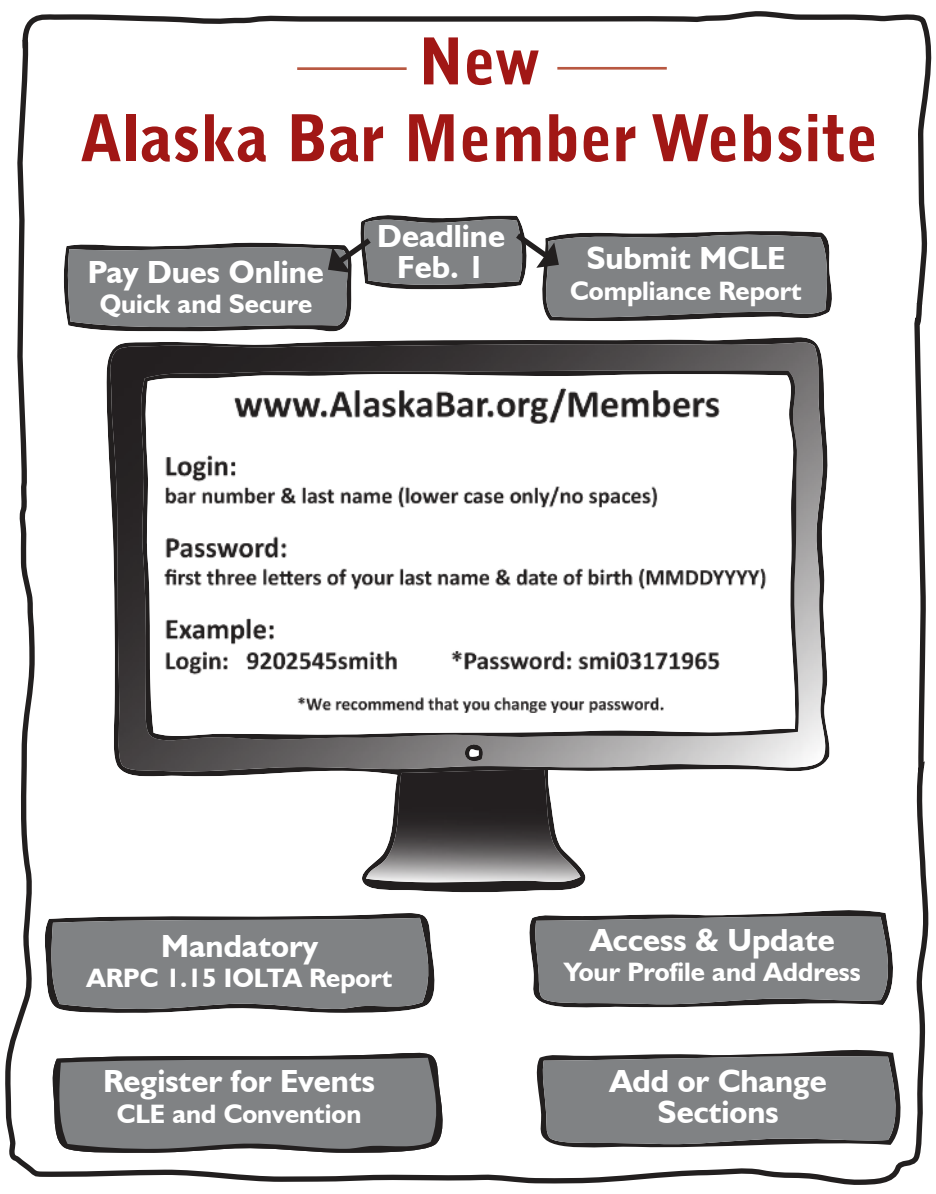
The Alaska BAR RAG

Dignitas, semper dignitas

VOLUME 38, NO. 4 October - December, 2014



Attorney steps off the boat right into the same-sex marriage case

By Laurence Blakely


Author Laurence Blakely

As some of you may know, my husband, Mark Ward, and I spent the last couple of years circumnavigating the Pacific Ocean in our sailboat, *Radiance*. In June we set off on our last major passage from Rongerik, an uninhabited atoll in the Marshall Islands, bound for Dutch Harbor, Alaska, – more than 3,300 nautical miles away. Taking two years away from full-time work may seem daunting, but for us it just came down to a question of priorities. I kept my hand in legal practice: doing appellate work in Alaska courts whenever I could find a suitably reliable internet connection, attending a law conference in Vanuatu, and drafting articles about fisheries, plastic, Pacific communities, international markets and string theory in my head throughout the long hours of night watch.

Although we were apprehensive about returning to a land-based existence and all of its implications, we were very excited about coming back to Alaska. So after 26 days at sea (during some of which we saw the southern cross and the north star at the same time on opposite horizons) traveling from intense tropical heat to bone-chilling Aleutian cold, and sailing through one particularly nasty low pressure system, we were thrilled to arrive safely in Dutch Harbor on the Fourth of July. We spent the following month making our way back to our home port of Seward and enjoying some truly exceptional Alaskan moments: picking berries with the Katmai National Park bears in Geographic Harbor, sailing through McArthur Pass with a pod of orcas, diving

Continued on page 31

Ethics Committee cool toward change proposal

By Kevin Cuddy and Dick Monkman

Some of you may have read a recent issue of the *Alaska Law Review* in which a law student's Note argued that the Alaska Bar Association's Ethics Committee should revisit an ethics Opinion that authorizes an attorney to provide undisclosed assistance to a pro se client.[1] Several members of the Ethics Committee thought it would be useful to provide this short response. We appreciate the Note's scholarly assessment, but – at least for now – the committee declines the invitation to change its advice concerning the way that unbundled legal services may be provided in Alaska.

Ethics Opinion No. 93-1

The Opinion at issue – Ethics Opinion No. 93-1 (the "Opinion") – concludes that a lawyer may provide legal services to a pro se litigant without entering an appearance in the litigation in question if the lawyer follows certain guidelines. In particular, the Opinion states that the lawyer must fully describe the scope and limitations of his or her assistance to the client; must comply with the Alaska Rules of Professional Conduct with respect to the assistance provided; and must provide the client with all counseling necessary to make informed decisions within the agreed scope of the representation.[2] Under this approach, the Ethics Committee reasoned, lawyers have greater latitude to provide low-cost or free legal services to otherwise unrepresented litigants without making a formal entry of appearance and undertaking a full representation of the litigant in the matter. In short, the Opinion facilitates greater access to legal services for those least able to afford those services.

The Note's critique

The Note offers a number of arguments as to why the author believes it is inappropriate to allow Alaska lawyers to "ghost write" pleadings for these individuals. Before addressing those arguments, the Note does recognize that several other jurisdictions share Alaska's position that attorneys have no duty to disclose assistance to a pro se client as long as the assistance is provided ethically, competently and in a manner that is consistent with court rules. Other jurisdictions sharing this view include Arizona, California, Maine, Minnesota, New Mexico, North Carolina, Utah and Washington D.C.[3] Likewise, the American Bar Association's Formal Opinion 07-446 concludes that a litigant submitting papers to a tribunal on a pro se basis need not disclose that he or she has received legal assistance as long as the assistance was not material to the merits of the litigation.

Aside from the general criticism of "ghost writing" by various federal courts (which reflects a fundamental difference of Opinion too broad to address here), we address the Note's arguments.

First, the Note questions whether undisclosed assistance actually benefits pro se litigants or prompts lawyers to provide legal assistance that they would not otherwise provide if disclosure of their involvement were mandated. The Note asserts that there is an absence of concrete data showing that low-income clients benefit from unbundled services.[4] This may be an unfair criticism, as several researchers recently noted in a Harvard Law Review article: It would likely be unethical to conduct studies in which one set of litigants was given no assistance (pure pro se) and another set of litigants was offered unbundled legal assistance.[5] It may not be possible to gather the precise data the Note seeks. But what the Harvard researchers did conclude was that, perhaps unsurprisingly, more legal assistance tends to lead to better outcomes for litigants.[6]

Continued on page 8

Alaska Bar Association
P.O. Box 100279
Anchorage, Alaska 99510

Non-Profit Organization
U.S. Postage Paid
Permit No. 401
Anchorage, Alaska

PRESIDENT'S COLUMN

In support of the Judicial Council

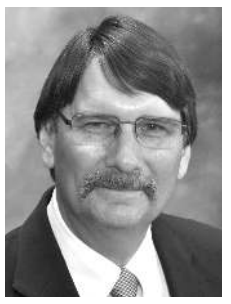
By Geoffry Wildridge

As attorneys in Alaska, we are often aware of the strengths and weaknesses of individual judges. As advocates, we may be troubled by court decisions in individual cases that fail to reflect our personal views or serve our clients' interests. But despite our differences, Alaska's lawyers readily acknowledge the impressive competence and integrity of our state's judiciary as a whole.

Those not as directly involved with our courts sometimes contend that judges routinely administer justice in ways driven by partisan political beliefs. As lawyers involved in the day-to-day work of our courts, most of us recognize that this is simply not true.

These claims have often been voiced by persons who themselves have a political agenda, persons whose positions on certain issues have not routinely been advanced by court decisions. These attacks are often aimed at securing specific outcomes on particular issues through political action, rather than at promoting the integrity of our judiciary as an institution. Critics focus on individual court decisions, sometimes mounting personal attacks on the judges who made those often difficult determinations, while losing sight of the broader systemic importance of an independent judiciary.

Such criticisms also frequently involve complaints about the influence of lawyers on our legal system, based upon the erroneous assumption that we are all cut from the same political cloth. But the diversity of lawyers' beliefs, political and otherwise, is undeniable. What attorneys do have in common is specialized knowledge, developed through training and experience, of how our legal system works and should work. We have a collective commitment to the rule of law, which includes the administration of justice in a fair and equal way. And we know that honoring this commitment requires that we safeguard the competence and independence of our judiciary.



"...despite our differences, Alaska's lawyers readily acknowledge the impressive competence and integrity of our state's judiciary as a whole."

Attempts have been made over the years to broadly reconstitute our courts to achieve political ends. These partisan measures have been undertaken by those on both the political left and right. One example is Franklin Roosevelt's 1937 attempt to "pack" the United States Supreme Court in response to decisions contrary to his New Deal legislation. In Alaska, such efforts now include legislative proposals to reconfigure the Judicial Council, the constitutionally created body responsible for the merit-based selection of our judges.

Rather predictably, the lines have been drawn by proponents of these measures in ways that pit non-lawyers against lawyers. They seek a Council more inclined to screen judicial candidates on the basis of current popular sentiment and ideology, rather than on merit, presumably in an effort to influence court decisions. At its core, the issue presented by these efforts is the degree to which Alaska's judiciary will continue to remain highly qualified and independent of political pressures.

Delegates to Alaska's Constitutional Convention recognized the need for well-qualified judges who, following appointment, would be shielded from political influence in their decision-making. As a result, they adopted a system of judicial selection which had been championed nationally by progressives, a system known as the "Missouri Plan" given its initial adoption in Missouri in 1940.

The basic components of the Missouri Plan involve the transparent, merit-based evaluation of applicants conducted by a commission comprised of both lawyers and non-lawyers. That commission then refers the names of only the best-qualified candidates to the governor, who makes the final selection from those nominees. Following a judge's appointment, the Missouri Plan promotes judicial accountability through the commission's evaluations of the judge's performance and periodic non-partisan retention elections by the public at large.

In Alaska, the Judicial Council is the constitutionally mandated commission called for by the Missouri Plan. In 1956, delegates to Alaska's Constitutional Convention created the Judicial Council by adopting Article IV, Section 8 of the Alaska Constitution. The importance of having significant lawyer representation on the Council was recognized by the framers, an acknowledgment of attorneys' specialized knowledge. Article IV, Section 8 thus requires that the Council consist of seven members: three attorney members appointed by the Alaska Bar Association; three non-attorney members appointed by the governor and confirmed by the Legislature; and the Chief Justice of the Supreme Court, sitting in an ex officio capacity as chairperson. Appointments are to be made to the Council "with due consideration to area representation and without regard to political affiliation."

Continued on page 19

EDITORS' COLUMN

Winter brings on a mood for reconnecting

By John Crone

A farewell

I write to say farewell. My time practicing law in Alaska and co-editing the *Bar Rag* were too short, approximately two years and exactly two issues, respectively. I have moved back to where I'm from: the Lower 48. As I acclimate back into an over-populated world where the short winter days are still pretty long and people meander about oblivious to the beautiful world that exists north of the edge of the world, Seattle, it has become quite clear that my short time in Alaska will remain one of the most meaningful times of my life.

I learned the practice of law from a deeply competent group of mentors at Bankston Gronning O'Hara, P.C. From that group of attorneys I have been engrained with certain good habits that I will carry for the rest of my career. I owe them all a debt of gratitude and probably more. At *The Bar Rag* I had the pleasure of working with many smart and unique personalities, including the various attorneys and legal professionals who fill the pages of this publication with interesting words.

And of course, working with Meghan Kelly, former co-editor turned sole-editor of *The Bar Rag*, was an immense pleasure. We set out to subtly usher in some large changes to *The Bar Rag*, and I hope she continues to succeed in achieving that goal. I wish her the best, hope her tenure as editor is much longer than mine, and assure the membership that she has many more interesting ideas to bring to this publication.

Meghan Kelly

John Crone

Alaska is overflowing with intelligent and creative people. I was extremely lucky to have spent two years learning from colleagues, adversaries, the judiciary, and so many others. It was time well spent, and I hope you all find life in Alaska as enriching as I did. And if you ever find yourself in Colorado, send me an email, I'm always happy to catch up.

— John Crone

By Meghan Kelly

I heard someone on the radio recently talking about how winter time in Alaska is a time when we turn our focus inward – a time for hibernation and reconnection with parts of our life that remained relatively dormant during the mania of summer.

This idea of reconnecting is something I see reflected in this month's issue of the *Bar Rag*. These pages are filled with photos and descriptions of the many and creative outreach efforts that you and your colleagues are undertaking, often on a recurring basis, throughout our communities. This is important work that I believe helps to generate a spirit of excitement and generosity within our Bar.

As 2014 draws to a close, we at the *Bar Rag* wish you a relaxing and joyful holiday season, and we thank you for your support and patience during the last six months as we've weathered significant changes in our ranks.

I am excited for the new year and the issues to come, and I am thankful to be a member of this storied institution. *Dignitas, semper dignitas.*

Meghan Kelly is editor of The Alaska Bar Rag.

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).

President: Geoffry Wildridge
President-Elect: Nelson Page
Vice President: Laura L. Farley
Treasurer: Bill Granger
Secretary: Blake Chupka
Members:
Alexander O. Bryner
Susan Cox
Darrel Gardner
Bill Gordon
Bill Granger
Gene L. Gustafson
Michael A. Moberly
Adam Trombley
New Lawyer Liaison:
David Wilkinson

Executive Director: Deborah O'Regan
Editor in Chief: Meghan Kelly
Social Media Director: Ruth Anne Bergt
Managing Editor: Tim Jones
Editor Emeritus: Harry Branson
Contributing Writers:
Dan Branch
Mamie Brown
Kevin Clarkson
Bill Falsey
Darrel Gardner
Cliff Groh
Susan Falk
Steven T. O'Hara
Steve Pradell
William Satterberg

Contributing Photographers
Karen Schmidlkofer
Mara Rabinowitz
Contributing Cartoonist
Bud Root
Design & Production:
Sue Bybee
Advertising Agent:
Alaska Bar Association
840 K St., Suite 100,
Anchorage, Alaska 99501
(272-7469)

Publication Dates	Editorial Deadlines
January-March	Feb. 10
April - June	May 10
July - September	Aug. 10
October - December	Nov. 10

Board of Governors meeting dates
January 29 & 30, 2015
(Thursday & Friday)
May 11 & 12, 2015
(Monday and Tuesday)
Annual Convention
May 13 - 15, 2015
Westmark Hotel, Fairbanks

The Alaska Judicial Council: If it ain't broke, don't fix it

By Sen. Bill Wielechowski

For more than 50 years, Alaska has enjoyed a judicial system free from corruption and scandal. Our system rests on a process of nominating judges based on merit, not political ideology, campaign contributions or passage of a political litmus test. Judges are nominated based on their character, intellect, integrity and judicial temperament. They are evaluated by their peers – other attorneys who know them best, who work with them day in and day out and have the opportunity to observe how clear-thinking, deliberative and impartial they are.

Some states elect their judges. This presents the awkward situation where judges must raise massive sums to fund their political campaigns, often from the very attorneys and parties who will end up appearing before them. Some states provide for governors to appoint judges directly. This often ends with appointments based on politics instead of merit.

Alaska learned from what other states do and adopted a system that is one of the best in the nation. Under our Constitution, the Judicial Council selects candidates for consideration by the governor. The governor appoints three members to the council and the Alaska Bar Association elects three members. Candidates apply to become judges through the council, which then puts them through a rigorous, transparent screening process. In the end, the council votes to forward a list of the best candidates to the governor. In the rare event of a tie among council members, the chief justice of the Supreme Court casts the deciding vote. Entrusting the chief justice with this role is not unusual in Alaska – the chief justice also appoints a potentially tie-breaking member to the highly contentious Redistricting Board. The governor then must appoint a candidate from the list supplied by the Judicial Council. After serving a term, judges then must stand for a retention election by the people of Alaska.

The structure of the Alaska Judicial Council has served us well for half a century. It has maintained public faith and trust in the judiciary. Unfortunately, this system is under attack. Last year, a bill was introduced (SJR 21) to amend the state Constitution to change the way judges are appointed in Alaska. The essence of the bill is to increase the number of gubernatorial appointees to the Judicial Council. This change would disrupt the delicate balance our constitutional framers envisioned, injecting a greater measure of politics into Alaska's respected system for nominating judges and putting at risk the trust Alaskans have in our court system.

Changing our Constitution is not a matter to be undertaken lightly, and should certainly not be done without a demonstration as to a strong reason why the change is needed. Yet, proponents of this change have been unable to demonstrate any need for such a change. Proponents have claimed the attorneys and public members have different agendas, and often split on votes. This is simply false: 90 percent of all council votes are unanimous or are 5-1. In fact, in the past 30 years, of the 1,149 votes that have been taken by the Judicial Council only 16 times have the two "sides" – the public members and attorneys – reached opposite conclusions, with the chief justice of the Supreme Court stepping in to break the tie.

Proponents of the bill argue that the attorneys and public members have split more in recent years. Again, this is false. There have been several instances in recent years of split votes, but in those instances, the judicial applicants were usually rated below other applicants. In one notable instance, a very politically active candidate was rated as "below acceptable." The public members voted to forward this candidate's name, while the attorneys voted against him. The chief justice appropriately voted against the candidate.

Continued on page 18

Reconstituting the Judicial Council more in line with democratic principles

By Sen. Pete Kelly

Does any part of our state government operate without any glitches or areas that need to be reformed? Almost everyone I know would answer "no" – things *can* be done better. Our judicial nominating body is just one of many spheres of state government that could be improved. In particular, I've proposed that the public interest would be served by adding more public (non-attorney) members to increase regional diversity and to further require legislative confirmation of all members.

Our constitutional framers set up what they thought was the best architecture for state government at the time, yet they knew it wouldn't be perfect. Thomas Harris, a delegate on the Judiciary Branch Committee noted, "in the greater part of it, the Constitution is a good document. But when 55 persons are involved in writing a paper, it will always be a compromise situation to some extent. … we will have to take time to live with it and see if it is going to work out."

When the Judicial Council was created our framers didn't have the advantage of 55 years of hindsight that we enjoy today. Article 4 of the Constitution states the following regarding the council membership: "Appointments shall be made with due consideration to area representation and without regard to political affiliation." However, history reveals this has not been the case. All the attorney members have come from four cities: Fairbanks, Anchorage, Juneau, and Ketchikan. The three non-attorney members have been only slightly more diverse, with the same four cities having the bulk of representation. You have to go back to the period of 1987-1993 to find the one public member from Barrow – the last time someone from rural Alaska had a direct voice on a panel that largely determines who controls one of our three branches of state government.

When Alaska became a state, and the population was around 226,000 (1960 Census), it could perhaps be argued that three public members were sufficient to represent the whole state. I doubt our founders could have predicted the state's growth in 55 years and how much the regions would change. It is impossible to achieve true regional diversity with only three public members.

Another rationale for increasing the public representation is to correct a flaw that puts the chief justice in a perceived and sometimes actual conflict of interest. The Judicial Council must act by a concurrence of four members. When the members split 3-3, the chief justice suddenly morphs from a non-voting member of the council into the crucial deciding vote on whether an applicant will be forwarded to the governor or not. Inevitably, this empowers the chief justice to use inclusion or exclusion of an applicant as a means of influencing who will be among his or her peers on the bench. It is even more alarming when this occurs during a Supreme Court nominating vote – and in fact, these tie-breaking votes actually occurred during *each* of the last two Supreme Court vacancies. The chief justice, like the rest of us, is only human – and should not be placed in a position where she or he can be perceived to allow personal biases and ideology to influence the decision regarding who sits next to them on the bench.

The tie votes on the council are especially troubling when it involves a split of all three public (non-attorney) members voting, and all the Bar members voting the opposite way. Though rare over the course of the council's history, these attorney/non-attorney vote splits have happened much more frequently in the past few years. From June 22, 2012 – Oct 10, 2013, there were five attorney/non-attorney split votes, in which all three public members voted to send an applicant's name to the governor, but the chief justice voted with the attorney members and turned down the applicant. Three of those votes occurred with regard to Supreme Court vacancies, and the rejected applicants were highly regarded Superior Court judges. The addition of three more public members to the council will create an odd

Continued on page 18

From left: Alaska Chief Justice Dana Fabe, United States Supreme Court Justice Sonia Sotomayor, and Senior Judge Elaine Andrews attend the National Association of Women Judges 36th Annual Conference. Protecting and advancing meaningful access to justice was the theme of the conference in San Diego, CA. Photo by Bob Ross Photography

Have a safe and happy Holiday Season!

