

## Is the Alaska law community ready for artificial intelligence?

### AI itself sets the stage for legal applications

By ChatGPT

Alaska, known for its stunning landscapes and vibrant culture, has always been a land of adaptation and innovation. As we venture into the 21st century, the state's legal sector finds itself on the cusp of a transformative change driven by the rise of Artificial Intelligence (AI). From enhancing research capabilities to streamlining administrative tasks, AI is poised to revolutionize the practice of law in Alaska, bringing about efficiency, accuracy, and new opportunities.

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### AI can't replace human touch in Alaska practice

By Diana Wildland

This morning, freshly returned from a bar conference and finally staring down my always-insurmountable to-do list, I made an account on ChatGPT. I entered the prompt: "Write an article for the Alaska Bar Rag about how AI is going to change the practice of law in Alaska." In less than a minute, I had a six-point essay pointing out the obvious benefits of incorporating artificial intelligence into legal practice in Alaska. It incorporated flattery (Alaska's "stunning landscapes and vibrant culture") and

Continued on page 2

## Justice Pate installed to Alaska Supreme Court in Sitka

From the Alaska Court System

Justice Jude Pate was installed to the Alaska Supreme Court during a ceremony June 9, 2023, at the Alaska Native Brotherhood Hall in Sitka. Justice Daniel E. Winfree (ret.) administered the oath of office, and Justice Peter J. Maassen welcomed a large gathering of friends, family, co-workers, and members of the Sitka community.

Gov. Mike Dunleavy appointed

Justice Pate to the Supreme Court Jan. 20, 2023, filling a vacancy to be left by Justice Winfree who retired in February.

Addresses and remarks were provided by Justice Maassen, Justice Susan M. Carney, Justice Dario Borghesan, and Justice Jennifer S. Henderson with the Alaska Supreme Court; Judge Amy Mead, Presiding Judge, First Judicial District; Judge Kirsten Swanson, Juneau Superior Court; Dionne Brady-Howard, Tribal Council member, Sitka Tribe of Alaska; John Straley, former writer laureate, State of Alaska; and Brian E. Hanson, Sitka Bar Association. Justice Pate's mother, Suzanne Pate, and his children performed the robing.

Justice Pate is the 27th justice of the Alaska Supreme Court, the first justice from Sitka, and the first justice from Southeast since Justice Walter L. Carpeneti retired in 2013. Justice Pate's chambers are in Juneau.

Justice Pate earned a journalism degree from the University of



Justice Pate's sons Joseph, left, and Will assist the robing.

Kansas and attended law school at Lewis & Clark Northwestern School of Law in Portland, OR.

He came to Alaska in 1993 and clerked for the Chief Judge of the Sitka Tribal Court, William Brady. He then served as legal counsel for the Sitka Tribe of Alaska, operated

a private law practice, and was an assistant public defender. He was appointed to the Sitka Superior Court in 2018 by Gov. Bill Walker. Justice Pate and his wife Christine have two sons, William and Joseph, and a four-legged Bethel special named Oscar.



Justice Daniel E. Winfree (ret.) administers the oath of office.



After the ceremony Justice Pate's family gathered for a photo. From left are son Joseph; wife Christine; and son Will.

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#### CAPTIONS

PATE | PATE 3.

PATE ROBE

PRESIDENT'S COLUMN

# AI can't replace human touch in Alaska practice

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self-aggrandizement (“AI is poised to revolutionize the practice of law in Alaska”) to the point that what emerged was little more than an advertisement for the legal services of ChatGPT. (See the AI-generated story on page 1)

Lawyers are already deeply divided about what role, if any, AI is going to play in the legal advocacy of the future. No person living in the 21st century is unaware that technology — especially emerging technology — is full of pitfalls. One Manhattan attorney made headlines in June when he used ChatGPT to file a motion and was chastised by the judge when the attorney realized, apparently on record, that AI had made up case law to support the arguments in his brief. And state bars have been objecting to proposals that would have AI feed arguments to *pro se* traffic court litigants using a small speaker.

At the same time, we are at a crossroads: both for access to justice and for the practice of law. During a presentation by the World Justice Project at the American Bar Association's National Conference of Bar Presidents last week, president-elect Jeff Robinson and I learned that 90 percent of the world's legal needs are not being met. This is no less true in Alaska where, despite popular and successful *pro bono* events and progressive movements

to improve accessibility by lowering the bar cut score and ALSC's new Community Justice Worker program, people still struggle to get access to legal counsel.

We must continue to be creative about the way we approach our profession. State bars are aging, and young people do not want to work for firms that do not or cannot support their lawyers having a life outside of the office. At this same conference, the ABA reported that 59 percent of attorneys report working more than 40 hours per week. My father, who joined the Alaska bar in 1979, responded, “That seems low.” And the ChatGPT essay I generated is not wrong that it could reduce the burden of “spending countless hours sifting through mountains of case law, statutes and regulations to build solid arguments.”

But ChatGPT misses the point. Being a lawyer is not really about “quickly identify[ing] relevant precedents” to “create stronger, well-informed legal strategies.” The AI's concern about “reducing the risk of oversight and human error” ignores the necessity of the human element in the work that we do. As well as ChatGPT thinks that it can predict outcomes by looking at previous rul-



**"Law school doesn't teach us to navigate the level of complex emotion that controls even the most basic bankruptcy or eviction proceeding."**

ings, it cannot consider, as lawyers do, the things that actually move the needle: the defendant's demeanor in court; the judge's attitude toward your client; the storytelling power of the facts before the court; counsel's engagement with a jury.

As a lawyer who represents people, I know that a lot of what I do is social work. Law school doesn't teach us to navigate the level of complex emotion that controls even the most basic bankruptcy or eviction proceeding. We are not trained in how to listen to our clients when they are crying. This is earned through lived experience. In the end, “human error” is often what brings our clients to us, and seeing it reflected back is what makes our representation meaningful to our clients.

This is especially true in our bar. Alaskans are boldly and unapologetically unique. (I'm thinking now of the popular bumper sticker that says of Fairbanks, “we're here because we're not all there.”) We cherish our independence as much as we cherish our community. Artificial intelligence may be an effective band aid in an emergency, but nothing can replace the value of a sincere, and human, connection.

So, will AI save the world? Right now, it's impossible to say how its use will impact the legal advocacy landscape of the future. Certainly, there will be a place for AI generated content in our world (*Ode to the Alaska Bar Association* on page 3). But for now, it's all in jest. I don't foresee our next bar president Jeff Robinson being replaced by Jeff Robot-son any time soon. As I end my term as president, I feel confident that our bar association is among the strongest in the “human element” of any in the nation. Our power is in the people we are and the people we serve. ChatGPT can't generate that.

*Diana Wildland is president of the Alaska Bar Association. She was born and raised in Fairbanks. She has been a member of the board since 2020, and previously served as the Board New Lawyer Liaison from 2018-2020. She graduated from University of Oregon School of Law in 2017. She is currently a supervising attorney in Fairbanks with the Alaska Public Defender Agency.*

EDITOR'S COLUMN

## Rag's heritage confirmed by unanimous poll result

By Ralph R. Beistline



**"I am told that a sign of old age is a growing focus on the past — but the paper's past is a good one, well worth the read."**

The BAR RAG is now fast approaching its 45th birthday. Happy Birthday! To celebrate, I am publishing below a portion of the Editor's Column I wrote 35 years ago on the paper's 10th birthday. Coincidentally, it was the first edition of the paper that I was editor — the first time I was editor. That edition contained a very well-written and thorough article by Mickale Carter that set forth anything one would need to know about the history of this great publication, entitled **Rag Roots Revealed**. But there was much more in that edition, including a detailed description of Bob Groseclose's ascent of Mount Denali with photo of a communal commode at the 7,000-foot level, complete with operating instructions in seven languages; there was Robert Wagstaff's pilgrimage to Soviet Siberia; and, of course, Michael Schneider's continuing battle with tort reform. Also included was a list of those who recently passed the Bar Exam, which I have included herewith for those interested, and there was an article by Harold Brown, a former Alaska attorney general and executive director of the Judicial Council who was defending the Judicial Council, much like a similar article in this edition of the

paper. And there were articles about two judicial retirements, Judge Buckalew in Anchorage, and Judge Blair in Fairbanks. Judge Blair's retirement brought out the poetry skills of long time Fairbanks attorney Dave Call, who wrote the attached poem to the retiring judge.

We were a much younger bar association 35 years ago, so there were no obituaries. And there were numerous excerpts from the Tanana Valley Bar Association minutes, including a report by Skip Cook of a trial he had with Randy Olsen in which the defendant, accused of murdering her husband, had been asked why she shot him with a bow and arrow. She explained that she didn't want to wake the children. Olsen chimed in to say that Cook had missed the best part of the story, which was the defendant's explanation that she didn't know that the bow was loaded.

I am told that a sign of old age is a growing focus on the past — but the paper's past is a good one, well worth the read. And many of the past editions are now on-line to

peruse at your leisure. Certainly, an enjoyable trip down memory lane.

Anyway, below are pertinent parts of my flagship article, which included a little history, and which addressed the name of the paper.

