

The Alaska BAR RAG

Dignitas, semper dignitas

VOLUME 46, NO. 3 July - September, 2022



Parade of pets lightens the load in an attorney's office

By William R. Satterberg, Jr.

My office has an eclectic air to it. Painted like a John Deere tractor in classic yellow and green, we occupy two older houses. Both have colorful history. One of the facilities clearly was used as a house of ill-repute in past years. After all, the houses are located on the infamous Fourth Row in Fairbanks. There are numerous cribs in the basement of one house attesting to the accommodations which were offered on an hourly rate to the lonely miners. The other house reportedly has a similar past. Understandably, I feel quite at home when at work.

But there is more. In the back of the office is an old garage which has a sordid criminal saga of its own, as well. It is said that, in the 1930's, a

local named LeeRoy Panky was brutally beaten to death with a shovel. Despite years of investigation on my part, that is all I have been able to learn about the heinous crime. Hopefully, it may someday be solved and the perpetrator finally brought to justice.

A factor of which I am quite proud is that the firm has twice been named the Fairbanks Family Friendly Workplace. Contrary to the yearly Reader's Choice Awards contest conducted by the Fairbanks Daily News-Miner, which is a glorified popularity contest designed to sell advertising to the winners, the Family Friendly Workplace award is competitive. Whereas the Reader's Choice Awards is an award in

Continued on page 20

YWCA, courts join to present justice camp for Alaska youth

From the Alaska Court System

YWCA Alaska partnered with the Alaska Court System and the National Association of Women Judges to host the 2022 YWCA Justice Camp this summer. This week-long experience allowed youth to explore careers in Law and Justice and learn from the stories of professionals. Youth engagement with justice administrators created a deep

understanding of the intricacies of daily cross-collaboration throughout the justice system.

Judge Sharon Gleason hosted students at the federal courthouse, providing a tour and the opportunity to observe a criminal court hearing. Carl F. Olson, assistant district counsel US Army Corps of Engineers, presented to students on the Alaska Bar Youth Law Guide. Justice Susan Carney and Justice Jennifer Henderson welcomed the students to the Alaska Court System and discussed their own paths to the law and the work of a Supreme Court justice. Judge Una Gandhir and Judge Herman Walker, introduced the students to the trial courts and encouraged the students with stories of their experiences.

Magistrate Judge Suzanne Cole, presented on the work of the Domestic Violence Office and the larger community of justice professionals who work to protect vulnerable people in the community. The youngsters also heard from Judicial Services Officer Derrick Hayes, about the importance of court security and the role of judicial services in daily court operations. The students learned about the work of the appellate courts from Clerk of the Appellate Courts Meredith Montgomery; and, Jeannie Sato, director of the Access to Justice Services Department, delivered a presentation with the message that the courthouse is the people's house and seeks to provide quality customer service to all Alaskans.

Participants toured major law enforcement facilities, the Alaska



Justice Camp students gather outside the Fitzgerald US Courthouse in Anchorage. Please flip to Back Page for another picture.

Law Enforcement Museum, the State Medical Examiner's Office, the State Crime Lab and attended sessions that included discussions about public safety, the role of the courts, the branches of government and legal careers in the public and private sector. Throughout the week, students also met with attorneys from diverse backgrounds and experiences and learned about different career paths and opportunities. Attorney volunteers included: Charlie Kidd, Alaska Native Justice Center; Renee Wardlaw, Bristol Bay Native Association; Jacqueline Shepard, ACLU; Claire Dewitt, Public Defender Agency; Whitney Bostic, District Attorney's Office; Elizabeth Smith, Municipality of Anchorage Prosecutor's office; Richard

Payne, Denali Law Group; Carolyn Heyman, Sedor Wendlandt Evans & Filippi; and Dan Bellerive, Anchorage District Court Law Clerk.

YWCA Alaska seeks to encourage youth in a manner that encourages, inspires, and motivates them in leadership, teamwork, and service. We appreciated the opportunity to do that, in partnership with Judge Kari McCrea and Judge Pamela Washington.

A quote from survey results; "This camp was really awesome. I loved every bit of it. Even though I had not thought about criminal justice careers in the past, I am now grateful to know all of these different and vast careers that I can choose from now."

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Speaker slate set for October Bar convention

By Jessica Graham

Flexibility is not just for yogis. In December of 2021 the Bar staff and I were thrilled to solidify the participation of now-United States Supreme Court Justice Ketanji Brown Jackson to serve as the keynote speaker at the October 2022 Alaska Bar convention. The invitation was offered and accepted when Justice Jackson was a judge on the U.S. Court of Appeals for the D.C. Circuit. She was a well-recognized member of most short lists for a possible Supreme Court appointment,

As the first in-person convention since 2019 we are long overdue for a refresh of the camaraderie, fun, networking and learning that uniquely happens at the bar convention.

but there was no indication at the time that Justice Stephen Breyer would decide to expedite the process during the spring of 2022. It was thrilling to watch the nomination process, knowing that then-Judge Jackson had already committed to our convention, and a little bit crushing to acknowledge that the timing of the confirmation and subsequent fall term of the Supreme Court would mean we were back to square one for a keynote speaker.

The silver lining, for the bar's purposes, is that Justice Jackson was extremely gracious about the change in circumstances and provided assurances that she should be able to honor her prior commitment to Alaska after getting her feet underneath her on the Court. To the extent you can hold a Supreme Court justice to such a promise, future bar presidents can follow up on that. Fortunately, we could pivot quickly and remain flexible and now have a great line up of speakers for the convention. Our keynote speaker

will be Victoria Nourse, Ralph Whitworth Professor of Law at Georgetown University Law Center. Professor Nourse is one of the country's leading scholars on statutory interpretation, Congress, and the separation of powers. Along with her most recent work analyzing the executive power of the president, Professor Nourse did foundational and extensive work on the original Violence Against Women Act. (This history can be heard on an NPR episode of *Thoughtline* that aired in January 2020 entitled, "Everybody Knows Somebody.") Professor Nourse will be the keynote speaker at the convention reception and dinner Thursday evening, Oct. 27, followed by a



"The US District Court began its journey in Alaska roughly 63 years ago when, shortly after statehood, Judge Walter Hodge received his commission"

panel discussion on the morning of Oct. 28. As the first in-person convention since 2019 we are long overdue for a refresh of the camaraderie, fun, networking and learning that uniquely happens at the bar convention. This year's convention is deliberately structured to provide something for everyone, in all areas of practice and legal expertise. Elie Mystal, justice correspondent at *The Nation*, will discuss the role and opportunities for lawyers to participate in local media. Both litigators and transactional lawyers will benefit from Marty Latz's sessions on negotiation strategies. Corporate lawyers can improve their drafting skills with Stuart Teicher's session on contract drafting. Lawyers in private practice can get a briefing on the law firm structure of the future and ways to build your legal business in the session with Stephanie Everett, as well as a briefing on privacy, security and data obligations with David Elkanich. And, every lawyer who is tasked with service on an Alaska non-profit board can come away with a better understanding of professional and ethical obligations after hearing Dorsey & Whitney partners Bonnie Paskvan and Mackenzie McNaughton discuss

"Ethics for Attorneys serving as non-profit directors." As the strength of our bar is often described as its collegiality and its size, most often allowing for one, maybe two, degrees of separation, this convention will provide a forum to restrengthen old relationships, learn something new that will improve your practice, and make a visible commitment to your peers about the value of continuing education.

In other bar news, last year's national Celebrate-Pro-Bono-Week was so successful that we decided to stand up a month of pro bono focused programming in October. During the month of October, bar members will have the opportunity to attend seven free one-hour CLE programs hosted by Alaska's legal service providers including a panel discussion program of how pro bono boosts your career. We've partnered with the American Bar Association to offer a national workshop on voice, presence, and performance techniques for legal advocacy and a local Alaska book club gathering to

Continued on page 3

EDITOR'S COLUMN

New federal District Court judge mounts the 'old gray pony'

By Ralph R. Beistline

I had the privilege recently to attend the investiture of Judge Joshua Kindred as a United States District Court Judge for the District of Alaska. Although Judge Kindred began his duties in February 2020, the public ceremony was delayed for over two years due to the COVID pandemic. However, when the ceremony finally did happen, it gave me the opportunity to ponder the rather short history of the Federal Court in Alaska and recall the story of the Old Gray Pony, both of which I share below.

I remember many decades ago becoming a partner in the law firm of Hughes, Thorsness, Gantz, Powell & Brundin. At the time, Brian Brundin explained how he viewed the nature of this kind of partnership. He said it was like an Old Gray Pony that just kept plodding along. Over the years, new partners would jump on, enjoy the ride, make their contributions, learn some lessons, overcome some challenges, and then, when their time was over, they would dismount and be on their way. But the Old Gray Pony would just keep plodding along, steady and true.

In some ways I see the United States District Court for the District of Alaska the same way. It began the journey roughly 63 years ago when, shortly after statehood, Judge Walter Hodge received his

commission. The next year Judge Raymond Plummer received his commission, and the two of them laid the foundation for the Federal Court in Alaska.

Next came the two Jameses: James A. von der Heydt and James M. Fitzgerald, the great gentlemen of the Court, each providing his own unique charm and each dismounting when his time came. And the Old Gray Pony just kept plodding along.

Judge number five was H. Russell Holland, whose seat I assumed in 2002 after he took senior status. Judge Holland has broken all records, as he remains saddled-up and riding tall, after 38 years with the Court. He still provides us with his wisdom and dearly needed sage advice.

Judge number six was Andrew J. Kleinfeld, who spent five years with the District Court before being elevated to the United States Court of Appeals for the Ninth Circuit. Judge Kleinfeld, although assumed senior status, is still going strong in his chambers in the Old Federal Courthouse in Fairbanks. And, during the summer months, he is still driving his Porsche with the top down.

Judge number seven was James K. Singleton, Jr., our third James on the Court. He was the Chief Judge



"We are here to celebrate the future and welcome judge number 12 to our ranks, Joshua M. Kindredon ..."

when I arrived, and I think has read every book ever written. Judge Singleton recently assumed inactive status, but he is still actively reading.

Judge number eight was John W. Sedwick, who, after 30 years with the court, will be taking inactive status Oct. 31. Judge Sedwick brought class to the Court.

Each one of these judges were, and are, extremely talented and were right for their time, and each made an indelible mark on the Court, while that Old Gray Pony just kept plodding along.

And next was me, Ralph R. Beistline, judge number nine. For me this was just pure luck and good timing. In fact, I still can't believe it happened. Frankly, nobody can. I recall during the selection process on a visit from Fairbanks, driving around the Federal building and wondering if I would ever get in. Come to think of it, I am still having problems with my key card and am locked out of the parking garage even as I speak. Even the building can't believe I belong here, which is partially why I am grateful for lifetime tenure.

Anyway, when I saddled up, paper filing was all that we knew. Al-

Continued on page 3

The Alaska BAR RAG

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Speaker slate set for October Bar convention

Continued from page 2

read and discuss *Scarcity* by Sendhil Mullainathan and Eldar Shafir. Keep an eye out for news about program and registration details in the coming weeks.

Finally, as I write this, we are preparing for the August meeting of the Bar Association Board of Governors. The August regular meeting will be preceded by a day and a half of strategic planning that will facilitate a discussion about the Bar's strategic goals for the next several years, how to measure progress on those goals, and how to address proactively some of our pressing issues such as changing bar demographics, how to act upon expected recommendations from the Diversity Commis-

sion, mandatory CLE, the protection of judicial independence, the right "cut score" for the bar exam, and how to elevate the return on investment on the Bar's purchase of 840 K Street in Anchorage. To the extent members of the Bar have opinions about these topics, I encourage you to communicate proactively with your representatives on the Board of Governors.

This type of planning and forward thinking is important at this particular moment in time given the retirements and change we have seen at the Bar and at the board

level. Beyond Deborah O'Regan's retirement at the end of 2020, there has been and will continue to be significant board turnover. Last year we lost the service and long-range perspective of Molly Brown after six years of service and Darrel Gardner (six years of service, including president from 2017-2018), and we will shortly see the departure of Rob Stone (nine years, including president from 2019-2020), and Hanna Sebold (12 years, including a term as president in 2012-2013). I remain grateful

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that we have had so many willing to serve, and hope many of you will consider service in the future so that this wisdom-of-the-crowd can be rebuilt.