Alaska's Territorial and Senior lawyers schedule dinner

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

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

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

For reservations call Kim Unger at Ross & Miner: 907-279-5307

Rookie survives early hazing to become a valuable partner

By Kenneth R. Atkinson

Bruce Gagnon joined our law firm in July 1970. He drove to Alaska from Nashville, Tennessee, with a teenage nephew. His wife and infant daughter flew up several weeks later. Bruce was a law professor at Vanderbilt University for three school years following his 1967 graduation from Harvard Law School. He told me that he tired of the academic life and of the limited hunting and fishing available in the area. He was steered to Alaska in 1969 by a Seattle lawyer with whom he had a job interview, during which Bruce disclosed his desire for abundant hunting and fishing. The lawyer in Seattle, who had frequent business in Alaska, told Bruce that he should go to Alaska, and that, by chance, an Anchorage lawyer, John Conway, was then in a Seattle hospital recovering from back surgery. The Seattle lawyer and Conway had frequently worked together on Alaska matters. Bruce visited Conway in the hospital, and they agreed that Bruce would fly to Alaska that fall to be interviewed by the rest of the firm. Following that fall interview, Bruce was offered a job, which he accepted, to commence in the summer of 1970 after he had completed the academic year at Vanderbilt.

I received a telephone call from Bruce in July 1970 announcing that he was in Tok, which he pronounced "Tock." I welcomed him to Alaska and told him I'd see him in a day or so.

It didn't take long for Bruce to make his lawyerly skills a valuable asset to the firm, which then consisted of six or seven lawyers located on the Fifth Floor of the National Bank of Alaska building on the northeast corner of Fifth Avenue and E Street. That summer, Bruce and I, as lawyers for a general contractor building the Union Oil building at Ninth Avenue and I Street, now owned by NANA, quashed a threatened building trades strike by citing a United States Supreme Court case decided a few weeks earlier that forbade such strikes. Bruce's drafting of pleadings, correspondence, and briefs was elegant, precise and cogent. I, and the other lawyers in the firm, often used him to test our own theories of matters, and he was unfailingly helpful in that role, for his analytical insight into legal problems.

After about a year or so with us, Bruce was representing an Alaskan subcontractor of a California-based general contractor who was building a subdivision development near the Anchorage Senior Center. The sub was having difficulty getting his contract payments from the general due to disputes, the details of which were never known to me. The general contractor had initiated litigation in California State Court over the dispute and had somehow convinced a judge there to issue an order forbidding the filing of a mechanic's lien in Alaska by Bruce's client. The statutory time for filing such a lien was getting near deadline.

Bruce consulted me about the matter and showed me the purported order forbidding the filing of liens in Alaska against the project. I told Bruce that I was dubious about the legal efficacy of an order from a California State judge restraining an Alaskan from perfecting a lien claim allowed him under Alaska law. I also told Bruce that it would probably be malpractice on the firm's part if he didn't file the lien, which he had already prepared. Bruce said: "By God, you're right, Ken." He then returned to his office.

A half hour later, I was looking out of my office window, which I often did while thinking, or as a distraction from thinking, and I saw Bruce walking West on Fifth Avenue carrying a manila folder. Jesse Bell was with me. It was March, not cold, but cold in the evening and warming in the daylight. Bruce was wearing a bulky, blue-colored, down-stuffed jacket, which made him look even larger than his 6'3" height and 225-pound weight usually did. He strode like he was on an important mission. The Anchorage District Recorder's office was then located in the basement level of the Voyager Hotel on the Southeast corner of Fifth Avenue and K Street, about five blocks from our office. I had known the recorder, Mary (whose last name I have forgotten) for several years. After the conversation with Bruce about the need to record the lien and seeing his purposeful stride to the Recorder's Office, I couldn't resist the urge to play a prank on him. I called Mary and told her that one of my law partners would be at her office soon to record a lien. I described Bruce by his size and the jacket he was wearing. I told her to tell Bruce that a judge in California had just telephoned her, saying that he had issued an order in the California litigation in which Bruce's claimant was a party, forbidding the filing of liens against the project in Alaska. As I finished telling her this, Mary said: "Ken, I think your guy is here now at the counter being waited on by a clerk." Mary told me later that she then walked out to the counter and told the clerk waiting on Bruce that she, Mary, would handle this customer. She then told Bruce about the nonexistent call from the California judge. Like most pranksters, I couldn't wait to hear from my accomplice how the prank worked out, and I called Mary after I thought that enough time had elapsed for the prank to be over. I had told Mary not to let it go on too long, and to tell Bruce that I was behind it.

Mary told me that Bruce became quite agitated when she told him about the judge's phone call and her intent to honor his order, and not permit the lien to be filed. She said: "Bruce looked like he was going to climb over the counter and record the lien himself." At that point, she told Bruce that it was all a gag that I set up with her willing collusion. When Bruce got back to the office, he, Jesse Bell, and I had a good laugh over the incident.

Several years later, in 1974, our office relocated to a building at Third Avenue and K Street. One winter day, Bruce returned to the office with a small Sydney Laurence oil painting that he had purchased for about $5,000. He was very proud of his purchase, which he showed to everybody in the office to admire. He then placed it on the floor in his office, leaning it against a wall. He planned to take the painting home that night after work. Jesse Bell, one of our partners, was not in the office when Bruce returned with the painting. Before Bell's return, we had a building-wide power outage lasting an hour or so. All work at the firm stopped, and the attorneys and staff gathered in one location that had temporary lighting, killing time and chatting, waiting for power to be restored.

Jesse Bell returned during the power outage. I immediately thought of a prank to play on Bruce. I sneaked into his office and removed the new painting to another room and then returned to where Bruce and the idled group were gathered. I said to Bruce: "Jesse hasn't seen your new painting," knowing that Bruce was eager to show it off. Bruce got a flashlight and he and Jesse went to his office, and I followed. Bruce pointed the flashlight where he had placed the painting. He then pointed the flashlight around the

Continued on page 5

In Memoriam

Kenneth Russell Atkinson (1926 - 2014)

Kenneth "Ken" Russell Atkinson, a prominent Anchorage attorney and frequent contributor to *The Bar Rag*, died Oct. 11. Ken first came to Alaska in 1949 to help build a cabin at Nancy Lake for his friend and Navy buddy, John Hale. He was immediately awed by Alaska and vowed to return after attending law school at the University of Iowa. He moved to Alaska permanently in 1954.

Ken was a consummate Alaskan. He hiked, skied, fished and hunted. He was a devoted cyclist and gardener. He loved Alaska and all that it offered. He built a successful law practice and acquired many friends and associates over the years. He and his former wife, Betty Atkinson, built a home and raised three children: his son, Eric J. Atkinson and daughters, Nancy A. Nelson and Katie A. Atkinson. He also leaves two grandchildren, Michael F. Nelson and Bonnie M. Nelson; as well as one great-grandchild, Russell Joy Jr.

.....

John A. Treptow (1946 - 2014)

John Alan Treptow died Oct. 20. John, 68, lived in Anchorage for the past 38 years and worked as an attorney. During his years in Alaska, he worked for Atkinson, Conway and Ganon; Kessel, Young and Logan; Dorsey & Whitney L.L.P.; and finally for the State of Alaska, serving as a senior assistant attorney general.

John was born in Fairmont, Minn. A few years later, the family moved to Northbrook, Ill. Upon graduation from Glennbrook North High School, John was accepted at Washington University in St. Louis. where he earned both his bachelor's and law degrees. John was a talented athlete. He was one of the top high school wrestlers in Illinois. He served as president of his fraternity, Kappa Sigma.

As an attorney, he received countless awards for his pro bono work in maritime, employment, health care and environmental law. Regardless of the outcome in the courtroom, John always treated his colleagues, staff and his opponents with the respect. His presence in the courtroom demanded respect making him a worthy opponent in any situation.

However, his selflessness, kindness and great sense of humor touched so many lives inside and outside the workplace. John and his wife Barbara celebrated their 29th anniversary this past July.

John is survived by his father, Charles; mother, Ruth; brother, Rick and wife, Barbara; and sons, Andrew, Matthew and Adam.

.....

Kathleen M. Scanlon (1958 - 2014)

Kathleen "Kitty" Scanlon lived her life to the fullest, achieving quality over quantity, inspiring all who knew her until she finally surrendered to cancer on Sept. 26, 2014, at Providence Hospital in Anchorage, Alaska. She was born in Detroit, Mich., on Aug. 31, 1958. She earned a degree in political science from Northern Michigan University in Marquette. After graduation, her love of the outdoors took her on to Utah and ultimately Alaska, in search of a longer ski season. Kitty settled in Girdwood, Alaska, in the late 1980s, working at the Sitzmark as a bartender and establishing a reputation as "that redheaded girl who runs on Alyeska Highway every day." She also worked as a bartender and caterer at events at the Egan Center and the Sheraton, but in 2000, decided to fulfill an ambition to earn a law degree. She returned home to Michigan for this endeavor and graduated cum laude from the Thomas M. Cooley Law School in Lansing in 2003, immediately heading back to Anchorage and the mountains she loved. After a few years as a lawyer, Kitty had the courage to say "I don't really like this line of work after all." She went on hiatus, took a job at REI and devoted her free time to skiing, hiking and biking. Diagnosed with cancer in 2009, Kitty faced her new adversary head on, working as a ski host for Alyeska resort through multiple courses of chemotherapy, bouncing back after every setback, skiing Christmas Chute with enthusiasm at every opportunity in the winter and hiking Bird Ridge most Sundays in the summer. She especially enjoyed walking the Coastal Trail, logging five miles a day almost every day. She'll be remembered for her brilliant smile and ability to listen with focus and intent. Kitty is survived by her parents, Joe and Mary Scanlon; sisters, Margaret (Jeff) Daniel and Micheleen (Jeremy) Mantei; brothers, Joe and Pat Scanlon; and nieces, Elise Daniel and Mackenzie and Emma Mantei, all of Michigan. She was preceded in death by an infant sister, Michelle. Kitty's memorial service will coincide with the 6 p.m. Mass at Our Lady of the Snows in Girdwood on Sunday, Nov. 30, 2014, with Father Leo Walsh officiating. A celebration of life will follow at the Sitzmark at Alyeska Resort. In lieu of flowers, Kitty requested donations to Hospice of Anchorage or the Providence Oncology Rehabilitation Program.

Rookie survives early hazing to become a valuable partner

Continued from page 4

perimeter of his office. He became visibly agitated by the painting's absence. I told him: "Maybe this whole power outage was rigged to steal your painting." Bruce said: "By God, you're right, Ken." I let it go on for a few moments more and then told Bruce and led him to the room where I had taken his painting. We all had a laugh. I did not receive the punishment which I received from my mother when, as a child, I played pranks that caused her shock. She made me cut off little saplings and used them to spank my bare legs.

I suppose that Bruce's intense power of concentration and his complete absorption in whatever subject then engaged him triggered my pranks on him as my way of testing that power for my amusement.

Bruce was exposed very early in his tenure at our firm to the stark and raw emotions that sometimes motivated people to seek legal services. A man I knew slightly called me for an appointment to draft a will for him. I told him that, besides preparing for a trial, I had limited skills for that job. I recommended one of the partners to him for that purpose. An appointment was made. When he came in, I introduced him to Bruce. Within a day, Bruce had the will prepared, as the man had said he wanted it promptly. He came in at 10:30 a.m., read the will, and signed it. I was one of the witnesses. The man seemed his usual self. He took the will with him and, at his request, paid for it. Shortly after 1:00 p.m. the same day, Bruce received a telephone call informing him that the man had killed himself, using a pistol. Bruce and I were shocked by the news. Bruce was racked by feelings that he should have sensed what the man planned to do and what he, Bruce, might have done to prevent it, even though there were no overt clues that could have alerted him.

That incident reminded me of an incident 15 years before. I represented the appellee in a case before the Alaska Supreme Court. I had agreed with Al Maffei, the opposing attorney, to an extension of time to file his brief. Al hired a young Harvard law school graduate, living in Anchorage and waiting to take the Bar exam, to prepare the brief. The man called me at home on a Saturday and asked if he could bring the brief to my house early that evening as it was due on the following Monday. I agreed with that. The young lawyer, in his late twenties, showed up about 7 p.m. My children were 5 and 3 then, and were playing in the living room, and must have presented a cozy domestic scene. We chatted a while after he served me with the brief. He appeared to be a serious young man and was not married. I had met him before, but didn't know him. He prolonged his visit. He seemed to linger. He left after what should have been a much briefer visit although we had a cordial conversation. Two days later, I was informed that he killed himself with a hand gun on Saturday night. I still think of him occasionally.

With intellectual skills and an affable nature as ample as his physical stature, Bruce was a valued partner in the practice of law. He was also an excellent companion on river rafting trips on the Ongavinuk, Stuyahok and Alagnak Rivers and three-day cross-country ski trips between Nancy, Butterfly and Red Shirt Lakes, with overnight stops at Pat Gilmore's cabin on Butterfly Lake and John Conway's cabin on Red Shirt Lake. There were often six or seven lawyers from the firm on those trips. One of the wives said, either dismissively or enviously, that it was "male bonding."

I have often wondered why I chose Bruce as the target of my hazing. Something in his nature egged me on. His legal skills; powers of concentration on any task he understood; his zest for work, life, and enjoyment of the material perks of his success; and his good nature made him a challenge to me. His reaction to my pranks has provided me fodder for many fond memories for my old age, a tribute to the years we shared as partners.

NEWS FROM THE BAR

Bar Association Board approves ethics opinion

ALASKA BAR ASSOCIATION ETHICS OPINION 2014-4

Lawyer's Indemnification of Opposing Parties

Questions Presented

Is it ethically permissible for a plaintiff's lawyer, as part of settlement of the plaintiff's claims, to agree personally to indemnify the defendant from third-party claims to the settlement funds?

Is it ethically permissible for a defendant's lawyer to propose a condition of settlement requiring the plaintiff's lawyer to agree personally to indemnify the defendant from third-party claims to the settlement funds?

Conclusion

A lawyer may not agree personally to satisfy third-party claims to settlement funds. With the issuance of this opinion, Alaska joins other bar associations that have concluded such agreements are ethically impermissible.[1] Accordingly, defense counsel may not attempt to require that a plaintiff's lawyer personally indemnify the defendant from third-party claims to the settlement funds.

Introduction

In personal injury lawsuits, it is not uncommon for various entities to have a claim to a portion of the plaintiff's recovery. For example, a plaintiff may owe various third parties for medical expenses, including healthcare providers, insurers, and state and federal assistance programs. These third parties may hold liens against the plaintiff's recovery from any settlement. The plaintiff must satisfy valid liens out of any settlement proceeds.[2]

When on notice of a tort suit on the plaintiff's behalf, lienholders may inform the defendant of the lien and threaten litigation if a settlement is made without addressing the lienholders' interests. If a plaintiff fails to pay those liens, it is possible that a lienholder could make a claim or file suit against the defendant who settled with the plaintiff. Typically, a settlement agreement contains language where the plaintiff agrees to indemnify the defendant from such claims. Such a provision involving a promise by the plaintiff raises no ethical concerns.

However, defendants in some civil cases also have demanded as a condition of settlement that the plaintiff's attorney, as well as the plaintiff, agrees to indemnify the defendant in the event of claims arising from liens asserted against the plaintiff's settlement funds.

The Committee has been asked whether the plaintiff's attorney ethically may agree to such a demand, and conversely, whether a defense attorney may ethically make such a demand.

Relevant Authorities

Several provisions from the Alaska Rules of Professional Conduct are relevant to the analysis of whether such agreements are ethical.

Rule 1.2 mandates a lawyer follow the client's objectives in litigation and abide by a client's decisions with respect to settlement. Section (e) provides an exception "[w]hen a lawyer knows that a client expects assistance not permitted by the rules of professional conduct or other law."[3]

Rule 1.7 addresses conflicts of interest, which include instances where there is a significant risk that the lawyer's representation of the client will be materially limited by the lawyer's own interests. Rule 1.8 then lists some specific conflicts of interest. Rule 1.8(e) provides (with limited exceptions not applicable here) that a lawyer shall not provide financial assistance to a client.

Rule 1.16(a)(1) provides that a lawyer shall not continue representing a client if "the representation will result in violation of the rules of professional conduct or other law."

Finally, Rule 8.4 provides that it is professional misconduct for a lawyer to violate the rules of professional conduct or "knowingly assist or induce another to do so."

Analysis

(1) Rule 1.7 Precludes a Lawyer from Agreeing to Personally Indemnify an Opposing Party

A lawyer's personal agreement to indemnify the opposing party from any and all claims is distinct from an agreement by a client. Such an agreement by the lawyer to act as a personal guarantor violates Rule 1.7 because the agreement creates an actual or potential conflict of interest between lawyer and client. That is, a lawyer's personal indemnification of the defendant as part of a settlement agreement creates a financial risk for the lawyer that would not otherwise exist, and is not inherent in the attorney client relationship. To effectuate settlement, the lawyer might feel pressure from the client to accept the risk. Or a lawyer might discourage an otherwise worthwhile settlement if the lawyer's personal guarantee is required. Further, the agreement to indemnify poses the risk of an additional conflict of interest in the future. If the plaintiff's lawyer is forced to defend and indemnify the opposing party, the lawyer's only recourse will lie in a claim against his or her client.

According to Rule 1.7(a), a lawyer's representation of a client creates a conflict of interest if "there is a substantial risk that the lawyer's ability to consider, recommend, or carry out an appropriate course of action for that client will be materially limited . . . by the lawyer's own personal interests." If a lawyer could commit to an agreement to indemnify the tort defendant, the very consideration of whether to accept that obligation would create a substantial risk that the lawyer's advice to the client would be materially affected by the lawyer's own financial interest – and entering into such an agreement would set up the potential for a future situation where the lawyer and client have directly opposite interests.

Rule 1.7(b) identifies ways that a lawyer may proceed notwithstanding a conflict of interest – but the specific prohibition in Rule 1.8(e) against providing financial assistance to a client, because of the inherent conflict of interest in that situation, argues against allowing compliance with Rule 1.7(b) to supersede the express prohibition in Rule 1.8(e). By agreeing to indemnify the defendant, the lawyer is agreeing to potentially pay some of the client's lawful obligations – and in this way the lawyer is rendering financial assistance to the client. Although that obligation may never actually arise, by providing a personal financial guarantee at the time of settlement, the lawyer is providing financial assistance – a source of credit the client would otherwise not have. Rule 1.8(e) clearly precludes a lawyer from paying his or her client's medical bills directly. A lawyer's promise to indemnify a defendant against third-party liabilities (medical or otherwise) that his or her client fails to satisfy is a prospective obligation, which may never come to pass, but still violates the rule.

(2) Rule 8.4 Precludes the Defendant's Lawyer from Inducing the Plaintiff's Lawyer to Violate the Rules of Professional Conduct

Rule 8.4 provides that that it is professional misconduct for a lawyer to violate the rules of professional conduct or "knowingly assist or induce another to do so." Therefore, if, as discussed above, the plaintiff's lawyer may not provide a personal promise to indemnify the defendant, it is professional misconduct for the defense lawyer to request such an agreement as part of settlement discussions.

Approved by the Alaska Bar Association Ethics Committee on October 2, 2014.

Adopted by the Board of Governors on October 30, 2014.

Footnotes

[1] AZ Bar Ethics Op. 03-05 (2003); DE Bar Ethics Op. 2011-1 (2011); FL Bar Ethics Op. 30310 (2011); GA Bar Ethics Op. No. 13-2 (2013); IL Bar Ethics Op. 06-01 (2006); IN Bar Ethics Op. 1 (2005); KS Bar Ethics Op. 01-05 (2001); MO Bar Ethics Op. 125 (2008); NC Bar Ethics Op. 228 (1996); OH Bar Ethics Op. 2011-1 (2011); SC Bar Ethics Op. 08-07 (2008); TN Bar Ethics Op. 2010-F-154 (2010); AL Bar Op. 2011-01 (2011); VA Bar Ethics Op. 1858 (2011).

[2] See, e.g., Arkansas Dep't of Health and Social Servs. v. Ahlborn, 547 U.S. 268 (2006).

[3] Rule 1.2(e).

Board of Governors action items October 30, 2014

- Approved the results of the July 2014 bar exam and recommended 48 people for admission; recommended the admission of three reciprocity applicants and one applicant by UBE score transfer.
- Voted to allow a person who has passed the Alaska bar exam to take the UBE in Alaska for the purpose of obtaining a transferable score and that such applicants must pay the full application fee.
- Voted to adopt the ethics opinion entitled "Lawyer's Indemnification of Opposing Parties."
- Voted to send to the Supreme Court a proposed amendment to Alaska Bar Rule 44(c)(3) which strikes the word "subsequently" and allows some one who has passed a bar exam to qualify for a legal intern permit or the 10 month rule even if at one time they have failed a bar exam in a state other than Alaska.
- Voted to publish a proposed amendment to Alaska Bar Rule 4, section 5, clarifying that only a failed applicant is allowed to inspect their essay exams, and eliminating the requirement that passing applicants can only get their MBE score upon written request (allowing all applicants to get their written, MBE and UBE score.)
- Approved the minutes from the September 5, 2014 board meeting.
- Voted to set up an ad hoc committee of the Board to explore whether there is merit to the concept of buying or building a Bar building.
- Voted to set up an ad hoc committee of the Board to investigate the ramifications of Bar Rule 33. Members are Page, Bryner, Gordon, Granger.
- Voted to approve the request to form a Juvenile Justice Section.
- Approved the 2015 budget; bar dues to remain at $660.
- Voted to add the amount for software replacement to the capital acquisition reserve.
- Voted to set up a Board subcommittee to review some of the fundamental functions of the Bar. Members are Granger (Chair), Moberly, Chupka, Gustafson, Trombley and Wilkerson.
- Voted to set up a Board subcommittee to look at the staff total compensation package, consisting of the treasurer, president, past-president and president-elect (Granger, Wildridge, Moberly and Page.)

