggan's retirement and beyond, estates will go on devolving under the settlements he approved. Spouses and children will go on being protected by the trusts he enforced. Beneficiaries will rise up and bless him for the wills he determined valid. (This last paragraph is derived from Reginald L. Hine, *Confessions of An UnCommon Attorney* 112 (Macmillan, New York City, 1947).)



Probate Master John E. "Jack" Duggan

Attorney Discipline

Supreme Court orders attorney suspension for 42 months

The Alaska Supreme Court suspended attorney Mark A. Rosenbaum from the practice of law for a period of 42 months, effective 30 days after its July 9, 2015, Order.

During disciplinary proceedings, Mr. Rosenbaum did not contest misconduct allegations involving two clients. By not answering charges, he admitted that he failed to keep his clients informed, failed to disclose the absence of malpractice insurance, failed to refund unreasonable fees, failed to account for fees he charged, and failed to respond to requests from disciplinary counsel.

Mr. Rosenbaum agreed that the misconduct warranted suspension, although he no longer lived in Alaska and was no longer engaged in the active practice of law. The parties stipulated to a suspension for two years with one year stayed. The Supreme Court rejected the stipulated suspension time as too lenient given the number and nature of the stipulated offenses and the stipulated aggravating factors, and remanded the matter to the Bar Association for further proceedings.

At the conclusion of a sanctions hearing, a hearing committee found that Mr. Rosenbaum, an experienced lawyer, provided no explanation or defense for his actions, from which the committee concluded there were none. The committee found that he ignored his obligations under the Alaska Bar Rules relating to disciplinary proceedings. As a result of his deemed admissions and non-participation in the disciplinary matter, the hearing committee recommended a 42-month suspension.

In addition to recommending suspension for the admitted violations, the hearing committee and disciplinary board conditioned Mr. Rosenbaum's reinstatement upon making full restitution to all clients for any unpaid fee arbitration award and Lawyers' Fund for Client Protection distribution. The court ordered interest at the rate set by the Civil Rules from the date of loss or payment from the Lawyers' Fund for Client Protection. The court ordered Mr. Rosenbaum to pay \$2,500 to the Alaska Bar Association for its disciplinary costs and fees.

General aviation accidents to major airline disasters

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Bar People

Four Manley and Brautigam lawyers selected as 2016 Best Lawyers

Four lawyers from the office of Manley & Brautigam, P.C. have been selected for inclusion in the 2016 edition of The Best Lawyers in America®.

Peter Brautigam was named as Anchorage "Lawyer of the Year" in Tax Law. He is also included in the practice area of Trusts and Estates; **Robert Manley** - Litigation-Trusts & Estates, Tax Law and Trusts and Estates; **Charles Schuetze** - Tax Law and **Steve Mahoney** was named as Anchorage "Lawyer of the Year" in Natural Resources Law. He is also included in the practice areas of Oil & Gas Law, Energy Law, Tax Law, Litigation & Controversy-Tax Law and Non-Profit/Charities Law.

Christine Williams joins Davis Wright Tremaine's Anchorage office

Christine V. Williams, who most recently served as vice president and general counsel of the Bering Straits Native Corporation, has joined the Anchorage office of the national law firm of **Davis Wright Tremaine LLP (DWT)** as a partner. Also joining the firm's Seattle office are **Lisa Marchese** and three other partners from Dorsey & Whitney, who represent some major Alaska-based clients. The group will enhance the firm's government contracting, litigation and construction practices.



Williams

"I'm very excited to join DWT's Alaska team's whose platform is a perfect fit with my practice and I am looking forward to working more closely with Lisa and her team," said Williams. "Lisa and I have known one another for quite some time and we are excited to be partners in the future of the firm."

"We are delighted to have Christine and the Seattle group join us," said Joseph Reece, partner-in-charge of DWT's Anchorage office. "Their wealth of experience with a wide range of issues will be of tremendous value to our Alaska Native corporation clients and our other clients engaged in government contracting and construction."

Patricia Vecera joins Davis Wright Tremaine

Patricia Vecera, an experienced labor/employment lawyer, has joined the Anchorage office of **Davis Wright Tremaine LLP (DWT)** as counsel. Vecera defends private and public employers in a full range of employment disputes and is also known for her labor law expertise. She joins DWT after spending 15 years at the Anchorage-based firm of Turner & Mede, P.C.



Vecera

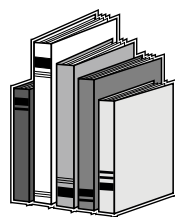
"We're very pleased to have Patti further expand our leading Alaska employment practice," said Joseph L. Reece, DWT's Anchorage partner-in-charge.