Jessica Graham is president of the Alaska Bar Association. She has been a member of the board since 2019, and previously served as the Board New Lawyer Liaison from 2000-2002. She graduated from the Duke University School of Law in 1997 and clerked for the Honorable Sidney R. Thomas on the US Court of Appeals for the Ninth Circuit. She worked in private practice for several years before going in-house in 2003. She is the general counsel and chief risk officer for Alaska USA Federal Credit Union.

After long wait Kindred invested to US District Court

From the Alaska Court System

Judge Joshua M. Kindred was invested Aug. 24, 2022, as the newest US District Court judge for the District of Alaska, a celebration long postponed due to the COVID-19 pandemic.

Judge Kindred took the bench in February 2020, just weeks before the pandemic halted judicial proceedings.

Kindred is a graduate of Bartlett High School and the University of Alaska Anchorage. The first in his family to attend law school, he graduated from Willamette Law before clerking for Justice Paul De Muniz of the Oregon Supreme Court. Prior to his appointment as District Court Judge, Judge Kindred worked as a homicide prosecutor and Violent Crimes supervisor at the Anchorage District Attorney's Office, an attorney with the Alaska Oil and Gas

Association, and regional solicitor at the Department of the Interior.

He was welcomed by his fellow

judges and toasted by his wife and colleagues before a large group of family and friends.



Judge Kindred's daughter Evie presents the gavel to her father.



Judge Kindred's son Ollie assists him with his robes.

New federal District Court judge mounts the 'old gray pony'

Continued from page 2

though we were advocating for modernization and electronic filing, it really was over my head. I recall one day, as we were transitioning to the new system, being upset because the government had not filed its sentencing memorandum, and sentencing was that afternoon. I just sat in my old leather chair amazed at the lack of preparation. Then the computer "fell in the way of my wandering gaze" and I wondered if that sentencing memorandum might be there. So, I got up and walked to the computer. I looked up the file and there it was, right on the screen — like magic, it just appeared. So, I pushed print and I had it in my hands. No one had to bring it to me, and the rest was history. Now electronic filing is common practice. We couldn't do without it.

Over the years, many of these type changes have been made as the Court grows, and matures, and excels. And through it all, that Old Gray Pony just keeps plodding along.

After me, judge number 10 was Timothy M. Burgess, a former United States Attorney. Judge Burgess was not only large in stature, but a technical giant as well. He actually



Judge Joshua Kindred

taught classes to judges throughout the district on how to use all their new-fangled devices. And Judge Burgess clearly raised the average height for an Article III Judge in the District of Alaska. Now he is the Senior Judge Representative to the Ninth Circuit.

And speaking of averages, along came Judge Sharon L. Gleason, straight from the state court bench. Judge Gleason was judge number 11, our Chief Judge and our leader. She not only reduced the average height of an Article III Judge in Alaska, but she also significantly in-

creased the average I.Q.

But we are not here today to focus on the past. We are here to celebrate the future and welcome judge number 12 to our ranks, Joshua M. Kindred, who replaced me after I had been on senior status for over five years. So, we now have an even dozen.

As the youngest person to ever become a United States District Judge in the State of Alaska, Judge Kindred is destined to be the longest serving active judge in our history. He, too, is the right person for the job. One can only imagine the changes that will take place in the

next 20-plus years during his tenure. There are exciting times ahead.

But there are two things we know. One is that with all the talent and wisdom and thoughtfulness that Judge Kindred brings to the Court, which he has already demonstrated, the future will be bright.

And the second thing that we know is that, no matter what happens, the Old Gray Pony will just keep plodding along.

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

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The annual Tanana Valley Bar Association Christmas party

After a two-year recess due to the COVID-19 pandemic, the Tanana Valley Bar Association was able to hold its annual Christmas picnic and long-deferred changing of the guard July 29. Greeted by warm weather, a hungry crowd, and celebrants eager to demonstrate their egg-tossing skills, fun was had by all. This was especially so for the youth, some of whom had been practicing for the gunny sack race, tug-of-war, and the hula hoop contest for several years.



Claiming years of practice, the young folks stood ready to begin the gunny sack race.



Cameron Leonard scopes out the eggs before they're tossed while referee Ralph Beistline stands ready to start the scramble.



Ready: Ralph Beistline calls for attention as he prepares contestants for the start.



In a peaceful transition of power, TVBA president (and now Judge) Kirk Schwalm, who, with Rachael Delehanty, held down the fort at the TVBA throughout the first two years of COVID, turned over the presidential reins, staff, and cloak to Amy Welch.



Of special significance were the winners this year of the Robert Noreen Memorial Egg Toss Contest, which turned out to be a tie. From left: Pete Braveman and spouse Justice Sue Carney tied with attorney Rita Allee and daughter Mercedes Colbert. True athletes, they earned the first tie ever recorded in this event.



Judge Ben Seekins oversees the meat.



Ralph Beistline even pulled the hauling chore bringing the eggs to the toss with Peggy Beistline.

Photos: An anonymous past TVBA president

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, aoravec@doyonutilities.com
- Mat-Su: Greg Parvin, gparvin@gparvinlaw.com
- Anchorage: Stephanie Joannides, joannidesdisputeresolution@gmail.com

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

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In Memoriam

Alaska attorney active in the arts dies in Arizona

R. Everett Harris, 89, an Anchorage resident from 1958 until 2003, died May 18, 2022, in Mesa, AZ. Born in a remote ranch house near Ewan, WA in 1932, Harris grew up in that state, graduating from Whitman College, Walla Walla, and the University of Washington Law School. After his arrival in Anchorage in 1958, he was a territorial lawyer and then a member of the law firm of Jensen, Harris & Roth from 1965 until his retirement in 1995. He had been president of the Anchorage Bar Association and the law delegate to the US Ninth Circuit Judicial Conference.



R. Everett Harris

He served as the choir director, vestry member, and senior warden at All Saints' Episcopal Church, as well as chancellor and president of the Standing Committee for the Episcopal Dio-

cese of Alaska. Active in the performing arts, he performed several roles with the Anchorage Community Theatre including narrator in "Cry of the Wild Ram," Proctor in "The Crucible," and Don Quixote in "Man of La Mancha." He was a board member and president of the Anchorage Symphony Board. He sang with the Anchorage Concert Chorus and was on its board. He served on the Anchorage Arts Advisory Commission, and was emcee and sang with the Alaska Children's Choir. He was preceded in death by his first wife, Sally Maxon Harris, and is survived by their son Daniel Harris and his wife Trudy. He was a widower to his wife of 35 years, Marie Schembre Harris, and is survived by their son John Harris and his wife Robyn, and daughter Margo Schembre and her husband Mike Dederian. He is survived by his sister, Mary (Harris Crane) Cowan of Coupeville, WA, and her daughter Elizabeth Fleming and her family; by seven grandchildren and six great-grandchildren; and by the children and grandchildren of his wife of 12 years, Susan Shaw Harris, who passed away in 2021.

His ashes are interred alongside his wife Marie in Mesa, Arizona.

Anchorage attorney dies after auto accident

Evan Chyun, of Anchorage, formerly of Bristol CT died Sunday, May 29, four days short of his 40th birthday, after an automobile accident.



Evan Chyun

Evan was a graduate of Bristol Eastern High School, 2000; Princeton University, 2004; and the University of Pennsylvania Law School, 2008, where he served on the University of Pennsylvania Law Review.

He was an avid student and alumni volunteer. Evan worked as a public defender, first at the Defender Association of Pennsylvania and then at the Office of Public Advocacy in Anchorage, before his most recent position at the Alaska Attorney General's Office.

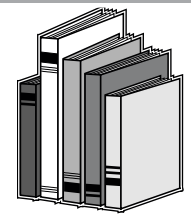
He loved the outdoors and was happiest there, hence his life in Alaska. Evan cared deeply about social justice. He was principled and righteous; passionate about racial and gender equality and spent his career supporting people ignored and mistreated by our system.

He leaves parents Deborah and Yong Sung Chyun; sister Elle; brother-in-law Michael Gillman; two nieces; his feline companion OJ; aunts, uncles and cousins, as well as many devoted friends.

Celebrations of his life were planned in Anchorage and Connecticut. Donations can be made to the Alaska Legal Services Corporation or to Princeton University Outdoor Action (denote donation in memory of Evan Chyun for Outdoor Action).

Law Library

Make the online Law Library catalog work for you



By Susan Falk

Near the start of the pandemic, the Law Library launched a new, statewide helpline, 907-264-0856, or 888-282-2082. Over the last two years, many of you have reached out to us through these numbers, or have emailed us at library@akcourts.gov, to check whether the library has a particular item. We love it when you call and email us — really, we do. Please keep those calls and emails coming. We nerdy librarians especially enjoy treasure hunts for obscure sources, so please do send us your requests.

But as much as we love to hear from you, there are some questions you can answer yourselves, especially if you're wondering if we have a title you need. Our online catalog, which can be found at <https://bit.ly/3CkXmin>, or by navigating from the Court System's website, can tell you if we have something in print and which locations hold it. We've been working to link a number of items that were previously known only to us. If you want to know whether we own a book you want, this is the fastest way to find out.

But wait, there's more. We don't have any Ginsu knives to sell you, but our catalog boasts much more than a list of the books that sit on our shelves. Our amazing technical services librarian, Nancy Tileston, along with members of our library staff, have worked countless hours to bolster the library catalog. Many of the electronic resources we subscribe to also appear in our catalog, with direct, embedded links. You can search for a title in our catalog, and if it is included in one of our electronic subscriptions, you will find a link directly to that item.

Just last week, someone asked me for two articles from the Federalist Papers. These are included in our subscription to HeinOnline, an invaluable resource that is sometimes difficult to search. Instead of wrestling with Hein's search box, I turned to our catalog, which helpfully provided a direct link to the Federalist Papers within Hein. This amazing time-saving gift is entirely thanks to our staff's efforts to add links to our catalog.

Of course, to access the content behind these links, you need to have a subscription to the relevant platform. Links will be active from any court system computer, including all of our patron access computers in libraries and court buildings statewide. If you're not using a court computer, you will need your own subscription to access this content. If you don't have a subscription, just go back to that phone number and email address at the top, and we'll be happy to help you locate the resource in question — or send it to you.

As amazing as all of this is, there is still more you can do on our public catalog. If you've been set up as a borrower for the Lexis Digital Library, for example, you can change your password yourself, directly from the catalog page (pro tip: unless you work for the court system, your library card number is AB plus your bar number).

As always, if you don't find it, we can try to get it through interlibrary loan. While it still can take weeks for a physical book to get here, individual articles, chapters, or sections may arrive in a matter of days, or even hours. If you check our catalog and come up empty, just give us a shout and we'll see what we can do.

While I have used this space to highlight the self-service features of our catalog, I don't want to neglect our live and in-person services. Library hours expanded this summer, though specific hours vary by location. The Anchorage Law Library is open to the public Monday through Thursday, noon to 6 p.m., and noon to 5 p.m. Sundays. The Juneau Law Library is open Monday through Thursday, 10 a.m. to 4 p.m. The Fairbanks Law Library is open Monday through Thursday, 8 a.m. to 2 p.m. In addition, we are available via phone and email Monday through Thursday, 8 a.m. to 6 p.m.; 8 a.m. to noon. Fridays, and noon to 5 p.m. Sundays.

Susan Falk is the Alaska law librarian.