ECLECTIC BLUES

After three generations, Juneau seniors bring Millennials a lesson

By Dan Branch

JUNEAU – I am baby boomer—one of a generation of Americans who marched behind Martin Luther King; launched feminism and the environmentalist movement; cheered Lester Maddox; elected politicians who rejected the Equal Rights Amendment and efforts to curb global warming. We started adulthood singing, "Give Peace a Chance" but spent our middle years making it all about "the me." Now we are old, or getting there.

When city planners warn of the approaching silver tsunami, they are talking about us. Some argue that my generation owes youngsters an apology for: government deficit spending, global warming, elevator music, Fox News, political gridlock, the breakup of the Beatles, the survival of the Rolling Stones, sex-based wage discrimination, an over-dependence on oil and the wars it has caused, a growing gap between the super-rich and the rest of us, baseball's designated hitter rule, and the lost war on drugs. Although I can not be personally blamed for these things and only take partial responsibility for the Stones' survival (I bought the "Aftermath" album), I'd gladly apologize for my generation's sins if I knew that the Millennials, America's next generation of boomers, will learn from our mistakes.

We boomers have no excuse. Our parents' generation, AKA "The Greatest," survived the great depression, formed the Social Security Administration, and won World War II — not to protect America's economic base, but to stop genocide. We should be more like them and their ability to sacrifice and persevere. But the middle class of the greatest generation raised their little baby boomers in the land of *Leave it to Beaver* and *Father Knows Best*. We were supposed to grow up as Eisenhower supporters and GO TO COLLEGE. (Most of us could get a four-year college degree for under $5,000. That won't cover a college student's beer tab today.) We were supposed to be kind and responsible in the ways fostered by the Lions Club and the Shriners. Instead, we elected Richard Nixon. Hubert Humphrey might have beaten him in 1968 if the Democrats' Convention hadn't been held in Chicago that year and fewer boomers were still recovering from the Summer of Love.

"When city planners warn of the approaching silver tsunami, they are talking about us."

When the stock market took off in the 1980s some boomers embraced greed as a life choice. That led to the self-centeredness that characterizes our generation in most of the country.

Now that we are becoming social-security eligible some politicians use the threat of our silver horde to justify weakening the senior citizen safety nets. I can understand how the idea could gain traction among the younger generations who see the national debt as an old man's bar bill that they have to pay. We gray hairs need some redemption; provide examples of elder wisdom and generosity other than volunteer meals-on-wheels drivers. Our generosity must be felt across generations. Juneau might be showing the way.

The City and Borough of Juneau currently face a large budget deficit. The Assembly hopes to close the fiscal gap with a revision of the sale tax exemption provisions. The other night they held a public hearing on a proposal to eliminate the senior citizen sales tax exemption. Before the meeting, the Assembly representatives must have braced themselves to face a room full of angry boomers chanting, "Gray power" and, "You can have my tax exemption when you peel my dead fingers from it." Instead the seniors present urged the Assembly to eliminate their age specific tax exemption and replace it with a provision that would exempt food, fuel and utility purchases from the tax. They also urged that the Assembly eliminate the current sales tax exemptions for lobbyist fees. This, seniors present at the meeting pointed out, brought fairness to the tax system. These are the values that our parents from the Greatest Generation taught us by their actions.

Recently Juneau members of the Greatest Generation memorialized actions of the Juneau High School Class of 1942 that showed generosity and kindness in the face of fear-borne prejudice. John Tanaka, the class's valedictorian, couldn't attend graduation because he and all the other Japanese Americans in Alaska were locked in Lower 48 concentration camps. John, an American citizen, was exiled from his Juneau home simply because of his Japanese heritage. This happened along the entire Pacific Coast. Many Japanese Americans were subject to racism and some to economic ruin. John's classmates insisted that the chair he would have sat in had he not been interned be left empty so no one could ignore his forced absence. After the war, thanks to kind and respectful friends and neighbors, John's family was able to reopen their City Café on Juneau's South Franklin Street.

The bronzed empty chair stands as a memorial to encourage future generations to not make the mistakes of the past.

Now, through the work of the Class of 1942, an empty bronze chair sits near the sledding hill next to the old high school building. Sometimes I find cut flowers or strings of origami cranes decorating the chair. May it always be a place for acts of kindness and inspire bravery in the face of fear or prejudice. May it encourage the Millennials and generations that will follow them to do the right thing.

John's classmates insisted that the chair he would have sat in had he not been interned be left empty so no one could ignore his forced absence.

May it always be a place for acts of kindness and inspire bravery in the face of fear or prejudice. May it encourage the Millennials and generations that will follow them to do the right thing.

Board invites comments

The Board of Governors invites member comments regarding the following proposed amendment to Alaska Bar Rule 4, Section 5. Additions have underscores while deletions have strikethroughs.

Alaska Bar Rule 4, Section 5. An applicant who takes and fails to pass the bar exam has the right to inspect his or her essay examination books, the grades assigned thereto, and a representative sampling of passing and failing essay answers to the examination.

However, with the adoption of the Uniform Bar Examination (UBE) effective this past July, an applicant is now entitled to know the grade assigned to the applicant's UBE and Multistate Bar Examination (MBE) in order to decide whether to transfer a final UBE score to another UBE jurisdiction.

This amendment clarifies that only a failing applicant is entitled to copies of his or her MEE and MPT examination booklets and the representative sample of passing and failing examination answers. The last sentence is deleted because the executive director will be advising applicants of their UBE and MBE scores as a matter of policy.

Rule 4. Examinations....

Section 5. If written request is made to the board within one month following notice of failure to pass a bar examination, only an applicant who takes and fails to pass the bar examination has the right to inspect his or her ~~essay~~ Multistate Essay Examination (MEE) and Multistate Performance Test (MPT) examination books, the grades assigned thereto, and a representative sampling of passing and failing ~~essay~~ MEE or MPT answers to the bar examination at the office of the Alaska Bar Association, or at such place as the board may designate. Absent an express prohibition by the National Conference of Bar Examiners (NCBE), an applicant who takes and fails to pass the bar examination has the right to inspect a copy of his or her Multistate Bar Examination (MBE) answer sheet or Multistate Professional Responsibility Examination answer sheet, scores, and the correct answer key to the form of his or her MBE examination or Multistate Professional Responsibility Examination under the procedures designated by the board. An applicant has no right to a copy of any of these MBE materials or Multistate Professional Responsibility Examination materials for removal from the place of inspection. An applicant who passes the bar examination is not entitled to inspect any MEE or MPT examination books or discover the individual grades assigned thereto. ~~However, a passing applicant may be informed of the applicant's MBE score upon written request to the Executive Director~~.

...

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

Opinion on pro se ghost writing for clients doesn't need any changes

Continued from page 1

While it would be preferable to provide full legal representation for all those seeking it, without regard to cost, the reality is that unbundled legal services offer the pro se litigant more affordable access to more legal services than would otherwise be available. Allowing counsel to provide discrete, unbundled services without filing an entry of appearance or otherwise disclosing her or his participation facilitates the delivery of those services. If the client would prefer to hire the lawyer to enter an appearance, the client may do so. If the client and attorney wish to agree to some more limited form of representation that does not entail the lawyer entering an appearance, they may also do so – as long as the lawyer complies with the requirements of the Opinion. Anecdotal evidence suggests that requiring lawyers to enter an appearance or otherwise disclose their participation in an action in which they are providing discrete unbundled services may create a "chilling" effect on that participation. Before removing this avenue for low-income clients to receive legal advice, one would want to see some actual evidence that the clients are worse off as a result.

Second, the Note reports on several Florida judges' concerns that the anonymity of "ghost writing" may "provide cover for incompetent, predatory practices by lawyers who sell their services to low-income individuals and then provide them ineffective assistance.[7] There is no evidence that this problem has been occurring in Alaska in the more than 20 years since the Opinion was adopted.

Third, the Note suggests that it may not be obvious to judges whether or not a filing was "ghost written" and that judges may have difficulty determining whether or not to view the litigant's filings with the type of leniency typically reserved for pro se litigants. We believe this fails to give appropriate credit to Alaska's judges, who review countless filings from pro se litigants and lawyers. As noted in the Opinion, "the committee believes that judges are usually able to discern when a pro se litigant has received the assistance of counsel in preparing or drafting pleadings. In that event, the committee believes that any preferential treatment otherwise afforded the litigant will likely be tempered, if not overlooked."[8] The Note observes that some pro se litigants are quite sophisticated, competent, and experienced, while some lawyers' work product is lacking. While recognizing that there may be some overlap, we are confident that judges have the experience, wisdom and ability to determine how much solicitude a pro se litigant should receive in order to fairly adjudicate his or her claim. Certainly one could strain to construct a hypothetical scenario, as the Notes does, in which a judge may be confused as to how much solicitude should be afforded to the pro se litigant. But theoretical risks that a judge may be confused by "conflicting signals" about a pro se litigant's understanding of his or her claims is a slender reed to use to discard the Opinion's approach.[9]

In the 21 years since the Opinion was approved by the Board of Governors, it is fair to say that there has been little concern about the issue. Bar Counsel Steve Van Goor, who has helped guide the Ethics Committee for more than a quarter century, reports that he cannot recall a single objection to the Opinion by any judge, lawyer or client. This suggests that this approach to unbundled services is working as the committee hoped.[10] Alaska judges have not complained to the Ethics Committee that this unbundled service delivery approach is defective, confusing, or rife with abuses by counsel. Perhaps such concerns exist but have not yet been expressed by those whose lives are impacted most directly by the Opinion. If so, we welcome their views. Until such time, however, this appears to be a scholarly answer to a problem that does not exist in Alaska.

Kevin Cuddy and Dick Monkman are members of the Ethics Committee, but this article represents their own views and not those of the committee. Kevin practices with Stoel Rives LLP in Anchorage and Dick is a partner at Sonosky, Chambers, Sasche, Miller & Munson, LLP in Juneau. This article was reviewed and endorsed by Monica Elkinton and Carlos Bailey, co-chairs of the Unbundled Law Section. Their endorsement of the article represents their own views and not those of the individual members of the section.

Footnotes

[1]*See* Howard Burgoyne Rhodes, *Giving Up the Ghost: Alaska Bar Ethics Opinion 93-1 and Undisclosed Attorney Assistance Revisited,* 30 Alaska L. Rev. 231 (2013) ("the Note").

[2]*See* Alaska Bar Ass'n Ethics Comm., Op. 93-1 (1993), *available at* https://www.alaskabar.org/servlet/content/indexes_aeot__93_1.html (the "Opinion").

[3]*See* Rhodes, *supra* note 1, at 244-45 & n.65.

[4]*See id.* at 249-50, 259-60

[5]*See* D. James Greiner, et al., *The Limits of Unbundled Legal Assistance: A Randomized Study in a Massachusetts District Court and Prospects for the Future,* 126 Harv. L. Rev. 901, 906 (2013). The focus of the Harvard research was on how access to a full attorney-client relationship tended to lead to better outcomes than more limited unbundled legal assistance.

[6]*See generally id.*

[7]*See* Rhodes, *supra* note 1, at 260.

[8]*See* Opinion at 2 n.2.

[9]*See* Rhodes, *supra* note 1, at 258. It is unclear how the Note's proposed solution – a disclosure stating "Prepared with the Assistance of Counsel, Alaska Bar No. ___" – would operate in practice. If an attorney explains to a pro se litigant the difference between a motion to dismiss and a motion for summary judgment, has the lawyer provided "assistance" in connection with the litigant's eventual motion? Or does this apply only if the lawyer actually drafted the filing in question? Or some portion of that filing?

[10]This is akin to "legislative inaction," whereby courts occasionally defer to a judicial or agency interpretation of a statute if the legislative body fails to override that precedent for an extended period of time; in effect, the legislative body ratifies the statutory interpretation through its inaction. *See, e.g.,* William N. Eskridge, Jr., *Post-Enactment Legislative Signals,* 57 Law & Contemp. Probs. 75, 80-82 (Winter 1994).

The joys and the tribulations of the northern San Francisco Giants fan

By Jack McKenna and Tara Wheatland

Every transplanted Alaskan knows that it can sometimes feel lonely and isolated up here, far away from the people and places that are familiar to you: your hometown, your family, and of course, your beloved sports team.

The longer we live up here, the more the strip mall-lined streets of Anchorage start to feel like home, the more we fill our lives with people who become our "Alaska Family." But the challenges of being a dedicated fan of a far-away sports team can be difficult to overcome. Especially if you're a baseball fan with a team in the postseason.

If you do not have cable at home, it can be quite the challenge to convince a sports bar to change a TV or two from football or hockey to your baseball game. Heartless proprietors have proven to be unmoved by even the most plaintive cries of "*But but but... it's the World Seeeeeeries!*" Even if you do get them to change a screen or two, you'll still have to get all the commentary from the closed captions, surrounded by people wearing all the wrong colors, cheering at all the wrong times. And then, there's the dreaded Time Zone Issue – unsurprisingly, most professional sports leagues do not seem to take the few Alaskan viewers into account when scheduling sporting events. At least we have never had to watch a post-season baseball game in the pre-dawn hours, like some football fans we know.

But we San Francisco Giants fans have been lucky enough to have plenty of time over the last few years to nurture our own loving little Alaskan baseball family. (For those of you with your head under an iceberg, the Giants have three World Series wins in the last five years.)

We've worked out the kinks in our baseball viewing routine. We've got it down to a science, a ritual. We know who's hosting the games (the one person who finally sprung for cable), who's bringing the beer (Anchor Steam or 21st Amendment Brewing Company, naturally), and who we have to be careful texting so his phone does not buzz too much in his pocket in court.

But perhaps most importantly, we've surrounded ourselves with our Alaska Baseball Family. People who make sacrifices to spend time with you, and put up with all of your idiosyncrasies. Fellow ex-San Franciscans (and sometimes, their partners or compadres) who will go in to work early, day after day, so they can slink out at 3:45 to catch the first pitch. Who cheer along when you obsessively chant "Two Out Rally (Clap Clap, Clap Clap Clap) every single time your team is up to bat with two down. Who won't blink an eye when you ask everyone in the room to switch seats because this seating arrangement is clearly bad luck. People who gamely and earnestly offer rally rags, morsels of food, and swigs of beer as offerings to your tabletop Giants shrine (pictured).

That is why our little community of Giants fans, who have banded together for this shared experience far from McCovey Cove, is its own reward.

And that shiny trophy is pretty nice too.

Jack McKenna is an assistant district attorney and Tara Wheatland is corporate and regulatory counsel with GCI.

The World Serice Giants shrine.

Giants fans from left are: Tara Wheatland, Jack McKenna, Katy Soden and Lucas Soden.

FAMILY LAW

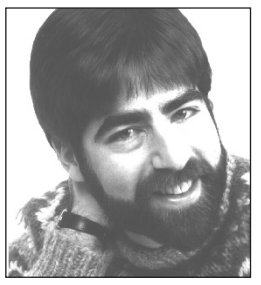
Alaska rules attempt to clarify unbundled legal services issues

By Steven Pradell

Unbundling is a service offered by a lawyer to fit a client's specific legal needs. It falls midway between no legal representation and full-service representation. Although the term may be unfamiliar, most attorneys have performed such services at one time or another, by providing initial consultations, second opinions, assisting clients with drafting documents, settlement, and other more limited matters which do not rise to the level of the filing of an Entry of Appearance in a legal proceeding.

In 1993, the Alaska Bar Association issued Ethics Opinion 93-1, which stated that a lawyer may ethnically limit the scope of representation of a client, but the lawyer should notify the client clearly of the limitation of representation and the potential risks that client is assuming by not having full representation. When a lawyer limits the scope of representation, an attorney-client relationship is still created between the lawyer and the client, with all the attendant duties and responsibilities detailed in the Professional Canons.

More recently, Alaska Rule of Professional Conduct 1.2(c) went into effect, which expressly permits limited representation and governs communication between opposing counsel and pro se clients. Alaska Rule of Civil Procedure 81 governs limited appearances and includes section (d) which expressly permits limited appearances in non-criminal cases so long as the attorney files and serves an Entry of Appearance with the court and all parties of record before or during the initial proceeding. The Entry of Appearance must clearly identify the limitation, and section (e)(D) allows attorneys to withdraw from a limited appearance without court action or approval by filing and serving a notice with the court indicating that the representation has ended.



"Alaska is the first and perhaps the only state thus far to create a bar association section specifically addressing unbundled legal services."

At this time, the court system is overburdened. Lawyers are representing only a small percentage of the domestic litigants, and custody cases which often continue for years clog the court system. Judges are spending too much time managing ongoing cases with pro se clients who don't follow the civil rules or have a sufficient understanding of the legal process. The Alaska Family Law Self Help Center has been an attempt to address this problem, but it remains largely unsolved.

There are many pro se parties seeking assistance who cannot afford to pay a large retainer up front. Many family law lawyers have already adjusted to the changing marketplace by offering both bundled and unbundled legal services to clients who may not be able to afford a large retainer.

Alaska is the first and perhaps the only state thus far to create a bar association section specifically addressing unbundled legal services. In November 2013, the section sponsored its first CLE entitled "How to Make Unbundled Law More Profitable and Less Risky for Your Practice." The section meets every other month for 90-minute sessions at the Bar Association Offices. Attorneys from different practice areas meet to discuss such topics as drafting appropriate fee agreements, limiting the scope of representation, ethical considerations, strategies for efficiency and practice tips.

***About the author**: Steve Pradell's book, "The Alaska Family Law Handbook," is available for family law attorneys to assist their clients in understanding domestic law issues. Steve's website, containing additional free legal informa-*

Rainmaking for the new solo

Working alone is as much marketing as it is the practice of law

By Monica Elkinton

So you've hung your shingle, and now you're sitting at your desk waiting for the phone to ring. How do you get clients? Your poor IOLTA account is sitting empty. The best way to get clients is through networking, both with other lawyers and other people in your life. Getting referrals can be difficult. So you just need to network, network, and network some more. Network like it's your job, because it is. And do it face to face – in actual reality, involving actual physical shaking of hands and exchanging of physical business cards. That is how you get cases. People need to know who you are.

Networking with other lawyers is absolutely critical. When I started out, almost all my private clients come as referrals from other lawyers. Cold calls can actually be very useful. Many lawyers are willing to talk to newbies, have some overflow, or are willing to help in other ways. Ask more experienced lawyers out to lunch or for a beer and ask them how their practice works. Once they know you, they may have some overflow or contract work to send you.

"Networking" does not just mean going to receptions where you don't know anyone and prefer to stand awkwardly in the corner. "Networking" means getting to know people. It means making friends.

Going to bar meetings, sticking around at a social event or reception, attending live CLEs, joining bar committees or sections, being on panels, or organizing events are also important ways to meet other lawyers. Those are things that get the introductions and handshakes of other lawyers and business cards exchanged. Volunteer for ANDVSA and Alaska Legal Services. They need you, and their work gets you into the courtroom where you'll gain experience and meet other lawyers. Join the Unbundled Section, which lists their members online and clients of modest means just call down the list until someone answers the phone.

I also join every appropriate practice area group (Alaska Association of Criminal Defense Lawyers, Alaska Association of Justice, Family Law Bar Section), affinity bar association (Anchorage Association of Women Lawyers, Young/New Lawyers Sections), local bar association (Anchorage Bar Association), and every other group I can get my hands on. I go to all the local CLEs I can afford. I go to as many section meetings over at the Alaska Bar office as I can fit in my schedule. (Tip: the section meetings are free!)

Many lawyers have referral lists of other lawyers where they send cases they do not take. I have a list of attorneys who do employment law, estate planning, etc., practice areas that I do not do. I got to know those attorneys through bar events and social life and *facebook* and volunteer work. All of that is networking, and it is how you get business.

Also think about how you're going to sustain your practice. It's great to have no boss, but it sure comes with a lot of work and responsibility. Think about whether a different practice area is something you should explore. I was a criminal defense attorney, but expanded into family law because the clients just kept calling. You won't even know what the market needs in your area unless you are out shaking hands and socializing with other local lawyers. If there are retiring attorneys in your area, there may be some big opportunities for hungry solos. But without the networking connections, you're going to miss out.

Networking with non-lawyers in your community is also super important. Do your neighbors know you're a lawyer, or in what practice? You can do all the SEO, blogging, tweeting, and other social media interacting you can imagine. None of it compares to the business you can get from your neighbors and those who live in your town and actually know you.

Join community groups and clubs in your area like Rotary or Lions or the Moose Lodge or Freemasons or Garden Club or whatever. If you like music or art, join a community orchestra or chorus or get involved in a local arts organization or gallery. Join a soccer team, running or skiing group, or practice yoga regularly. If you are fond of or even indifferent to religion, go to a church or faith group as regularly as possible. Get yourself on committees. Join your condo/homeowners association board. Teach Sunday School. Join the PTA. Volunteer at Habitat for Humanity. Solo practice can be very isolating, especially if you came from a job with lots of colleagues who wandered the halls with coffee mugs in their hands. All of this "joining" has the added benefit of decreased loneliness.