*From the Editor's Desk: August-September 1988*

This is the 10th Anniversary Edition of the Bar Rag. Ten years ago, Jimmy Carter was President of the United States, Jay Hammond was Governor of Alaska, and Ken Jarvi was President of the Alaska Bar Association (note each of their names contained the letter J). The state was still oil rich and the number of Alaska attorneys was growing.

The elements were right (Three J's.) The dream of a Bar newspaper, conceived months earlier in the shimmering shadows of the courthouse, by various visionary

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First edition 1978

### The Alaska BAR RAG

The Alaska Bar Rag is published quarterly by the Alaska Bar Association, 840 K St., Suite 100, Anchorage, Alaska 99501 (272-7469).

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December	Nov. 10

[Editor's Disclaimer: As with all Bar Rag articles, advertisements and letters, we do not vouch for, stand by, or support most of what we publish. Nor have we cleared any of this with either the FDA or the Department of Homeland Security (aka Interior Ministry). We sure as hell won't be responsible for your hurt feelings or misguided reliance on anything we publish or not]. TVF2000

# AI itself sets the stage for legal applications

Continued from page 1

## 1. Legal Research and Analysis

In the digital age, legal professionals are no strangers to spending countless hours sifting through mountains of case law, statutes, and regulations to build solid arguments. AI is changing this landscape by offering sophisticated tools that can analyze vast quantities of legal information in a fraction of the time. Platforms powered by AI algorithms can quickly identify relevant precedents, helping attorneys in Alaska create stronger, well-informed legal strategies. Moreover, AI-driven analytics can provide insights into how judges have historically ruled on similar cases, giving lawyers a competitive edge when presenting their arguments.

## 2. Document Review and Due Diligence

Document review and due diligence are often time-consuming aspects of legal practice. AI-driven software can now assist in this process by sifting through documents to identify pertinent information, thus reducing the risk of oversight and human error. This is particularly significant in Alaska, where large volumes of documents are often involved in cases related to resource management, land use, and indigenous rights.

## 3. Contract Analysis and Drafting

In a state where contracts play a pivotal role in various industries, AI-powered contract analysis tools offer invaluable assistance. These tools can help lawyers identify potential issues, inconsistencies, and clauses that might require closer examination. AI can even aid in drafting contracts by suggesting standard clauses based on the specific circumstances, saving time and reducing the likelihood of errors.

## 4. Enhanced Efficiency and Cost Savings

Alaska's vastness often presents logistical challenges, making remote collaboration and communication crucial for legal teams spread across the state. AI-powered communication tools, chatbots, and virtual assistants can facilitate smoother interactions, ensuring that legal professionals can work seamlessly across distances. This is particularly relevant when dealing with remote communities and clients.

## 5. Ethical and Regulatory Considerations

While the benefits of AI in the legal field are vast, it's important to address ethical and regulatory considerations. Alaska's legal community must grapple with questions surrounding the ethical use of AI, data privacy, and ensuring that

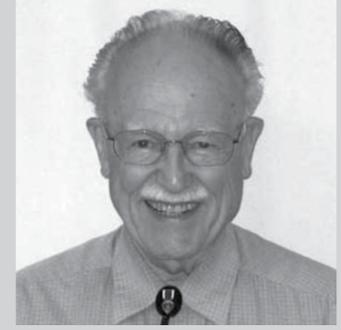
AI-driven decisions are transparent and understandable for clients and the public.

## 6. New Avenues for Legal Practice

The rise of AI doesn't just pose challenges; it opens up new avenues for legal practice in Alaska. As the technology evolves, legal professionals can explore areas like AI-related regulations, intellectual property concerns in AI development, and the legal implications of emerging technologies like autonomous vehicles and drones, which have unique relevance in the Alaskan context.

## Conclusion

Alaska's legal landscape is on the brink of an exciting transformation, thanks to the integration of AI. While the technology promises to streamline various aspects of legal practice, it's important to approach its implementation thoughtfully, keeping ethical considerations at the forefront. As AI continues to evolve, Alaska's legal professionals have an opportunity to leverage its capabilities to not only enhance their practice but also to ensure that justice remains accessible, efficient, and effective for all Alaskans. Embracing AI's potential while maintaining the core values of the legal profession will undoubtedly shape a brighter future for Alaska's legal community and the clients it serves.



Gordon Severson

## Bailiff experiences a woman-dominated trial scenario

It may be time for an all-women reboot of the movie "12 Angry Men." Gordon Severson, 93, has been serving as a bailiff in Anchorage for more than 20 years and is still experiencing firsts on the job. In August he experienced his first all-women jury. All 14 jurors, including the two alternates, were women. Severson also thought it was interesting to note that both prosecuting attorneys as well as the judge were women as well. Severson said he enjoyed the women-dominated jury and noted they "were a very amiable and compatible bunch."

Alaska has allowed women to serve on juries since 1923 when it was just a territory. At that time, 18 other states similarly allowed women jurors. Mississippi was the last state to make women eligible to become jury members in 1968.

## ChatGPT's artificial intelligence ode to the Alaska Bar Association

Thanks to Chris Newbold, one of our partners from ALPS Insurance, we were inspired to ask ChatGPT to write a Dr.-Seuss-inspired poem about the Alaska Bar Association. The results were too good not to share:

*In the land of Alaska, where snowflakes dance in glee,  
Stands the Bar Association, as grand as can be.  
With lawyers in suits and judges so wise,  
They uphold justice under Arctic skies.*

*They gather together in this frozen land,  
Guiding the law with a steady hand.  
From Anchorage to Fairbanks, they span wide,  
Supporting attorneys on their legal ride.*

*Their books are their treasures, knowledge they hoard,  
As they advocate justice and laws they're adored.  
The Alaska Bar Association, oh, what a sight,  
A beacon of justice, shining so bright!*

If this poem inspired you to learn about artificial intelligence, consider signing up for our CLE:

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## 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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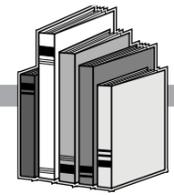


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# Law Library



## Library offers VitalLaw research platform

By Susan Falk

As you know, the Law Library offers a wide range of electronic legal research tools on our public access computers. Available options include Westlaw, HeinOnline, the Lexis Digital Library, and more. Today I'd like to highlight another resource, VitalLaw, formerly Cheetah. This is the research platform containing titles from Wolters Kluwer and Aspen publishers.

VitalLaw includes content covering a broad swath of subjects. Practice areas include:

- Antitrust & Competition
- Elder and Estates Law
- Energy & Environment
- Family Law
- Government Contracts
- Healthcare
- Intellectual Property
- Labor and Employment Law
- Litigation
- Pension & Employee Benefits
- Practice of Law
- Products Liability & Insurance
- Property & Construction Law
- Securities
- Sexual Harassment & Workplace Compliance
- Transportation
- Within these categories, resources vary. You will find

treatises like Myers on Evidence of Interpersonal Violence under Family Law, while the Sexual Harassment practice tab houses EEOC policy guidance documents and direct links to federal statutes and regulations. Other helpful tools include Quick Answers and Expert Guidance on black letter law questions, sample documents like policy templates, and up-to-date legal news.

Our VitalLaw subscription includes roughly 300 treatise titles. The collection is especially broad in tax subjects and state-specific employment laws. There are case-law compilations like the Federal Carriers Reporter and the Aviation Law Reporter, as well as agency materials like the Department of Justice Manual and the EBSA Enforcement Manual.

VitalLaw also offers a variety of practical content and tools. There are guidebooks like the Americans with Disabilities Handbook and the Civil RICO Practice Manual, sample forms with expert analysis, and Smart Charts, SmartTasks, Answer Books, and checklists. In short, VitalLaw contains a wealth of tools designed to assist you in your practice and save you time.

VitalLaw is available on every public library kiosk, in most

courthouses throughout the state. If you're using VitalLaw in a rural location and need assistance, library staff is available to help Monday through Thursday, 8 a.m. to 6 p.m., 8 a.m. to 4:30 p.m. Fridays,

and noon to 5 p.m. Sundays. Call us at 907-264-0856, or email us at library@akcourts.gov.

Susan Falk is the Alaska law librarian.

## Bar People

### Davis Wright Tremaine welcomes labor, employment partner

Michael O'Brien, an attorney with more than two decades of wide-ranging labor and employment-related experience, has joined Davis Wright Tremaine LLP's employment services team in Anchorage.

O'Brien comes to Davis Wright from Perkins Coie LLP, where he built a local and national practice that encompasses traditional labor, litigation and counseling.

A significant portion of his work involves advising clients on their most complex labor challenges: union organizing, collective bargaining, arbitrations and responding to unfair labor practice allegations.

Prior to joining Perkins, O'Brien spent 11 years as associate general counsel at the University of Alaska. There he represented system universities in complex legal issues involving labor and employment, Title IX, NCAA violations, and other education laws. He began his career as a State of Alaska public defender, where he tried dozens of jury trials to verdict.



Michael O'Brien

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## J.B.