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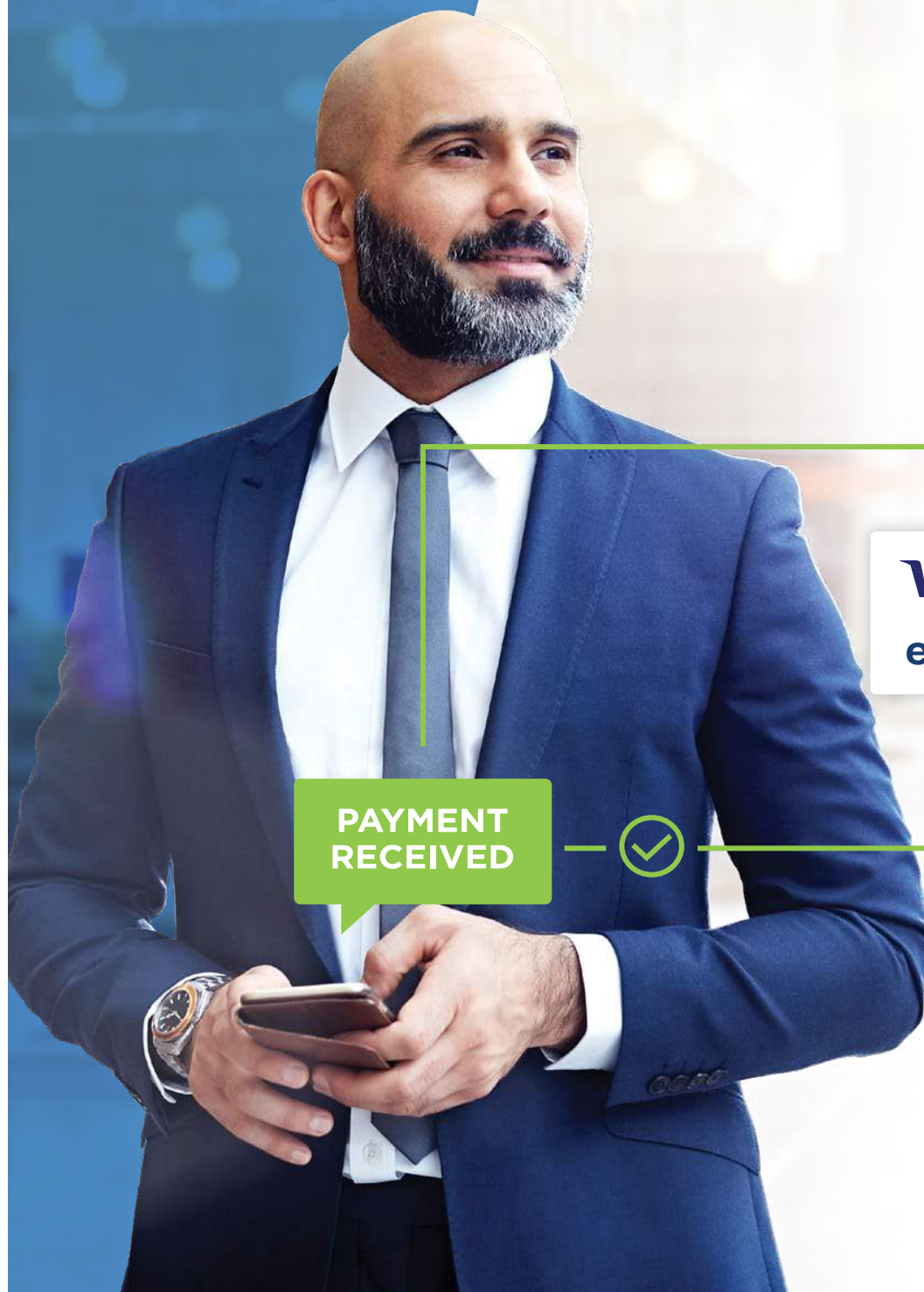
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A tenderfoot enters life in the Village of the Smokehouse People

(Editor's note: Alaska lawyer Dan Branch, a frequent contributor to the Bar Rag, died this past January. Over the years he often gave us a story or two ahead of time to be filed for use some day. Well, this is some day. Dan spent several years as a VISTA volunteer in the Yukon-Kuskokwim Delta when he first came to Alaska and this remembrance from his early days there is the last of his stories we had on file.)

By Dan Branch

A few paragraphs of this piece were first published in an essay called "The Californian," in *The Cardiff Review* (Wales). I've given the other parties alternative names to protect their privacy.

In 1976, 3,000 Bethel people lived in its plywood mansions, shacks, apartments, as well as dwellings made from converted shipping containers. I lived on food stamps and a \$500 monthly stipend from Volunteers in Service to America (VISTA).

The town had one judge, three grocers, no bars or liquor stores and three miles of road. Only an informal seawall of junked cars and trucks protected it from river erosion. I swelled the membership of the Bethel Bar Association to eight. Five of the other members worked with me in the Alaska Legal Services Office. We served cash-poor people living on the Yukon and Kuskokwim River Delta, a place the size of Kansas. The region suffered from high unemployment and poverty rates. Our clients subsisted in Dena'ina towns on the Yukon River, in villages where people spoke Yup'ik, or in places on the Bering Sea coast where they used a variation of Yup'ik called Cup'ik.

My first day working for the Bethel Alaska Legal Services office, I met my mentor attorney, two secretaries, a paralegal, and two other VISTA lawyers, but not our supervisor. "The boss is traveling," Mary, the office paralegal, told me, "He is always traveling." Since he led the team forcing the state to build high schools in all Alaska villages, our boss had good reasons to be on the road. Even if he watched over my shoulder every work day, he wouldn't have been able to help me learn the rules for the world that I had first entered at the Bethel airport. Without a basic understanding of Yup'ik culture, I could do more harm than good with my legal skills. That made Mary just as important to me as my mentor or our supervising attorney.

Mary came from a village on the Bering Sea coast about halfway between the mouths of the Yukon and Kuskokwim Rivers. Her long black hair framed a round, almost always smiling face. As well as English, she spoke Cup'ik and the dialect of Yup'ik spoken on the Kuskokwim. She was a patient translator and a kind but sometimes blunt cultural advisor. Years of trying to stop non-Native lawyers from offending Yup'ik clients had taught her that the Yup'ik way of non-confrontation did not work with us.

Before the Moravian missionaries arrived on the Kuskokwim River from Pennsylvania, the Yup'ik people of Western Alaska migrated from one seasonal camp to another, efficiently harvesting salmon and other fish from the river as well as useful land animals, sea mammals, berries and wild greens. They used the place where Bethel sits today for smoking and drying salmon. Today it is called Mamterillermuit, Village of the Smokehouse People. The Moravians settled here because their ocean-going transports could not go any farther up river. Like a magnet, the mission attracted trading posts, schools, a post office, the hospital, jobs and the Yup'ik community that holds the majority of Bethel's population.

The pre-Moravian people made beautiful art, practiced a loving faith, taught and treated their children with respect. They did not need lawyers or money. Today, thanks to the doctors who arrived after the Moravians, they have longer life expectancies but face a myriad of new problems.

In 1971 the Yup'ik people received millions of dollars and title to millions of acres of their traditional homeland in a settlement with the U.S. government. The deal required them to form business corporations to own the land and manage the money. They held shares in the corporations. Their leaders spend more time as corporate directors than hunters or fishermen. Yup'ik people needed legal help to fight for state and federal financial assistance, seek state court resolution of their family law issues, or contend with the legal fallout from alcohol-related problems. They must have appreciated the efforts of Alaska Legal Services lawyers, who provided the bulk of legal help on the river. "Lawyer" in Yup'ik means "one who helps."

In early November, Mike, the lawyer I was replacing, walked into

the office kitchen, days before we were to fly together to the Bering Sea village of Hooper Bay. He had promised to teach me the ins and outs of village travel and to introduce me to my new clients. I had just topped off the teakettle with water dipped from the fifty-five-gallon barrel that the city water truck filled every week. Mike watched me place it on the office hotplate before saying, "Branch, there has been a change of plans." As the hotplate burner turned orange he explained, "I got a boondoggle to Miami, chance to get some sun and heat before winter sets in, good legal training too of course. So, you'll have to go to Hooper Bay on your own." I digested this bit of news while dunking a bag of Lipton's tea in a mug of boiling water. *Why not? How bad could I screw up?*

Mary, the office paralegal knew how many ways I could screw up. The day before my flight to the village, she sat me down on the office couch and said, "*Titu Avayaq* (branch with big eyes), listen to me. Don't you embarrass us in that village.

"...If someone offers you something to drink, you say, 'Quyana (thank you)' and take it. If someone offers something to eat, you thank them and eat it. If they invite you into their house, you sit down and wait for them to ask you for help. Don't start talking first like some *kassaakaq*."

If someone offers you something to drink, you say, "*Quyana* (thank you) and take it. If someone offers something to eat, you thank them and eat it. If they invite you into their house, you sit down and wait for them to ask you for help. Don't start talking first like some *kassaakaq*."

I reviewed Mary's lesson at 8 the next morning while I waited to board a Wien Air Alaska flight to Hooper Bay. The blue and gold Twin Otter's overhead wings rocked in the wind as the ground crew removed a canvas cover from each of its engines. Wanting to use a flush toilet in the



Dan Branch collected memories from his 12 years in Alaska's Yukon-Kuskokwim Delta in a book published in 2021.

terminal, something I couldn't do at home or the office, I walked toward the bathroom and then heard, "Wien Air Alaska's flight to Hooper Bay, Chevak and Scammon Bay is now boarding."

I finished my business, walked onto the runway, and got in line behind a dozen passengers—a couple of young male school teacher types (white/bearded/blue jeans/expensive down parka/beaver hat) and members of Yup'ik families. The older Yup'ik women wore hooded parkas covered with bright, cotton-print fabric. Wolf ruffs trimmed their parka hoods. The young women had sweatshirts and tight jeans. Most of the Yup'ik men wore one-piece, insulated snowmachine suits. I sported a wool balaclava collapsed into a watch cap, thick wool pants, and a magenta-colored puffy parka.

And, thus prepared I followed the line onto the airplane and began my first voyage into Yukon-Kuskokwim village life.

Dan Branch, a member of the Alaska Bar Association from 1977 to 2021, lived in Juneau. He wrote a column for the Bar Rag beginning in 1987. His book "*Someday I'll Miss This Place Too*" was published in August 2021. He died Jan. 5, 2022.

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New Justice Henderson joins Alaska Supreme Court

Justice Jennifer Henderson was installed in a ceremony June 8, 2022, in the Supreme Court Courtroom at the Boney Courthouse. A large gathering of family, friends, and co-workers attended. Fellow justices and judges, family members and members of the Alaska and Anchorage Bar Associations spoke. Senior Justice (Ret.) Warren W. Matthews administered the oath of office.

Justice Henderson was appointed to the Supreme Court by Gov. Mike Dunleavy July 7, 2021, to fill the seat of retired Chief Justice Joel Bolger.

Justice Henderson was born and raised in Santee, CA. She attended Claremont McKenna College, graduating in 1998 with a Bachelor of Arts degree in Politics, Philosophy, and Economics. She thereafter attended Yale Law School, earning a Juris Doctor degree in 2001.

She moved to Alaska in 2001 to clerk for Justice Warren W. Matthews. After returning to California for one year to clerk for Judge Kim Wardlaw on the Ninth Circuit Court of Appeals, she moved back to Alaska and served as an assistant district attorney in Anchorage from 2004 to 2007. In 2007, she entered private practice, working at Farley & Graves, P.C., until she was appointed to the bench in 2012.

Henderson was appointed to the Anchorage District Court in 2012 by Gov. Sean Parnell, and was subsequently appointed to the Anchorage Superior Court in 2017 by Gov. Bill Walker. During her service on those courts, she participated as a judge in the Coordinated Resources Project and oversaw the Anchorage Centralized Criminal Competency docket. Justice Henderson currently co-chairs the Court System's Access to Justice Committee and Judicial Conference Planning Committee.