Make sure as many people as possible have your business card and are able to shake your physical hand and look you in the eye. Tell all your neighbors, your parents' friends, the other parents at your kid's school, etc., that you are a lawyer and what in particular you do. I was at the nail salon last weekend and left a stack of business cards.

When the people you meet doing the above things find out you are a lawyer, they will start asking you questions and will often have a client in mind for you. Their family member or friend will have a legal issue that they will want to tell you about. Hand out those business cards like it is your job, which it still is.

You now own a small business. Give your money (i.e., business) to other small business owners in your area. If you can, use a local printer for your business cards, and make sure the printer keeps a few for behind the desk. Become a regular at a coffee shop and see if you can leave some cards around, or hand them to the barista. Same for the sandwich shop where you go to lunch. Same for your dry cleaner. Same for your dog groomer. Same for every vendor you use. Make yourself a regular, and make sure they know you're a lawyer and what kind of law you practice. Sometimes this is inconvenient. I would rather use direct deposit, but I want the bank teller to know my face and what I do, so I make sure to park the car, walk in, and use the bank lobby to deposit my checks. You never know who will be a referral source, so you want to give yourself as many possible chances as you can. No one else is doing this for you.

The final step in networking is making sure people know you're a good lawyer. You have to tell them. There's just no other way to do it. So you have to brag a little. This is called marketing. Humility is great in many parts of our job, but it just doesn't work in marketing. Talk about the great results you've gotten. Talk about challenges you have faced and how you have overcome them.

Also, of course, be a great lawyer! Treat your clients well, do good work, and all the clients will become referral sources for you. Then your practice will grow exponentially.

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

Possible Future Topics in this series: What kind of insurance do I need (Health, Malpractice, Vehicle)? What do I do about Trust Accounting? If you have a suggestion for an article topic, email monica@elkintonlaw.com.

Fourth Annual Elizabeth Peratrovich Legal Clinic a rousing success

Thank you to the 30-plus volunteers who assisted clients at this year's event during AFN in Anchorage. Your contributions helped 75 Alaskans from communities ranging from Akhiok to Shaktoolik. On behalf of the Alaska Native Law Section, we extend our thanks to project partners at the Alaska Federation of Natives, Alaska Legal Services Corporation, Alaska Native Justice Center and generous donors Holland & Knight, Landye Bennett Blumstein LLP, Perkins Coie and Stoel Rives LLP. Photo credit: Adam Gulkis

NOTICE OF PUBLIC DISCIPLINE

By order of the Alaska Supreme Court,
entered March 7, 2014

DAVID R. EDGREN
Member No. 9406058
Wasilla, Alaska

is suspended from the practice of law for six months with all six months stayed on conditions and publicly censured for client neglect, failure to communicate, failure to refund unearned fee, failure to properly withdraw from representations, and failure to respond to requests for information from bar counsel and a fee arbitrator effective retroactively from September 6, 2013.

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

NOTICE OF PUBLIC DISCIPLINE

By order of the Alaska Supreme Court,
Entered August 7, 2014

DAWN D. AUSTIN
Member No. 0608050
Anchorage, Alaska

is suspended from the practice of law for three years with one year stayed effective September 8, 2014

for neglect of client matters, failure to communicate, failure to account for and deliver client funds, failure to properly supervise nonlawyer assistant, failure to return client files and property, failure to comply with order to produce client file and pay fees and costs, failure to safekeep client property, and failure to honestly advise clients regarding her ability to provide legal services.

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

THE BARN ROOF SONNETS

By Warren Matthews

circa 1995

The baron was four years consecutive
our country's highest paid executive.
And his wife for one year less
was America's richest executess.
He bought a Bitterroot ranch in '84
and liked it so well purchased twenty-two more.
And now comes a tale of wealth pride and reproof,
of hubris of kindness and of our barn roof.

THE UPSTREAM PLACE
Baron Myron Moesch looked out
on his Sheep Creek homestead,
groomed and green and planned, no doubt,
by a modern Frederick Olmstead.
From the window of his manse
to our stile, a full mile down the stream
(at the furthest reach of his expanse)
all was order, a handsome scene.
Fence rails were split, stained to match,
horses all greys, and cows, Charolais, each bore
his mark,
brown trout in the creek dimpled the hatch:
A perfect Montan' ranch theme park.
And a first class spread, throughout forty carat,
reflecting the owner, showing his merit.

A WEN IN THE EYE OF THE BARON
Then to this scene so justly earned
a flash, a glimmer, then a gleam,
a beam of light his mood it turned
transgressing from a place downstream.
His eyes grew moist and then they burned
his view, bought dear, had turned to tear,
his amber waves of grain were blurred,
his picture window now a smear.
"What is the cause of this cursed ray?"
He asked his builder with reproof.
"The sun reflects this time of day
off your neighbors' tin barn roof."
And now a solution must be sought.
All questions have answers. All can be bought.

THE BARON PAYS A VISIT
From a cloud of dust, from a gilded Suburban
strode the cowboy from Greenwich, the baron of
beef.
The glint from our barn he found most disturbin'
he was goddam unhappy and he wanted relief.
Then he made us an offer, he called it win win,
he'd pay from his coffer, the contract he'd make
to tear off our roof, of corduroy tin
and replace it with one of split cedar shake.
We told him no thanks, we'd not take his charity
we liked what we had and it fit the decor,
his new ranchette shakes would be a disparity,
then we gave him a smile and showed him the
door.
And we asked as he passed if he'd use this same
etiquette
on the real estate of his friends in Connecticutt.

FAVORS
Until the winter of our disarming
when the tenant ignored what he owed us
he'd had enough of hay farming
and he quit the place without notice.
Horses must eat every day,
but the fields were filled with ice nubble
the tenant had sold all our hay
and they could not get through to the stubble.
They might have starved without our knowing
but the baron's man showed kindly heed
and every day rain, wind, or snowing
he drove the road and pitched them feed.
So we dispensed with our sense of injured offence
and our attitude,
and we let Myron put a new roof on to show our
gratitude.

And so ends our story of wealth pride and reproof,
of hubris of kindness and of our barn roof

TALES FROM THE INTERIOR

Awards are all right as long as a free lunch is involved

By William Satterberg

The most favorably maligned profession in the United States is the legal profession. Lawyer jokes abound. There is bar-room competition on who can out-lawyer joke the other. The public's opinion of lawyers is one notch above that of a used car salesman.

Still, I love my job. The work is exciting, with never a dull day. My office is an eclectic location comprised of two converted houses. One clearly had been used as a house of ill repute during the heyday of "the Row" in Fairbanks. The staff, as well, is a casual lot. Blue jeans and t-shirts abound. Many bring their dogs to work, which are generally accepted, depending on their diet.

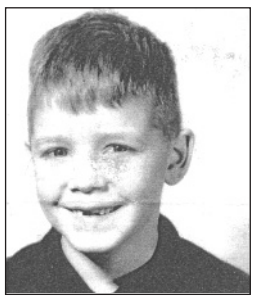
Should a family matter arise, a person is usually free to leave. And, when a member of the office has had a particularly difficult personal time, everybody pulls together as a team and as friends to help that person out. The office parties, some of which you have read about in the pages of the *Bar Rag*, have been legendary. Although it is a stressful environment, it is a fun place to work. People look forward to coming to work as opposed to dreading each day. Stress exists, but the goal is to make the workplace enjoyable.

Three years ago, one of my paralegals invited me to a Chamber of Commerce lunch. I asked her why I would want to attend a Chamber meeting. I view the Chamber as a bunch of business people admiring each other, and I did not need the exposure. Still, the paralegal was insistent. I sensed something was up. When I confronted her, she indicated the Chamber was giving out its "Family Friendly Workplace Awards." Our firm had been nominated as a candidate.

Eventually, I decided to attend. Besides, I told myself, a free lunch was involved. I was surprised that my associate Tom Temple was not grappling with me to attend the free fete.

After lunch, the awards ceremony began. Awards were being given to companies in two categories: those with more than 25 employees and those with fewer than 25 employees. To qualify, the business had to be a fun place to work, take care of its employees, and allow the staff time to deal with family matters.

As the third and second place awards were announced, I noticed some unusual behavior on the part of my paralegal, well beyond her usual unusual behavior. I began to suspect that my attendance was more than simply to be paraded at a free Chamber lunch.



"The public's opinion of lawyers is one notch above that of a used car salesman. Still, I love my job."

Surprisingly enough, when it came down to handing out the first-place award for a company with fewer than 25 employees, our firm won. This was extremely unusual because I rarely attended Chamber meetings and was not even sure if our dues were current. Nevertheless, I accepted the lacquered plaque which now hangs proudly in our office. The firm has been nominated on two subsequent occasions for the Family Friendly Workplace Award.

Admittedly, the award is one of the best awards that our office has ever received. Unlike an award for personal achievement, or the honor roll certificates which used to paper my bedroom walls as a nerd in junior high school, the Chamber award proclaimed that the firm was taking care of its people and that people enjoyed the workplace. In fact, when interviewing with prospective staff, I point out that we did receive this award and that, hopefully, the firm will remain a fun place to work.

The accolades for the firm did not end there. Every year, the *Fairbanks Daily News Miner* has a competition for the "Most Favorite" category of various local businesses. It is a very skewed newspaper poll. There is no screening device in place to limit the number of times a person can vote. Some businesses lobby patrons aggressively for votes, while others shun the recognition entirely. Like Rotary, there is only one category available for each business.

In the spring of 2014, I was contacted by a salesperson for the *News Miner*. Our firm had been submitted in the poll so many times that we actually placed in a category. At the time, I was still nursing a bad case of writer's cramp.

The salesperson advised me, "Mr. Satterberg, your firm has been selected in the most favorite attorney category for the *News Miner*." The term, itself, was an oxymoron. When asked the place of my win, the woman apologetically told me that I was Fairbanks' "second most favorite attorney."

"Who was the most favorite attorney," I innocently inquired. I was told the person's name was John Hutchison. "And who, specifically, is John Hutchison?" The woman then confessed that her editor had the same question. She had searched futilely statewide to locate attorney John Hutchison. The closest counselor with a name even similar was in Utah. She would get back to me on the subject.

A day later, the salesperson called to advise me that, whoever John Hutchison was, he had now been disqualified. Our law firm was now the most favorite. Not wanting to cause turmoil, I decided not to tell local attorney Chad Hutchison that he might have missed his golden opportunity.

I was next asked if I wanted to buy a display advertisement thanking all of our loyal supporters. I responded that I might consider buying an advertisement telling them never to vote for us again, but I did not want to purchase advertising thanking those who had so foolishly voted for us. After all, such behavior should not be encouraged.

Two days later, I was speaking with local attorney Van Lawrence on a matter when Van volunteered that he understood that he and I were "in competition." Van bragged that he had been selected and tied for the third most favorite attorney in Fairbanks, along with Valerie Therrien. I began to question my own credentials at that point. In modest reply, I corrected Van, stating that he and Valerie were now tied for the second most favorite attorney in Fairbanks because the first most favorite attorney allegedly lived somewhere in Utah. Van was delighted.

Sure enough, one week later, the *News Miner* released its tabloid of the most favorite Fairbanks businesses. It was a local *Who's Who*. Several pages into the publication, nestled between copious advertising, our firm was listed as the most favorite local law firm, with Van and Valerie tied for second place. Surprisingly, a large local law firm, Cook, Schuhmann & Groseclose came in as the third (or fourth) place winner. Like myself, neither Van nor Valerie bought thank you advertisements. Cook, Schuhmann & Groseclose, on the other hand, did succumb to the temptation and had a nice display advertisement thanking all their loyal patrons.

Later that week I attended a Rotary lunch in Fairbanks where I did brag about our prize. The lunch was attended by Alaska's lone Congressman, Don Young. Many people are not aware of Don's history in entering the United States Congress, but research will show that, in 1972, Don had been running as a Republican candidate against incumbent Congressman Democrat Nick Begich. Prior to the November general election, Nick disappeared in a plane wreck over the Prince William Sound area. The wreckage has yet to be found. Still, at the time of the election, Nick was already presumed dead. Regardless, Nick still handily won the general election against the upstart newcomer from Fort Yukon, Don Young. It was only after a special election held in January of 1979 that Don was elected to the United States Congress.

As such, when I made my Rotary announcement regarding our success as Fairbanks' most favorite law firm, I hastened to point out that Don and I actually had something else in common beyond our rumored liberal politics. We had both lost a poll to somebody who did not exist. Fortunately, Don got the joke and broke out in laughter. He totally understood the context, even if the younger members of the crowd were puzzled. After all, politicians and lawyers are not that far apart on the social scale.

Law Library News

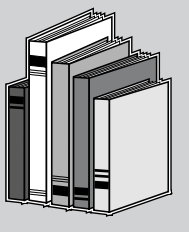
eBooks are now available through the library

By Susan Falk

We are proud to announce that Lexis eBooks are now available at the Law Library. All library users may view the eBooks on the library's patron-access computers, and all Alaska Bar members may check out eBooks for use at home or at the office, at any time, from any location. You'll have 24/7 access to these titles, and lawyers in Nome, Sitka and Kenai will have the same access as those in Anchorage. Lexis is the only major publisher offering a lending platform at this time, but the Lexis Digital Library includes nearly every Lexis title we have in print.

Lexis uses the same platform as the State Library's *Listen Alaska* service. If any of you have checked out eBooks through the public library, you already know how easy it is to use the platform. You can open the book in your browser and copy directly into your work document. You can highlight or make notes on the text, and these notes will pop back up if you check the book out at a later date (while never being visible to other users). You can also access the book online, or download it to your computer, your e-reader, or your mobile device.

To check out eBooks, all Bar Members will need a library ID number and a PIN. Your ID number will be based on your bar number, and your PIN can be any four-digit number you choose. To set up your account, simply visit us in one of the staffed library branches, call us in Anchorage, or send us an email. We can help you use eBooks and the borrowing platform, so be on the lookout for training announcements in the new year.



Anchorage Law Library Update

After three years of construction, the Anchorage Law Library remodel is nearing completion. Some of the treatises have come out of storage and are back on the shelves already. The new compact shelving for our basement storage rooms will be installed in December and January, and we are scheduled to move back into our Reading Room in February. We look forward to spreading out into our beautiful new space, and welcoming you back to our updated library. If you're in Anchorage this winter, come check out our new digs.

The new library space includes computer workstations, a new reading balcony, lots of wired tables, and several comfortable reading nooks. While we hope you find this new physical environment welcoming, please remember that you don't have to spend time in the library to enjoy our services. Call or email us with questions and requests. We are happy to email material to you, when possible.

Because justice has a price.

The staff and board of Alaska Legal Services Corporation (ALSC) extend our sincere thanks to the individuals, firms, foundations, and corporate sponsors who contributed to the ALSC in the last year including those that donated to the Robert Hickerson Partners in Justice Campaign.

We are especially grateful to our 2013-2014 campaign co-chairs:

Charlie Cole, Saul Friedman, Josie Garton, Ann Gifford, Jonathon Katcher, Erin Lillie, Peter Michalski, Susan Orlansky, Joe Paskvan, and Jim Torgerson

July 1 2013 to June 30 2014

Champions of Justice - $10,000 +

CIRI
Norton-Cruz Family Foundation Fund
Jennifer A. Schafer-Soderman

Justice Society Members - $5,000 to $9,999

Arctic Slope Regional Corporation
Cameron and Jane Baird Foundation
The Carr Foundation, Inc.
Dillon & Findley
Marie C. & Joseph C. Wilson Foundation
David S. Carter

Senior Partners - $3,000 to $4,999

Bristol Bay Native Corporation
The Pew Charitable Trusts
Randal G. Buckendorf
Myra M. Munson
Morgan Christen & Jim Torgerson
Robert Anderson & Marilyn Heiman

Benefactors - $1,000 to $2,999

ConocoPhillips
The Dorsey & Whitney Foundation
Doyon, Limited
Holland & Knight, LLP
Nome Eskimo Community
Perkins Coie
Sedor, Wendlandt, Evans, & Filippi, LLC
John Angell
Robert G. Coats
William S. Cummings
Carol & Tom Daniel
Saul R. Friedman
Andrew R. Harrington
Marc W. June
Jon A. Katcher
Peter A. Michalski
Melanie B. Osborne
Mark W. Regan
Daniel G. Rodgers
Elizabeth Wilson

Partners - $500 to $999

Bessenyey & Van Tuyn, L.L.C.
Faulkner Banfield
Hagen Insurance
KeyBank Foundation
Mendel and Associates
Midwifery & Women's Health Care at Geneva Woods
Seawolf Physical Therapy
Elaine M. Andrews
Susan L. Bailar
Ronald L. Baird
Barbara K. Brink
Cate Burnstead
Brooks W. Chandler
Charles E. Cole
Christopher R. Cooke
Joseph M. Cooper
Jennifer Coughlin
Glenn E. Cravez
Kenneth P. Eggers
Ben J. Esch
Walter T. Featherly
Mary C. Geddes
Sharon L. Gleason
Bill Gordon
Kay E. Gouwens
Carolyn Heyman-Layne
Barbara J. Hood
Lisa M. Kirsch
Gabrielle R. LeDoux
James N. Leik
Leslie Longenbaugh
Richard W. Maki
Marilyn May
Brad Osborne
Art Peterson
Karl Potts
Barbara L. Powell
James N. Reeves
Norman P. Resnick
Jane E. Sauer
Natasha V. Singh
Kathleen Strasbaugh
R. Scott Taylor
Leon T Vance
Carole Waters
Michael & Vanessa White
Donna C. Willard
David P. Wolf
Larry R. Woolford

Associates - $300 to $499

Jacqueline Carr
Erick Cordero
Dennis G. Fenerty
Clifford J. Groh
M. Lee Holen
Don W. McClintock
Louis J. Menendez
James Q. Mery
Robert Minch
Charles W. Ray
Janine J. Reep
Susan E. Reeves
Grace B. Schaible
Steven C. Weaver
Sandra J. Wicks
Geoffry B. Wildridge
Ethan L. Windahl

Colleagues - $100 to $299

Cooper's Wounded Bear Farms & Kennels
The Couples Center of Alaska
Law Offices of Davison & Davison
Eyak Corporation
Woelber, Jacobson & Passard, LLC
Dorothea G. Aguero
Helene M. Antel
Constance A. Aschenbrenner
Candace Baca
Theresa L. Bannister
Jeffrey J. Barber
Carole J. Barice
Allan Barnes
Corinna Batt
David A. Bauer
Martha Beckwith
Carl & Ruth Benson
Ilona M. Bessenyey
Diane Bischoff
Kathryn A. Black
Kristen F. Bomengen
Judith Brady
Charles F. Bunch
Winston S. Burbank
Bill Caldwell
Christian W. Carpeneti
Linda M. Cerro
Sharon Chamard
John B. Chenoweth
Rachel Cheyette
William L. Choquette
Jo Ann Chung
Mariko Churchill
Susan G. Churchill
James F. Clark
Alfred T. Clayton
Joan M. Clover
Linda S. Corbin
Eric C. Croft
Joseph D. Darnell
James J. Davis
James D. DeWitt
Michael Dillard
R. Stanley Ditus
Cynthia C. Drinkwater
Louise R. Driscoll
Kim Dunn
Sherry Eckrich
Shannon Eddy
George W. Edwards
Roger Endell
Sonja Engle
Robert C. Erwin
Rebecca L. Eshbaugh
Joseph W. Evans
Dana Fabe
Randall E. Farleigh
Laura L. Farley
April S. Ferguson
Debra J. Fitzgerald
Maryann E. Foley
Deirdre D. Ford
Linda Freed
Jill Friedman
William H. Fuld
Darrel J. Gardner
John N. Garner
Josie W. Garton
Ann Gifford
John Goetz
Donna J. Goldsmith
Deborah L. Greenberg
Marla N. Greenstein
Janell Hafner
Michael J. Hanson
Bethany S. Harbison
David Hardenbergh
Leone M. Hatch
John E. Havelock
Eric Hedland
Erik Helland
Beth Heuer
Brandie Hoffmeister
Ronald Horvath
Roger L. Hudson
Karla F. Huntington
Ann E. Hutchings
Mike Jeffery
Erling T. Johansen
Kathy J. Keck
Amrit K. Khalsa
Margot O. Knuth
Leslie J. Kramer
Elizabeth F. Kristovich
Eric A. Kueffner
Kathryn L. Kurtz
Lawson (L.N.) N. Lair
Karen L. Lambert
Yvonne Lamoureux
Robert W. Landau
Terri Lauterbach
Cam M. Leonard
Wendy E. Leukuma
Janice G. Levy
Erin M. Lillie
Bruce Linquist
Leonard M. Linton
Paul F. Lisankie
John Lynch
Margie Mac Neille
Barbara L. Malchick
David Mannheimer
Lea S. McDermid
D. John McKay
Joseph H. McKinnon
Robert J. McLaughlin
Chris E. McNeil
Nancy B. Meade
Douglas K. Mertz
Dennis M. Mestas
A. Fred Miller
Robert E. Mintz
Michael G. Mitchell
Robert J. Molloy
Walt Monegan
Richard D. Monkman
Margaret L. Murphy
Jeanie A. Nelson
Oscar Nolan
Neil T. O'Donnell
Deborah O'Regan
Nora Ortiz Frederick
Brad D. Owens
Jean Paal
Donna S. Pegues
Willa B. Perlmutter
Daniel F. Poulson
John L. Rader
Alicemary L. Rasley
Gregory P. Razo
Jerald M. Reichlin
Lisa R. Rieger
Mark Rindner
Caren Robinson
Catherine Rogers
Andre Rosay
William B Rozell
Virginia A. Rusch
Vance A. Sanders
Kristine A. Schmidt
Alan L. Schmitt
Michael T. Schwaiger
Timothy W. Seaver
Hanna Sebold
Joseph W. Sheehan
John R. Silko
Connie J Sipe
Deborah M. Smith
Diane A. Smith
Stephen F. Sorensen
Ivy Spohnholz
Anselm C. Staack
Trevor N. Stephens
Scott A. Sterling
Catherine Ann Stevens
John Suddock
Sharry Sullivan
Valerie M. Therrien
Frederick Torrisi
Breck C. Tostevin
Eric Troyer
Fran Ulmer
Julie Varee
Jennifer Wagner
Nancy Waterman
Lisa Ann Weissler
Leslie Wenderoff
Ian Wheeles
Michael N. White
D. Kevin Williams
Julie Willoughby
Lisa M. Wilson
Tonja J. Woelber
Patricia (Penny) Zobel