Law Library News

Anchorage Law Library moving back in after remodel completed

By Susan Falk

The Alaska State Court Law Library is thrilled to announce that after three and a half years of construction, the remodel of our Anchorage branch is complete. We have moved back into the Reading Room and are using the main entrance again. While several thousand boxes of books currently remain in storage, the treatise collection and most Alaska materials are available in print. In addition, we have five public computer stations offering complementary WestlawNext, HeinOnline, National Consumer Law Center titles, and more.



Our new space boasts abundant light and a variety of seating options. You can spread out on one of our larger tables, work at our laptop bar, or relax in an armchair with a recent periodical. Most of our tables are wired, so you can charge your devices as you work. We remain open six days a week, as we did throughout construction. Librarians are available Monday through Friday to help with research projects or interlibrary loan requests.

We will spend the next few months filling our new shelves, pulling books out of storage and returning them to circulation. I know some of you will be very happy to get your hands on a few of these items. But while we have several rooms of closed stacks in the Boney basement, we will not have room for every book that went into storage in 2012. Decisions as to what exactly will stay and what might have to go have not been finalized; if you have an opinion on this, now is your chance to make yourself heard. If you believe a particular title is invaluable, and you'd like to make sure we find room for it somewhere in the library, please speak up now.

In the meantime, we're very happy to have the run of the library again after so much time in constricted quarters. If you haven't stopped by, come check us out. We're happy to provide tours of our new rooms, demonstrate our new mobile shelving, argue the merits of individual books or formats, sign you up for Lexis eBooks, and assist you with your research needs.

Marilyn May receives award for distinguished service

On Aug. 6, 2015, in Snowbird, Utah, the National Conference of Appellate Court Clerks presented Marilyn May, clerk of the Alaska Appellate Courts, with the J.O. Sentell Award for distinguished service. The J.O. Sentell Award is given out every year to recognize distinguished service to the conference.

May's service to the NCACC includes membership on the Executive Committee for over 10 years, as president from 2011-12, president-elect from 2010-2011, vice president from 2009-2010, and treasurer from 2005-2009. May has also chaired several committees and serves on numerous others, and she served as host for the 2004 annual meeting and the co-host for the 2013 annual meeting.

May has been clerk of the Appellate Courts since her appointment in 1998. Echoing the words of this recent recognition, the Alaska appellate courts are better due to Marilyn's hard work, her willingness to serve, and her warmth and love for the court system, its employees, and those who use it.

The National Conference of Appellate Court Clerks was organized in 1973, with current members throughout state and federal appellate courts. The conference has three main objectives: to improve the skill and knowledge required of those performing the duties of appellate court clerks by conferences, seminars or other educational programs; to promote and improve the contribution of the offices of appel-



Marilyn May, clerk of the Alaska Appellate Courts, displays her award.

late court clerks within the area of effective court administration; to maintain facilities for the collection and dissemination of information and ideas with regard to the operation and improvement of the offices of appellate court clerks.

The Executive Committee created an annual award to recognize distinguished service rendered by the recipient who has contributed in a substantial way to the objectives of the Conference. Known as the "J.O. Sentell Award," it was first presented at the 1979 annual meeting held in Monterey, California.

Clarkson and Brena named Super Lawyers for 2015

Kevin G. Clarkson and **Robin O. Brena** of the law firm **Brena, Bell & Clarkson, P.C.** were named Super Lawyers for 2015. Both Clarkson and Brena were selected as Super Lawyers in 2014 as well. Super Lawyers is a rating service of outstanding lawyers from more than 70 practice areas who have attained a high degree of peer recognition and professional achievement. The selection process includes independent research, peer nominations and peer evaluations. Once a year, Super Lawyers invites lawyers in each state to nominate the top attorneys that they have personally observed in action. Super Lawyers' peer evaluation, also known as the "blue ribbon review," is conducted by practice area. Top-rated lawyers in the community in each practice area serve on a blue ribbon panel to provide the peer review. Only five percent of the lawyers in a community are selected as Super Lawyers. Brena, Bell & Clarkson, P.C. is a law firm with a history of nearly 30 years of providing a wide range of legal services to a broad array of clients ranging from individuals, to municipalities, to closely held businesses, to fortune 500 companies.

Lindemann named partner at Richmond & Quinn

Richmond & Quinn, a civil defense law firm based in Anchorage, proudly announces that **Rebecca A. Lindemann** has become a partner with the firm. Lindemann's practice primarily focuses on personal injury and product liability defense. She previously practiced law with Schwabe, Williamson & Wyatt in Portland, Oregon, where she specialized in business and product liability litigation.