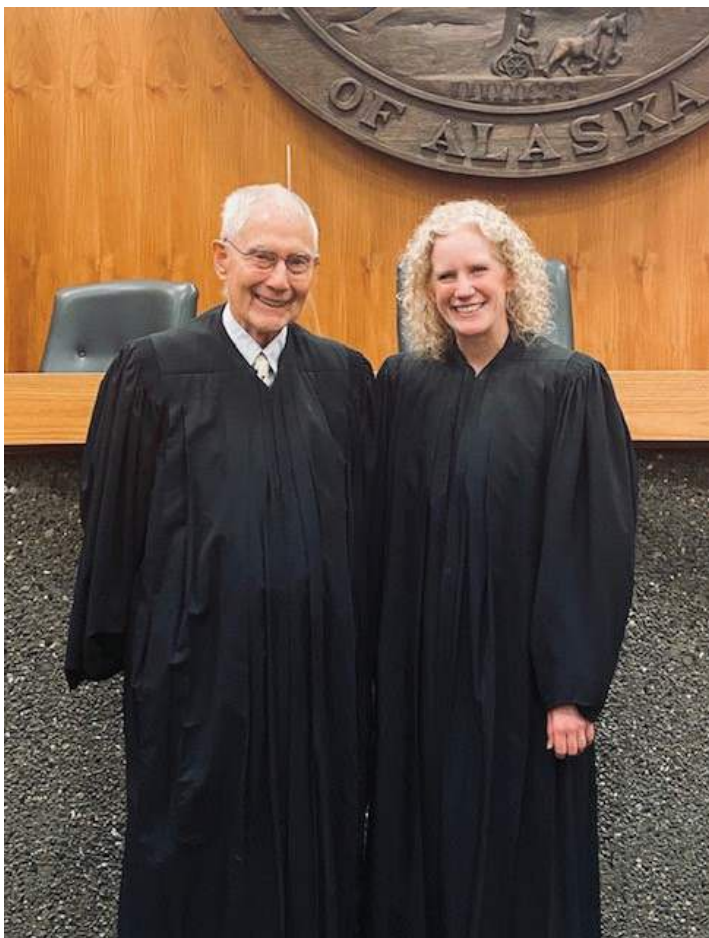
She lives in Anchorage with her husband, Robert Henderson, and their two children, Jack and Chloe.



Senior Justice Warren Matthews administers the oath to Justice Jennifer Henderson.



From left are: Justice Dario Borghesan, Senior Justice Warren Matthews, Justice Jennifer Henderson, Chief Justice Daniel Winfree, Justice Peter Maassen.



Senior Justice Warren Matthews officiated at Justice Henderson's installation. Henderson had clerked for Matthews.



Attending from left are (back row): Justice Dario Borghesan, Senior Justice Warren Matthews, Justice Jennifer Henderson, Chief Justice Daniel Winfree, Justice Peter Maassen, Judge William Morse. Front row: Judge Tracey Wollenberg and Judge Jo-Ann Chung

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Bar People



Attending the installation were: Judge Jonathan Woodman, Judge Kari Kristiansen, Judge Shawn Traini, Judge Tom Jamgochian, Judge Jude Pate, Magistrate Judge Kim Sweet, Magistrate Judge Anna Cometa, Justice Jennifer Henderson and Judge Browning.

Palmer District Court judge sworn in

Judge Amanda Browning was sworn in June 10, 2022, as District Court Judge in Palmer by Sitka Superior Court Judge Jude Pate, with a large group of family, friends, fellow judges and co-workers in attendance

Gov. Mike Dunleavy appointed Browning Sept. 21, 2021, but due to pandemic-related restrictions, the installation ceremony had been postponed.

Judge Browning served as an assistant district attorney for the Alaska Department of Law in Kenai and Sitka before serving as a Magistrate Judge IV in both Sitka and Kenai. She graduated from the Ralph R. Pappito School of Law at Roger Williams University in 2005. Since her appointment, Browning has presided over a mixture of civil and criminal cases in Palmer.

Two attorneys join Clayton & Diemer, LLC

The law firm of Clayton & Diemer, LLC has announced attorneys **Blake Call** and **Michael Hanson** have joined the firm effective July 11, 2022. Call and Hanson were most recently of the firm Call & Hanson, P.C. which concluded its operations.

Alaskan named to select trial lawyers group

Meg Simonian was just made a member of the Inner Circle of Advocates. Since its inception in 1972, the Inner Circle has included the top plaintiff trial lawyers in the nation among its members. Membership is limited to attorneys of exceptional qualifications and trial skill, and is also limited to a total of 100 lawyers nationwide.



Meg Simonian

She is an accomplished trial lawyer and litigator who has been practicing law in Alaska since 1999. Meg now practices civil law, emphasizing plaintiffs medical malpractice, serious injury or death, and other complex litigation

NOTICE TO THE PUBLIC

By order of the Alaska Supreme Court,
Dated 9/7/22

RANDALL S. CAVANAUGH

Member No. 8812215
Anchorage, Alaska

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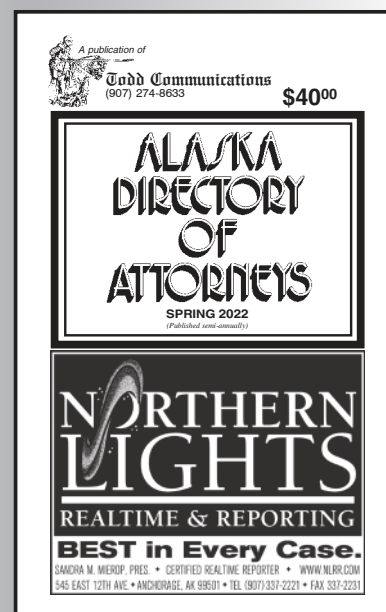
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Request for Comment on Proposed Alaska Rule of Professional Conduct 1.8(e)(3) And New Comments to ARPC 1.8 “Financial Assistance”

The Alaska Rules of Professional Conduct Committee was asked by a Bar member to consider adopting an amendment to ARPC 1.8(e), similar to American Bar Association Model Rule 1.8(e)(3) adopted by the ABA in 2020. This ABA Model Rule has been referred to by some as a “humanitarian aid” exception to the general prohibition in Rule 1.8(e) of providing financial assistance to a client in connection with pending or contemplated litigation.

After several meetings, the Rules Committee unanimously agreed to propose an amendment to ARPC 1.8(e)(3) that is similar to, but more broad than, the ABA Model Rule. The Committee also proposed new Comments to be added to ARPC 1.8.

At its August 31, 2022 meeting, the Board of Governors voted to approve publication of this proposed rule change to the membership for comments. Please send any comments to Bar Counsel Phil Shanahan, shanahan@alaskabar.org, by October 13, 2022.

The proposed Rule reads:

(e) A lawyer shall not provide financial assistance to a client in connection with pending or contemplated litigation, except that:

- ...
- (3) a lawyer may provide modest gifts to a client for food, rent, transportation, medicine, and other basic living expenses. The lawyer:
- (i) may not promise, assure, or imply the availability of such gifts prior to retention or as an inducement to continue the client-lawyer relationship after retention;
 - (ii) may not seek or accept reimbursement from the client, a relative of the client, or anyone affiliated with the client; and
 - (iii) may not publicize or advertise a willingness to provide such gifts to prospective clients.

Gifts that would compromise the lawyer’s independent professional judgment are prohibited.

COMMENT Financial Assistance

....

[11] Under Paragraph (e)(3), a lawyer may give a client modest gifts for food, rent, transportation, medicine, and similar basic necessities of life. Because such gifts may have collateral consequences for the client – for example, they may affect the client’s tax liability or the client’s eligibility for government benefits or social services – the lawyer should consult with the client about these issues before giving the gifts. See Rule 1.4.

[12] Even though Paragraph (e)(3) allows lawyers to give modest gifts to clients for the listed basic living expenses, these gifts must not be so substantial that they would create a conflict between the lawyer’s interests and the client’s interests in regard to the handling or settling of the case. In addition, Paragraph (e)(3) prohibits a lawyer from (i) promising, assuring, or implying the availability of such financial assistance prior to the lawyer’s retention or as an inducement to continue the client-lawyer relationship after retention; (ii) seeking or accepting reimbursement from the client, a relative of the client, or anyone affiliated with the client; and (iii) publicizing or advertising a willingness to provide gifts to prospective clients beyond court costs and expenses of litigation in connection with contemplated or pending litigation or administrative proceedings.

....

REQUEST FOR INFORMATION RELATED TO PREPARATION OF WILL

This request for information involves the representation of Kevin Anthony Harless, Sr. in preparation of a will. Mr. Harless passed on September 10, 2021 in Wasilla, AK. Before his passing it is believed that Mr. Harless may have contacted an attorney for the purpose of creating a will. If you know or have information of someone who assisted in preparing a will or other testamentary instrument for Mr. Harless, please contact:

Jennifer Brooks, Vice President, Legal and Associate General Counsel
Bristol Bay Native Corporation
 111 W. 16th Avenue, Suite 400 • Anchorage, AK 99501
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Board of Governors Action Items August 31, 2022

- Approved May 2022 Board meeting minutes.
- Approved nine reciprocity and twelve UBE applicants for admission.
- Approved ALSC waivers for Fang He.
- Approved military spouse waiver for Katherine Gonsalves.
- Appointed members to Alaska Legal Services Corporation (ALSC) Board of Directors: Joseph G. Nelson to the regular seat in the 1st JD; Carolyn Heyman to the regular seat in the 3rd JD; Melanie Osborne to the alternate seat in the 3rd JD; Melony Urban to the regular seat in the 4th JD; Robin Brown to the alternate seat in the 4th JD; and Steven Hansen to the alternate at large seat.
- Proposed slate of Board of Governor officers: president-elect Jeffrey Robinson; vice president Ben Hofmeister; secretary Aimee Oravec; treasurer Bill Granger.
- Voted to renew the Alaska Law Review contract with Duke University Law School for another three years.
- Voted to extend the Diversity Commission and reporting deadlines until the May 2023 Board of Governor Meeting.
- Voted to publish Bar Rule amendment to lower the Alaska Bar exam cut score from 280 to 270 in the December *Bar Rag* for comment.
- Voted to publish proposed Bar Rule amendments regarding limited practice of law for non-lawyers trained and supervised by ALSC in the *Bar Rag* for comment.
- Voted to publish amendments to Alaska Rule of Professional Conduct 1.8(e)(3) in the *Bar Rag* for comment.
- Voted to accept the recommendation of the subcommittee and recommend admission of an applicant who was previously referred to character and fitness subcommittee.
- Voted to approve Board of Governor Award recipients.
- Voted to approve changes to the Standing Policies of the Board of Governors of the Alaska Bar Association regarding the nominating committee in Article III and the Board evaluation of the Executive Director and Bar Counsel in Article V.

Seeking Comments on Proposed Amendment adding Bar Rule 43.5 Granting Waiver to Engage in the Limited Practice of Law for Non-Lawyers Trained and Supervised by Alaska Legal Services Corporation

At its August 31, 2022 meeting, the Board of Governors voted to approve the publication of a proposal to add a new Alaska Bar Rule 43.5, as requested by the Regulatory Reform Subcommittee of the Alaska Court System’s Access to Justice Committee. The Board is seeking comments from members on this proposal.

As explained by the below Memorandum from the Regulatory Reform Subcommittee, the proposal would permit certain non-lawyers, trained by and under the supervision of Alaska Legal Services Corporation, to engage in the limited practice of law. The proposal represents an attempt by ALSC and the Subcommittee to partially address the access to justice gap in Alaska, especially in rural communities. For further information on these issues, please see the information compiled by the Court System’s Justice For All Project, available at: <https://courts.alaska.gov/jfa/>.

Members of the Subcommittee are: Justice Jennifer Henderson (Alaska Supreme Court), Stacey Marz (AK Court System), Nikole Nelson (ALSC), Susie Dosik (Alaska Judicial Council), James Torgerson (bar member), Ryan Fortson (bar member/UAA Justice Center), Meghan “Sig” Topkok (bar member), Christopher Slottee (bar member), Dr. Robert Onders (Alaska Native Tribal Health Consortium), Deborah Periman (bar member/UAA Justice Center), and Phil Shanahan (Bar Counsel).

Please send any comments to Bar Counsel Phil Shanahan, shanahan@alaskabar.org, by October 13, 2022.

Introduction to Proposed Alaska Bar Rule 43.5

“Expanding access to justice requires innovation and moving past the idea that an attorney or a courtroom is the best or only solution for Alaskans.” *Alaska Court System’s Justice for All Statewide Action Plan*.