*James Blair, the judge, has quit.  
He's stepped down from his throne.*

*The tears flow freely down  
My cheeks. I sigh. I groan.*

*Blair says he will not leave  
This place. He likes it here.  
He will not tell us what  
He plans to do. O dear.*

*With whom will he join up?  
With what will he combine?  
Perhaps he will decide  
To practice with Steve Cline,*

*Or maybe Rita Allee  
Or Douglas Blankenship  
Or Barry W. Jackson  
Or James D. DeWitt?*

*He used to be with Hoppner  
And Mayor Julian Rice.  
Perhaps those three will reconcile.  
Wouldn't that be nice?*

*No, James R. Blair will be  
A solo lawyer here, like thee.  
He will not have quite so much  
power.  
When in his presence we need not  
cover.*

*We need not even stand  
When he walks into court.  
We can sit upon our duffs,  
And not commit a tort.*

*We can all give him the finger,  
For now he's one of us.  
He can even come to lunch here.  
Won't that be fabulous!*

By Dave Call

## Fairbanks judge sheds robe for running shorts

Retired Fairbanks Superior Court Judge Mark I. Wood was victorious in his age group of the 41st running of the Fairbanks Midnight Sun Run which took place June 23, 2023. Pictured in an orange shirt pre-race, he was joined by the 2,000 other runners from across the United States and worldwide. Runners enjoyed approximately 21 hours, 48 minutes of daylight during the annual Summer Solstice 10-kilometer event sponsored by Fairbanks Daily News-Miner.



## Rag's heritage confirmed by unanimous poll result

Continued from page 2

members of the Board of Governors, was coming to term. Finally, in September 1978, after intense labor, the Alaska Bar Association gave birth to the Bar Rag.

**John Abbot** served as first editor of the young paper, and in his first editorial column, expressed his hope for the fledgling publication.

A year later, **Harry Branson** was to assume custody of the infant paper, and nurtured it through the endless growing pains of adolescence. Then, after six years, Harry's endurance waned, and **Gail Frait**, who had previously worked as a columnist, assumed the mantle of editorship and guided the paper for a year, imparting sage advice and ageless wisdom to his readers.

Next was **James Bendell**, who, in a very professional manner, brought the paper to maturity, cleaned the rough edges, and stood as guardian over one of the best such periodicals in the nation.

It is now my turn (we take turns.) It is my hope to build upon the hopes and dreams of the Bar Rag's progenitors, and to continue to improve upon what is already an excellent product.

In the last edition of the Bar Rag, a poll was taken addressing the propriety of the publication's name. We were happy to see such an enthusiastic response and can now report that of the 2,500 persons who were asked to take part, four responded. Polls being as they are, we consider this result to be statistically signifi-

cant and have noted that all four responders favored retaining the paper's name.

Anxious as we always are to please our readership, and considering the overwhelming mandate of our recent poll, we have elected to retain the Bar Rag's name for at least another decade.

We now begin our second decade of publication and do so with great

expectations, and with the hope that you will continue to contribute to our paper to make it relevant, to make it meaningful, and to make it entertaining. These are our goals, and, with your help, we will obtain them.

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

## A farewell to Fairbanks

By Ryan Tansey

*In the land of Fairbanks, where the snowflakes fall, there's a legal community, the best of them all.*

*Where lawyers gather, their minds sharp and keen, To practice law in this little Arctic dream.*

*Then appear! The TVBA Lunch, oh so dear, a gathering of souls, a sense of cheer.*

*In this chilly home, where justice prevails, A federal prosecutor leaves with some... unusual tales.*

*So here's to Fairbanks, where the law's at play, where the midnight sun lights up our way.*

*The lawyers here, we shine so bright, with the northern lights to guide us through the long winter nights.*

United States Attorney Ryan Tansey is transferring to Washington, D.C., and wrote this farewell poem for the Tanana Valley Bar Association.



Captain Ryan Tansey

## SUCCESSFUL BAR EXAMINEES

February, 1988

Thomas A. Ballantine, III  
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Mark D. Butterfield  
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Susan M. Carney  
Connie L. Carson  
Douglas A. Carson  
Mark D. Christensen  
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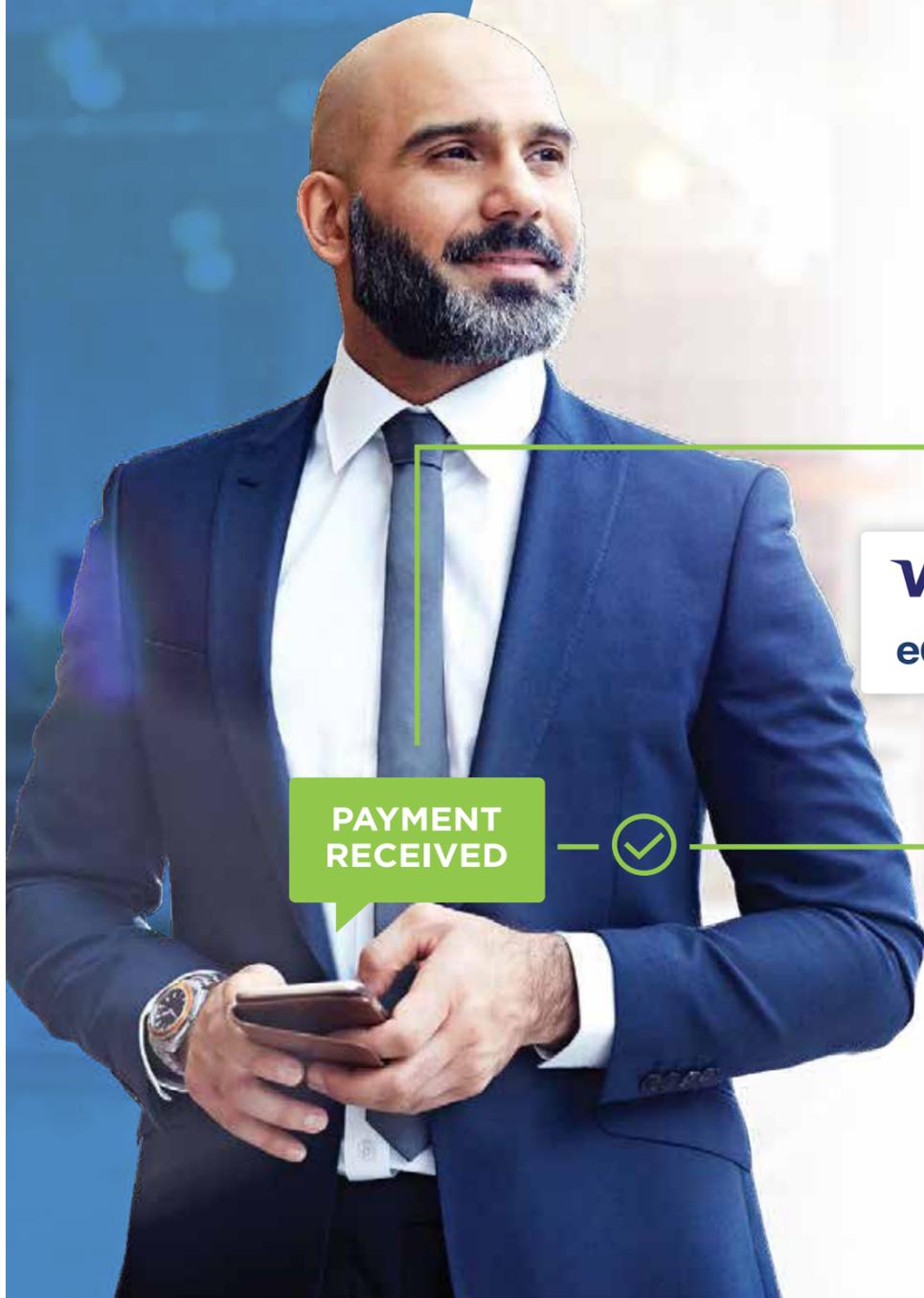
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Twenty-four Tribal ICWA workers gathered in Anchorage for a Basic ICWA Training for Tribes put on by ANJC.

## In-person social service training connects workers

### Alaska Native Justice Center

When a family needs a well-child check in Aniak, it's part of Mary Kvamme's job to follow up. She accompanies a state trooper, and sometimes a social services associate comes along, too. As an Indian Child Welfare Act (ICWA) tribal worker, Mary works alone; the local trooper and associate are all the support she has.

"In the village, we don't have the lawyers there. We don't have the social workers there," she pointed out.

In April, Mary joined 23 other ICWA workers from around the state for the Alaska Native Justice Center's (ANJC) first Basic ICWA Training for Tribes in Alaska. The training complements ANJC's other support for ICWA workers in Alaska, including legal representation for tribes involved in Child-in-Need-of-Aid hearings within the Anchorage and Southcentral regions.

"This training is something that's been needed to fill a gap and make sure that those who do this hard work in their communities have the support they need," said Casey Groat, ANJC tribal justice facilitator.

Across Alaska, tribes strive to provide necessary ICWA services, but funding, recruitment, and retention of staff can be challenging. While some tribes have a dedicated ICWA coordinator, others have a staff person who only works part time, or whose time is divided between ICWA work and other duties. Additionally, ICWA caseworkers in-

tervening on behalf of children are often working from remote villages and can only appear in court proceedings by telephone.

While ANJC provides support for ICWA workers in the form of representation and technical assistance, the introductory training course provided an opportunity for ICWA staff to get questions answered and to form connections with other workers from all around the state.