Lindemann

Thomson Reuters 2015 Super Lawyers

The law firm of Sonosky, Chambers, Sachse, Miller & Munson, P.C., with offices in Anchorage and Juneau, is pleased to announce that three of its Alaska partners have been named to the Thomson Reuters "2015 Super Lawyers" list. **Myra Munson** was named a "Super Lawyer" in the areas of Native American, Appellate and Government Relations law. **Richard Monkman** received the "Super Lawyer" designation in Health Care, Native American and Appellate law. **Lloyd Miller** received the "Super Lawyer" designation in Native American, Appellate and Government Relations law.

Lazar named Defendant's Lawyer of the Year

Howard Lazar of Delaney Wiles, Inc. was named the Best Lawyers 2016 Personal Injury Litigation – Defendant's "Lawyer of the Year" in Anchorage.

Alaska Supreme Court affirms parental rights for minor children

By Kevin Clarkson

In *Ross v. Bauman*, Slip Op. No. 7024 (Alaska July 24, 2015), the Alaska Supreme Court reaffirmed the right of fit parents to control the care and custody of their minor children. The right of parents to control the care and custody of their minor children is a fundamental constitutional right that is protected by both the United States and Alaska Constitutions. *Ross*, at 23; *Troxel v. Granville*, 530 U.S. 57, 65 (2000); *J.M.R. v. S.T.R.*, 15 P.3d 253, 257 and n. 8 (Alaska 2001). According to *Ross*, because of the fundamental nature of the parents' constitutional right, a court may only grant third-party visitation with a minor child against the parents' objection, even visitation with a biological grandparent, if the third-party proves by clear and convincing evidence that it is detrimental to the child to limit visitation consistent with the parents' decision. *Ross* at 26.

The beginning point for a court when it considers any third-party application for visitation with a minor child is the fundamental right of fit parents to control the care and custody of their minor children. As the United States Supreme Court stated in *Troxel*, "the interest of parents in the care, custody, and control of their children ... is perhaps the oldest of the fundamental liberty interests recognized by this Court." 530 U.S. at 65 (citing *Meyer v. Nebraska*, 262 U.S. 390, 399, 401 (1923); *Pierce v. Society of Sisters*, 268 U.S. 510, 534-5335 (1925)). The Alaska Supreme Court has likewise affirmed the fundamental nature of this parental right under the Alaska Constitution. *Ross*, at 23; *J.M.R.*, at 257; *In re K.L.J.*, 813 P.2d 276, 279 (Alaska 1991);

L.A.M. v. State, 547 P.2d 827, 832 and n. 12 (Alaska 1976). In *L.A.M.*, the court recognized and affirmed the parents' rights even against a petition by an adolescent minor child to be free, to be "let alone" to make her own decisions. *L.A.M.*, 547 P.2d at 832.

"In *Meyer*, the Court held that the 'liberty' protected by the Due Process Clause includes the right of parents to 'establish a home and bring up children' and 'to control the education of their own.'" 262 U.S. at 399, 401. In *Pierce*, the Court held that the "liberty of parents and guardians" includes the right "to direct the upbringing and education of children under their control." 268 U.S. at 534-535. In *Prince v. Massachusetts*, the Court affirmed that "[i]t is cardinal with us that the custody, care and nurture of the child reside first in the parents, whose primary function and freedom include preparation for obligations the state can neither supply nor hinder." 321 U.S. 158, 166 (1944). In *Stanley v. Illinois*, the Court held that "[i]t is plain that the interest of a parent in the companionship, care, custody, and management of his or her children 'come[s]' to this Court with a momentum for respect lacking when appeal is made to liberties which derive merely from shifting economic arrangements." 405 U.S. 645, 651 (1972). And, in *Wisconsin v. Yoder*, the Court ruled that the "primary role of parents in the upbringing of their children is now established beyond debate as an enduring American tradition." 406 U.S. 205, 232 (1972).

According to *Troxel*, the court must start with the presumption



Clarkson

that parents are fit. *Troxel*, 530 U.S. at 68. And, "there is a presumption that fit parents act in the best interests of their children." *Id.* Accordingly, before a court may order visitation between a minor child and a third-party against the parents' wishes, even visitation with a biological grandparent, the petitioning party must first over-

come the constitutional presumptions. A court may not simply make a "best interests of the child" determination and then grant third-party visitation, not even on a heightened clear and convincing standard of proof. As Justice Winfree emphasized in his opinion for the court in *Ross*, "[a]ny visitation order infringes on a parent's due process right to make decisions regarding 'the care, custody and control' of a child." *Ross*, at 21 (citing *Hawkins v. Williams*, 314 P.3d 1202, 1205 (Alaska 2013) (citing *Troxel*, 530 U.S. at 66)). Applying a "best interests" determination would permit the court to substitute its judgment regarding the child's best interests for that of the parent. *Ross*, at 27-29.