In 2019 Alaska Legal Services Corporation (ALSC), in partnership with Alaska Pacific University (APU) and

Alaska Native Tribal Health Consortium (ANTHC), created the Community Justice Worker (CJW) Project, an innovative new step toward addressing Alaska’s escalating access to justice crisis. Now to make the project more effective, ALSC seeks a waiver that would allow properly trained and supervised CJWs to provide legal assistance to ALSC clients who otherwise would go without.

The Challenge

The Alaska Court System’s “Justice For All” *Statewide Action Plan* estimates that Alaskans experience 2.1 civil legal issues per person, or nearly 1 million legal issues among adult Alaskans, every 18 months. Comparing the number of cases filed in court to the number of estimated legal issues, it is clear that most Alaskans are not accessing the justice system to address their legal needs. ALSC is the only statewide provider of free, comprehensive civil legal aid, and operates the largest pro bono program in Alaska. As such, we are tasked with the enormous challenge of addressing the civil legal needs of the over 170,000 Alaskans who can’t afford legal help. However, there are only 1.13 ALSC attorneys available per every 10,000 Alaskans in poverty. Each year our limited resources force us to turn away one person for every individual we help. This doesn’t even take into account the many Alaskans who need legal help but can’t or don’t reach us. Given this reality, the need for a new strategy utilizing non-attorney resources to address Alaska’s civil justice crisis was clear, and the Community Justice Worker Training Program was launched in 2019.

Community Justice Worker Training Program

ALSC identified several areas of law where non-lawyer advocates could supplement existing ALSC staff and pro bono attorney efforts: addressing public assistance delays and denials, accessing unemployment benefits, debt collection defense, estate planning, domestic violence protective or-

Continued on page 13

NEWS FROM THE BAR

Continued from page 12

der advocacy, and Indian Child Welfare Act matters. The CJW Project recruits and comprehensively trains qualified non-lawyer volunteers (such as paralegals, tribal legal advocates, tribal employees, village health aids, undergraduate and law school students) to serve Alaskans who can't afford or otherwise access civil legal help.

We have successfully recruited and trained CJWs in forty different Alaska communities (many off the road system). CJW placement in remote areas of Alaska enables us to better match clients with legal help in their same geographic region, whereas the vast majority of our staff and pro bono attorneys are located in the urban areas on the road system and may not have a firm understanding of the challenges their clients are facing. Once trained, the CJWs assist ALSC clients on cases specific to the substantive area in which they have been trained. Each CJW is also mentored and supervised by an ALSC or pro bono attorney. The CJWs have advocated for individuals in administrative proceedings, drafted letters and other documents and provided legal information to clients in court proceedings. To date 88 cases have been placed with CJWs. SNAP cases are an example of the impact of CJWs. CJWs have helped low-income clients increase or maintain their monthly benefits, successfully reduce or eliminate overpayments, and identify back-owed benefits. Through their SNAP advocacy, CJWs have helped low income households maintain thousands of dollars in benefits. Additionally, CJWs have drafted and assisted in executing wills for elderly, mostly rural clients as well as put on informational will clinics for elders interested in learning about will drafting. In all, CJWs have achieved positive outcomes for clients in 74 of the 88 cases they have handled, in the other 14 cases clients did not follow through with their cases. These are positive outcomes for clients who otherwise would have gone without legal help.

The success of the CJW project has drawn attention from national Access to Justice researchers as a potential solution for not just Alaska, but the nation's growing civil justice crisis. It is currently being studied by Harvard's Access to Justice Lab and will shortly be the subject of another study conducted by the American Bar Foundation's Access to Justice Research Initiative including MacArthur Award winning researcher Dr. Becky Sandefur.

Building on this success and inspired by regulatory reform efforts in the Lower 48 in states such as Utah, Arizona and Delaware, and with oversight and support from the Alaska Supreme Court's Access to Civil Justice Subcommittee on Regulatory Reform and national Access to Justice researchers and policy voices, ALSC seeks a pathway for qualified CJWs to expand their practice and allow limited legal advocacy in certain civil cases where clients would otherwise go without help.

The proposed limited practice waiver has been carefully crafted as a measured approach towards expanding those who may provide legal assistance and representation within a very defined scope. The individuals would be granted waivers to provide limited legal assistance to ALSC clients on specific legal issues after completing required training on ethics, procedure and substantive law, all while receiving ongoing oversight and supervision by ALSC. The proposed rule also requires ALSC to provide quarterly reports to the Board of Governors and the Supreme Court's Access to Civil Justice Subcommittee on Regulatory Reform.

Rule 43.5: Waiver to Engage in the Limited Practice of Law for Non-Lawyers Trained and Supervised by Alaska Legal Services Corporation.

Section 1. Eligibility. A person not admitted to the practice of law in this state may receive permission to provide legal assistance in a limited capacity in certain civil matters in the state if such person meets all of the following conditions:

- (a) The person has completed the required training provided by Alaska Legal Services Corporation in the following areas: Rules of Professional Conduct, including, but not limited to conflicts of interest, confidentiality and duty of candor, the substantive area of law in which the person will practice, and appropriate tribunal procedures;
- (b) The person will be supervised by Alaska Legal Services Corporation;
- (c) The person will engage in the limited practice of law exclusively for Alaska Legal Services Corporation on a full-time or part-time basis or as a volunteer;
- (d) The person will inform all clients in

writing that they are not a lawyer and obtain consent confirmed in writing from the client to their representation by the non-lawyer.

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

- (a) The executive director of the Alaska Legal Services Corporation shall apply to the Board of Governors on behalf of a person or persons eligible under Section 1;
- (b) Application shall be made on forms approved by the Board of Governors and shall include the proposed scope of each applicant's practice;
- (c) Proof shall be submitted with the application that the applicant has completed the requisite training and that appropriate supervision is in place as set forth in Section 1.

Section 3. Approval. The Board of Governors shall consider the application(s) as soon as practicable after it has been submitted. If the Board finds that the applicant meets the requirements of Section 1 above and the applicant has completed train-

ing adequate for the scope of practice sought, it shall grant the application and issue a waiver to allow the applicant to provide legal assistance in the state of Alaska in the substantive areas of law in which they have completed requisite training and have supervision as required in Section 1. The scope of legal assistance will be limited to that approved by the Board pursuant to Section 2(b) of this Rule.

Section 4. Conditions. A person granted such permission may provide legal assistance in the scope approved pursuant to Section 3 of this Rule and only as required in the course of representing clients of Alaska Legal Services Corporation 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.

Section 5. Reporting. Alaska Legal Services Corporation shall provide regular quarterly reports to the Alaska Supreme Court, and the Board of Governors regarding the number of clients served by approved non-lawyers and case outcomes, as well as any complaints related to client harm, and the termination of any active waivers.

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Lawyers need to know law affecting doctors and DUI

By Pam Ventgen

Doctors, like other people, sometimes get stopped for driving under the influence. But unlike other people, doctors are subject to disciplinary action by the State Medical Board if they fail to report being stopped to the Medical Board within 30 days of any criminal charge, and again for any conviction.

Hospitals and employers may also require immediate reporting. AS 08.64.326 (9) lists the grounds for the Medical Board imposing disciplinary sanctions including unprofessional conduct. 12 AAC 40.967(26) lists the reporting requirements of unprofessional conduct.

Physicians in Alaska have access to the Physician Health Committee (PHC) of the Alaska State Medical Association (ASMA). This is very similar to the Alaska Bar Association's Lawyers' Assistance Committee. The PHC has a memorandum of agreement with the State Medical Board. This agreement allows that if a physician contacts the PHC and if the physician follows the recommendations of the PHC, the Medical Board is less likely to pursue disciplinary action against the physician's medical license. Also, the agreement requires the PHC to report any physician to the Medical Board who fails to follow the recommendations of the PHC.

Recently, several physicians have come to the PHC after having been advised by their attorneys to not report to the Medical Board having been stopped, charged or convicted of driving under the influence and to not seek the guidance and services of the PHC. Physicians need legal counsel to understand the law and to navigate the details of the court system. But if an attorney is not aware of physician licensing laws, their physician-clients will not be well served. The Medical Board may levy a fine or ask the physician to surrender his or her medical license even if the physician is following the recommendations of legal counsel.

The PHC does not treat physicians. The PHC facilitates evaluation and, if necessary, substance use disorder treatment. The PHC monitors physicians for successful sobriety and recovery. The PHC can advocate for the physician, but the PHC cannot undo non-timely reporting to the Medical Board.

The PHC is always available to provide information and welcomes questions and discussion. Attorneys may discuss potential cases anonymously. For further information attorneys are encouraged to contact Mary Ann Foland, MD, PHC Chair, 907-903-1848; Pam Ventgen, Committee Coordinator, 907-244-7266; or Roger Holmes, Esq. 907-351-2787.

Pam Ventgen has worked in health care in Alaska for more than 40 years, in medical office management, physician licensure and faculty in UAA's College of Health. She now works with the Alaska State Medical Association.

Marianna Carpeneti installed to Juneau Superior Court

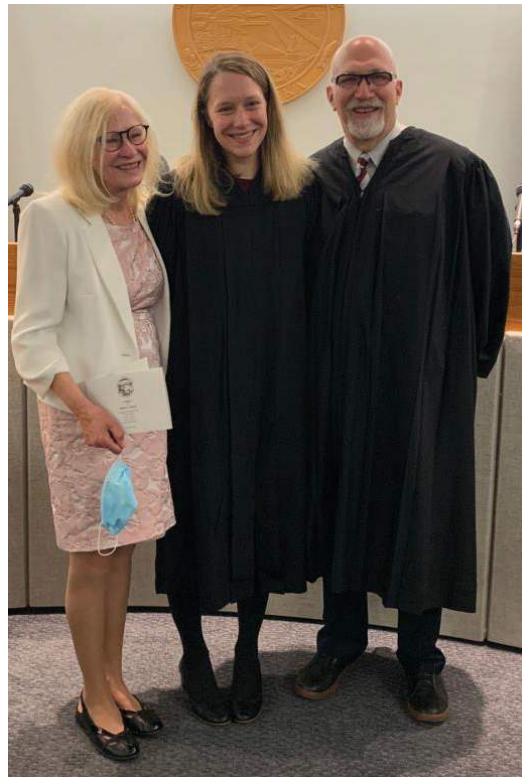
Marianna Carpeneti was sworn in to the Juneau Superior Court by Chief Justice Daniel Winfree, and retired Chief Justice Bud Carpeneti June 17, 2022, in the same courtroom of the Dimond Courthouse where her father, Bud Carpeneti, was sworn in 40 years earlier.

Gov. Mike Dunleavy appointed Marianna Carpeneti to the Juneau Superior Court Dec. 23, 2021, after she was selected from a group of individuals nominated by the Alaska Judicial Council to fill the seat of retired Judge Philip Pallenberg.

Judge Carpeneti was born and raised in Juneau, and has practiced law for 10 years. She graduated from the University of Washington School of Law in 2012 and was in private practice in Homer before her appointment to the bench.



Attending the ceremony from left are: Magistrate Judge Orion Hughes-Knowles, Judge Daniel Schally, Judge Christina Reigh, retired Justice Bud Carpeneti, Judge Marianna Carpeneti, Chief Justice Daniel E. Winfree, Judge Kirsten Swanson, and Judge Amy Mead, Presiding Judge, First Judicial District.



Annie Carpeneti, retired Justice Bud Carpeneti, and Judge Marianna Carpeneti, stand for a photo.



The Carpeneti family came to the installation including husband Michael Winfree; and children Vivianna and Annetta Carpeneti-Winfree.

My Five

This edition of My Five comes to you from three members of the Board of Governors: **Jessica Graham** (outgoing president), **Meghan (Sigvanna) Topkok** (outgoing new-lawyer liaison), and **Diana Wildland** (incoming president).