The April training covered topics like tribal sovereignty and how tribes can address child safety concerns on their own and advocate for culturally relevant services.

Featured guests included statewide ICWA coordinator Tasha Yatchmeneff and Anchorage regional ICWA specialist Robin Charlie, who spoke about how the Office of Children's Services (OCS) assesses child safety and collaborates with tribes.

"The better tribal workers understand the state system, the more they can hold the state accountable," Casey pointed out. "Learning the lingo and who's responsible for what at the state equips tribal ICWA staff to advocate for the child and the family in the best way."

The training also included a panel featuring three Alaska Court System judges who answered participants' questions.

"To hear from the judges when they're not on the bench in a black robe really helped to show their humanity," Casey said. "I think that helps the ICWA workers feel more comfortable in a court setting and

encourages them to participate because they got to hear firsthand how the judges value their role and their input."

Sponsored by the Bureau of Indian Affairs Human Services, Alaska Region, ANJC's Basic ICWA Training was offered again, virtually, in May. Two additional trainings were on this year's calendar: another virtual training Aug. 23-24, and an in-person session Oct. 12-13.

"The beauty of having the training in person is the ICWA staff can create those connections with each other and learn from each other," Casey shared.

She hopes to build intermediate and advanced trainings based on the basic training. "There's just

so much to cover, and the two days go by so fast. It would be great to strengthen statewide support of tribal ICWA workers by bringing those same workers back together for more advanced trainings."

ANJC will also host a Tribal Child Welfare Conference, Sept. 26-28, in Anchorage. Tribal ICWA workers and Tribal representatives from across the state can register to attend here (<https://bit.ly/3Q6z827>).

Learn more about how ANJC supports tribes across the state through their ICWA (<https://bit.ly/3Y70K93>) and Tribal Justice Support (<https://bit.ly/3O71Q05>) programs. To sign up for future ANJC ICWA trainings contact [icwa@anjc.net](mailto:icwa@anjc.net).

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Members of the sponsoring organizations joined Mary Smith (orange jacket) for a picture. (Photo by Dena Boughton)

## President-elect of American Bar visits Alaska

*From the Alaska Bar Association*

NANA Regional Corporation held a reception June 28 for Mary Smith, then president-elect of the American Bar Association. Smith is the first Native American woman in this role. In August 2023 she was to become president of the world's largest voluntary association of lawyers, judges and other legal professionals. The reception was sponsored by the Alaska Bar Association, Alaska Bar Native Law Section and the Anchorage Bar Association.

Smith was CEO of the Indian Health Service from 2015 to 2017: a \$5 billion national health-care organization with more than 26 hospitals, 50 clinics and a staff of 15,000. The service is an agency within the U.S. Department of Health and Human Services responsible for providing direct medical and public health services to members of Native American tribes and Alaska Native people.

"It's a very large and very bureaucratic part of the U.S. health system and not an easy thing to manage," Bill Horton, a Jones Walker LLP partner who serves on the American Bar Association nominating committee, told Law360. "Mary really did a good job with that and was able to bring a really vital perspective as a member of an indigenous tribe."

Smith, a member of the Cherokee Nation, also uses her background in STEM to encourage other people, especially women, with Native American heritage to enter the science, technology, engineering and mathematics fields. In 2017, she founded the Caroline and Ora Smith Foundation, which trains and supports Native American girls in STEM fields.



Mary Smith speaks with Alex Cleghorn, chief operating officer of the Alaska Native Justice Center. (Photo by Danielle Bailey)



Joining the ceremony were, from left: Magistrate Judge Amanda Schulz; Senior Judge William B. Carey (Ret.); Senior Judge Trevor Stephens (Ret.); Judge Kevin Miller (Ret.); Judge Kristian B. Pickrell; Chief Justice Peter J. Maassen; Judge Kathryn H. Lybrand; Judge Daniel Doty; and Judge Amy Mead. (Photos by Lesa Robertson, Alaska Court System)



Judge Kevin Miller, Ketchikan District Court (Ret.) administers the oath of office to Judge Kristian B. Pickrell.

## New judge installed at Ketchikan District Court

Judge Kristian B. Pickrell was installed at a ceremony June 16, 2023, in the Ketchikan courthouse. He was appointed to the Ketchikan District Court by Gov. Mike Dunleavy in October 2022.

A gathering of family, friends, co-workers and community members was welcomed by Chief Justice Peter J. Maassen. Judge Kevin Miller, Ketchikan District Court (Ret.) administered the oath of office, and remarks were given by Chief Justice Maassen; Judge Amy Mead, Presiding Judge, First Judicial District; Judge Kevin Miller, Ketchikan District Court (Ret.), and Clay Keene with the Ketchikan Bar Association.

Judge Pickrell was born and raised in Ohio. He fell in love with Southeast Alaska and adopted Ketchikan as his home. Judge Pickrell is a re-

tired Coast Guard officer. During a 20-year career, he served at sea on three Coast Guard cutters, followed by 13 years as a judge advocate. Prior to his appointment to the bench, he was an assistant district attorney and district attorney in Ketchikan.

Judge Pickrell graduated from the Coast Guard Academy in 1998, with a Bachelor of Science in Marine and Environmental Sciences. He graduated from Ohio State University Moritz College of Law and was admitted to the Alaska Bar in 2005.

His wife, Rhonda, was born and raised in Ketchikan. They have two children, and a faithful but ornery chocolate lab, a good girl named Charlie.

# Kenai Superior Court installs Judge Lawson

## *From the Alaska Court System*

Judge Kelly J. Lawson was installed to the Kenai Superior Court in a ceremony July 28, 2023, at the Kenai Courthouse. She was appointed by Gov. Mike Dunleavy March 13, 2023. Justice Jennifer S. Henderson welcomed friends, family, and co-workers in attendance, and administered the oath of office. Justice Henderson delivered remarks along with Judge Lance Joanis and Judge Martin Fallon, and friends Robyn Atkins, Tanya Shafer and Helen Hickmon, and Parrisa Harris with the Kenai Bar Association.

Judge Lawson was born and raised in Alaska, splitting her time between the Interior (Cantwell) and the Kenai Peninsula (Anchor Point). She received her bachelor's degree in Justice in 1999 from the University of Alaska Fairbanks. In 2002, Judge Lawson received her Juris Doctorate from the Univer-



Attending the ceremony were from left: Kimberly Sweet, Magistrate Judge; Jason Gist, Superior Court Judge; Lance Joanis, Superior Court Judge; Kelly J. Lawson, Superior Court Judge; Jennifer S. Henderson, Supreme Court Justice; Michelle Higuchi, Magistrate Judge; and Martin Fallon, District Court Judge. (Photo by Lesa Robertson, Alaska Court System)

sity of Montana in Missoula. Judge Lawson's career has been devoted to public service, having worked for the

Department of Law and the Office of Victims' Rights prior to becoming a judge. She loves life on the Kenai

Peninsula and is honored to be able to continue to serve her communities from the bench.

# Anchorage Superior Court welcomes new judge

## *From the Alaska Court System*

Judge Christina Rankin was installed to the Anchorage Superior Court July 14 at a ceremony in the Boney Courthouse. She was appointed by Gov. Mike Dunleavy Jan. 6, 2023.

Chief Justice Peter J. Maassen welcomed family, friends, and co-workers and administered the oath of office. Justice Maassen, Judge Marjorie K. Allard, Judge Jonathan A. Woodman, and Judge Pamela S. Washington provided remarks. Judge Rankin's friend Molly Brown also spoke, along with friend and former co-worker Kristina Crabb, and Matt Widmer, president of the Anchorage Bar Association. Judge Rankin's husband Scott Rankin and her daughter performed the robing ceremony.

Judge Rankin was born and raised in New York. She attended the University of Rochester, graduating in 1999 with a B.A. in Political Science, and earned her J.D. cum laude from Syracuse University College of Law in 2002. After graduating, she moved with her husband Scott to Bethel, beginning her career clerking for Superior Court Judge Dale O. Curda. While Alaska was supposed to be a one-year adventure, they were not ready to leave after her clerkship and relocated to Anchorage. In 2003, she joined Guess & Rudd P.C., where she spent her entire legal career until being appointed to the bench, working her way up the ranks from associate to managing shareholder and senior litigation shareholder.

Judge Rankin lives in Anchorage with her husband, their daughter, Elena, her mother, Karen Herouart, and their array of pets, Otto, Zoe, and Bun-Bun.



Attending, from left, are: Chief Judge Marjorie K. Allard, Alaska Court of Appeals; Chief Justice Peter J. Maassen, Alaska Supreme Court; Judge Rankin, Anchorage Superior Court; Judge Pamela S. Washington, Anchorage District Court; Judge Jonathan A. Woodman, Palmer Superior Court. (Photo by Lesa Robertson, Alaska Court System)

# It's official, sitting Judge Bahr installed to Court

## *From the Alaska Court System*

Judge Maria Bahr was installed July 7 to the Fairbanks District Court in a ceremony at the Courthouse in Fairbanks. Bahr was appointed by Alaska Gov. Mike Dunleavy in March 2021. Justice Susan M. Carney welcomed family, friends and co-workers to the ceremony, and administered the oath of office. Addresses and remarks were given by Justice Carney, Judge Patricia L. Haines, Judge Kari McCrea, Magistrate Judge Suzanne R. Cole (Ret.), Diana Wildland, President of the Alaska Bar Association, and Amy K. Welch with the Tanana Valley Bar Association.