This sort of substitution of judgment—substituting the court's judgment for that of parents regarding what is in a child's best interest—is precisely what the United States Supreme Court held to be unconstitutional in *Troxel*. 530 U.S. at 67-70; 72-73. All six justices voting in the majority in *Troxel* agreed that the application of a best interest standard alone is insufficient to adequately protect parental constitutional rights. *Ross*, at 25 (citing *Troxel*, 530 U.S. at 67-7. 72-73 (plurality opinion); *Id.* at 76-78 (Souter, J., concurring); *Id.* at 80 (Thomas,

J., concurring)). And, five justices in *Troxel* agreed that this is true even when it is a grandparent seeking visitation. *Ross*, at 25 (citing *Troxel*, 67-7. 72-73 (plurality opinion); *Id.* at 76-79 (Souter, J., concurring); *Id.* at 80 (Thomas, J., concurring)). As Justice Winfree explained in *Ross*, citing and quoting *Troxel*, "a simple disagreement between the . . . Superior Court and [the parents] concerning [their] children's best interests" "does not permit a State [e.g., the court] to infringe on the fundamental right of parents to make child rearing decisions simply because a state judge believes a 'better' decision could be made." *Ross*, at 24-25 (citing and quoting *Troxel*, 530 U.S. at 72-73).

Although some of the Alaska Court's past decisions on this topic have been less than precise in describing the constitutionally based rules that govern a third-party petition for child visitation, Justice Winfree took the opportunity for the court in *Ross* to restate the rules precisely: "a third-party seeking court-ordered visitation with a child, including a grandparent . . . must prove by clear and convincing evidence that it is detrimental to the child to limit visitation with the third-party to what the child's otherwise fit parents have determined to be reasonable." The court's opinion also suggests that the third-party may be required as well to prove that they have been denied visitation before their petition will be entertained. *Id.* at 24-27.

According to *Ross* a court may override the parents' decisions and preferences regarding third-party child visitation, even with a grandparent, only when it is shown by clear and convincing evidence that the parents' decisions and preferences "are so clearly contrary to a child's best interests that they are detrimental to the child." *Ross*, at 26. "Subjecting parents to a court's ongoing oversight and threat of intervention is in itself an infringement on parental due process rights." *Id.* at 30.

Kevin G. Clarkson is a civil litigator with the law firm of Brena, Bell & Clarkson, P.C. in Anchorage. In more than 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.

Marijuana legalization: where the process stands now

Continued from page 1

related businesses. It is currently illegal to sell marijuana in Alaska. Eventually, marijuana will be sold to the public through licensed retail establishments, but as of the date of this writing, no such licenses have been issued, nor could they be, as the regulations governing the license application and review process have not been finalized. As such, if a retail marijuana dispensary were to open in downtown Anchorage tomorrow, it would still expose the proprietors to criminal liability.

It is worth noting that the new statute does allow people to gift (technically to "transfer without remuneration") up to one ounce of marijuana to one another, provided both parties are over 21. According to news reports, some of the delivery services operating in the state are attempting to squeeze their activities into this exception. One claims that marijuana is "given" to the business, is then delivered to people suffering from illness as well as recreational users, and those recipients then provide "donations" for the deliveries. Another alleges that the business simply takes orders for and sells "empty bags," which then happen to have marijuana in them when delivered to their customers. Without all of the facts it is diffi-

cult to say whether these creative defenses have merit and would survive judicial scrutiny. But it is understandable that law enforcement would not look the other way from activities that attempt to create large loopholes.

Marijuana social clubs pose another regulatory issue, the so-called "public consumption conundrum." Essentially, the way marijuana social clubs work is that people pay a membership fee to access a space where they can bring their own marijuana to consume and share with others, and some clubs have additional free marijuana available. The state argues that these clubs violate the state law that prohibits consuming marijuana in public, which "includes a business to which the public or a substantial portion of the public has access." The clubs argue that they are private and provide a safe place for people who want to consume marijuana, and are especially needed to satisfy tourists. This is an issue regulators in other states are wrestling with, too.

So why are law enforcement agencies across the state making such a big deal about cracking down on conduct that will soon be legal? Well, first there's the obvious answer about respect for the rule of law. Second, there's the matter of

licensing — allowing businesses to operate without a license now will create a rush into the industry and would undercut the whole point of a licensing system. This would also encourage businesses to operate without regard for pending regulatory guidance on quality control, waste disposal, zoning, employee training, and a host of other matters critical not just to the success of this industry, but also to the protection of public health and safety.