Friends – Up to $99

Glacier Stenographic Reporters
Eric A. Aarseth
Charles D. Agerter
Marjorie K. Allard
Katherine R. Alteneder
Justin Andrews
Barbara A. Armstrong
John W. Ashbaugh
Laurie M. Ault-Sayan
Carlos Bailey
James L. Baldwin
Thomas A. Ballantine
Judith Barnes
Donna Baum
Thomas G. Beck
David G. Bedford
Laurel C. Bennett
Phillip E. Benson
Ruth M. Berkowitz
Rebecca L. Bernard
Greg E. Bidwell
Teryn Bird
Danielle M. Blair
Robert Blasco
Joel H. Bolger
Michael R. Boling
Troy Bowler
Dylan C. Buchholdt
Carolyn L. Buckingham
Kate Burkhart
Stephen J. Burseth
Marian Call
Larry D. Card
Glenn K. Carpenter
Samuel W. Cason
Holly S. Chari
Jacqueline Chase
Matthew W. Claman
Steve W. Cole
John W. Colver
Louie Commack
Craig S. Condie
Daniel Consenstein
Caroline B. Crenna
Andrew Crow
Jody Davis
Tamara E. de Lucia
Mary M. Deaver
E. Leigh Dickey
Linda Divers
Erin C. Dougherty
Robin Dublin
Suzanne M. Dufek
Charles Easaw
Daniel E. Eldredge
Monica Elkinton
William L. Estelle
Charles G. Evans
Zachary P. Falcon
Susan Falk
John Fechter
Kevin Finnigan
James E. Fisher
H. Ryan Fortson
Kirsten T. Friedman
Sarah Furman
Stephanie D. Galbraith Moore
Deidre S. Ganopole
Mary A. Gilson
Brittany Goodnight
Laura J. Goss
Valli H. Goss
Mary H. Gramling
Wendi Gratrix
Steven P. Gray
Robert L. Griffin
Violet Gronn
Nancy J. Groszek
Leonard L. Gumport
Robert J. Gunther
Robert A. Hall
Lori Hamblin
Mark T. Handley
Karen L. Hawkins
Marylee Hayes
Jonathan P. Hegna
Joseph R. Henri
Jennifer Hohnstein
Carole A. Holley
Amy Holman
Dennis Hopewell
Dixie L. Hudish
Elayne Hunter
Salvatore Iacopelli
Patrice A. Icardi
Rosanne M. Jacobsen
Michael A. Jacobson
Joyce M. James
Thom F. Janidlo
Tracey Janssen
Christine E. Johnson
Barbara A. Jones
Cheryl M. Jones
Robert J. Jurasek
Barbara Karl
Christopher M. Kennedy
Gavin Kentch
Kirsten M. Kinegak-Friday
Cynthia M. Klepaski
Rachel B. Lauesen
Nancyann Leeder
Beth A. Leibowitz
Kenneth P. Leyba
Esther Lim
Bernard E. Link
Heather Llewellyn
Melony P. Lockwood
Robert Lohr
James Longoria
Satrina R. Lord
Wendy Lyford
Krista Maciolek
Jeffrey D. Mahlen
John Martin
Renee McFarland
Amy A. McFarlane
Laurel McLaughlin
Margaret McWilliams
Vanessa Meade
Mary-Ellen Meddleton
Sarah Melton
James K. Metcalfe
Diane Miller
Anita Minor
Robert A. Mintz
Sarah R. Monkton
Daniel Moore
Sarah D. Moyer
Benjamin Muse
Leslie Need
Margie Nelson
Nikole M. Nelson
Matthew Newman
Jamie Newsom Eaton
Russell A. Nogg
Kara A. Nyquist
David D. Oberg
Thomas S. O'Connor
M. Gregory Oczkus
Ruth E. O'Rourke
Thomas P. Owens
Amy W. Paige
Marilyn D. Parke
Michael J. Pate
Michael J. Patterson
Rebecca L. Pauli
James B. Pentlarge
Irene C. Persson-Gamble
Phillip Peters
Matthew S. Phillips
Susan Phillips
Jeffrey G. Pickett
Susan R. Pollard
Kimberly Quale
Gail Ragen
James Ragen
Christina Reigh
Peggy Roston
Jan A. Rutherdale
Robert J. Sato
Gordon F. Schadt
Daniel J. Schally
Mark P. Scheer
Debra J. Schnebel
Bryan Schroder
Thomas E. Schulz
S. Jay Seymour
Walter Share
Nancy R. Simel
Cailan Simon
Sean Skillingstad
Thomas J. Slagle
Eugenia G. Sleeper
Elizabeth Smith
Ian Smith
Jack W. Smith
Michael R. Smith
Gretchen L. Staft
Robby Staley
Michael A. Stanley
John M. Starkey
Heather Stenson
Janna L. Stewart
Susan E. Stewart
Nicole D. Stucki
Gina M. Tabachki
Saralyn Tabachnick
Sydney Tarzwell
Sue Ellen Tatter
Francine Taylor
Kelly Taylor
Kneeland L. Taylor
Allan Thielen
Margaret A. Thomas
John H. Tindall
Richard J. Todd
Patrick J. Travers
Marlyn J. Twitchell
Alma M. Upicksoun
Susan L. Urig
Valerie A. Van Brocklin
Tom Wagner
Brian J. Waid
Darcie Warden
Daniel W. Westerburg
Florence Whinery
Danna M. White
Morgan White
Judy F. Whittaker
Kyla Wilkinson
Khalial L. Withen
David A. Zerby

Contributions received after July 1, 2014 will be credited in the 2014-2015 campaign.

Thank you for your generous support!

Contributions received after July 1, 2014 will be credited in the 2014-2015 campaign.

Thank you, for your generous support.

Robert Hickerson Partners in Justice

The Annual Campaign
for Alaska Legal Services Corporation

Access to Justice for Alaskans in Need

Our 2014-2015 Robert Hickerson Partners in Justice campaign has started. If you would like to join your colleagues in supporting this worthwhile cause, please send your tax-deductible contribution to:

Alaska Legal Services Corporation
1016 West Sixth Avenue, Suite 200
Anchorage, Alaska 99501
For information or to request a pledge form,
e-mail us at donor@alsc-law.org.
Online contributions can be made at www.partnersinjustice.org

Contributions received after July 1, 2014 will be credited in the 2014-2015 campaign.

Thank you for your generous support!

Universal bar exam fits better in a changing, expanding world

By Andrew Wilson

My name is Andrew Wilson, and I am an attorney, currently admitted to practice in the Commonwealth of Pennsylvania, who recently passed the Alaska Bar. I met my wife, a former Alaskan, at undergraduate college, in New Hampshire. My first year of law school (at UNH School of Law), she brought me to Alaska to meet her parents; Alaska never let go. Since that visit, I have been trying to make my way back. This past summer I took the Alaska bar (the Universal Bar Exam or UBE), and recently received the good news that I passed. I am anxious to bring my wife home to the land we both love.

Since I passed the Pennsylvania Bar in 2013, I have been practicing solo and on a referral basis under the wing of more experienced attorneys, with whom I share office space. The UBE was my second bar exam in two years. I am currently awaiting admission in Alaska and conducting job searches in all of the various Alaskan communities.

The UBE is a fantastic idea, and one that should see electric growth over the next few years. In past years, when America was a less mobile, slower-paced society, law was a family practice that spanned generations in a given location. However, the dawn of the internet age has given birth to a flurry of new and creative ways to practice law. E-firms sprawl across the country; groups of solos link up to enable multi-state practices. However, the laws that once forbade the practice of law across state borders do not yet reflect this everyday reality. Moreover, these boundaries also prohibit the job market from stabilizing and adjusting in the wake of business trends. Attorneys are bound by state boundaries in an economy that shifts and swells depending on the taxes, resources and changing laws. States like Pennsylvania, Massachusetts and Michigan have a glut of attorneys, while Nevada, Colorado, Nevada and Alaska have openings. The prevailing system of administering state-specific bar exams prohibits an attorney from searching for work beyond the borders of his state of admission.

The UBE offers a novel approach to solve the now archaic practice borders. Having passed this bar, I am deemed eligible for application to the bar in fifteen states. Now, granted, there are other admission hurdles, but even in "slow-admission" states, the UBE could reduce the application period by as much as half. This means that a UBE passer could apply to jobs in all UBE states contingent on admission – employers are much more eager to entertain hiring you if you have already passed the bar in their state.

As for practicing attorneys, the UBE expands the playing field by allowing prospective employers to consider a larger sample of applicants than previously allowed. UBE passers present an opportunity for more remote and less populated jurisdictions, like Alaska or Montana, to dip into a deeper pool of talent.

Many people fear that a standardized test "dumbs down" the exam topics – not so the UBE! The highly esteemed Pennsylvania Bar requires a scaled score of 272 to pass, while Alaska requires a UBE scaled score of 280. Having now taken both tests, I thought they were comparable in difficulty. Both use the MBE for the multiple choice portion of the test, and the essays test many of the same concepts. Many bar exam passers will admit, that even in states where the essay portion of the exam is purported to be state specific, the issues tested are not very different from those on the UBE. State-specific law is most often learned in practice.

In conclusion, I think it is fair to say that Alaska has not lost anything by choosing to adopt the UBE. If anything, it has joined the more forward-thinking states who realize that state borders are an antiquated and now awkward way of working in a national and international based economy.

Editor's Note: *all Alaska-based employers interested in talking with this bright new star in the Alaska Bar should contact Andrew at WilsonesqLaw@outlook.com.*

Appellate rule changes: brief extensions, filing deadlines, more

By Marilyn May, clerk of the Appellate Courts

The Alaska Supreme Court recently amended several Appellate Rules of Procedure. The amendments affect filing deadlines for certain types of cases and will change procedures for requesting extensions. This article highlights the most significant changes.

The first set of changes to the Appellate Rules are already in effect; they are published in the 2014-2015 Rules of Court and posted on the Court System's web page under Current Rules of Court. Appellate Rule 303 was amended to increase the time allowed to file a petition for hearing, cross petition, or response from 15 to 30 days. In addition, it allows parties to obtain a 15-day extension simply by filing a notice – no motion is required. Any additional extensions are by motion, upon a showing of extraordinary circumstances. Appellate Rule 217 is also amended to extend the filing deadline for appeals from district court from 15 to 30 days, to require a designation of transcript, and to increase the page limit for briefs in these appeals from 20 to 25 pages.

The changes the court adopted in Supreme Court Order (SCO) 1842, regarding extensions of time for filings briefs, will take effect on April 15, 2015; SCO 1842 is posted on the Court System's web page under Supreme Court Orders. Attorneys handling supreme court appeals should carefully review the amendments. While the rule amendments technically apply to all appeals, the court of appeals has ordered a separate method for handling state government attorneys' requests for briefing extensions.

The new SCO signals a real change in how the Supreme Court will handle extension requests under Appellate Rule 503.5. The change comes as part of the court's ongoing effort to reduce the time it takes to resolve an appeal. The court has altered its internal procedures – now it is tightening up the extra time it will grant for briefing.

The amended rule retains a three-tiered system for requesting extensions of time to file briefs. Under Appellate Rule 503.5(b), the first extension for each brief (up to 30 days for appellant's and appellee's briefs and 15 days for appellant's reply) may be obtained simply by filing a notice before the date when the brief is due. This first-level extension remains not available in expedited matters. The next two tiers of extension require a motion and a detailed affidavit. At the second tier or request for extensions of time, a party may obtain up to 30 additional days to file the opening or appellee's brief and up to 15 additional days for appellant's reply brief by showing diligence and substantial need.

Any request for additional time beyond what is allowed under the first two tiers must be supported by a detailed explanation of the extraordinary and compelling circumstances that prevent completion of the brief within the time allowed. The previous version of the rule provided no guidance as to what constitutes "extraordinary and compelling circumstances," and the court was very generous in granting such requests. The amended rule now includes some of the factors the court will consider. Essentially, the circumstances will need to be truly out of the ordinary to qualify for additional time.

For those appeals or granted petitions that are particularly complex or have unusual scheduling issues, a party will be able to request a scheduling conference early on during the appellate process to develop appropriate case-specific deadlines.

The changes to the extension rule were discussed and debated extensively by the Rules Committee, as well as by the court. The goal was to ensure that any standards adopted were reasonable and workable for practicing attorneys. Very few comments from the Bar were received when the draft was put out for review, suggesting that the balance struck by the amended rule is appropriate.

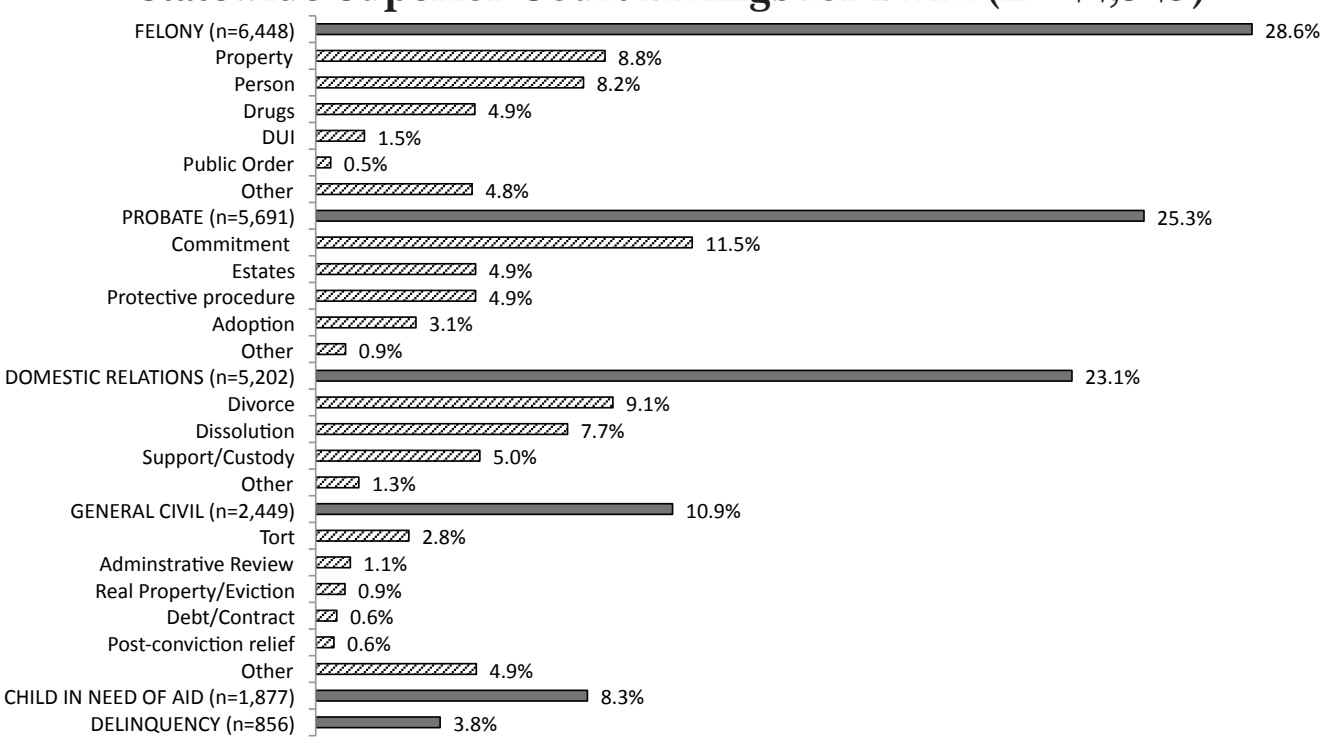
A final change included in the SCO is to amend Appellate Rule 510(c) to raise the maximum monetary sanctions that the court can impose for failure to comply with the court rules from $500 to $1,000.

Email mmay@akcourts.us with questions.

BY THE NUMBERS

Bill Falsey, Sedor Wendlandt Evans & Filippi LLC

Statewide Superior Court Fillings for FY14 (n=22,523)



Source: ***Alaska Court System Annual Report FY2014, Figure 4.02 and Table 4.04 (forthcoming), preview courtesy of Court Administrator Christine Johnson***

OPINION

Should Alaska have a law school? What part does sexual misconduct play?

This is the second installment of three exploring the state of the Bar and the possibility of establishing an Alaskan law school.

By John Havelock

REORGANIZING THE QUESTION.

In Part 1 of this essay, published in the September 2014 issue of the Bar Rag, the origins of law school planning, going back to 1974, were discussed relative to the founding of the UAA Justice Center and the creation of the Justice Degree for the University of Alaska system. The 1974 study of law school feasibility issues[1] concluded that, in terms of student attendance, there would be sufficient applicants, qualified by prior education and LSAT scores, to justify a modestly sized Alaskan school, but, in the year the study was done, only marginally. The doubling of the Alaska population since that time and more than commensurate growth in the legal community has changed the question. There are now easily enough candidates to make a law school "feasible" – but is there a need for an Alaskan law school or more Alaskan lawyers? Resistance to a law school is high at this time, maybe especially among lawyers, who, joining the chorus of general hostility to the profession, ask the question, "Don't we have too many lawyers already?"

To answer that question, we need at least tentative answers to several related questions. What are the purposes of legal education? What purpose does legal education serve in the larger community and society (i.e. in Alaska and the world)? What are the employment opportunities for people with some form of legal education? What elements of legal education are important for each type of employment? And of course, how do you decide how many is "too many" – and too many of what? You may have your own additional questions.

WHAT DOES A LAWYER DO?

As each question is parsed, the reader is required to turn to the individual. When defining "lawyer," the ordinary conception is that "lawyer" describes a person who regularly goes to court, tries cases and is licensed for this purpose. But among licensed lawyers, it is common knowledge that a great many, probably a majority, never go to court, or are in court rarely and then only briefly, often for formalities. Large numbers of lawyers practice before or in administrative agencies or specialized courts such as bankruptcy or probate. Many more deal exclusively in providing advice and preparing documents. The federal courts are a world of their own.

As bar membership has grown, and it has grown every year in Alaska, *de facto* specialization has grown apace, so that not only is there a class of barristers (to use the English formulation) dedicated to trials, some "high end" some 'low end" – but there is also a growing legal community that engages in specialized work, be it real estate, corporate management, wills and probate, or Worker's Compensation, with little or no court engagement. Some go to court who shouldn't. The common bond is a universal state license, graduation from an ABA accredited law school and a requirement of three credits annually of continuing legal ethics education. These things make lawyering a profession, said to require its members to be professing collective and individual social responsibilities beyond making a buck.

The yellow pages of a local phone book list 62 specializations recognized by the publisher. None of these self-selected, Yellow Page specializations require any kind of formal certification or evidence of specific educational or practical experience.[2] No more than 40 lawyers of Anchorage's approximately 1,800[3] purport to specialize in criminal defense, the layman's usual image of a lawyer. Even then, more than 90 percent of the criminal lawyer's work these days is in negotiating pleas, not trials. Though not compulsory, good lawyers also attend their specialty section(s), under the auspices of the bar association. Some also attend American Bar Association seminars and conferences and productions of the generally high quality Alaska Bar CLE program.

No one person has the legal education to adequately address more than a small fraction of the range of legal work now available. The complexities of commercial, political and even personal life have bred a nearly comprehensive web of legalities calling for expert assistance, suggesting that a real need for lawyers has grown over the last few decades. Claims for legal malpractice have grown. In the early years of the Alaska Bar, such claims didn't happen. It is unlikely that the absence of claims had anything to do with the quality of practice.

The proportion of women entering the practice of law has grown dramatically notwithstanding persistent, covert employment discrimination. The numbers of law school graduates now tilt slightly to women. This trend helps to explain the establishment of new law schools over the past two decades as legal education has been squeezed to accommodate the new lawyers without rejecting the thousands of men with lower LSATs who would previously have sought legal careers.

THE GROWING RELIANCE ON SUPPORT STAFF

Yet another feature of contemporary Alaska law practice markedly different from the "Old Days" is the growth of paralegal support. The legal secretary who learned his or her stuff through on-the-job advice from an employer is still around but the number of paralegals, many of whom are graduates of university justice programs, is on the rise, taking over routine and some not-so-routine tasks.