Judge Bahr's sons Billy Ballantine and Teddy Bahr performed the robing ceremony.

Judge Bahr was raised in Arizona and attended Harvard University and UCLA. She moved to Alaska in 1990, clerking for both the Anchorage Superior Court and the Alaska Court of Appeals. She worked in Sitka, Kodiak, Palmer and Anchorage for the Alaska Public Defender Agency. She was the director of the Lawyer Assistance Programs for the State Bar of Arizona, then chief Bar counsel for the Alaska Bar Association. Judge Bahr became ethics counsel for the Alaska Department of Law in 2017.



Members of the judiciary joined the new judge after the ceremony. From left are: Judge Patricia L. Haines, Fairbanks Superior Court; Judge Bahr, Fairbanks District Court; Presiding Judge Terrance Haas, Fourth Judicial District; Justice Susan M. Carney, Alaska Supreme Court; Judge Kari McCrea, Anchorage District Court. (Photo by Lesa Robertson, Alaska Court System)

## The other side – what they don't teach in law school

By William R. Satterberg, Jr.

### Part II

NOTE: In the exciting Part I of the four-part trilogy: *The other side — what they don't teach you in Law School*, our readers learned of Mr. Satterberg's antics in the courtroom over a 47-year period of practice extending from government service to the private sector. Now the exciting, nail-biting story continues with additional stream-of-consciousness musings of which Mr. Satterberg has been accused regularly, not only by the court but, by certain unnamed Anchorage counsel, as well.

Another case I had before Judge Mark Wood was a domestic violence charge. My client had been accused of crushing Cheetos into his wife's hair. He was upset because she had been lying on the couch watching TV sitcoms and eating Cheetos while he was cleaning the house.

As often occurs, the State was not willing to resolve the case. So, it proceeded to trial. As is often the case, by trial time, both the wife and the husband had fully reconciled. Furthermore, they were justifiably embarrassed about their childish behavior. Still, the State would not dismiss the case. After all, father knows best.

When it came time to cross-examine the wife, I addressed the Cheetos being ground into her hair. I asked if she liked being a redhead, drawing laughter. I then produced a bag of Cheetos. "Does this look similar to the involved bag of Cheetos?" I asked. She said the bag looked the same. I next moved for it to be admitted into evidence. As expected, the state's attorney objected for some long-forgotten reason. After all, if in doubt, object. Before the court could rule, I pulled up a shopping bag and dumped ten extra bags of Cheetos on my counsel table. I assured the court that I had brought enough goodies for everybody, including even the prosecutor. When the case was over, resulting in an acquittal, an empty bag of Cheetos came out of the jury room with the evidence sticker still attached. The jury had consumed the evidence. Yet another heinous crime. The empty bag adorned Judge Wood's chambers door with the evidence sticker still attached until his retirement.

There used to be a set of hydro-

lically operated counsel chairs in the courtroom. One of the chairs was defective. Counsel knew that whoever got the chair would be sitting well below the normal level of counsel table having to look up at everyone else in the courtroom. First come, first served. As such, we regularly attempted to switch that chair depending upon who arrived at the courtroom first. I usually lost the battle, unless Jeff O'Bryant was opposing counsel.

But probably one of the best switcheroos that took place in the courtroom was during Judge Winston Burbank's retirement. Fortunately, the statute of limitations for a complaint has long since expired.

It was a momentous day. The daily calendar call was taking place. It was Judge Burbank's final calendar call before leaving the bench. Calendar calls were always well-attended, often being the equivalent of a social event depending on the judge. The atmosphere was jovial. Judge Burbank was a highly respected and well-liked jurist when he wasn't having one of his moods against me. Fortunately, this was a good day, even for me. Before the doors to the courtroom opened, I was able to persuade Judge Burbank's court clerk to let me into the courtroom ahead of everybody else through a side door. Once inside, I surreptitiously taped a remote-controlled fart machine below the assistant district attorney's chair. Unbeknownst to me at the time, the assistant district attorney was Ben Seekins, later to become Judge Burbank's replacement. In retrospect, I wish I had known better. If so, I would have selected somebody else as my target, discretion being the better part of valor. Maybe a public defender given the high turnover at that time. But that was then and this is now.

My mission completed, I returned to the outer hallway to join the other attorneys. When the doors



"... they were justifiably embarrassed about their childish behavior. Still, the State would not dismiss the case. After all, father knows best."

opened, we all filed in. Seated with me behind Ben Seekins were two other attorneys from my office, Wendy Dau, and Tom Temple, (now a Fairbanks Superior Court judge). For three times, when a public defender would walk behind Ben's table to get to the defense table, I would trigger the device's remote-control switch. In response, the fart machine would emit a loud retort from beneath Ben's chair. It was a quality device.

Not one of those cheap fart machines sold on E-bay. It had a variety of tunes and each time the sound was different.

After the third volley, proving that he was not entirely deaf, Judge Burbank loudly declared, "Satterberg, I don't know if you are doing this or not. But I know that you are certainly behind it!" In response, I pled the Fifth Amendment. I still have the audio tape from that hearing as a memento — and the device as I wait for Judge Seekins to retire.

Other judges were not always so tolerant, however. I once found myself being sanctioned for contempt before Superior Judge Richard Savell.

Once again, it was a full courtroom. We were attending omnibus hearings. For some long-ago, forgotten reason, Judge Savell ruled that I was to be fined 100 dollars. As always, I was innocent. But Judge Savell was in another one of his moods — the type that allegedly would make him stand on top of his desk when having a judicial tantrum in chambers to prove a point. Fortunately, however, we were in court and not in his chambers. I respectfully asked if I could approach the bench. Permission was dismissively granted. Upon reaching Judge Savell's perch, I next pulled out a crisp one-hundred-dollar bill and promptly laid it on the banister.

Rather than being pleased as I expected, Judge Savell instead became quite agitated and shouted

**Rather than being pleased as I expected, Judge Savell instead became quite agitated and shouted "Mr. Satterberg, just what are you doing? Do you know what that looks like?"**

to be fined 100 dollars. As always, I was innocent. But Judge Savell was in another one of his moods — the type that allegedly would make him stand on top of his desk when having a judicial tantrum in chambers to prove a point. Fortunately, however, we were in court and not in his chambers. I respectfully asked if I could approach the bench. Permission was dismissively granted. Upon reaching Judge Savell's perch, I next pulled out a crisp one-hundred-dollar bill and promptly laid it on the banister.

"Mr. Satterberg, just what are you doing? Do you know what that looks like?" I responded "Yes, your honor, I do. It looks like I pay my bills on time!" Again, courtroom laughter followed. "Take that back now," he responded. I retrieved the bill as ordered. The contempt was later vacated.

And then there was a time that I was appearing in front of Judge Douglas Blankenship. Once again, it was an omnibus hearing. Numerous attorneys were again present. When my client's case was called, I was asked about motions. I stated that I had filed a motion to suppress evidence. In response, Judge Blankenship declared, "I have already read your motion, Mr. Satterberg. It looks like another one of those motions that you dictate like you do your Bar Rag articles with your feet propped up on the desk. And I intend to deny it." I was dumfounded since I thought it was one of my better spur-of-the-moment missives. Bar Rag quality, even. I politely asked, "Were your feet up on the desk when you dictated your order, your Honor?" And, once again, laughter ensued. That afternoon, Judge Blankenship called and apologized for making the statement. He actually conceded that my response was well put, saying "Touche, Satterberg."

One time I was arguing a case before Superior Court Judge Bethany Harbison. It involved a client of mine who had been spreading septage on a farm for fertilizer complete with little pink plastic capsules from unknown sources. He had been sued by a downwind neighbor for noxious odors. It was a large nuisance case that had gone on for years. The trial lasted over two weeks. In my closing, I argued that farms were, by their very nature, distasteful and obnoxious. After all, farms were replete with dust, noise, gross smells, deaths, nuisances, and yes, even animal sex. Apparently, it was that last reference to animal sex that got Judge Harbison's attention. She promptly challenged me with, "And just what do you mean by animal sex, sir?" I innocently replied that farm animals were regularly mating in full view. Animal sex. My argument was allowed to continue. For some reason, Judge Harbison may have thought that I had something

*Continued on page 13*



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# Groups work to protect integrity, independence of courts

As members of Alaska's legal community, one of our most important but sometimes overlooked responsibilities is to protect the integrity and independence of Alaska's third branch of government, the judiciary.

Under the Judiciary Article (Article IV) of Alaska's Constitution, all Alaskans benefit from a court structure and judicial selection and retention system designed to maintain judicial excellence and impartiality. Seeking to insulate our judiciary from politics as much as possible, the framers of our Constitution created a unified court system, a merit-selected judiciary and a voter-retention system that ensured regular accountability based on judicial performance. In short, they emphasized experience, qualifications, dedication to fairness and allegiance to the rule of law over personal and political views and affiliations.