Finally, and perhaps most importantly, from the standpoint of avoiding any imperial entanglements with the federal government, it is probably best for the state to take a proactive approach on such early cases. This establishes that Alaska takes its responsibility for robust enforcement and its role in the state-federal deal seriously. Of course, those who rail against any kind of federal oversight remain unhappy, as are those who believe there should not be any restrictions on personal marijuana use. Those are legitimate points of view, but they do not mesh with the reality of the current legal landscape.

Jason Brandeis is an associate professor of Justice at the University of Alaska Anchorage and an attorney who advises clients on marijuana law and policy issues.



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Federal Bar Association enjoys a busy year, prepares for new president

By Darrel J. Gardner

The Alaska Chapter of the Federal Bar Association is gearing up for another great year under the leadership of president-elect Jamie McGrady. She will assume her FBA presidency Oct. 1. Jamie has been an assistant federal public defender for three years. I hope that everyone in federal practice will continue to support the Federal Bar Association in Alaska.

By far our biggest story of the year will be the Second Annual Alaska Federal Bar Conference held on Aug. 21, at the Dena'ina Center in Anchorage. The event featured the current national president of the FBA, Matt Moreland, as well as some superlative speakers, including Dean Erwin Chemerinsky, U.C. Irvine, and Dean Deanell Tacha, Pepperdine, plus last year's FBA national president, Judge Gustavo Gelpi from Puerto Rico. Judge Gelpi attended last year's conference and loved Alaska so much that he decided to return this year and stay for a week. Check out the full story in the next issue of the *Bar Rag*.

Alaska saw two visits by the Ninth Circuit Court of Appeals this summer, once in early summer and most recently in August. Unfortunately, the August panel decided not to participate in a general bench/bar CLE program hosted by the Alaska Bar Association, as has been the tradition in Alaska for the past 19 years. The August panel was unique in that it was the first panel comprised entirely of female circuit judges to visit Alaska: Mary Murphy Schroeder from Arizona; Mary Helen Murguia from Arizona; and Johnnie B. Rawlinson from Las Vegas. The panel participated in an informal discussion on Aug. 12 hosted by the Anchorage Association of Women Lawyers. The program included Alaska's Ninth Circuit judge, Morgan Christen, and invited participation by the female lawyers of Anchorage. The program was intended to "be of interest to women practitioners and young women considering a career in the law." The FBA will continue to work with the Alaska Bar Association and the Ninth Circuit and hopefully will continue with a general appellate bench/bar CLE program next year.

The Annual Ninth Circuit Judi-

cial Conference was held at the Marriott Marquis Marina in San Diego, California on July 13-15. This was the first conference since Judge Sidney R. Thomas from Montana replaced Alex Kozinski as Chief Circuit Judge. The conference featured noted speakers addressing topics such as protecting ourselves from cyber warfare and cyber attacks; meeting the legal challenges of global demographic changes; the reality and consequences of human traf-

ficking; and the impact of mental illness on the law and courts. The conference's conclusion was "A Conversation with U.S. Supreme Court Justice Anthony

M. Kennedy," who spoke on a wide range of topics and issues that he has addressed over the course of his career. Alaska was well represented at the conference, and attendees included:

Chief Judge Ralph Beistline
Circuit Judge Morgan Christen
District Judge Timothy Burgess
District Judge Sharon Gleason
Bankruptcy Judge Herb Ross
Senior Judge Jack Sedwick
Senior Judge James Singleton
Senior Judge H. Russel Holland
Magistrate Judge Deborah Smith
Federal Public Defender Rich Curtner
U.S. Attorney Karen Loeffler
Lawyer Representative Greg Razo (outgoing LRCC Co-Chair)
Lawyer Representative Darrel Gardner (incoming LRCC Chair)
Lawyer Representative Kevin Feldis
FBA-Alaska President-Elect Jamie McGrady
Clerk of Court Lesley Allen

The rules that govern lawyer representatives allocate approximately 1.3 lawyer rep positions for each active district court judgeship; Alaska has three district court judges, and consequently there are four lawyer representatives. Lawyer reps serve a staggered three-year term, with two lawyer reps co-serving every third year. This was Greg Razo and Lane Tucker's last year as lawyer representatives. Juneau lawyer Richard "Dick" Monkman will begin his term



as the newest lawyer rep Oct. 1, 2015, and the court is currently considering candidates for the fourth Alaska District lawyer representative position. As the senior lawyer reps, Greg and Lane acted as co-chairs for Alaska as members of the Ninth Circuit Lawyer