Jessica Graham: The five song ringtones for five special people in her life

1. Jason (husband) — "How Sweet It Is" by James Taylor
2. Jada (daughter in college in NY) — "Empire State of Mind" by Jay-Z and Alicia Keys
3. Jolie (daughter in college in NC) — "Carolina in My Mind" by James Taylor
4. Jersey (daughter playing hockey in Chicago) — "Dynamite" by Taio Cruz
5. My boss (self-explanatory) — Mission Impossible Theme Song

Meghan (Sigvanna) Topkok: The five favorite songs at the moment

1. "Imiqtaaq ft. Viivi," — Riit
2. "Uplluten," — Byron Nicholai
3. "Sedna" — Kelly Fraser
4. "Ikajunga" — Elisapie
5. "Seqinitta Qinngorpaatit" — Nanook

Diana Wildland: The five favorite driving in cars with toddlers edition

1. "Baby Shark" — by Pink Fong. An inescapable banger for children aged 1-3. An anxiety-inducing ear worm for children aged 4-75.
2. "Hickory Dickory ...Crash!" — by Super Simple Songs. This song has a lot of ups and downs, literally. Unlike the traditional version, this one features an elephant who makes an ill-fated attempt to climb onto a clock. Alas, the clock is no more.
3. "Elmo's World" (song) — by Elmo & Friends. Elmo likes his goldfish. His crayon too.
4. "Apples and Bananas" — by Cocomelon. This one really upped my son's interest in fruits and vowel sounds, so I give it a 10/10.
5. "Ants Go Marching" — by Super Simple Songs. The little ant has a lot going on: tying his shoe (2), climbing a tree (3), shutting the door (4). By the time he stops to pray to heaven (7) I'm left wondering why none of the other ants are checking in. But my son seems unfazed.

Courts launch Child-in-Need-of-Aid laws e-learning course

From the Alaska Court System

The Court Improvement Program has launched its Child in Need of Aid (CINA) Laws e-Learning course at <https://bit.ly/3ApnTJM>. The CIP monitors and improves the way the court system handles child in need of aid cases and enhances coordination between the court system and other agencies and tribes involved in CINA cases. Members of the CIP Committee include judges, tribal representatives, youth representatives, and state agency representatives involved in child welfare from around the state. The curriculum subcommittee of CIP developed the e-Learning course.

Each module has been approved by the Alaska Bar Association for Continuing Legal Education (CLE) credits. A total of 24 CLE credits, including 3.75 ethics credits for module 2, are available for those who complete all the modules.

The curriculum was developed by an interdisciplinary team representing the different participants in CINA cases. The course is based on in-person and zoom trainings that are regularly provided for judges, tribal representatives, attorneys, child protection workers, and child advocates. Now the course is available to

anyone who wants to learn more about CINA laws from seasoned practitioners and judges to new participants in CINA cases and members of the public. Anyone with an interest in the child welfare system are also welcome to take the course or refer to individual sections without taking the entire course.

The course is divided into four training modules:

- Module 1: How a Case Comes into Court (laws and protocols governing OCS investigations and interventions),
- Module 2: Roles and Responsibilities of CINA Participants,
- Module 3: Child in Need of Aid State and Federal Laws, and
- Module 4: CINA Court and Administrative Proceedings.

Modules can be used in whole or part — it is possible to easily access just the information of interest. Learners can apply their knowledge in a series of interactions following a case study at the end of each subject matter session.

The eLearning course will enable anyone to access the training resources at their own pace and in whatever way is most helpful to them:

- reading through the materials,
- listening to a podcast style narration, or
- watching videos of Alaska judges and practitioners presenting the materials.

The course also hosts a training resources list at <https://bit.ly/3C6FaZo> that includes links to legal research materials, OCS practice model guide, training opportunities and more.

Each module has been approved by the Alaska Bar Association for Continuing Legal Education (CLE) credits. A total of 24 CLE credits, including 3.75 ethics credits for module 2, are available for those who complete all the modules.

The mission of the Alaska Court System is to provide an accessible and impartial forum for the just resolution of all cases that come before it, and to decide such cases in accordance with the law, expeditiously and with integrity.

Lawyer joke ...



After I prosecuted a man for killing a bird out of season with his slingshot, the court clerk suggested setting up a date for him to return with both the money for the fine and proof of community service. "That way," she said innocently, "you can kill two birds with one stone."

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OCTOBER 2022

- October 6:** **Overcoming Burnout: How to Build Resilience**
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- October 26-28:** **2022 Alaska Bar Annual Convention**
Keynote Speaker: Professor Victoria Nourse, Georgetown University Law Center
Dena'ina Civic & Convention Center
(In-person only)

NOVEMBER 2022

- November 17:** **38th Annual Alaska Native Law Conference**
4.75 General CLE Credits/1 Ethics Credit
Dena'ina Civic & Convention Center
(In-person & Webcast)
- November 18:** **2022 Annual Alaska Workers' Compensation Review**
4.0 General CLE Credits/Dena'ina Civic & Convention Center
(In-person & Webcast)

DECEMBER 2022

- December 9:** **Exit Row Ethics: What Rude Airline Travel Stories Teach Us about Attorney Ethics**
3.0 Ethics CLE Credits
- December 9:** **The Code of Kryptonite: Ethical Limitations on Lawyers' Superpowers**
3.0 Ethics CLE Credits
- December 15:** **“Nobody Wants to Be THAT Person: Avoiding Diversity, Equity, and Inclusion Faux Pas”**
1.0 Ethics CLE Credits (Webinar)

Job Opening

Executive Director—Alaska Innocence Project

The Alaska Innocence Project, a 501(C) non-profit organization, seeks an individual to serve as Executive Director of the organization.

Guided by AKIP’s mission, vision, and values, and working in partnership with the Board of Directors, the Executive Director provides strategic direction for AKIP. The Executive Director manages and oversees all aspects of the organization, including operations, casework, finances, personnel, development, programming, and community relations.

Crucial qualities in the Executive Director include excellent judgment, impeccable ethics, outstanding oral and written communication skills, flexibility, the ability to solve problems both autonomously and collaboratively, to work in a group and individually, to effectively handle multiple tasks with competing priorities, and to interact with a range of persons.

Executive shall exercise general supervisory responsibility and management authority shall perform such other duties commensurate with his position as may reasonably be assigned to him/her from time to time by the AKIP Board of Directors.

Knowledge and experience in criminal justice litigation is required.

Knowledge and experience in non-profit management is required. Experience with fund-raising is essential.

Admission to practice law in Alaska is highly desirable although the AKIP may consider applicants that could provide leadership to the organization under models that do not include Alaska Bar admission.

Implicit in the role of Executive Director is a willingness to accept the financial and organizational challenges facing a community-based non-profit organization in Alaska. A passion for justice is a prerequisite. AKIP will consider applicants with an interest in working on less than a full-time basis.

Submit letters of interest to: Board President, Alaska Innocence Project, P.O. Box 201656, Anchorage, AK 99508. Applicants will be responded to on a rolling basis.

And that's how the Court stole Christmas —From Judge Andrew Kleinfeld's clerks

Every clerk,
Down in clerk-ville,
Liked Fairbanks a lot.

But the Supreme Court
Which lived far south of clerk-ville,
Did NOT.

The Court hated Fairbanks. The whole winter season!
Don't bother asking why, no one quite knows the reason.
It could be, perhaps, that they were all just too old.
Or maybe each of them was allergic to gold.
But the most likely reason, experts agree,
Is that Fairbanks was and is just too damn cold.

"Now they'll be plugging their cars in," said Alito with a sneer.
"Forty below zero, it's practically here!"
"And don't forget," added Kagan, "about all the bears."
"If we still rode circuit, I'd never go there."

Well, whatever the reason,
Because of Fairbanks's quirks,
The Court hated Fairbanks, and hated its clerks.
"We simply must," intoned Thomas, "devise a nefarious plan,"
"to send their work where it belongs, straight to the dustpan."
Alito chimed in: "Hey I've got just the thing"
"I'm working on a blockbuster, this opinion will sing."

"Now just one minute," said Sotomayor.
"What exactly will that opinion be good for?"
"It's perfect," said Gorsuch. "I see what we'll do."
"Those Fairbanks clerks are working on that kind of case, too."
"We'll wait until it gets called en banc"
"And then, once it's been argued, we'll pull out the rug."
"We'll scrap the old test and put in something new,"
"Who knew that there was an historical standard of review!"

—Judge Kleinfeld's clerks who wrote the poem are Arium
Koochesfahuni and Conor Cathey.



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It's worthwhile to look for the lessons with problem clients

By Mark Bassingthwaighte

When it comes to problem clients, we all have a story or two to share; but what if it becomes more than that? What if a lawyer comes to realize that he or she is dealing with a problem client far more than once in a blue moon? It can happen, and if and when it does, it's time to stop and do a little problem solving. It's time to look for the learning.

Wait, how are you defining the term "problem client?"

A problem client is what you end up with when you fail to establish or fail to maintain a productive attorney-client relationship. Problem clients are often described as having several of the following characteristics. They can be demanding, confrontational, disrespectful, angry, unreasonable, needy, highly emotional, entitled, vengeful and the list goes on. They may have unrealistic expectations, have a personal agenda, be difficult to stay in touch with, and they are often problem payors at a minimum.

Don't get me wrong, taking on a client who is needy and highly emotional as an example, doesn't in and of itself make that client a problem client. If you are unable, unwilling, or simply don't have the skill set to productively work with such an individual, however, don't be surprised if that's what you eventually end up with.

Are problem clients the lawyer's fault?

Yes and no. Think about it this way. At the end of representation of a problem client, be it riding things out to the bitter end or deciding to withdraw because life is just too short, a typical response is to put it behind you and move on. If a lawyer does so and thereby misses the

opportunity for learning, then, yes, the problem clients that follow are the fault of the lawyer. On the other hand, if a lawyer takes the time to explore the evolution of the problem client looking for ways to prevent the situation from ever happening again, then, no. Sometimes, in spite of one's best efforts, something is missed, and the occasional problem client ensues.

What am I to look for?

Start by reviewing your intake process. This is where the "fail to establish" problem arises. While I believe most lawyers have learned to screen potential new matters, not as many are quite as effective when it comes to screening potential new clients. Every new matter comes with a client and taking the time to try to determine if the potential new client is someone you can create a productive attorney-client relationship with is going to be time well spent. Understand that relationships that start out on the wrong foot rarely improve over time and accept the fact that no one is able to work well with everyone that walks through the office door. Look for and learn to recognize when it simply isn't a match. That's when you should be thinking about saying thanks, but no.

To help you get started, always try to determine if the prospective can truly afford your services because the bill is often an issue with problem clients. Look for any warning signs. For example, does the social media presence of the individual jive with how he or she presented to you? Ask what the expectations of you and your staff are in order to determine if you can meet them. In short, it's all about trying to get to know who the prospective is as an individual and allowing a little time for your gut to weigh in as well.

In order to address the "failure to maintain" problem one needs to go a bit further. Step back and ask yourself whether your own actions throughout the representation helped create the problem client. Perhaps the client had some legitimate emotional needs (e.g., recently received some devastating news such as a cancer diagnosis) and you're not one who relates well to highly emotional individuals. In other words, could your own inability to meet your client's legitimate, yet non-legal needs have caused the client to be dissatisfied enough to become a highly volatile problem client? Have this discussion with everyone at your firm who interacted with the problem client. Be open to identifying communication shortfalls. Try to determine how the relationship went south. Take any learning that's to be had from the experience and use it to improve your skills in successfully managing effective attorney-client relationships.