But as many of us have learned, that which is precious today can be destroyed tomorrow. If we wish to see our current system continue, we must be diligent and purposeful in our efforts to protect and defend Alaska's judicial branch from the increasing partisan attacks that threaten to undermine the structures and systems that have served

Alaskans well since statehood.

Today, three separate Alaska organizations are working to secure the promise of our current constitutional structure:

- **The Committee on Fair and Impartial Courts (FIC)** [fairandimpartialcourtsalaska.org] is a standing committee of the Alaska Bar Association formed more than 20 years ago that plays an important role in providing Alaska's citizens and communities with vital information about the importance of an independent, well-qualified judiciary.
- **Justice Not Politics Alaska (JNPA)** [justicenotpoliticsalaska.org] is a non-profit organization established in 2014 to educate voters, elected officials and community leaders about the vital importance of the Judiciary Article, as key to the protection of constitutional rights that affect Alaskans' daily lives. JNPA also monitors state legislation that threatens the careful balance the article achieves.
- **Alaskans for Fair Courts (AFC)** [akfaircourts.com] is a non-profit organization formed in 2020 that defends individual state court judges recommended

for retention by the Alaska Judicial Council if they come under partisan political attack during the retention process. AFC also engages in educational efforts to counter misinformation and threats to Alaska's state judiciary.

While the focus and scope of each group differs, all are aligned with the primary goal of preventing partisan politics from eroding Alaska's legacy of impartial and fact-based decision-making by highly qualified judges who adhere to the rule of law. We are currently working hard to

foster civic education that informs Alaskans about the great gift we share: fair and independent courts that have protected our rights for the last 60-plus years. Visit our websites to learn more about our efforts, and to lend your support. Thank you!

*Bud Carpentieri, Board President, JNPA-Civics Education Fund*  
*Bill Gordon, Board President, JNPA*  
*Matt Widmer, Chair, Fair and Impartial Courts Committee*  
*Donna Goldsmith, Chair, Alaskans for Fair Courts*

## Courts raise rate for attorneys appointed to certain cases

The Alaska Court System has raised rate it will pay attorneys appointed under Administrative Rule 12(e) to \$130 per hour effective July 1, 2023. The Court System is in particular need of attorneys to represent Alaskans in adoption matters; minor and adult guardianship cases; estate cases; paternity actions; alcohol commitment proceedings; post-conviction relief (PRC) cases; and to represent military service members through the Servicemembers Civil Relief Act.

The Court System's Administrative Director Stacey Marz said the court system is "grateful for the attorneys who volunteer to serve on these cases, which often involve clients who lack the resources to protect very fundamental rights."

Attorneys interested in accepting appointments under Rule 12(e) should send their contact information (name, mailing address, phone numbers, e-mail, and fax numbers) and a copy of their errors and omissions insurance to the appropriate Area Court Administrator (ACA). The ACAs maintain a list of attorneys to receive court appointments in each Judicial District.

**Following is the contact information for the Area Court Administrators:**

First Judicial District (Southeast Alaska)  
 Clayton Jones  
 Area Court Administrator  
 P.O. Box 114100  
 Juneau, AK 99811  
[cjones@akcourts.gov](mailto:cjones@akcourts.gov)  
 907-463-4753; FAX 907-463-4720

Second Judicial District (Northern Alaska):  
 Robert Colvin  
 Area Court Administrator  
 Box 1110  
 Nome, AK 99762-1110  
[rcolvin@akcourts.gov](mailto:rcolvin@akcourts.gov)  
 907-443-5216; FAX 907-443-2192

Third Judicial District (Southcentral):  
 Carol McAllen  
 Area Court Administrator  
 825 West 4th Avenue  
 Anchorage, AK 99501  
[cmcallen@akcourts.gov](mailto:cmcallen@akcourts.gov)  
 907-264-0415; FAX 907-264-0504

Fourth Judicial District (Interior & Southwest):  
 Candice Duncan  
 Area Court Administrator  
 101 Lacey Street  
 Fairbanks, AK 99701  
[cduncan@akcourts.gov](mailto:cduncan@akcourts.gov)  
 907-452-9201; FAX 907-452-9206

## The other side – what they don't teach in law school

*Continued from page 12*

else in mind.

I had a trial in Delta Junction one time with District Attorney Jeff O'Bryant. We had been commuting from Fairbanks each day. Ordinarily, Jeff would park his state-issued car in front of the court building. It was a blue Plymouth sedan appropriated from the Department of Public Safety. Four days into the trial, Jeff's car was not parked in front of the building in its usual spot. Instead, Jeff had parked it on the back side of the building. I was then told by the clerk that Jeff had hit and killed a baby moose that day. Wanting to verify the tasty rumor, I inspected the vehicle. Sure enough, there was abundant baby moose hair stuck into the grill. I pulled out some tufts as verification. During the next break, I allegedly surreptitiously dropped a fluff of the

evidence on the Jeff's table. When we returned to the courtroom, Jeff stood ramrod straight and indignantly announced to Judge Wood that "someone" had dropped moose hair on his desk. He then accused defense of the dastardly deed without a confession or any direct evidence. As a team leader (even though I was the only defense representative in the courtroom), I told Judge Wood that I would take full responsibility for defense and removed the offending material from Jeff's table. I later stuck an evidence sticker on it, which I still have.

**To be continued. . .**

*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.*

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# Exploring Delaware Tax Trap Clauses for estate planning

By Steven T. O'Hara

## Second of three parts

This is the second in a three-part series on clauses relating to the tax planning potential of the so-called Delaware Tax Trap. A full presentation of this discussion can be found in my blog post at [www.oharatax.lawyer](http://www.oharatax.lawyer) titled "Delaware Tax Trap Clauses."

As touched on in the previous issue of this column, there is a 40 percent federal generation-skipping transfer ("GST") tax system and there is the Blattmachr/Pennell idea of giving a beneficiary a non-general power of appointment over a trust with GST tax exposure. There are code sections in the Internal Revenue Code known as the Delaware Tax Trap, which might be intentionally triggered for tax-planning purposes. Below I offer some language for illustration and discussion purposes only.

First, a quick review: The Delaware Tax Trap is about imputed, not actual, ownership. The trap can impute ownership of property to you for federal gift tax, estate tax and GST tax purposes. The elements of the trap are (1) someone has given you a non-general power of appointment known as the First Power (if it were a general power, ownership under tax law would already be imputed to you); (2) you exercise the First Power by creating one or more new powers of appointment; and (3) the applicable state law permits the new power of appointment to be validly exercised without reference to the date of the creation of the First Power. IRC Sec. 2041(a)(3) and 2514(d).

In the previous issue of this column, I provided language to illustrate what I call a heads-up clause. This illustration can be found in my blog post at [www.oharatax.lawyer](http://www.oharatax.lawyer) titled "Delaware Tax Trap Clauses."

Here is the hypothetical I am using in this series to illustrate the Delaware Tax Trap as well as Treasury Regulations mentioned in my heads-up clause:

Jane A. Client, a United States citizen domiciled in Alaska, was a widow with two children, Joseph and Charles, and several grandchildren from both her sons. Joseph is domiciled in Alaska and is self-supporting with no creditor issues. Charles regularly has creditors pursuing him. He has trouble with the law and is in and out of jail and marriages. He is domiciled in the U.S., outside of

Alaska, and the state where he is domiciled has a significant death tax.

Client died Dec. 31, 1999. As of her death, she funded two trusts for each of her children, namely: the Joe 1999 Trust — GST Exempt, the Joe 1999 Trust — Non-Exempt, the Chuck 1999 Trust — GST Exempt, and the Chuck 1999 Trust — Non-Exempt. As their names suggest, the GST Exempt Trusts have zero inclusion ratios under the GST tax system, while the Non-Exempt trusts have 100% exposure to the GST tax. See IRC Sec. 2641(a)(2) and 2642(a)(1) and (2) and (c). Client's governing document, a revocable trust that became irrevocable at her death, contains a heads-up clause like the one illustrated in my blog post at [www.oharatax.lawyer](http://www.oharatax.lawyer) titled "Delaware Tax Trap Clauses."

The trusts own membership interests in limited liability companies, which in turn own significant depreciable real estate. Cf. my blog post at [www.oharatax.lawyer](http://www.oharatax.lawyer) titled "More Depreciation Deductions, Less Tax."

Client's children do not have general powers of appointment over the trusts. Joseph has a non-general testamentary power of appointment over the Joe 1999 Trust — Non-Exempt as well as the Joe 1999 Trust — GST Exempt. Also, Charles has a non-general testamentary power of appointment over the Chuck 1999 Trust — Non-Exempt as well as the Chuck 1999 Trust — GST Exempt.

Charles has not undertaken any estate planning. By contrast, Joseph has an estate plan, including a Will. He has identified creditor protection for his children as an important objective; they are a family of medical professionals who regularly pilot their own small aircraft throughout Alaska. And from a tax perspective, Joseph has identified an undivided 70 percent interest in the property of the Joe 1999 Trust — Non-Exempt as the optimum share he wants included in his gross estate for federal estate tax purposes. For Joseph, the term "optimum" includes considering his particular circumstances at this time, the vicissitudes of life going forward, and tax that is or could be connected to him or a trust named for him, including any one or more of income tax, gift tax, estate tax, and GST tax.