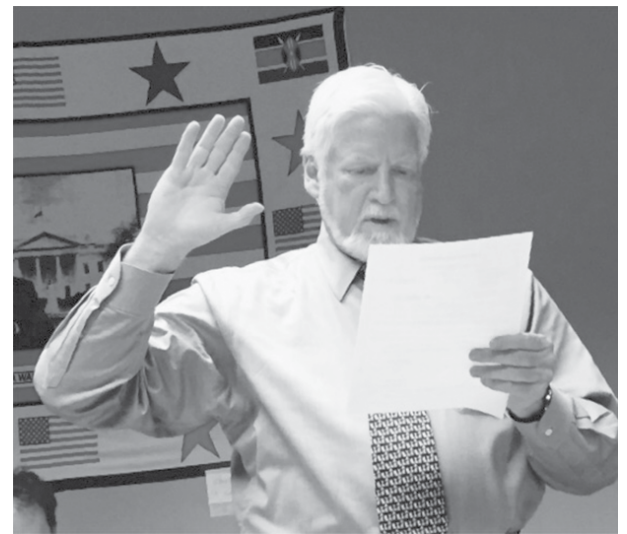
Representatives' Coordinating Committee (LRCC), which meets several times throughout the year. They also planned the district dinner held at the Ninth Circuit Judicial Conference, and prepared Alaska's District Report that is distributed on the Ninth Circuit's website (www.ce9.uscourts.gov). The FBA extends a hearty thanks to Greg and Lane for all of their hard work over the past three years.

Rich Curtner was recently reappointed to his sixth term as the federal public defender for Alaska. His next four-year term commences Jan. 1, 2016. Rich was first appointed federal defender in 1996. He remains devoted to the mission of the public defender to deliver outstanding legal representation to indigent defendants: "[F]ederal public defenders, in our experience, typically provide the highest quality representation, very often superior to that provided by members of the private criminal defense bar. Nor are we alone in that opinion: A survey of 457 federal district and appellate judges, published as part of an article co-authored by Judge Posner of the Seventh Circuit, rated advocacy by public defenders in federal court significantly higher than that provided by privately retained attorneys, court-appointed attorneys, and even prosecutors." Richard A. Posner & Albert H. Yoon, *What Judges Think of the Quality of Legal Representation*, 63 Stan. L. Rev. 317, 322, 327 (2011). *U.S. v. Brown*, 785 F.3d 1337 (9th Cir. 2015).

The FBA welcomes Lesley K. Allen as the new Clerk of Court following the retirement of Marvel Hansbraugh. Lesley joined the court on July 6, 2015. Lesley has more than 14 years of court management experience. She has a BA in Economics and a BA in Communications from the University of California at San

Diego, as well as a Masters Degree in Social Work Administration from the University of Michigan. For the last nine years she was the director of operations for the Superior Court of California County of Sonoma. Ms. Allen relocated to Alaska with her family for the extraordinary opportunity to serve as the Clerk of Court.

On June 25, the first session of the newly created "Alaska Hope Court" took place. This federal re-entry program is a pilot project with an initial three-year term to determine if such a court contributes to the reduction of recidivism by criminal defendants on supervised release following prison terms. The court started with a limited number of participants, all of whom have been assessed as being at "high risk" for recidivism, particularly because of prior substance abuse issues. Research establishes that recidivism can be reduced through a court program that provides individuals who have completed their imprisonment with: (1) immediate and proportional sanctions for misconduct; (2) positive reinforcement for personal progress in a public setting with judicial participation; (3) substance abuse and/or mental health treatment as needed; (4) assistance in meeting personal needs



Federal Defender Rich Curtner takes the oath of office.

such as employment, stable housing, and medical attention; (5) assistance in developing life skills and critical thinking; and (6) peer pressure from other participants to avoid risky behavior. The program is voluntary, and defendants who successfully graduate from Hope Court will receive at least a 1-year reduction in the period of supervised release or probation and, at the discretion of the Sentencing Judge and Hope Court Team, could receive as much as a 50 percent reduction in the period of supervised release or probation. The program requires defendants to complete 18 successful months of participation with no violations in order to graduate.

For more information, or to join the Federal Bar Association, please contact Brewster Jamieson (jamiesonb@lanepowell.com) or Jamie McGrady (jamie.mcgrady@fd.org), or visit the Alaska Chapter website at www.fedbar.org; like us on Facebook at "Federal Bar Association - Alaska Chapter;" and follow "Fed Bar Alaska" on Twitter "@bar_fed."

Darrel Gardner is the immediate past-president of FBA-Alaska and a current member of the Board of Governors of the Alaska Bar Association.



Judge Deborah Smith and Judge Timothy Burgess enjoy the Alaska District dinner in San Diego.



Senior Judge H. Russel Holland and Chief Judge Ralph Beistline tour the San Diego waterfront.