An informed guess suggests that lawyers are nowhere near as good at delegating as they should be. Part of the problem is evident in the persistence of solo or very small firms where a full-time paralegal may be underutilized. But in most cases, lawyers find that the paralegal, properly used, becomes a profit center while relieving the lawyer of sometimes tedious work for which she previously overcharged. While analogies have their hazards, a glance at the medical profession where hierarchies of assistants aid the physician, and the fact that physicians always practice in conglomerates of one kind or another, suggests that the legal community lags in adopting techniques for reorganization of legal service delivery. If paralegal use was growing more rapidly, it might suggest a shrinking need for lawyers, but there is no sign that such growth is anything but modest.

THE NUMBERS FOR ALASKA (HOW MANY LAWYERS)

There are approximately 2,500 attorneys in Alaska currently admitted to the bar, of whom 77% practice in the Third Judicial District. Another 600 Alaska lawyers are active but practice primarily out of state. That does not mean that they have dropped the business of delivering legal services in the state.

Hundreds of law school graduates, our guesstimate is around 500, are using their legal education, which may or may not include a degree from some ABA recognized law school, to support a recognizable part of their work. As last measured by the American Bar Association, about a quarter of law school grads do not enter the formal bar. By using that proportion in Alaska, we arrive at our "guesstimate." Maybe one or more of these graduates are waiters. But the fact that a law school graduate decides not to enter the bar does not mean he or she is not engaged in responsible employment that he or she enjoys – maybe she is happier than the rest of her classmates who grind away in licensed legal work.

REPLACEMENT

To determine the number of lawyers needed to replace lawyers who leave the practice (a "Replacement Number") we considered who is practicing for how long and with what intensity: murky questions. Considering mortality and the natural movement of Alaska's population, including lawyers migrating out of state, we hypothesize an average Alaskan legal career to last 25 years. Dividing that number into the 3,000-lawyer total suggests a replacement requirement, without growth, of just 120 a year.

About 140 law school graduates take the bar exam every year, of whom about 90 pass in a five-year average. Another 33 or so are admitted by "reciprocity." Based on these numbers, we are adding approximately 120 to our admitted lawyer population each year. So there are "enough" lawyers already coming in, 10 more than needed if

Continued on page 15

UW Law opens Anchorage office to aid legal education and access to justice

By Betsy Baker

A number of exciting initiatives are currently under way to address the absence in Alaska of a law school and the prohibitively high costs of creating a new one. It is my privilege to now live and work full time in Anchorage, representing just one of the many law schools active in the state, having helped the University of Washington School of Law open our office in Anchorage in July of this year. I have greatly enjoyed and benefitted from my many conversations with members of the legal, business and civic communities. Thank you for sharing your time, your hopes, and your expertise with me and our Dean, Kellye Testy, to help us understand how we might partner to advance legal education and access to justice in Alaska.

First, Dean Testy is eager to recognize the progress that Seattle University and her longtime friend and colleague, Dean Annette Clark, have made in partnership with Alaska Pacific University to establish a satellite campus. Stephanie Nichols, the executive director of SU's Alaska Program, has been instrumental in the success of that effort, which is designed to host visiting third-year students from any law school who wish to spend their final year of study in Anchorage. These students can serve as legal interns during the academic year, bolstering the provision of legal services in Alaska while gaining important practical skills education. Moreover, having experience in the state will encourage graduates to launch their careers here – adding depth and breadth to the legal profession. Testy and Clark are also discussing ways that the two schools can work together, including on CLEs and conferences.

In addition, UW Law is exploring additional innovative opportunities for Alaskans to study law as well as collaborative programs that expand access to justice throughout the state. Toward this goal, on Oct. 15, we hosted a roundtable discussion among academics from several law schools and Alaskan universities, and a group of lawyers representing the Alaska Court System, the Alaska Bar Association and its Board of Governors to discuss the future of legal education in Alaska. The roundtable discussion emphasized what we have been learning over the course of our many meetings with Alaska's lawyers, judges and others in the legal profession. Three needs surfaced repeatedly: expanding opportunities for various forms of legal education in Alaska, diversifying the legal profession, and improving access to basic legal services for underserved Alaskans in rural and urban communities.

The Oct. 15 roundtable generated many ideas, and we are grateful for the engagement of so many partners from the academy, the bench and the bar. The roundtable also helped us understand how many initiatives related to legal education are already extant in Alaska. Moving forward, a working group will seek to build on these efforts and to determine which short and longer-term projects have the greatest potential to meet the needs the Alaska bench and bar identify. In the meantime, UW law has created a 3/3 program with UAA, as has Willamette, and established scholarships for Alaska residents admitted to UW Law. We are also currently sponsoring a second-Friday CLE series and we will look to help host an annual symposium on a topic of interest to the legal, business and civic communities.

Betsy Baker is a professor at the University of Washington School of Law.

For further information, please contact me at bbbak@uw.edu, 907-793-7046.

AUTHOR'S NOTE: *Alaska Bar Rag* readers will know that John Havelock published the first article in an anticipated series on legal education in the July-September 2014 issue (p. 13). His second article in that series appears in this issue of the *Bar Rag*. We are pleased to contribute to this broader discussion and look forward to hearing readers' ideas regarding the possibilities for legal education in Alaska.

Should Alaska have a law school? What part does sexual misconduct play?

Continued from page 14

that 25-year career number is accurate, just enough to cover natural growth.

In 2013, 79 law schools were represented in taking the Alaska bar exam takers including the top sources: seven from Gonzaga and six each from Willamette and Seattle. Most schools, including very few of the more famous and a lot you never heard of, were represented by only one applicant. The handful of new lawyers originally resident in Alaska (estimated around 40 enjoying the economic resources to do that with, let's say 10 of them who decide on out-of-state careers) were the only ones with local knowledge. Including those who stayed home who might otherwise have gone out of state, and the backlog, somewhere north of 200 qualified students interested in living and practicing in the state are ready to apply each year for admission to an Alaskan law school.

Deserving of separate mention are the very small number of students who are likely to enroll at the Willamette University Law School or the University of Washington Law School in a program endorsed by the UAA Justice Center which allows enrollment in that law school after completing a junior year at UAA. The academic desirability of this arrangement is open to question. Another cooperative arrangement between Seattle University Law School (University of Puget Sound in the old days) and Alaska Pacific University promises that Alaskans who enroll there for two years will be able to do their third year in Alaska in a program that so far lacks full definition. The core purpose in each of these programs is to expand enrollment in the sponsoring institution. It seems unlikely that either will evolve into an Alaskan law school. Seattle University law school is also operating a two-month summer program here, open to all law students, teaching Alaska Native and environmental law for four credits and a cost of $5,000.

Conclusions: Part 2. The case for establishing an Alaska law school will have to rest on factors other than the state's shortage of lawyers. The matchup of Alaskan supply and demand reflects an intuitive understanding that Alaska is part of the national market for lawyers. The fluidity of the national lawyer employment market makes it unlikely that Alaska will notice a shortage of lawyers in the sense that a citizen with money looking for a lawyer would have a hard time finding one.

Where supply issues show up is in the relative high cost of mundane legal services and the scarcity of services for the economic lower half of the state's citizens. Alaska Legal Services Corporation reports taking in 2,648 cases assisting 6,441 Alaskans. They reject more than a thousand applications, most for lack of eligibility including not being poor enough. The perception of high cost in just visiting a lawyer prevents a sizable but unmeasured proportion of the population from seeking out necessary legal support or leaves those with fewer resources overmatched by opponents who don't blink at the cost of a lawyer.

Given the rise of the national market in lawyering, no state has needed a law school since the mid-20th century. Alaska would never "need" a law school to satisfy demand for lawyers if its population grew to that of California. Existing schools cover national demand with decade-long national fluctuations and local variations based on local economies making the life of the new graduate miserable or splendid.

This occasional lack of demand for lawyers, variability in job opportunities and compensation offered, is a hardship duplicated in the market for a variety of other professional schools and graduate programs. Yet the schools kept coming – why? Because it's not all about having "enough." There is a range of losses that come from the absence of an Alaskan school of law which will be addressed in the next (and final at least for now) column on this subject.

"Aren't there too many lawyers here already to open a law school?" This is the wrong question today. Though it was an aspiration of many territorial lawyers to depress the number of new lawyers coming into the state, that interest is long past – at least as a legitimate question. As a profession we are not interested in limiting competition – well, not very much.

Whether a law school, even if desirable, is an appropriate priority for the State of Alaska is a question still to be explored as are the intriguing questions of what this school might look like and how we might get there. As for sexual misconduct, a student will flunk out if he takes time from studies for sexual misconduct. A student needs to wait until after he is admitted to the bar. Thanks for reading this article to the end.

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

Footnotes

[1]That comprehensive study, was undertaken by the author on the request of the Regents and Legislative Council with the cooperation of the Deans of law schools at Stanford, University of Denver and Hawaii, and included separate surveys of Anchorage citizens and lawyers.

[2]The Yellow Pages like big ads but also publish regular phone numbers. A lawyer can list himself as a specialist in as many categories as he or she wants- for a fee.

[3]One thousand nine hundred and twenty-seven practice in the 3d Judicial District, picking up Kenai and Mat Valley bar members plus some fraction of newly admitted.

FEDERAL BAR ASSOCIATION

Federal Bar Association installs president, welcomes magistrate judge

By Darrel J. Gardner

The Alaska Chapter of the Federal Bar Association is now running smoothly under the leadership of its new president, Brewster H. Jamieson, who assumed office on Oct. 1. I hope that everyone in federal practice will continue to support the Federal Bar Association in Alaska. I am extremely proud to have been president of the Alaska Chapter for the past two years, and I am looking forward to my continued activity in the FBA locally and as a recently appointed member of the FBA's National Membership Committee.

The First Alaska Federal Bar Conference held in August was a great success, as the accompanying photos show. We are now planning The Second Annual Alaska Federal Bar Conference for Aug. 21, 2015. Although it is still in the early organizational stages, it promises to be an even better event with more varied presentations that will have broad appeal for all federal practitioners. Please save the date.

The Alaska Chapter received two awards at the FBA's Annual National Meeting and Convention, this year held Sept. 4-6 in Providence, R.I. Outgoing Alaska Chapter President Darrel Gardner accepted the awards which included a Chapter Activity Presidential Achievement Award (for the second year in a row) "in recognition of accomplished chapter activities in the areas of administration, membership outreach and programming," and a Chapter Membership Growth Certificate "in recognition of excellence in recruitment, experiencing a growth in membership of 10 percent or greater."

"I am looking forward to my continued activity in the FBA locally and as a recently appointed member of the FBA's National Membership Committee."

Chief Judge Ralph Beistline swearing in new Magistrate Judge Kevin F. McCoy

On Oct. 9, the FBA-Alaska Chapter hosted a lunchtime meeting to celebrate the appointment of new U.S. Magistrate Judge Kevin F. McCoy. FBA-Alaska President Jamieson welcomed everyone to enjoy free pizza, and then asked Magistrate Judge Deborah Smith to introduce Judge McCoy. Judge Smith described how Judge McCoy had been sworn in by U.S. District Court Chief Judge Ralph Beistline on May 9, in a small ceremony that included Judge McCoy's family and other members of the Court. His appointment followed the retirement of Magistrate Judge John Roberts, who left the court in May after serving more than 30 years. Judge McCoy was appointed to a four-year term and will serve as a part-time magistrate judge, with his office located in Anchorage.

Federal magistrate judges go through an exhaustive merit selection process required by statute. The District Court advertises the vacancy and appoints a Merit Selection Panel comprised of attorneys and non-attorneys to evaluate the candidates and recommend the most qualified candidates to the court. The District Court judges then consider the candidates recommended by the panel and make the final selection. The members of the Merit Selection Panel appointed to make recommendations to the District Court following Judge Roberts' retirement included: Nancy Gordon, chair; attorneys Robert Bundy, Marc June and Donald McClintock III; the Hon. Michael Spann, Superior Court judge; Janie Leask and John Wanamaker. There are 531 full-time magistrate judges and 40 part-time magistrate judges in the U.S. In Alaska, Judge Smith is full-time, and currently the District has three part-time magistrate judges: Judge Scott Oravec in Fairbanks, Judge Leslie Longenbaugh in Juneau, and now, Judge Kevin McCoy in Anchorage.

Federal magistrate judges have the authority to preside over all stages of a civil case with the consent of the parties. They also preside over civil settlement conferences referred by District judges, and issue reports and recommendations to the District judges on dispositive motions and habeas corpus cases. They also rule on nondispositive motions and resolve discovery disputes. In criminal matters, magistrate judges handle felony pretrial matters, including pretrial motions, evidentiary hearings, probation/supervised release hearings and guilty plea proceedings. They also have authority to preside over trials in petty offense cases and Class A misdemeanor trials with the consent of the parties. They conduct arraignments and detention hearings. They also review complaints and applications for search warrants, arrest warrants, and ex parte applications for electronic and digital information. The duties of full-time and part-time magistrate judges are set by statute and outlined further in the local rules of each district. The role of magistrate judges has steadily grown since 1990, when the title of the position was changed by statute from "U.S. Magistrate" to "U.S. Magistrate Judge." In 2013, magistrate judges decided 15,804 civil cases on consent; disposed of 124,703 criminal misdemeanor cases; resolved 210,052 pretrial criminal motions, 369,264 pretrial civil motions, 26,666 prisoner cases and hearings, 377,179 preliminary proceedings in felony cases, and 228,572 miscellaneous matters, including civil settlement conferences. ("A Brief History of the Federal Magistrate Judges Program," *The Federal Lawyer*, May/June 2014.)

Judge McCoy came to the state in 1976 and began his Alaska legal career as a staff attorney for Alaska Legal Services Corporation in Kodiak, representing individuals in civil and domestic relations matters. He also provided indigent criminal defense services to Kodiak, King Salmon, Dillingham and Dutch Harbor pursuant to a contract with the Alaska Public Defender Agency. From 1978-1981, he was an associate attorney at Hahn, Jewel and Stanfill in Anchorage, handling matters involving attorney malpractice, Open Meetings Act litigation on behalf of the *Anchorage Daily News*, domestic relations cases, and retained criminal defense matters. In 1981, Judge McCoy began his long career with the Alaska Public Defender Agency, serving as the state's supervising assistant public defender in Kenai for nine years and as the agency's appellate attorney for three years. Judge McCoy also served as an assistant attorney general for four years, as the supervising attorney for the Fair Practices/Business Practice Section in Anchorage. He enforced the Unfair Trade Practice and Consumer Protection Act and initiated the first criminal fraud prosecution by the section. Judge McCoy later transferred to the Oil Spill Section and assisted in the civil prosecution of Alaska's claims in the Exxon Valdez case. He then served as an assistant federal defender for 19 years before his appointment to the bench.

The FBA-Alaska Chapter is planning a formal reception for Judge McCoy to be held in December.

Other great news from the federal bench includes the appointment of Chief Magistrate Judge Deborah Smith to chair the Ninth Circuit Magistrate Judges Executive Board. At the Ninth Circuit Conference in July, Judge Smith began serving as chair of the board, following her election in May. The Executive Board is charged with administering and planning the Magistrate Judges' conference held during the Ninth Circuit conference each year. The board also participates each year in the training of new magistrate judges in San Francisco. The Executive Board, comprised of representatives of each of the 14 Districts in the Circuit, meets three times a year.

Judge Deborah Smith elected to chair Ninth Circuit Magistrate Judge Executive Board.

The Executive Board has two standing subcommittees. The Education Subcommittee is responsible for the continuing education and training of magistrate judges in the Ninth Circuit. The Subcommittee on Ex-Parte Applications for Electronic and Digital Information was recently established by Judge Smith to alert judges to developing law affecting such ex-parte applications. The chair of each subcommittee is elected to a two-year term. The duties of the chair include serving as the principal liaison with the chief judge of the Circuit and the Executive Committee of the Ninth Circuit Judicial Conference; serving as an observer-member of the Judicial Council of the Ninth Circuit; and representing magistrate judges at meetings of the Conferences of Chief District Judges and Chief Bankruptcy Judges.

Judge Smith has been a Magistrate Judge in the District of Alaska since 2007. Prior to her appointment to the bench, she served as acting U.S. attorney and first assistant U.S. attorney for the District of Alaska. She began her career as an assistant public defender in Anchor-

Continued on page 17

Alaska Chief Judge Ralph Beistline, District Judges Timothy Burgess and Sharon Gleason and FBA President Judge Gustavo Gelpi

The *Bar Rag*: 36 years of not taking ourselves too seriously …

The 13th annual Bar Historians Luncheon was held on Oct. 30. The topic was the history of The Bar Rag, and the panelists were former Bar Rag editors Judge Ralph Beistline, Harry Branson, Justice Peter Maassen, and Michael Schneider. Meghan Kelly did double duty as moderator and current editor of the Rag. Attendees were treated to a fun and informative discussion of the history of this august institution.

Bar Association members attended a luncheon Oct. 30 in Anchorage celebrating the history of the *Alaska Bar Rag*. Several former editors reminisced about their days with the Rag, recalling mostly humorous incidents during their tenure. From left are: Judge Ralph Beistline, Mike Schneider, Judge Harry Branson, Justice Peter Maassen, and current editor Meghan Kelly.

Born and raised in Alaska, Judge **Ralph R. Beistline** obtained his Bachelor's Degree from the University of Alaska, Fairbanks, in 1972 and his JD from the University of Puget Sound (now Seattle University) in 1974, gaining admittance to the Alaska Bar in 1975. He has served on the Board of Governors of the Alaska Bar Association from 1985 to 1988, serving as President from 1986-87. He also served as Editor of the Bar Rag from 1988-1993. Judge Beistline served as a State Superior Court Judge in Fairbanks before he was appointed to the United States District Court for the District of Alaska in 2002. He is currently Chief Judge of that court and also serves on the Ninth Circuit Judicial Council.

Harry Branson was born in Chicago, raised in Pittsburgh, and returned to Chicago where he completed undergraduate work at Northwestern and got his law degree from the University of Chicago. He hated every minute of law school and deferred the bar exam for three years, after which he served in the Philadelphia Public Defender's Office. He moved to Alaska in 1971 where he started with Alaska Legal Aid. Since then he has spent time in private practice, as a professor at UAA, and as a federal magistrate, serving part-time from 1976-1997 and again from 1989-1993, then served full-time from 1993-2005 when he retired. He also served on the Alaska Bar Board of Governors.

Meghan Kelly was born and raised in rural southwestern Wisconsin. She received her BA from the University of Wisconsin and her JD from the University of Denver.Meghan came to Alaska in 2008 to clerk for Judge Joel Bolger in Kodiak and followed him to the big city of Anchorage in 2009.She is honored (and thoroughly intimidated) to join the ranks of her distinguished predecessors at the Bar Rag.

Michael J. Schneider was born in Yakima, Washington. He got his BA from the University of Washington (1972) and his JD from the McGeorge School of Law (1975). During his career he has actively served the legal community: American Association for Justice (State Delegate, 1989-1990; Member, Board of Governors, 1993-2004); Alaska Academy of Trial Lawyers (President, 1982-1983; Member, Board of Governors, 1982—); American Board of Trial Advocates (Member; President, Alaska Chapter, 2005-2006). Aircraft Owners and Pilots Association (Commercial Pilot). He was also Editor-in-Chief of the Alaska Bar Rag (1993-1994).

Justice Peter J. Maassen was born and raised in Michigan, and received a B.A. from Hope College in 1977 and a J.D. from the University of Michigan in 1980. Other than a two-year stint in the General Counsel's Office of the U.S. Department of Commerce and then for a private firm with a federal administrative practice, Justice Maassen spent most of his 30-year career in private practice in Anchorage. He was a member of the Alaska Bar Association Board of Governors from 2009-2012, serving in various capacities, and continues to serve on the board of the Anchorage Youth Court. He now chairs the Supreme Court's Access to Justice Committee and its judicial conference planning committee. Justice Maassen was appointed to the Alaska Supreme Court in 2012.

Tom Van Flein was raised in Fairbanks. He got his BA from the University of Alaska, Fairbanks, and his JD from the University of Arizona College of Law (1989), after which he clerked for Supreme Court Justice Ed Burke . He was associate attorney at Clapp, Peterson & Stowers, managing partner at Clapp, Peterson, Van Flein, Tiemessen & Thorsness (2001-2010), and represented Governor Sara Palin. Since then he has gone on to serve as legislative director Rep Paul Gosar (R- AZ) and currently serves Chief of Staff & General Counsel at U.S. House of Representatives (since 2011).

Federal Bar Association

Continued from page 16

age. She also clerked for Superior Court Judge Douglas Serdahely and served as staff attorney for the Alaska Court of Appeals. Later, Judge Smith held numerous positions in the U.S. Department of Justice, including deputy chief, Environmental Crimes Section, Washington, DC; director of the New England Bank Fraud Task Force, Boston, MA, one of three task forces established in the country to prosecute cases arising from the savings and loan scandals of the '90s; and senior litigation counsel, Fraud Section, Washington, D.C.

Judge Smith's notable litigation includes the successful 1989 prosecution of former televangelist Jim Bakker in Charlotte, NC, for defrauding his followers of $158 million; the first Racketeer and Corrupt Organization Act (RICO) prosecution in Alaska in 1986, in which the defendants were convicted of defrauding a subsidiary of Sealaska Native Corp. of more than $30 million; and the environmental prosecution of U.S. v. British Petroleum Exploration Alaska in 2000, which resulted in a plea agreement that required BP to establish a nationwide environmental management system at a cost of $40 million.

For more information, or to join the Federal Bar Association (which includes a free subscription to *The Federal Lawyer* magazine), please contact Brewster Jamieson or visit the Alaska Chapter website at www.fedbar.org, friend us on Facebook at "FBA Alaska Chapter," and follow "Fed Bar Alaska" on Twitter "@bar_fed."