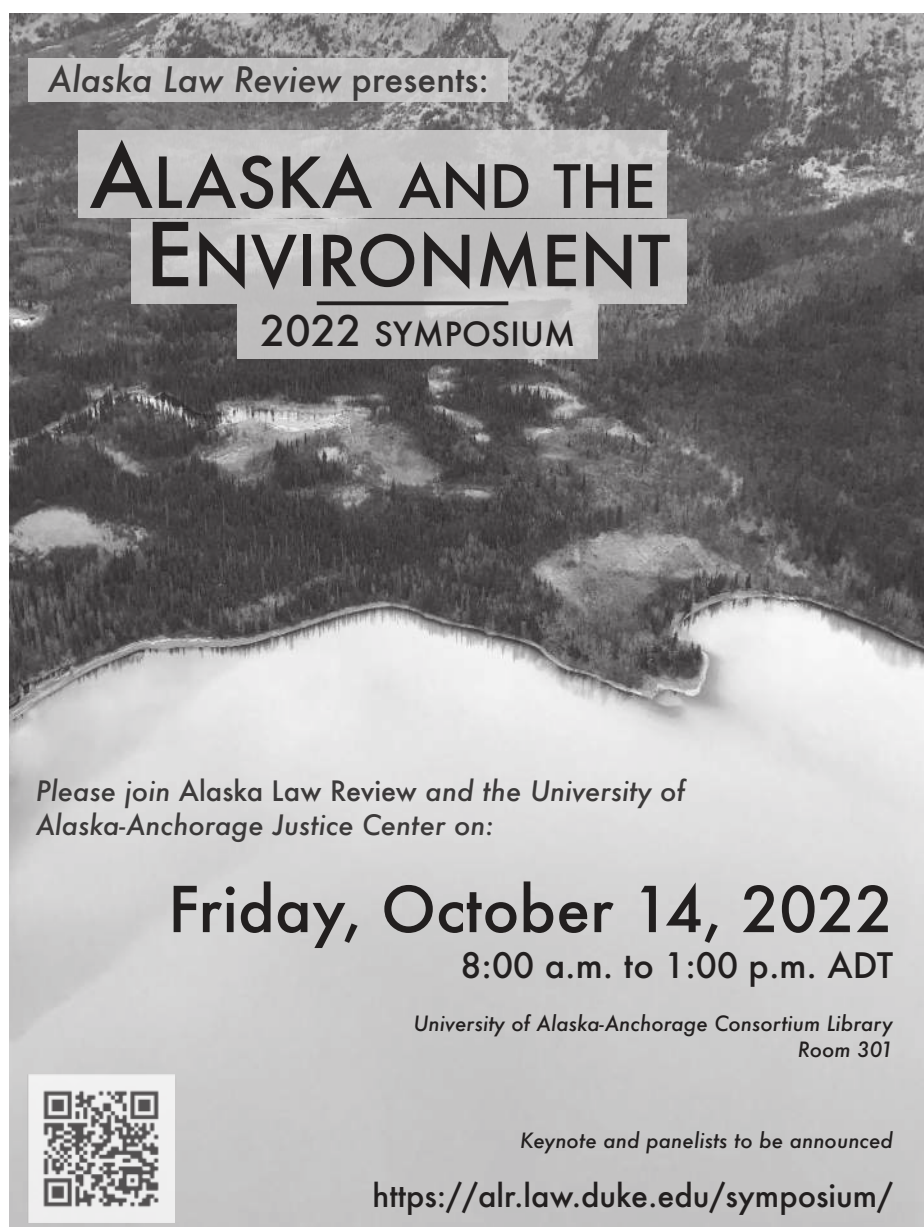
Why take the time?

It's pretty much a given in the practice of law. Stress is part of the equation. And while I get that, as a risk manager I also appreciate that the likelihood of a misstep occurring rises the higher a lawyer's stress level rises. Even one problem client typically demands a disproportionate amount of time and can come at a cost to the amount of remaining time available to other clients. Problem clients are unpleasant to interact with, difficult to satisfy, and often are collection problems. Problem clients are also more likely

to file a malpractice suit or disciplinary complaint. These are high stress, low reward relationships. It seems obvious to me. One clearly effective way to reduce stress is to do all you can to avoid taking on problem clients.

I'm simply suggesting that it is worthwhile to take time to look for the learning when an attorney-client relationship doesn't play out as expected. Is there not value in taking some time now and again to ask, "What can I learn from this?" when an opportunity presents itself? I believe it's especially wise to ask that question about those parts of our professional lives that aren't as satisfactory as we'd like. As I see it, learning from the problems we find ourselves in is the only way to avoid making the same mistake over and over.

Since 1998, Mark Bassingthwaighte has been a risk manager with ALPS, an attorney's professional liability insurance carrier. In his tenure with the company, Bassingthwaighte has conducted more than 1,200 law firm risk management assessment visits, presented more than 400 continuing legal education seminars throughout the United States, and written extensively on risk management, ethics and technology. He is a member of the State Bar of Montana as well as the American Bar Association where he currently sits on the ABA Center for Professional Responsibility's Conference Planning Committee. He received his J.D. from Drake University Law School. He can be reached at mbass@alpsnet.com



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More depreciation deductions mean less tax

By Steven T. O'Hara

Depreciation deductions on tax returns generally mean tax savings. Tax basis and depreciation deductions go together in a for-profit situation. Tax basis is the foundation of depreciation deductions; if there is no tax basis, there are no depreciation deductions. IRC Sec. 1.67(c) and Treas. Reg. Sec. 1.167(g)-1.

Recall that tax basis is used in determining gain or loss. IRC Sec. 1001 and 1011. If a client purchases a building for \$2,000,000, her tax basis in the building is \$2,000,000. IRC Sec. 1012. If she sells the building with a tax basis of \$2,000,000 for \$2,100,000, her taxable gain is \$100,000, which is the consideration received in excess of her tax basis. IRC Sec. 1011.

There is a level of symmetry under the tax code. Depreciation deductions, for example, provide a tax benefit, and thus it is reasonable that depreciation deductions reduce tax basis. See Treas. Reg. Sec. 1.1016-3(a)(1) and (2). Reduced tax basis means more taxable gain upon

sale, assuming value is maintained.

Also, where there is inclusion in a tax computation under tax law, there may be an upward adjustment to tax basis and ultimately an offset or deduction or both. As illustrated below, sometimes the inclusion in

the tax computation is of no practical importance other than generating immediate deductions and tax savings out of thin air.

Every United States citizen with property has, upon death, a gross estate under the federal estate tax system. IRC Sec. 2031. The gross estate includes all property owned or deemed owned by the decedent. IRC Sec. 2033. It may be the case that no federal estate tax is actually payable, given the currently large credit against federal estate tax. See IRC Sec. 2010.

A credit is a dollar-for-dollar offset against tax otherwise payable. See *id.* However, inclusion in the gross estate means that the decedent's beneficiaries could get additional depreciation deductions immediately, at least under the law in effect in August 2022. And if community property is involved, the community property may allow the decedent's beneficiaries more depreciation deductions than would otherwise be the case.

Suppose you represent a husband and wife, legally married, both U.S. citizens. Neither has ever made a taxable gift. They are wealthy. However, under the law in



"Tax basis is the foundation of depreciation deductions; if there is no tax basis, there are no depreciation deductions."

effect at all relevant times, no federal estate tax would be payable if either or both of them died. See IRC Sec. 2010. One or both of them own an office building (the "Building") with a fair market value at all relevant times of \$2,000,000. There is no debt on the Building. For simplicity, let's say they do not own the land under the Building.

Clients own the Building for income-producing purposes, particularly for rental income. Cf. IRC Sec. 167(a). Clients no longer obtain any depreciation deductions from the Building because their tax basis in the building is zero by reason of many depreciation deductions taken over many years. Cf. Treas. Reg. Sec. 1.1016-3(a)(1) and (2).

For simplicity, let's say that each client has an estate plan giving any interest in the Building outright to the surviving spouse rather than in trust. Let's consider some possible ownership scenarios and, given that all individuals will die, possible increased tax basis by reason of death, at least under the law in effect in August 2022. Let's consider that, perhaps, more depreciation deductions and less tax begins with the way in which assets are owned.

1. **Ownership in One Spouse's Name.** In the first scenario, wife owns the Building as her sole individual property. Under this scenario, what happens in the event of husband's death in 2022? The answer is nothing. Tax basis in the Building is unaffected. Tax dollars are left on the table.

2. **Tenants in Common.** In the second scenario, clients own the Building as equal tenants in common and not as community property. Under this scenario, what happens in the event of husband's death in 2022?

Upon husband's death, husband owned an undivided 50-percent interest in the Building. Although the Building has a fair market value of \$2,000,000, the value of a 50 percent interest may be less than \$1,000,000. The valuation expert assisting with husband's estate opines that the fair market value of a 50 percent interest in the Building is \$900,000 on the date of husband's death. Cf. IRC Sec. 2032. Thus, the amount of at least \$900,000 is includable in husband's gross estate. IRC Sec. 2033. No federal estate tax is payable under our facts, but this inclusion in the gross estate means wife now has a tax basis of \$900,000 in the Building. This new tax basis

is calculated as \$900,000 plus zero, with the \$900,000 tax basis relating to the 50 percent interest she inherited and a zero tax basis relating to her 50 percent interest. IRC Sec. 643(e) and 1014(a) and (b)(1).

Under this scenario, wife gets the benefit of additional depreciation deductions, to the extent allowed by law, because of her new \$900,000 tax basis in the Building. IRC Sec. 167(c) and Treas. Reg. Sec. 1.167(g)-1.

3. **Tenants in Community Property.** In the third scenario, clients own the Building as community property. Under this scenario, upon husband's death in 2022, husband owned an undivided 50 percent community property interest in the Building. The valuation expert assisting with husband's estate opines that the fair market value of a 50 percent community property interest in the Building is \$900,000 on the date of husband's death. Cf. IRC Sec. 2032. Thus, the amount of at least \$900,000 is includable in husband's gross estate. IRC Sec. 2033. No federal estate tax is payable under our facts, but this inclusion in the gross estate means wife now has a tax basis of, wait for it, \$1,800,000 in the Building. This new tax basis is calculated as \$900,000 plus another \$900,000, with the first \$900,000 tax basis relating to the 50 percent interest she inherited and the second \$900,000 tax basis relating to community property tax law and her 50 percent interest. IRC Sec. 643(e), 1014(a) and (b)(1), and 1014(b)(6).

Under this scenario, wife gets the benefit of additional depreciation deductions, to the extent allowed by law, because of her new \$1,800,000 tax basis in the Building. IRC Sec. 167(c) and Treas. Reg. Sec. 1.167(g)-1.

4. **LLC Owned as Individual Property.** In the fourth scenario, the Building is owned by a Limited Liability Company which owns no other asset. Clients each own a 45% membership interest in the LLC as individual property and not as community property. An unrelated party owns a 10 percent membership interest in the LLC. The LLC is treated as a partnership for federal income tax purposes. Cf. Treas. Reg. Sec. 301.7701-2(c)(1).

The LLC holds the Building for income-producing purposes, particularly for rental income. Clients no longer obtain any depreciation deductions from the Building because the LLC's tax basis in the building is zero by reason of many depreciation deductions taken over many years. Cf. Treas. Reg. Sec. 1.1016-

Continued on page 19

Also, where there is inclusion in a tax computation under tax law, there may be an upward adjustment to tax basis and ultimately an offset or deduction or both.

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More depreciation deductions mean less tax

Continued from page 18

3(a)(1) and (2). And let's say clients' tax basis in their LLC interests is zero by reason of those depreciation deductions plus annual distributions of net rental income from the LLC. See *id.* and IRC Sec. 702(a)(7) and 733(1).

Under this scenario, upon husband's death in 2022, husband owned a 45 percent membership interest in the LLC. Although the LLC owns the Building with a fair market value of \$2,000,000, the value of a 45 percent LLC interest may be less than \$900,000. The valuation expert assisting with husband's estate opines that the fair market value of a 45 percent membership interest in the LLC is \$810,000 on the date of husband's death. Cf. IRC Sec. 2032. Thus, the amount of at least \$810,000 is includable in husband's gross estate. IRC Sec. 2033. No federal estate tax is payable under our facts, but this inclusion in the gross estate means wife now has a tax basis of \$810,000 in her LLC interest. This new tax basis is calculated as \$810,000 plus zero, with the \$810,000 tax basis relating to the 45 percent LLC interest she inherited and a zero tax basis relating to her 45 percent LLC interest. IRC Sec. 643(e) and 1014(a) and (b)(1).

Significantly, by reason of husband's death, the LLC is allowed an election to increase 45 percent of its tax basis in the Building to \$810,000 as if wife had purchased husband's 45% LLC interest for \$810,000. See IRC Sec. 743 and 754. The election must be made no later than with a timely-filed federal income tax return for the LLC covering the year Husband died. Treas. Reg. Sec. 1.754-1(b)(1).