These four men shaped Alaska's judicial future

By Robert C. Erwin

Alaska had no judicial system before statehood and relied upon the appointment of a federal judge for each judicial district to handle all judicial matters in the Territory of Alaska. The jurisdiction of the territorial federal judge to handle legal matters which involved solely Alaskans ceased after statehood and a new state judiciary had to be formed and implemented for the new state.

The new judicial system included four judges who can be only be described as legal giants who guided and molded the Alaska judicial system into the outstanding system it is today. These giants were John Dimond, Jay Rabinowitz, James von der Heydt and James Fitzgerald.

These men came from all over the country: Jay Rabinowitz from New York and Harvard Law School; Jim Fitzgerald from Portland, Oregon, and Willamette Law School; and James von der Heydt from Montana and Illinois and Northwestern Law School. Only John Dimond was born in Alaska but he grew up in Washington, D.C., where his father, Tony Dimond, was Alaska's non-voting delegate to Congress. He attended Catholic University Law School.

Each judge got his judicial start in Alaska in a different judicial district: John Dimond in the First Judicial District at Juneau; James von der Heydt in the Second Judicial District at Nome; James Fitzgerald in the Third Judicial District in Anchorage; and Jay Rabinowitz in the Fourth Judicial District at Fairbanks.

Each judge had a long judicial career in Alaska (25 to 40 years). Two were veterans from the Second World War, and two had military service afterwards. They all had different religious backgrounds, yet they all had a similar impact as judges. Justice Fitzgerald was a marine gunner and pilot in the South Pacific from the beginning of the war while Justice Dimond was a combat engineer in the South Pacific where he received a Purple Heart and the Silver Star for his actions under fire.

Each had experience in the public sector as attorneys for the government or the territorial attorney general's office as well as private attorneys before their appointment as judges by Gov. William Egan, the first elected governor of the new State of Alaska.

John Dimond served as an assistant attorney general under the Territorial Attorney General J. Gerald Williams. He had also been a private attorney in Anchorage and Juneau.

James von der Heydt was the U.S. attorney for the Second Judicial District at Nome as well as a private attorney in Nome and served as an elected member of the Territorial House of Representative of the Alaska Legislature.

James Fitzgerald was an assistant U.S. attorney at Ketchikan and Anchorage, Anchorage city attorney, special assistant of the Statehood Group in Washington, D.C., and Alaska's first commissioner of police.

Jay Rabinowitz was assistant U.S. attorney in Fairbanks and chief of the Civil Division of the Attorney General's office in Juneau and a critical adviser to setting up the new state government.

When you realize there were only a total of 175 attorneys in Alaska in

1960 – the record of achievement by these men before their appointment is apparent.

John Dimond was appointed as one of the three original Supreme Court justices and served on the Alaska Supreme Court from 1959 to 1973, when he retired for health reasons. He then returned as a senior justice after a two-year absence and served until 1985. James von der Heydt served as the first Alaskan Superior Court judge in Juneau from 1959 until 1966 when he was appointed a U.S. District Court judge for Alaska where he served in regular and senior status. James Fitzgerald served as one of the three original Superior Court judges in Anchorage from 1959 to 1972 and he was then appointed to the Alaska Supreme Court until 1975. Justice Fitzgerald was then appointed to be a U.S. District Court judge for Alaska where he served as a regular and senior judge. Jay Rabinowitz was appointed a Superior Court judge in Fairbanks from 1960 to 1964, and was appointed a justice of the Alaska Supreme Court in 1965 where he served until 1997. He served as judge *pro tem* in the Superior Court in Juneau.

Each of these judges made significant contributions to their courts and the direction and strength of the Alaska Judicial System both at the state and federal levels.

Justice Dimond drafted the original Alaska Rules of Civil and Criminal Procedure in the hectic first year of existence for the Alaska Court System. He brought an attribute of compassion to the early days of the Alaska courts despite bench-bar disputes rooted in territorial politics and the threat of control of Alaska by outside interests. He was a man of great sincerity, compassion and scholarship to the law which guided the court.

Justice Dimond was an unusually thoughtful and reflective person, thoughtful in the sense that he would never fail to consider the consequences of a particular ruling he was about to make. He was a scholar and an excellent writer who used simple words. As Justice Rabinowitz remembered at Justice Dimond's

memorial service:

"I came from an entirely different background and religious faith than your husband maintained. I didn't know whether we would get along on the Supreme Court. I came on in 1965 and - these things aren't of public record - but there were tremendous internal tensions, and I'm sure that Justice Conner and Justice Erwin can testify that for years these internal strains existed. And John had the remarkable ability to take our problems and they were really monumental and of importance to the state - and make decisions. And if he

lost, he lost without rancor, without bitterness. He was always a gentleman and he was always encouraging. John was the cement at the time when our court system

at the very top could have blown apart. He was just a magnificent human being and it was an honor and privilege to have been fortunate to work with John for the number of years that I did. I had a profound personal respect for him and I hope that I earned it from him."