National FBA President Hon. Gustavo Gelpi and Alaska Chapter President Darrel Gardner.

Ninth Circuit Judge Morgan Christen and Neil Weare, founder of We the People project, Washington, D.C.

Joshua Decker, executive director of the ACLU of Alaska.

Judge Jeffery receives certificate

Chief Justice Dana Fabe presenting Judge Michael I. Jeffery with a certificate recognizing his 32 years of service to the community of Barrow and the State of Alaska. Judge Jeffery was the first superior court judge appointed to serve in Barrow and he has presided there since 1982.

Left to Right: Alaska Supreme Court Justice Dana Fabe, Judge Michael I. Jeffery, Presiding Judge of the Second Judicial District.

The Alaska Judicial Council: If it ain't broke, don't fix it

Continued from page 3

Adding even a single partisan gubernatorial appointee to the council would very likely result in purely political appointments to our judiciary by tipping the delicate balance of the council. In our hyper partisan political system, it doesn't take much imagination to envision future governors on either side of the aisle appointing council members who would simply do their political bidding in appointing judges – something our constitutional founders sought to prevent.

One other argument made by proponents of adding additional members to the Judicial Council is that there is a lack of diversity on the council, particularly due to the absence of Alaska Natives. During the debate on this bill last year, legislators agreed that finding more diverse council members from all parts of the state is essential. But this can be done under the current structure and is consistent with the Constitution's existing mandate that the council represent all regions of Alaska. Particularly in rural Alaska, greater outreach is needed. Alaska needs judges who represent all of its people, but politicizing the selection process will not accomplish this. This fact was recognized by the largest Native organization is Alaska – the Alaska Federation of Natives – which strongly opposed the attempt to change the makeup of the Judicial Council.

Alaska's Constitution has long been acknowledged as one of the best in the nation. The men and women who wrote it sought to create enduring institutions that would serve the highest public interest, not simply mirror the preferences and philosophies of one party or one moment in our history. The current composition of the Judicial Council accomplishes this. It ensures that individuals nominated for judgeships have the respect and backing of average Alaskans as well as their peers – lawyers who have argued with and against them and closely observed how well the judges know and apply Alaska's laws. One Alaskan testified last year that he would not choose a doctor who lacked the respect of his or her peers. Likewise, we shouldn't hand the keys to our judiciary to any but the best and brightest minds in Alaska, individuals who are known by their peers to be of the highest intellectual and moral caliber.

We are likely to see a new bill this coming session that again seeks to politicize the process of appointing judges in Alaska. I urge all Alaskans to take this threat seriously and speak out if it arises. Belief in the fairness and impartiality of our legal system is too important to risk. We should not appoint judges because of a particular opinion they hold; we should appoint judges that are temperate, exceptionally capable and willing to look at the details of each case and apply our laws and constitutional directives to it. Pre-ordained conclusions and political loyalties must be kept out of the courtroom.

As the old adage goes, "if ain't broke, don't fix it." Alaska's Judicial Council "ain't broke." It has served us well for more than 50 years, producing a judiciary that is the envy of many states and nations.

Reconstituting the Judicial Council more in line with democratic principles

Continued from page 3

number (nine) of regular voting members instead of the current even number (six). This will make tie votes exceptionally rare – and in the unlikely event the chief justice must break a tie, she or he will always be on the side of some of the public members.

Another area where the Judicial Council could be improved is to require legislative confirmation for all members. Currently, only three of the six appointed members on the Council must stand before the legislature for confirmation – the public members. Legislative confirmation is required for appointees to numerous other boards and commissions, from the Board of Barbers and Hairdressers to the Board of Game to the Commission on Human Rights. Why? Because they are public servants, and they exercise powers and responsibilities that affect the lives of every single Alaskan. The notion that attorney members should be exempt from this mechanism of public accountability seems indefensible to me.

Many will say the Missouri Plan we adopted removes politics from judicial selection. I respectfully disagree. It merely shifts the locus of political influence from the roughly 500,000 registered voters of Alaska, to the roughly 3,100 active members of the Alaska Bar Association. That is not just my opinion – it was also the assessment of the nine consultants who served our Constitutional Convention delegates. In Vic Fisher's book *Alaska's Constitutional Convention*, he quotes the consultants' concerns about the Missouri Plan: "These sections in particular, however, go a long way toward withdrawing the judicial branch from the control of the people of this state and placing it under that of the organized bar. No state constitution has ever gone this far in placing one of the three coordinated branches of the government beyond the reach of the democratic controls. We feel that in its desire to preserve the integrity of the courts, the convention has gone farther than is necessary or safe in putting them in the hands of a private professional group, however public spirited its members may be."

As Alaskans we embrace our independent spirit, and debate public policy ideas with a robust dialogue. While some have embraced the idea of reconstituting the Judicial Council, others have questioned the exact way in which that should be accomplished. I welcome your input and suggestions on this crucial topic. Please email me anytime at Sen.Pete.Kelly@akleg.gov.

In support of the Judicial Council

Continued from page 2

Following the Judicial Council's evaluation of judicial applicants, two names – those who are the most qualified (or in the words of one delegate to the Constitutional Convention, "the best available timber") – are sent to Alaska's governor, who makes the final selection. Article IV, Section 8 requires that nominations be supported by "four or more" members of the Council. The Chief Justice, as chairperson, votes only in the case of a tie.

This issue of the *Bar Rag* features articles prepared by Senators Pete Kelly, R-Fairbanks, and Bill Wielechowski, D-Anchorage. They address Sen. Kelly's efforts to reconfigure the Judicial Council through a constitutional amendment. The senators' submissions take opposing positions on the degree to which the Council, as currently comprised, is serving the public interest. I very much appreciate their willingness to prepare these articles.

A. Sen. Kelly's Position Summarized

Sen. Kelly believes the public would be best served by a Council restructured to make it more responsive to the governor and those elected to the Legislature.

Under Sen. Kelly's proposal, the number of non-lawyers on the Council appointed by the governor would be increased from the current three to six. The number of attorney members would remain at three; and while the Constitution now requires that those members be appointed exclusively by the Alaska Bar Association, Sen. Kelly's proposal involves lawyer members also being subject to legislative approval.

Sen. Kelly argues that his proposal will, by adding three non-attorney members, cure what he believes are lawyer-centric "political" deficiencies in the judicial selection process. He believes that the Council's current configuration *"shifts the locus of political influence from the roughly 500,000 registered voters in Alaska, to the roughly 3,100 active members of the Alaska Bar Association."* He also posits that adding three public members will increase the prospects for regional diversity on the Council.

Sen. Kelly states that his efforts are motivated particularly by his unhappiness with five recent Council votes in which the three non-attorney members voted to nominate candidates, and the three attorney members voted against nomination. The Chief Justice – also a lawyer – broke the tie by voting with the attorneys, with the candidates' names not having gone to the governor.

The Kelly proposal is aimed at creating a voting majority in the non-lawyer, politically appointed Council members. Were three public members added pursuant to his plan, bringing the total of non-lawyers on the Council to six, the public members would always prevail in the event of a lawyer/non-lawyer split vote.

Sen. Kelly further believes that legislative confirmation of attorney Council members is necessary to insure their "public accountability," just as is true of members of other boards and commissions subject to legislative approval.

B. Sen. Wielechowski's Position Summarized

Sen. Wielechowski supports the Judicial Council's current composition, pointing to its remarkable success in creating a highly qualified, independent judiciary. He believes that our judiciary's competence and independence is based upon a merit selection process which is largely free of political involvement by elected officials. Sen. Wielechowski opposes attempts to reconfigure the Judicial Council in ways which would "*inject a greater measure of politics*" into Alaska's judicial selection process, thereby disrupting "*the delicate balance our Constitutional Framers envisioned.*"

Sen. Wielechowski argues that no genuine basis for a constitutional amendment has been identified: *"Changing our Constitution is not a matter to be taken lightly, and should certainly not be done without demonstrating a strong reason why change is needed."* He points out that Sen. Kelly's concerns about the impact of attorney and non-attorney split votes are exaggerated because they almost never occur – a fact well-documented in the legislative record concerning the proposed amendment. Moreover, in the recent cases cited by Sen. Kelly involving split votes in which the Chief Justice voted with the attorney members, the candidates who were ultimately not nominated were usually rated below other applicants.

Sen. Wielechowski agrees that greater regional diversity on the Council is desirable, particularly with regard to Alaska Natives. He notes that this could, however, be achieved under the existing structure of the Council – governors have in the past appointed public members with diverse backgrounds. The senator emphasizes that the Alaska Federation of Natives has strongly opposed attempts to change the Judicial Council. This is a clear indication that improving Council diversity has lower priority for Alaska Natives than preventing its politicization.

Sen. Wielechowski supports a Council with continuing membership equally divided between lawyers and non-lawyers. *"[This] ensures that individuals nominated for judgeships have the respect of average Alaskans as well as their peers—lawyers who have argued with and against them and closely observed how well they know and apply Alaska's laws."* This comment echoes those of delegates to Alaska's Constitutional Convention, and reflects the basis for the constitutionally mandated composition of the Judicial Council.

Sen. Kelly's proposed constitutional amendment would result in a Judicial Council more inclined to make decisions on the basis of the political beliefs of judicial candidates, rather than their merit. It would have the effect of politicizing Alaska's judiciary, presumably with an eye toward bringing its decisions into accord with the political beliefs of the governor and Legislature of the moment.

This is, from Sen. Kelly's perspective, desirable. His attempt to reconfigure the Council has the support of interest groups that promote conservative causes and other politically active conservatives who wish to advance their agenda.

From the perspective of most others the proposed reconfiguration of the Judicial Council is troubling and unnecessary. Sen. Kelly's efforts fail to recognize more than five decades of impressive accomplishment under a constitutional provision that has more than proven its worth. His proposed constitutional amendment ignores the paramount importance of maintaining the competence and independence of our judicial branch of government as an institution.

The importance of an independent judiciary is, however, something that virtually all lawyers recognize. Our recognition is based not upon some uniform adherence to a liberal political ideology, as seems to be assumed by proponents of Judicial Council change. Rather, it is based upon our profession's collective commitment to the rule of law.

Congratulations to **Jacob Sonneborn** of Ashburn & Mason for receiving the annual Attorney General's pro bono service award for his work on behalf of domestic violence survivors and their families. Nominated by his primary volunteer agency, the Alaska Network on Domestic Violence and Sexual Assault, Sonneborn is the fourth recipient of this award presented each year on Oct. 1 in honor of the kick-off of Domestic Violence Action Month. Pictured here with his colleagues at Ashburn & Mason, from left: Mera Matthews, Becky Windt, Jennifer Witaschek, Sonneborn, Don McClintock and Eva Gardner.

BAR SECTIONS

Children and the Law: Forming a Juvenile Justice Section for the Alaska Bar

By Bob Polley, Chris Provost and Carina Uraiqat

Who is a Child in Need of Aid? How does prosecution of crime differ when the defendant is a minor? How can judges and attorneys be better aware of special considerations of children in their cases? These and other legal questions are some of the unique issues surrounding juveniles in the legal system. So how do we, as attorneys and adults, best serve this vulnerable population?

For a few legal practitioners specializing in representing minors, the answer was to create a new statewide bar section. The idea was borne out of a Spring 2014 multi-state Juvenile Justice Reform Summit with Alaska representatives from the judiciary, the Department of Juvenile Justice, prosecutors and defense attorneys. In addition to delinquency matters, the new section will focus on topics surrounding CINA practitioners, Guardians-ad-litem, youths in foster care, scientific research on child and adolescent development, and other relevant subjects. In October, the Board of Governors approved the formation of the Juvenile Justice Section. Like the Law and Community Health Forum, membership is open to all Alaskan attorneys and non-lawyer practitioners working with children in legal matters.

Won't you consider joining us? This new opportunity for collaboration and training will 1) improve the processing and handling of cases involving minors; 2) educate and inform Bar members on juvenile justice issues; and 3) serve as a clearinghouse for members statewide with respect to contemporary federal and state case law and regulations, research on adolescent development, and state and national level training and volunteer opportunities.

Our first meeting will be from noon-1 p.m. Tuesday, Dec. 9, at The Boardroom, 601 W. Fifth Avenue, second floor. More information can be found on the Alaska Bar Association Sections webpage.

Bob Polley is a co-founder, Chris Provost and Carina Uraiqat are interim co-chairs and co-founders, of the Juvenile Justice Section of the Alaska Bar Association. Bob Polley is special projects coordinator at the Alaska Court System, and previously served as a Guardian-ad-litem with the Office of Public Advocacy in Kodiak. Chris Provost is an Anchorage-based attorney with more than 20 years of experience representing children. Carina Uraiqat is a former assistant district attorney who owns a general practice law firm in Anchorage.

Alaska Native Law Section celebrates its 30th anniversary

By Brennan Cain

In 1984, Lloyd Miller petitioned the Board of Governors of the Alaska Bar Association to create an Alaska Native Law section of the Bar. At the time, Alaska's legal landscape included a great many Alaska Native legal issues, and it seemed odd to Lloyd that there was no Alaska Native Law section to collaborate on those issues. The rest, as they say, is history.

The Alaska Native Law section quickly became one of the largest sections of the Bar, with very strong attendance at monthly section meetings and annual CLEs. Lloyd recalls how "hungry" his colleagues were for more focused programs on Alaska Native and federal Indian law issues during the 10 years he served as chair of the section.

Initially the section held CLEs as part of the annual Bar Convention. But within a couple of years the section began coordinating its annual CLE programs with the October Alaska Federation of Natives Convention, so that rural practitioners and Alaska Native leaders and managers could more easily participate. That tradition continues to this day. Lloyd stepped down as chair in 1994, but the Alaska Native Law section has continued performing at a very high level, thanks to the contributions of countless individuals.

In recent years, the section has built on the strong base of members and structure already in place, and has focused on:

1. Consistent monthly CLEs addressing the varied sources of Alaska Native law (tribal, corporate, litigation, legislative and inter-governmental/regulatory relationships) and the varied subject matter (lands, subsistence, family/ICWA, corporate, government contracting, tribal courts, healthcare, criminal);
2. Providing an opportunity to Alaska Legal Services Corporation and Native American Rights Fund to address the section at least annually;
3. Reaching out to our colleagues in Washington, D.C., for federal updates;
4. Providing a relevant half-day or full-day conference supported by the Bar, which includes an annual litigation update; and
5. Partnering with other sections (environmental/lands, corporate counsel, estate law, employment) on topics of mutual interest.

In 2011, then Co-Chair Melanie Osborne took the lead in collaborating with other Alaska Native law practitioners to talk through ways the section could help provide access to justice. The group brainstormed several ideas ranging from a resource library, to rural presenters, to a legal resource at the Alaska Native Medical Center. Ultimately, the Section chose to partner with the Bar's pro bono program, Alaska Legal Service Corporation, and the Alaska Native Justice Center to provide an annual clinic in conjunction with Alaska Federation of Natives Convention, with local law firm sponsorships and volunteers from the section and the Estate Law section. The resulting Elizabeth Peratrovich Legal Clinics, held each October, have been very successful.

Another event held this October was the section's 30th Annual Alaska Native Law Conference. The CLE addressed recent land issues (Ahtna's proposed federal land co-management program; ANCSA contaminated lands) as well as recent cases (including Simmonds v. Parks and Pederson v. ASRC).

The section's monthly meetings in 2014 have covered: rights-of-way; ANCSA settlement trusts; the Katie John litigation; recent changes to proxy regulations for Alaska Native Corporations and Alaska Supreme Court decisions on proxy law; and the Voting Rights Act.

December's meeting will address the very timely issue of Descendant Enrollment into Alaska Native Corporations. Handouts for the section's meetings dating back to 2010 can be found on the following website: www.alaskabar.org/servlet/content/Information_Distributed_at_Meetings_1237.html.

The Co-Chairs (Bruce Anders, Brennan Cain, Walter Featherly and Jana Turvey) wish to thank Lloyd, Melanie and the many other attorneys who have contributed to the section's success during the past 30 years.

Diversity was theme of luncheon

The Anchorage Association of Women Lawyers, in cooperation with the Alaska Supreme Court's Fairness, Diversity and Equality Committee and the Alaska Bar Association held a luncheon on Nov. 4, the theme of which was "Diversity in Our Community: Stories Affecting Our Lives." More than 150 attorneys and community members attended at the Captain Cook Hotel. The event was underwritten by Perkins Coie and BP.

From left: Christine Williams, Judge Morgan Christen, Thomas Mack, Sarah Lukin, Stephanie Nichols and Chief Justice Dana Fabe

Christine V. Williams, vice president and general counsel of Bering Straits Native Corporation, and past president of the Anchorage Association of Women Lawyers, introduced the moderator, Chief Justice of the Alaska Supreme Court Dana Fabe. Panel members included Judge Morgan Christen, United States Court of Appeals for the Ninth Circuit; Sarah Lukin, chief of staff, PT Capital, LLC; Thomas Mack, president and shareholder, The Aleut Corporation; and Professor Stephanie M. Nichols, executive director, Alaska Programs – Seattle University School of Law.

This is the fourth year this event has been held and many participants stayed after the event to talk with the panelists.

Thomas Mack and Judge Jo-Ann Chung

Why should a lawyer join the local bar association?

By Lynn M. Allingham

As president of the Anchorage Bar Association, I'm often asked, "Why should I join the Anchorage Bar Association?" The reasons are different for different people. I have been a member of the Anchorage Bar Association since 1982. I joined when I first came to Anchorage in order to meet some new people and attend their weekly lunch meetings, which were well attended and held at what is now the Westmark Hotel. They had speakers at their meetings who were interesting, and they threw great parties including a summer picnic in Wasilla which included a ride on the Alaska Railroad.

A lot has changed in the 30-plus years since then. The Anchorage Bar Association no longer has weekly meetings, nor a picnic with a train ride. The practice of law is very different now, too, thanks to the technology available. When I first started my practice, I went to the law library in the state courthouse quite often. Computerized legal research was just getting started but it was exorbitantly expensive, and most research included checking the West digests, and maybe the legal encyclopedias or treatises. And don't forget Shephard's cite checking! I always saw people I knew there. Nowadays, like most attorneys, I do most of my legal research online and rarely go to the law library. Telephonic hearings are much more common now. Much person to person communication is now done online through email and social networking.

It's easy to become isolated if you don't have a practice that gets you into court often. Engaging with other attorneys outside of the courtroom has many benefits, beyond just social benefits. Building a network is important. For attorneys just starting out, it can be a source of leads for jobs, or just a chance to rub elbows with more experienced attorneys who can mentor you and give advice about issues that you face as you start your practice. For more experienced attorneys, it's a chance to meet other attorneys who can be a source of referrals. Also, doing something for the public good is good for the soul. You will get a chance to serve on committees with like-minded individuals who are doers. Givers and not just takers.

The Anchorage Bar Association is a voluntary bar association for attorneys in the Anchorage area. Our motto is "promoting collegiality, professionalism and good works." We sponsor social events, such as social receptions and an annual St. Patrick's Day party. We also sponsor judicial robing and retirement parties and receptions for new admittees to the Alaska Bar. We have a newly revamped web site with a directory of attorneys by practice area. We offer a membership in the Life Balance program, which can save you hundreds of dollars on tickets to events, tours, gym memberships, ski tickets and more.

We also have a very active Young Lawyers Section for attorneys who are under the age of 36 or who have been practicing law for five years or less. YLS is the public service arm of the association. They have monthly meetings on the first Wednesday of the month where lunch is always included. Some of their activities include:

- Mock Trial competition of high school students
- Annual Race Judicata to raise money for Youth Court
- A Christmas party for Covenant House
- Volunteering at Bean's Café.

Being a member of the Anchorage Bar Association gives you a connection with attorneys who practiced here before Alaska became a state. The Anchorage Bar Association has been around since territorial days. While joining for the collegiality and networking opportunities are great reasons, perhaps the best reason for joining a local bar association is that it is just the right thing to do.

If you would like more information about our association or how to join, please call (907) 250-4291 or visit our website at www.anchoragebarassociation.org

District Court Judge Pamela Washington, second from left, joins prospective law students at The Color of Justice exhibit, designed to introduce diverse students to the study of law and to encourage them to consider legal and judicial careers, at the UAA Law School Fair. Washington met with students and answered their questions about pursuing legal careers and becoming judges. Students also viewed the Power Point presentation – "A Zillion Things You Can Do with a Law Degree."

Socialized voting: It's just like MadisonCare, only in public

By Peter J. Aschenbrenner

"Why so glum, Professor?"

"The Australians gave humanity this gift," I mumble. "And then –"

Jimmy and Dolley enter.

"Allow us to survey the tragedy in progress," they chorus.

"May I assume," Dolley queries, "the terms of *AS 15.20.066* are in play?"

"Regulations applicable to the delivery of absentee ballots by electronic transmission," the Governor paraphrases, "must ensure the accuracy and, to the greatest degree possible, the integrity and secrecy of the ballot process."

"That doesn't match the Alaska Constitution," Mr. Whitecheese opines, "as I tinkle my ivories to Thekla Badarazweski-Baranowski's *A Maiden's Prayer*."

" 'Secrecy of voting shall be preserved'," Jimmy ahems, "if I may consult my Alaska Constitution with catechism annexed."

"*Art. 5, Sec. 3*," Governor Egan adds, "if I may unison with Lt. Gov. Terry Miller."

"I sold trailer homes before the party put me on the ticket," he explains. "The year was 1966. But I did read our state's constitution when I took office."

"We governors must get used to all climates," our Governor declares.