"First, a quick review: The Delaware Tax Trap is about imputed, not actual, ownership."

Upon Joseph's death, he wants all property of the Joe 1999 Trust — GST Exempt and an undivided 70 percent interest in the property of the Joe 1999 Trust — Non-Exempt to be retained in trust with some changes to the default provisions that his mother provided in her trust instrument that is the umbrella document for the trusts.

Accordingly, Joseph makes a Will exercising his testamentary powers by appointing property in trust for his children, giving them (donor's grandchildren) successive powers of appointment. Joseph wants to maintain the zero inclusion ratio of the Joe 1999 Trust — GST Exempt. Cf. Treas. Reg. Sec. 26.2654-1(a)(1)(iii) ("Each separate ... trust resulting from a mandatory division ... will have the same inclusion ratio immediately after the severance as that of the original trust immediately before the division....") And Joseph wants an undivided 70 percent interest in the property of the Joe 1999 Trust — Non-Exempt to be included in his gross estate for federal estate tax purposes. Cf. IRC Sec. 2041(a)(3) and AS 34.27.051(b). Joseph has been advised about what a presently exercisable general power of appointment means and about the Alaska statute that provides that the creditors of an individual with a general power of appointment over a trust can reach trust assets only to the extent the power is exercised. AS 34.40.115.

Joseph's Will is the instrument through which he attempts to accomplish the foregoing estate planning objectives as relates to his non-general powers of appointment. Below are hypothetical clauses as they appear in Joseph's hypothetical Will. These hypothetical clauses are for illustration and discussion purposes only:

A. *Triggering IRC Sec. 2041(a)(3)(A) known as Delaware Tax Trap.* Under paragraph C of Article VI of that certain trust instrument executed by my deceased mother, Jane A. Client, and known as the Jane A. Client Trust dated December 31, 1999 (the day my mother died), I am given a testamentary power of appointment. I hereby exercise that power by appointing an undivided 70% interest in the property over which I have a power of appointment under that paragraph C, which property is held by that certain trust known as the Joe 1999 Trust — Non-Exempt, to my descendants who survive me, *per stirpes*; provided, however, and notwithstanding any other provision of this instrument:

1. Property appointed and otherwise distributable under this paragraph A to an individual shall be held in a separate trust named for the individual, subject to the directions for maintaining GST Exempt and non-Exempt principal in separate, but related, trusts, as provided elsewhere in this instrument. Each such trust named for an individual shall be administered as provided in paragraph E of this Article; and

2. As provided in paragraph E of this Article, commencing as of my death and during the life of the individual for whom the trust is named,

*the Trustee shall distribute to the individual for whom the trust is named as much or all principal and income of the trust as the individual may from time to time direct in writing. Thus, as of my death I intend the individual to have a presently exercisable general power of appointment over that trust with the result that IRC Sec. 2041(a)(3)(A) shall include property in my gross estate for federal estate tax purposes, and I direct that this instrument shall be construed in accordance with this intent.*

B. *Not Triggering IRC Sec. 2041(a)(3)(A) known as the Delaware Tax Trap.* Under paragraph D of Article VI of that certain trust instrument executed by my deceased mother, Jane A. Client, and known as the Jane A. Client Trust dated December 31, 1999 (the day my mother died), I am given a testamentary power of appointment. I hereby exercise that power by appointing all property over which I have a power of appointment under that paragraph D, which property is held by that certain trust known as the Joe 1999 Trust — GST Exempt, to my descendants who survive me, *per stirpes*; provided, however, and notwithstanding any other provision of this instrument:

1. With respect to property appointed under this paragraph B, I do not intend to cause any property of the Joe 1999 Trust — GST Exempt to be included in my gross estate for federal estate tax purposes under IRC Sec. 2041(a)(3)(A) or otherwise, and I direct that this instrument shall be construed in accordance with this intent;

2. Property appointed and otherwise distributable under this paragraph B to an individual shall be held in a separate trust named for the individual, subject to the directions for maintaining GST Exempt and non-Exempt principal in separate, but related, trusts, as provided elsewhere in this instrument. Each such trust named for an individual shall be administered as provided in paragraph F of this Article, which contains a non-general testamentary power of appointment;

3. Each trust administered under paragraph F of this Article shall terminate no later than December 31, 2089. Thus, I intend that each such trust will not violate any "perpetuities period" limitation suggested by Treasury Regulation Section 26.2601-1(b)(1)(v)(B) or otherwise applicable, and I direct that this instrument shall be construed in accordance with this intent; and

4. Upon termination of a trust pursuant to subparagraph 3 of this paragraph B, any balance of retained principal in such trust shall be distributed to the individual for whom the trust is named.

In the next issue of this column, I will offer some additional language for illustration and discussion purposes.

Nothing in this article is legal or tax advice. Non-lawyers must seek the counsel of a licensed attorney in all legal matters, including tax matters. Lawyers must research the law touched upon in this 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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# The annual Tanana Valley Bar Association summer picnic



Fierce competition in the sack race.

In its second picnic after a two-year recess due to the COVID-19 pandemic, the Tanana Valley Bar Association held its annual summer picnic and changing of the guard in late July. A hungry crowd, and celebrants eager to demonstrate their egg-tossing skills along with others, filled out the crowd. 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.

*(Photos by an Anonymous  
Past TVBA President)*



Mark Wood displays his broken egg.



Kristin Farleigh demonstrates her championship form in the egg toss.



You just can't leave those egg-toss eggs unattended.



Mike MacDonald checks out the goodies.



The hula hoop contest is always a favorite.



Child or adult, who doesn't enjoy making bubbles?



Egg toss winner Kristin Farleigh was joined by her crew after the victory,



Some of the hula hoop competitors are more adept than others.

# The annual Tanana Valley Bar Association summer picnic



Girls plant their feet for the annual tug of war.



Kristin Farleigh, her daughter and Roseann Wall enjoyed a moment.

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## ATTORNEY DISCIPLINE

### Attorney X admonished for misleading statements

*From the Alaska Bar Association*

Bar counsel issued a written private admonition to Attorney X for violating Alaska Rule of Professional Conduct 4.1 which mandates

truthfulness in statements to others.

Attorney X represented a father embroiled in a custody dispute. When the father was criminally charged in a related matter, Attorney X investigated his client's account regarding the criminal charges and determined that the charges were based on false testimony that the mother helped arrange. Attempts to reach his client's assigned counsel to discuss the matter were unsuccessful. Attorney X contacted the district attorney, reported what he had learned, and requested discovery from the criminal case, without disclosing that he only represented the father in a civil proceeding.

The district attorney told Attorney X to enter his appearance in the criminal case. Subsequent e-mail from Attorney X to the district attorney never stated that Attorney X had entered his appearance in the criminal case or clarified that his representation was limited to the civil matter, but the communication suggested that he was involved in the criminal proceedings. Attorney X knew that it would be improbable that the district attorney would turn criminal discovery over to a civil attorney, but he didn't think the district attorney would assume that he was criminal defense counsel.

ARPC 4.1 bars a lawyer from knowingly making a false statement of material fact or law to a third person while representing a client. Comment to the rule and ethics authorities instruct that statements that are partially true, but misleading, or omissions are the equivalent of affirmative false statements. Bar counsel determined that the statements in the e-mail, while not untrue, were misleading. Attorney X agreed that hindsight showed that while he did not intend to misrepresent the facts, he understood how others could be misled.

Attorney X had no prior discipline. Under the *American Bar Association Standards for Imposing Lawyer Sanctions*, an admonition is appropriate when the failure to disclose material information was isolated and a significant injury did not result. An Area Division member reviewed the file and approved the issuance of a written private admonition.

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# When sharing office space, protect yourself

By Mark Bassingthwaighte.

I once came across a comment on a blog post about attorneys sharing office space that stated malpractice insurance companies and those who write our rules of professional conduct are behind the times. Apparently, those of us who run in the ethics or malpractice insurance circles just don't understand how attorneys practice in today's world. Let's just say I respectfully disagreed, and the following explains one of the many reasons why.

Years ago, I visited a small law firm that was part of an office share arrangement located in Chicago's Loop. Of course, I understood that the cost of maintaining an office in the Loop would be prohibitively expensive for the typical solo or small firm, so this was no surprise. What took me off guard was the reception area. As soon as I walked in, the first thing I saw was a large reception desk staffed by six to eight receptionists.

I quickly realized that far more than two or three distinct firms were operating out of this common space, which made me think that this was going to be a longer day than I had planned. Why? Well, while I do appreciate the benefits that can come with office-share arrangements, there are ethical, malpractice and insurance coverage concerns that can easily arise in the context of an office-share situation. Due to the amount of client traffic in that reception area, I suspected little thought had been given to any of those concerns by anyone in this group.

To set the stage, let's talk about my response to walking into that space. From the outset, I viewed the arrangement as misleading and thus an ethics violation in and of itself because there was no signage informing the public that the space housed a number of independent firms.

Making matters worse, anyone entering simply approached the first available receptionist. The result was that the common reception area suggested that all the attorneys who practiced in that space practiced together as one firm when in fact they didn't, and that's a problem. For example, should one of the solo attorneys practicing there ever be sued for malpractice, other occupants may also be named in that suit given the public presentation of the entire group as a single firm.