With this election, the LLC's tax basis in the Building goes from zero to \$810,000; provided, however, the resulting depreciation deductions are allocated to wife only. She now has a special tax basis for purposes of depreciation. In other words, the adjustment to tax basis does not affect the LLC's other member. See Rev. Rul. 79-124 and Treas. Reg.

Sec. 1.743-1(d).

5. **LLC Owned as Community Property.** In the fifth scenario, the Building is owned by the LLC. However, clients own their membership interests in the LLC, a total of 90 percent, as community property. Under this scenario, upon husband's death in 2022, husband owned a 45 percent LLC membership interest as community property. The valuation expert assisting with husband's estate opines that the fair market value of the 45 percent LLC membership interest as community property is \$810,000 on the date of husband's death. Cf. IRC Sec. 2032. Thus, the amount of at least \$810,000 (50 percent of the community property) is includable in husband's gross estate. IRC Sec. 2033. No federal estate tax is payable under our facts, but this inclusion in the gross estate means wife now has a tax basis of \$1,620,000 in the LLC. This new tax basis is calculated as \$810,000 times two, with the first \$810,000 tax basis relating to the 45 percent LLC interest she inherited and the second \$810,000 tax basis relating to community property tax law and her 45 percent LLC interest. IRC Sec. 643(e), 1014(a) and (b)(1), and 1014(b)(6).

By reason of husband's death, the LLC is allowed an election to increase 90 percent of its tax basis in the Building to \$1,620,000. IRC Sec. 743 and 754; see Rev. Rul. 79-124. With this election, the LLC's tax basis in the Building goes from zero to \$1,620,000; provided, however, the resulting depreciation deductions are allocated to wife only. See Rev. Rul. 79-124 and Treas. Reg. Sec. 1.743-1(d). The holding in Revenue Ruling 79-124 provides: "Adjustments to the basis of partnership properties under section 743(b) of the Code are to be made in respect of the portion of such properties that is allocable to the entire interest in the partnership that was owned by A and B as community property immediately preceding the death of A."

6. **LLC Owned by Revocable Trust.** In the sixth scenario, once again, the Building is owned by the LLC, and an unrelated party owns

a 10 percent membership interest in the LLC. Each client has contributed the client's 45 percent LLC interest to a Revocable Living Trust created by the client for the benefit of the client. Each Revocable Living Trust is a grantor trust for federal income tax purposes during the lifetime of the grantor. IRC Sec. 676(a) and 677(a).

Suppose that under husband's Revocable Living Trust, the trust does not terminate upon his death but, rather, continues for the benefit of wife. Under this scenario, what happens in the event of husband's death in 2022? In other words, may the LLC elect to adjust its basis in the Building as if husband had transferred his 45% LLC interest upon his death? In Revenue Ruling 79-84, the Internal Revenue Service has issued a favorable ruling suggesting yes.

Note that an estate plan with QTIPable trusts, where the QTIP election (Qualified Terminable Interest Property) under IRC Sec. 2056(b)(7) is available, may be advisable. Cf. my blog post at www.oharatax.lawyer entitled "5 and 5 Powers."

7. **Ownership in S Corporation.** Now let's flash back to scenario one. Husband has died and wife wants to change her Will to give Building to an S corporation, the Building's long-term tenant with whom she is affiliated. The S corporation has multiple shareholders, all individuals. Cf. IRC Sec. 1361(b)(1)(B). At first glance, an S corporation may be considered a pass-through entity not unlike an LLC taxed as a partnership. See IRC Sec. 1363 and 1366.

However, one of the reasons client's idea for her estate plan is inadvisable from a tax standpoint is that an S corporation is not allowed an election to increase tax basis in the event of the death of a shareholder. Cf. IRC Sec. 1367 (no provision for adjustment for the inside basis of S corporations like under IRC Sec. 743(b) for partnerships). It is a given that all the shareholders will die. So why not structure Building ownership where there will be the possibility of increased depreciation deductions out of thin air? Ownership of Building by an S corporation leaves tax dollars on the table.

In sum, solely from a tax standpoint: Ownership of Building by one spouse may be inadvisable. Community property ownership may be desirable. And although limited liability protection has not been mentioned, ownership of Building by an LLC may be advisable. But ownership of Building by an S Corporation is certainly not advisable from a tax point of view. Non-tax considerations in deciding ownership issues have not been mentioned but are important to identify based on facts and circumstances.

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

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

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Parade of pets lightens the load in an attorney's office

Continued from page 1

which readers vote for their favorite pizza, veterinary, attorney and other services, the Fairbanks Family Friend Workplace Award is bestowed by the Fairbanks Chamber of Commerce and the Fairbanks North Star Borough to the business which has provided the most family friendly environment for the people who work there. Our firm was nominated for the award in 2013 and, six years later in 2019. Both times, the award was unexpected. In fact, I did not even know about the nomination in advance.

The first time, one of my co-workers, Adena, kept insisting that I had to go to the Chamber of Commerce lunch that week. Not being an active Chamber member, I politely refused. After all, a valuable billable hour was at stake. Adena appeared frustrated. I was finally told by another co-worker that I "had to go to the lunch with Adena. It was non-negotiable." Reluctantly, I attended and soon realized it was an awards luncheon. The room was packed. I sat quietly through the spiel where the moderator talked about the nature of the recipient and why it qualified for the award. It soon dawned on me that she was talking about our infamous law firm. Admittedly, there were many qualified candidates. Yet, there were only two awards given in the private sector — one for companies over 25 employees and one for companies with fewer than 25 employees. With tears welling in my eyes, I gratefully accepted the award. But, for some unexplained reason, I was told I could not give my prepared 10-minute acceptance speech thanking everyone for our surprise award.

Six years later, I was once again asked to attend the ceremony. And, once again I refused. Soon, I received a call from the awards chair asking me if I could please attend. I told him that I still had a billable hour quota to make up from the loss when I attended three years previously. I could send somebody else, if necessary. He then told me, "Bill, you really need to attend again this time!" I asked whether or not the firm had once again made the cut. He told me that I was not supposed to know, but emphasized that I had "better attend." So, I attended. And,

once again, we received the coveted award with no prepared acceptance speech allowed.

The reason I appreciate The Family Friendly Award, contrary to the popularity contest in the Fairbanks News-Miner where any reader can vote daily, is because the Family Friendly Award represents input by the members of the office. After nominations are submitted, both the Fairbanks Chamber of Commerce and the Fairbanks North Star Borough jointly decide who will receive the award. In 2019, our firm was one of well over 200 candidates and, to my knowledge, the only company to ever receive the award twice.

One office policy in place for years is that "Family comes first." Work is a necessary requirement for most of us, even in this age of the great resignation and massive federal unemployment benefits. Still, in my opinion, the workplace should be a place where people ac-

I have learned that attorneys have to be careful about keeping talking birds as office mascots. Talking birds are a security risk to confidentiality. In addition, some of the birds have colorful vocabulary which they have learned from their owners or the office staff.

tually look forward to going each day. Friendships develop at work. Loyalties develop at work. And communicable diseases are often passed at work, allegedly often in the cribs in the annex basement next door by consenting employees.

People care for each other at work. In fact, we usually spend more waking time with our co-workers than with our families. There have been occasions in the office where someone has undergone a particularly stressful period of time. When that happens, all have pulled together to support the affected person. That stress can be the result of



"One office policy in place for years is that "Family comes first."

an illness, family relationships, financial, or a favorite pet running away or traversing the Rainbow Bridge.

Which finally brings me to the point of this massive missive. Over the years, we have had several animals as office mascots. The first non-human office member to join the firm was a lovable little Iguana named Zegar. Zegar was a Bosses Day gift from the staff. At the time,

Zegar was only 3 inches long. Zegar was named after a California attorney who I felt had been particularly obnoxious. Yet, in time, I actually grew to like Zegar, as did the rest of the staff.

When he was young, Zegar would perch on the back of the computers. This was when computer monitors were the size of apple boxes. The heat from the monitors was attractive to Zegar. (Even though Zegar was an iguana, he still had an affinity for monitors.) Zegar also loved vanilla birthday cake, gulping down huge mouthfuls like ripe deciduous tree leaves.

Over the years, Zegar grew in size to over six feet in length. As such, Zegar needed to have a screened cage built in my office. The cage still exists, although Zegar has since crossed the Rainbow Bridge. Zegar was quite happy in his cage. He could come and go as he wished. Many times when I would be visiting with a client in the office, Zegar would suddenly launch himself through the air and slam into his screen with a resounding wang. Invariably, the startled client would jump and spin around to see a meaty, fifteen-pound lizard clinging to the side of a wire cage hungrily eyeing the client like a piece of vanilla birthday cake.

One day, Zegar died. I was out of the firm on a long business trip when I got the news. The entire office was in mourning. After all, Zegar had been a beloved member of the firm. One particularly distressing thing about Zegar's passing was that no one kept Zegar's tail for soup. Nor his hide for a pair of boots or a belt. Rather, Zegar was solemnly buried in a dumpster, I was later told.

The next office mascots were two piranhas surreptitiously dropped into the office fish tank as a joke. I had previously populated the aquarium with smaller playful tropical fish known as Cichlids. The piranhas were aptly named Don and Jane after former Fairbanks attorney, Don Logan, and his girlfriend, Jane. Like their human counterparts, Don and Jane were always nipping at each other. In short order, both had succeeded in ridding the tank of my prized Cichlids. Don and Jane could be distinguished by the distinctive chunks that they took out of each other's rear ends. Don and Jane were actually enjoyable to watch as they chewed on each other.

Unfortunately, all that came to an abrupt end one day when a summer helper, Billy Pearson, decided to clean my fish tank. The bucket that Billy transferred Don and Jane

into while he cleaned the tank was the same bucket he had used earlier that day for scrubbing floors. Apparently, the bucket had disinfectant in its residue. Within seconds, both Don and Jane also crossed the Rainbow Bridge. Even Billy thought it was strange for them to be swimming upside down together, albeit a bit romantic. Later, Billy became an attorney and a partner in the Anchorage firm of Foley & Pearson. Although he is a respected Anchorage attorney now, I still view Billy as a cold-hearted piranha killer who summarily executed Don and Jane.

Cats have also been visitors to the office. Some staff are owned by several cats. Although I have never had a profound fondness for cats, I do still find them to be entertaining. From time to time, a cat will be brought into the office because it needs to go to a vet or because it is lonely. Cats also have the unique ability to clear the office of unwanted pests. In fact, the office is devoid of roaches.

Then there are the birds. We have had a parrot which comes to the office occasionally, as well as a cockatiel. I have learned that attorneys have to be careful about keeping talking birds as office mascots. Talking birds are a security risk to confidentiality. In addition, some of the birds have colorful vocabulary which they have learned from their owners or the office staff.

But, in the end, dogs make up the bulk of the office mascots. When Judge Thomas Temple used to work at the firm, he would bring his dog, Riker, to work. Riker would sit patiently in the office while Tom worked and generally kept to himself except when he pooped on my office floor or peed on the office chairs.

And then there is Amy Welch's dog, Inigo, who is named after a movie character. According to Amy, Inigo was a rescue who had been used as a training dog for illegal dog fighting. Despite his traumatic past, Inigo certainly is a delightful pet who regularly visits my office to practice catching pepperoni pup treats. However, because Inigo has both vision and hearing issues, he never makes much progress catching pepperoni treats. On the other hand, Inigo and I do have a relationship and he is not afraid to enter my office during client meetings. Fortunately, Inigo does not prolifically poop or pee like Riker did. But Inigo has his own issues. One thing that we have learned is not to leave the office door open. When that happens, Inigo is prone to go on walk-about. Everything quickly stops and the entire staff goes into a panic trying to find Inigo before he gets hit by a car that he did not see or hear.

Undoubtedly, there will be other office mascots. Certainly, the presence of these non-humans has made the day much more enjoyable. And they also add a needed perspective to work. In retrospect, perhaps it was our mascots which made the nominations for Family Friendly Workplace.

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



Continued from page 1. Judge Kari McCrea (front row center) and YWCA CEO Theresa Lyons (front row far right) joined students in an Anchorage courtroom.