John Dimond was followed on the Supreme Court by Jay Rabinowitz in 1965. Jay Rabinowitz brought his intellectual scholarship to the court for the next 30 years. Rabinowitz championed the legal concept that the Bill of Rights guaranteed to Alaska citizens by the Alaska Constitution was greater than those similar rights guaranteed by the United States Constitution. His intellectual leadership and his charismatic personality helped establish the Alaska Supreme Court as one of the best in the nation. His energy and his interest, over the next 30 years, in judicial activity across the U.S. also kept the Alaska Supreme Court in the forefront of judicial administration.

James Fitzgerald became a legend for his ability as a trial judge in state and federal court where he served for 40 years. He was in demand from other federal courts to handle difficult and complex cases around the United States as well as serve on the Ninth Circuit Court of

Appeals.

His astounding background from "Hell's Kitchen" in Portland reveals a high school dropout who worked as a migrant farm worker and then returned to finish high school, and then attend college on a football scholarship. He was in Pearl Harbor for a football game on December 7, 1941. He immediately joined the Marine Corps, for World War II and then returned to law school on his own. Each of these is a story all its own.

Those experiences made him an excellent judge who listened, who required preparation and scholarship and the best from attorneys. He was tough and his experience in life left little tolerance for excuses or poor performance. Courtroom histrionics were unheard of in his court. His example was a guiding light for every judge and guaranteed justice for all.

James Fitzgerald was joined on the United States District Court by von der Heydt after his service on the Juneau Superior Court for six years. Jim von der Heydt matched the excellence of Jim Fitzgerald from an entirely different prospective.

James von der Heydt was everyone's after-dinner speaker and host with a sense of humor and gift of speech one could only envy. He was a renaissance man. He painted, wrote short stories and poetry, and was a patron of the arts. When he spoke people stopped to listen.

James von der Heydt was a man of wit, civility and charm. He was also a disciplined man of superb intellect, meticulous with details, who observed proper decorum. He was also a master in the courtroom and demanded the best from lawyers. The rules were to be obeyed and those appearing in court were expected to know them and to apply them with civility, courtesy and respect. The United States District Court in Alaska was the envy of the nation.

Alaska was more than fortunate to receive the efforts of four such outstanding Jurist to light the way for the future. We have their guiding star - may we follow their example.

Robert C. Erwin is a retired justice who appeared in court as an attorney before all four judges as well as serving in the judiciary with them.

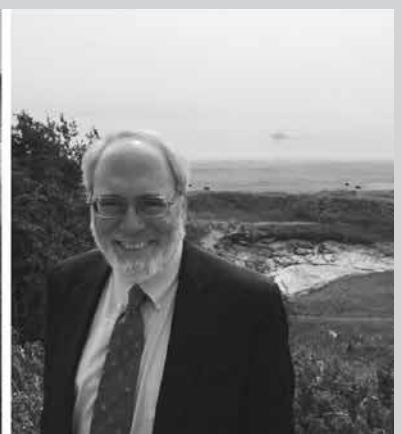
Each of these judges made significant contributions to their courts and the direction and strength of the Alaska Judicial System both at the state and federal levels.



Just about everywhere is south from Barrow.



Bar President Nelson Page meets with an attorney.



Nelson Page enjoys the view from the bluff overlooking the Kenai River.

Bar president tours state during outreach

Over the summer, Nelson Page, recently installed Alaska Bar Association president, traveled Alaska from the Beaufort Sea to the Southeast Panhandle in his outreach effort. He met with attorneys in Barrow, Juneau and Kenai.



The group.

18th annual Territorial Lawyers dinner held June 11

Lawyers admitted to the Alaska Bar in territorial days, as well as Bar members admitted 40 or more years ago, and their spouses and guests gathered for dinner in Anchorage on June 11. The numbers in the photo captions indicate the years members were admitted to the Bar.



Emcee Wayne Anthony Ross, '69, and Juliana Wilson, '51.



Jack Roderick, '61.



Territorial lawyers: Warren Taylor, '55; Al Maffei, '53; Juliana Wilson, '51; Russ Arnett, '55; Don Burr, '57; Charlie Cole, '55.



Judge James, '65, and Sandra Singleton.



Russ, '55, and Betty Arnett.



Stan Ditus, '65.



Ames Luce, '69, and Sheila Gallagher, '66.