Now here is where it gets interesting. Malpractice policies typically exclude coverage for all claims that arise out of or in connection with any act, error or omission committed by an attorney with whom an insured shares common office space and who is not an insured under the insured's policy. So, if your independent office suite mate gets sued for malpractice and you are named in that suit and were not involved with or even aware of the client who filed suit, don't be surprised if your insurance carrier says "Good luck with that" after you put your own carrier on notice. Given this, the following tips are provided as a guide to assist you in avoiding this coverage problem and others like it.

Focus on clear indicia of separation. Signage should emphasize the existence of separate practices or firms and not simply be a list

of attorney names. Establish and maintain separate phone numbers, letterhead, fax numbers, offices, business cards, file storage areas, support staff, and computer systems. Directory listings and other advertising should not contradict the indicia of separation. Thus, running an ad referring to the group as something like "The Southern Illinois Law Center" might not be in your best interests. Try to look at your space through a client's eyes. If a first-time client might view or experience the arrangement as a firm, you're inviting trouble. Finally, include a statement in every firm's engagement letter and fee agreement that explains there is no partnership relationship with the other attorneys or firms who also occupy the space.

Prioritize maintaining client confidences. This isn't optional. There should be no talking in the halls, no common fax machine and file cabinets (or office doors) should be locked when attorneys are away from their offices. Don't leave client material in public places such as shared conference rooms. Close doors when visiting with clients or taking on the phone. Computers should be password protected. If there is a shared staff person, this individual should not be involved in opening mail, taking detailed messages, receiving faxes, etc., they never be privy to sensitive client information as the attorney-client privilege could easily be lost as a result.

Don't minimize conflict-of-interest issues. If the office-sharing arrangement calls for a common employee or the indicia of separation are weak in nature, representation of adverse parties by separate practitioners in the space is ill-advised and would be ethically prohibited in a number of jurisdictions. Regardless, if whether adverse parties will be represented by separate attorneys in the space, always obtain client consent in writing at the outset.

Don't mislead the public. The use of common advertising to include terms such as "of counsel," "an association of solo practitioners," or "affiliated with" can be a significant misstep if the actual relationship does not support the use of these terms. For example, of counsel means more than being available for an occasional consultation or question. Of counsel is defined as having a close and continuing relationship that involves frequent and continuing contact. If this isn't going to be the case, don't use the term.

Put the office sharing agreement in writing. Issues worth considering include what equipment will be shared and who will be responsible for its maintenance and repair? If there will be shared staff, who will hire and fire? How will work be prioritized, salaries paid, and who will evaluate these shared employees? Plan for the inevitable attorney arrivals and departures. Who will decide who comes into the space and under what conditions? Will departing attorneys be responsible for finding someone to take their space? Detail all financial responsibilities and the consequences of a



failure to meet those responsibilities. Most importantly, require that all office-sharing attorneys maintain professional liability insurance in order to remain in the space each year because the lack of insurance is one of the reasons why every attorney in the shared space often gets named in these malpractice suits.

In contrast to the Chicago situation mentioned at the beginning of this piece, I have also visited a number of office share situations where I have found all the above ideas fully implemented. It really is possible to avail oneself of the benefits of an office-sharing relationship, yet minimize the risks normally associated with these types of arrangements.

The key is to identify and avoid conflicts, implement strong policies and procedures that preserve client confidence, and most importantly, do all you can to maintain professional independence as viewed and experienced by everyone's clients. That said, always remember that in spite of what you might say to a client if you and your officemates conduct yourselves in a way that would lead a reasonable person to believe you are a firm, ethical and/or liability trouble may be just around the corner. This is a great example of where that old saying "If it walks like a duck, and talks like a duck, then it's a duck" rings true.

Now, in reference to the comment left on the blog. The problem really isn't about us insurance or ethics types being stuck in the 1980s. It's that we as attorneys need to deal with the reality that some of our peers will bring a malpractice action against all attorneys practicing in an office share setting and at times that's exactly what should be done; because to those of you practicing in this setting, understand that you don't get it both ways. You really do need to have your ducks in a row.

Since 1998, Mark Bassingthwaighte has been a risk manager with ALPS, the nation's largest direct writer of professional liability insurance for lawyers. In his tenure

with the company, he has conducted more than 1200 law firm risk management assessment visits, presented numerous continuing legal education seminars throughout the United States, and written extensively on risk management, ethics, and technology. Bassingthwaighte 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](mailto:mbass@alpsnet.com).

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## *In Memoriam*

### Long-time state attorney Cummings dies in Oregon

William F. "Bill" Cummings, 76, of Beaverton, OR, died with family by his side June 9 in Portland, OR. He was a longtime resident of Juneau prior to moving to Beaverton in 2019.



**William F. Cummings**

Bill was born Nov. 3, 1946, in Phoenix, AZ. In 1951, his family moved to Alaska where they lived primarily in the Anchorage area. In 1965 he graduated from East Anchorage High school. Upon graduation, Cummings attended Lewis & Clark College for his undergraduate work where he received his Bachelor of Arts degree in History and Languages in 1969. He returned to Alaska and worked for the Department of Transportation, as a right-of-way officer.

He went back to Lewis & Clark Law School where he received his Doctor of Jurisprudence degree in 1978. Cummings returned to Alaska where he began his career with the Alaska State Attorney General's Office as an assistant attorney general. Among the many achievements, his proudest moments were the cases he worked on to help acknowledge the tribal status of many Alaska Native communities. He was instrumental in helping build the infrastructure of the state of Alaska through Real Property Law. Further, he represented the Alaska Marine Highway on major contract controversies. All together Cummings served the State of Alaska for 30 plus years.

He loved golf, fishing, was a friend to many, and enjoyed his pets including a series of idiosyncratic cats before he fell for that "terrible dog" his beloved Danika.

In September 2016, Bill met his wife in the back of a bus in Iran on an almost-50- year anniversary trip of Lewis & Clark exchange students. He had studied at the University of Tehran in 1968. Although their time together was too short, they had seven wonderful years of travel and golf. They spent good times at their homes in Palm Desert and Beaverton entertaining many friends.

Cummings was preceded in death by his parents, William F Cummings and Beatrice Ellen Vandaberg Cummings Kohlhase, and his brother-in-law Larry "Lars" Andersen.

He is survived by his wife, Kathy Leslie of Beaverton; his sister Ellen Andersen of Iowa; and her two children and his many wonderful friends and honorary niece and nephews. He also leaves a large extended fam-

ily gained when he married Kathy, including three children and spouses, four grandchildren, three great-grandchildren, brothers and sisters-in-law plus nieces and nephews and many cousins too numerous to count.

A Celebration of Life was to be held Aug. 5 at the Juneau Yacht Club. In lieu of flowers donations can be made to the William F. Cummings Scholarship Fund at Lewis & Clark College: [go.lclark.edu/Cummings](http://go.lclark.edu/Cummings).

### Adventuring Alaska lawyer dies at 65



**Mary Gilson**

Longtime Alaska resident Mary A. Gilson, 65, died June 20, 2023, in Coloma, CA.

Born in Midland, MI., Mary came early to her strong love for the outdoors, visiting the family cabin at a lake, fishing, hunting and stargazing with her father Jim. She gained additional outdoor skills in high school as an Explorer Scout. Mary graduated from Michigan State University, then soon headed north with friends. Once in Alaska, she set up camp on the Homer Spit, working in the canneries. Winters found her in Girdwood, running an Alyeska lift line and flipping omelets at the Bake Shop.

Mary enrolled at Lewis and Clark College in Portland, OR, to pursue a law degree. She graduated with honors and returned to Alaska. She worked in law for 30 years, primarily for the State of Alaska. She was admired for her work ethic, skill and good nature. Her love of the Alaska wilderness took her on innumerable adventures, including summiting Denali. She was an avid mountaineer, hiker, skier and sea kayaker. After retirement, Mary and co-adventurer Sue Campbell enjoyed summers at their Homer cabin and winters in Coloma.

Mary is survived by her wife, Sue Campbell; parents, James and Mary E. Gilson of Michigan; sister, Jean (Jeff) Baumann of Minnesota; nephew, Cauldon Baumann of Minnesota; sister, Barbara Gilson of Wisconsin; aunt, Barbara Veeck of Alaska; cousins, William Jasper of Washington, Matthew Jasper, Merchant Marines, Bay of Bengal; uncle, Richard (Janice) Veeck; and cousins, Brittany (Craig) Bernarda, Ryan Anderson and Trevor Anderson, all of California.

A memorial will be held in Homer, details to be announced. Donations in Mary's name to your local hospice or Pancreatic Cancer Action Network would be appreciated.

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**Lawyers' Assistance Committee  
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## George Washington's Rules of Civility

2 "Sleep not when others speak, sit not when others stand, speak not when you should hold your peace."

The *Bar Rag* doesn't intend to print them all but will offer one now and then.



Library of Congress

The first U.S. President wrote a copy of the 110 Rules of Civility in his school book when he was 14. The rules appeared in late 16th Century France and were popular in Washington's time. Some have application today.

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**Wednesday, December 6 | Advanced Fastcase: Legal Research for the Alaska Bar Association**  
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