"But why did you turn the clock back?" Dolley inquires of our most famous former gubernatorial eminence. "To 'protect the secrecy of the ballot'," the director of elections, 'may adopt regulations prescribing … requirements regarding ballot boxes, voting screens, national flags.' I cite to *AS 15.15.060(b)*."

"The sheriff conducted the election in public," the Governor explains the two previous, but one, centuries to the assembly. "She opens the voting roll and calls the names of the voters. Seriatim."

"That means," I offer Mr. Whitecheese, " 'one by one'."

"I speak dead languages," the Prince of Spenard Road frosts me. "I'm a comedian."

"The voter steps forward as his name is called and challenges, if any, to his credentials are resolved. On the spot."

A mysterious voice echoes the received pronunciation: During the whole time of the polling, the town was in a perpetual fever of excitement. Everything was conducted on the most liberal and delightful scale. Spring vans paraded the streets for the accommodation of voters who were seized with any temporary dizziness in the head — an epidemic which prevailed among the electors, during the contest, to a most alarming extent, and under the influence of which they might frequently be seen lying on the pavements in a state of utter insensibility.

"That does sound like Spenard Road," Mr. Whitecheese concedes.

A small body of electors remained unpolled on the very last day. They were calculating and reflecting persons, who had not yet been convinced by the arguments of either party.

One hour before the close of the poll, Slumkey's agent solicited the honor of a private interview with these intelligent, these noble, these patriotic men. It was granted and electoral consequence thereby devolved.

"Lemme guess," I blurt. "Eatanswill returned Slumkey to Parliament!"

"We can thank the Cotswolds for Australian voting," Gov. Egan beams. "And they're Alaska's next-doors. Let's raise a toast to us. We've all done very well."

"And everything takes place in public!" our Governor intones. "Except for suborning a few voters in Eatanswill."

"Hence a public or social spectacle," Jimmy responds. "I remember how I beat James Monroe in 1789. We were competing for a seat in Congress. The weather was especially nasty in Orange County in January and … "

A small body of electors remained unpolled on the very last day. They were calculating and reflecting persons, who had not yet been convinced by the arguments of either party.

"The point the Governor was making," Dolley commandeers the marital chariot, "is that elections were decided in public. And the social consequences of their acts were inescapable."

"You're saying that," I mumble, "today, Americans escape accountability?"

"Seclusion is the death of democracy," Jimmy counters. "When the Australian secret ballot came in, you couldn't even tell if your vote was counted."

"This is true," Dolley adds. "I have seen poll workers hand out stickers in your degraded times: 'Was My Vote Counted? Was Yours?' "

"This is, like, really painful," Gov. Egan mops his brow.

"Welcome to the Twentieth and Twenty-First Centuries," our Governor replies.

"Under the current proposal everyone would vote in public. You would know who voted and who didn't and who they voted for. Hence," I add, "socialized voting."

"And don't get me started on MadisonCare," the Governor of last-to-resign status adds.

"Here's the problem with democracy," Mr. Whitecheese picks up the fallen baton. "Responsibility is what we face, looking forwards," Spenard's answer to Mel Brooks continues. "Accountability supplies the backwards-looking reckoning," he adds.

"But why would Alaskans vote under your Dickens-fangled system?" Gov. Egan asks, while attending to duties most mixologist.

"It's the negative face to accountability," Dolley explains. "People vote from a sense of shame."

'That may explain recent events," the Governor checks her Vote-tronic Electro-mechanism. "Samuel F. B. Morse invented it."

"If only we had the semaphore in 1814," Dolley asides to Jimmy. "We would have known the British were coming."

"So the bottom line is that Americans should vote to defend themselves," I garble the myriad notions flying, like spaghetti, inside my head. "Harrington's *Oceana* has been turned upside down. We're not voting men and women into *or* out of office. We're voting to fend off the shame of living in a state where something *will* go wrong when we should have been going down to the polls and voting our heads off in public."

"It's the least we could have done," Gov. Egan helps me with my mixed modals.

"We should participate in the mechanics attendant to John Locke's political society and its role as contrivance – wait a sec, that's Edmund Burke – if only to alleviate the shame of the inevitable disaster," Mr. Whitecheese opines. "We could be ruled by Peter the Great or Catherine the Ditto, and so forth. Instead we are obliged to vote for one of us."

"Participation in the mechanics of elections is motivated," I suggest, "by the shame that would be draped over she who would fail her obligations to the partnership."

"It is now our ambition," The Egan adds, "to emulate all matters after the fashions and modes of the early *res publica*."

"Living in two centuries is not all it's cracked up to be," Dolley sighs. "You get married in one century and you live half-way through another. Big deal."

"But you must have met Charles Dickens," Mr. Whitecheese importunes. "He invented *The Pickwick Papers* and 'Some Account of Eatanswill of the State of its Parties in Public; And of the Election of a Member to Serve in Parliament for that Ancient, Loyal and Patriotic Borough'."

"Dickens made Alaska possible," Jimmy sighs.

"Dickens made Alaska inevitable," Dolley corrects her husband.

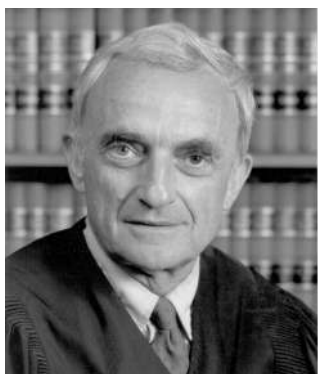
"Where are those vans," Mr. Whitecheese queries our assembly, "inveigling the citizenry to its well-deserved parade of dizziness?"

Peter J. Aschenbrenner has practiced law in Alaska since 1972, with offices in Fairbanks (until 2011) and Anchorage. From 1974-1991 he served as federal magistrate judge in Fairbanks. He also served eight years as a member of the Alaska Judicial Conduct Commission. He has self-published 16 books on Alaska law. Since 2000 the Bar Rag has published 42 of his articles.

Call for nominations for the 2015 Jay Rabinowitz Public Service Award

The Board of Trustees of the Alaska Bar Foundation is accepting nominations for the 2015 Award. A nominee should be an individual whose life work has demonstrated a commitment to public service in the State of Alaska. The Award is funded through generous gifts from family, friends and the public in honor of the late Alaska Supreme Court Justice Jay Rabinowitz.

Nominations for the award are presently being solicited. Nominations forms are available from the Alaska Bar Association, 840 K Street, Suite 100, P. O. Box 100279, Anchorage, AK 99510 or at www.alaskabar.org. Completed nominations must be returned to the office of the Alaska Bar Association by March 1, 2015. The award will be presented at the 2014 Annual Convention of the Alaska Bar Association.



Jay Rabinowitz

Alaska Bar Foundation

JANET McCABE
2014 Recipient

KATIE HURLEY
2013 Recipient

TREVOR STORRS
2012 Recipient

JUDGE MARY E. GREENE
2011 Recipient

BARBARA J. HOOD
2010 Recipient

ANDY HARRINGTON
2009 Recipient

JUDGE SEABORN J. BUCKALEW, JR.
2008 Recipient

BRUCE BOTELHO
2007 Recipient

LANIE FLEISCHER
2006 Recipient

JUDGE THOMAS B. STEWART
2005 Recipient

ART PETERSON
2004 Recipient

MARK REGAN
2003 Recipient

Bar People

Birch Horton Bittner Cherot is pleased to announce that **Holly C. Wells** has become a shareholder, **Amy Walters Limeres, Adam W. Cook** and **Aaron D. Sperbeck** have become members and that **William T.M. Baynard** has joined the firm.

Holly Wells joined the firm in 2008. Ms. Wells' practice focuses primarily on Alaska municipal government and admiralty matters affecting government ports and harbors. Ms. Wells also represents Native and private corporations as well as individuals in various actions involving complex litigation, construction, contracts, and land use. Ms. Wells provides general counsel services for healthcare institutions with emphasis on the unique needs of government-owned healthcare facilities. Ms. Wells routinely acts as lead counsel to municipal boards and commissions regarding ethics disputes, conditional uses, variances, and other matters. She also represents government and private corporations before various federal and state boards and commissions, including but not limited to, the Federal Maritime Commission ("FMC"), Public Employees Retirement System ("PERS") and Alaska Public Offices Commission ("APOC").

Amy Walters Limeres joined the firm in 2009. Ms. Limeres' comprehensive employee benefits practice emphasizes the regulation of qualified retirement plans, designing retirement and welfare benefit plans, and advising private and public employers concerning employee benefits regulatory compliance and taxation issues.

Adam W. Cook joined the firm in 2007. Originally from Anchorage, Mr. Cook worked for the Alaska State Legislature and as a clerk for Alaska Superior Court Judge Patrick McKay before joining the firm. Mr. Cook's litigation practice includes federal contracting, contract disputes, bid protests, construction law, and general litigation. He has also worked in appellate matters before the Alaska Supreme Court. He has represented clients before the Armed Services Board of Contract Appeals, the U.S. Court of Federal Claims, and the Federal Maritime Commission. Mr. Cook looks forward to continuing his work with a dynamic and knowledgeable team of attorneys at Birch Horton.

Aaron D. Sperbeck joined the firm in 20__. Mr. Sperbeck's practice is primarily focused on private and multi-party commercial litigation but also includes insurance defense, municipal law, and criminal defense. As a former district attorney, Mr. Sperbeck has conducted numerous jury and bench trials throughout Alaska, as well as administrative board and appeal hearings in both state and federal jurisdictions.

With respect to the increasingly complex state and federal regulatory environment governing employee rights and business compliance, Mr. Sperbeck is well versed at interfacing with various regulatory compliance entities overseeing the administration and enforcement of state and federal law. He is experienced in identifying and developing policies, procedures, and best practices to ensure corporate compliance and litigation strategy.

Mr. Sperbeck advises employers regarding best employment practices and counsels employers concerning regulatory compliance over a broad array of legal areas, including but not limited to personnel policies, internal practices, hiring, discipline, and termination decisions.

William T.M. Baynard joined the firm in July, 2014. Mr. Baynard's practice focuses on corporate formation, real estate and commercial transactions, as well as banking and commercial finance. His background allows him to represent a variety of businesses from formation through financing and throughout operation. Mr. Baynard is available to help new companies, existing companies seeking out new ventures, and those simply seeking to stay current with changing laws and regulations. Prior to joining Birch Horton Bittner & Cherot, Mr. Baynard has worked as a commercial loan officer and as in-house counsel for a federal credit union. His years spent working inside financial institutions, both as a lawyer and a banker, give him an operational and business-oriented perspective that elevates the level of service he provides to corporate clients.

Guess & Rudd P.C. is pleased to announce that **Josh Van Gorkom** has become a shareholder of the firm. Since joining Guess & Rudd in 2010, Mr. Van Gorkom has represented insurance companies, insurance brokers, banks, Native Corporations, oil & gas companies, mining companies, municipal governments, small businesses, and individuals in a broad range of litigation and administrative matters, including appeals to the Alaska Supreme Court and the Ninth Circuit Court of Appeals. In addition, he works with the firm's natural resources group on a variety of transactional matters. Mr. Van Gorkom is a graduate of Augustana College in Sioux Falls, South Dakota, and of Valparaiso University School of Law in Valparaiso, Indiana."


Josh Van Gorkom

4 Manley & Brautigam lawyers selected as 2015 Best Lawyers

Four lawyers from the office of **Manley & Brautigam, P.C.** have been selected by their peers for inclusion in the 2015 edition of ***The Best Lawyers in America©.***

Robert Manley was named as Anchorage **"Lawyer of the Year"** in **Trusts & Estates.** He is also included in the practice areas of Litigation-Trusts & Estates and Tax Law.

Peter Brautigam – Tax Law and Trusts and Estates Law.

Charles Schuetze – Tax Law.

Steve Mahoney was named as Anchorage **"Lawyer of the Year"** in **Energy Law** and **Oil & Gas Law.** He was also recognized in the practice areas of Natural Resource Law, Non-Profit/Charities Law, Tax Law and Litigation and Controversy-Tax Law.

Richmond & Quinn announces Allison Gordon Strickland to its defense team


Allison Gordon Strickland

After her clerkship with the Alaska District Court in 2009-2010, Allison spent two years practicing with Richmond & Quinn. In 2012, Allison moved to Tampa, Florida where she worked for Murray, Morin & Herman, a law firm specializing in aviation law. Allison rejoined the Richmond & Quinn team in 2014.

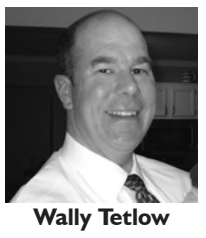
Allison's practice areas include aviation, personal injury and wrongful death, premises liability, transportation litigation, insurance coverage and commercial litigation.

Allison received her Bachelors of Science from the University of California, Davis in 2004. Prior to law school, Allison served as an AmeriCorps Volunteer in Northern California working with the Watershed Stewards Project. Allison graduated from Golden Gate University School of Law in 2008. While at Golden Gate University, she served as a writer and editor of the Environmental Law Journal.

Allison is admitted to practice law in the State of Alaska; the State of Florida; the United States District Courts for the Southern, Middle, and Northern Districts of Florida; and the United States District Court for the District of Alaska. She is a member of the Alaska Bar Association, the Florida Bar Association, the Defense Research Institute and the International Aviation Women's Association.

Tetlow included in "Best Law Firms" for 2015

Tetlow Christie, LLC is pleased to announce it has been selected for inclusion in the U.S. News and World Reports/Best Lawyers "Best Law Firms" for 2015. Firms included in the 2015 "Best Law Firms" list are recognized for professional excellence with persistently impressive ratings from clients and peers. Achieving a tiered ranking signals a unique combination of quality law practice and breadth of legal expertise. Tetlow Christie, LLC received a 1st tier Metropolitan rating in the area of Criminal Defense: White-Collar, and a 2nd tier Metropolitan rating in the area of Criminal Defense: Non-White-Collar. Tetlow Christie, LLC has been listed with "Best Law Firms" in the field of criminal defense since 2014.


Wally Tetlow

Anchorage attorney **Wally Tetlow** has been selected by his peers for inclusion in the Best Lawyers in America 2015, which recognizes the top 4 percent of practicing attorneys in the United States. Mr. Tetlow was first distinguished with this award in 2014 for his work in the area of criminal defense. Mr. Tetlow began his career as a trial attorney with the Alaska Public Defender Agency, worked as an associate at Wilkerson Hozubin, and is currently a partner at the law firm of Tetlow Christie, LLC.

Joseph Levesque selected by peers for inclusion in The Best Lawyers in America

Joseph Levesque, principal of Levesque Law Group, LLC, has been selected by his peers for inclusion in the 21st (2015) edition of The Best Lawyers in America for his work in the practice areas of Litigation – Municipal and Municipal Law. Attorney Levesque has been included in the Best Lawyers publication for at least the past five years. He has been providing legal services to Alaskan Municipalities for more than 20 years.


Joseph Levesque

Riekkola joins Foley, Foley & Pearson, P.C.

Foley, Foley & Pearson, P.C. is pleased to announce that Chelsea Ray Riekkola has joined the firm. Chelsea's practice will emphasis estate and business planning, probate, wills, and trust administration.

Born and raised in Anchorage, Chelsea graduated from Dimond High School in 2006. She received an athletic scholarship to Missouri State University where she was a member of the NCAA Division I swimming and diving team. She matriculated with a bachelor's degree in marketing. Chelsea received her J.D. from the University of Oregon, focusing her studies on estate planning and probate law. While in law school Chelsea also wrote and published an article for the American Bar Association Journal of Real Property, Trust and Estate Law on handling digital assets after death.

Chelsea returned to Alaska in 2013 as a clerk for Anchorage Superior Court Judge, Patrick McKay. She became involved in a variety of local organizations, including the Young Lawyers Section of the Anchorage Bar Association, of which she is the current President. YLS encourages public service and active participation in local and state bar associations by new practitioners. Chelsea, now a member of the Alaska Bar, is also a member of the Estate Planning & Probate Section of the Alaska Bar Association, the Anchorage Bar Association, the Anchorage Association of Women Lawyers, WealthCounsel, the Anchorage Estate Planning Council, and YWCA of Alaska.

Chelsea is the daughter of Bethel Superior Court Judge Chuck Ray and Mrs. Jenny Ray. Chelsea is married to attorney Brian J. Riekkola.

FEDERAL PROBE

The Stevens prosecution starts presenting evidence and gets into trouble

One of a series of columns on the Ted Stevens case

By Cliff Groh

The tradesmen's parade

Following opening statements, the prosecution in the Ted Stevens case sent to the stand more than a half-dozen construction tradesmen employed by VECO, an Alaska-based multi-national oil-services and construction company that generated close to a billion dollars in annual revenues. The Justice Department's clear intent in putting on this evidence was to show that VECO had gone to great lengths over a number of years to give hundreds of thousands of dollars in renovations and repairs to Ted Stevens and hide the fact that it did so.

The Justice Department's clear intent in putting on this evidence was to show that VECO had gone to great lengths over a number of years to give hundreds of thousands of dollars in renovations and repairs to Ted Stevens and hide the fact that it did so.

Roy Dettmer, a VECO electrician, told the Washington, D.C., jury that he worked 10 hours a day, six days a week, for four months rewiring the U.S. senator's Girdwood chalet. Dettmer said that he went every morning to the Port of Anchorage (where VECO had other work) to sign in with his badge and then drove the 45 miles to Girdwood, worked his shift on the chalet, and then drove back to the Port of Anchorage to badge out before he could get back to the hotel in which he was staying. Dettmer estimated that he spent approximately 400 hours working on the chalet, and he had an apprentice working with him during part of that time.

Other witnesses testified about three VECO employees spending two days installing a VECO-supplied backup generator at the chalet. Doug Alke said that he coded his time for the work as VECO overhead, rather than billing a specific client. Alke estimated that he spent 20 to 24 hours on the work, including his time to come back on a third day to check on how the device was working. Providing the kind of small detail a juror might remember, VECO employee Derrick Awad testified that he traveled from Anchorage to Girdwood – a round trip of about 80 miles – at the direction of VECO's long-time CEO Bill Allen to clean snow off of Stevens' home.

Brian Byrne was a carpenter who worked as a subcontractor for VECO installing the deck on the Girdwood chalet as well as a handrail inside the house. Byrne testified that he was hired directly by Allen, who said "a certain amount of discretion would be need to be used because it was the senator's house" and because VECO was an oil-services company instead of a general contractor. Asked why he thought Allen would have said that, Byrne responded "I'm not really sure, other than the appearance of impropriety I believe is what he was concerned about."

In addition to all these tradesmen, VECO bookkeeper Cheryl Boomershine testified that VECO records showed VECO had provided $188,928.82 in labor and supplies to the construction projects, but Stevens had reimbursed none of it. The only checks coming in from Stevens were for reimbursements for two charter flights, and those checks totaled $2,130.69. Boomershine said that when she asked questions about a handwritten expense report on the construction project, she got back the cryptic note "No paper trail" with the reason offered as "per Bill Allen."

The defense responded with several points to address all this evidence of VECO's substantial and concealed provision of benefits to Stevens at the Girdwood chalet.

First, the defense noted that VECO did not normally work in home remodeling. While the prosecution argued that Stevens picked VECO to remodel the chalet despite the corporation's inexperience in residential renovations because Stevens knew that Allen would give him a sweetheart deal on the work, the defense contended that VECO ended up doing so much work on the chalet because the company's inexperience in that area led it to make big mistakes that required a lot of make-up work.

Next, the defense focused on how infrequently the senator showed up at his home in Girdwood, more than 3,000 miles away from his residence in Washington, D.C., supporting the argument that Stevens lacked knowledge of the provision of these benefits. Most of the tradesmen reported that they rarely, if ever, saw Stevens. One counterexample to this defense argument was given by John Fugate, an electrician sent repeatedly by Allen and VECO to work at the Girdwood chalet. On one occasion, the electrician went out to do a repair at the chalet and met Stevens there. The electrician estimated that he spent 2.5 hours on the job—counting commuting time from Anchorage—and said that his hourly rate was about $75 per hour then. Fugate said that the senator sent him a thank you note and a keychain, but did not pay him.

The defense's final theme in this early stage of the proceedings illustrated the saying that a trial features two sides each trying to stage its own play for the jury at the same time. While the prosecution's play cast Stevens as happily taking many thousands of dollars in free benefits from VECO and then hiding them, the defense's play makes Bill Allen the bad guy who gives the senator stuff that Stevens didn't want. Additionally, the defense worked to point out that some of the things VECO and Allen gave the senator were clearly defective and/or so garish and over-the-top that a classy guy like Stevens wouldn't have wanted them. Defense lawyer Beth Stewart, for example, got VECO electrician Cecil Dale to say on cross-examination that the elaborate outdoor lighting VECO installed at the chalet was so bright that it irritated the neighbors and could be seen from 1,000 feet away, far up the ski slopes at the resort town.

Judge Sullivan called what the government did "very, very disturbing" and said "Somebody's treading in very shallow water here."

The prosecution trips on an absent Rocky Williams

The Justice Department ran into its first serious problem at the beginning of the trial's second week, when the defense filed a motion alleging that the prosecution had sent a key government witness back to Alaska after deciding that he would not be an asset to the government's case.

What set off Judge Emmet Sullivan was told best in the first paragraph of "Senator Stevens' Motion to Dismiss Indictment or for a Mistrial":

"The defense believed that Rocky Williams was a key government witness. The government apparently thought so too. For the better part of the past two weeks, the government has had Mr. Williams in Washington, D.C., interviewing him and preparing him to testify. Apparently, government counsel did not like what they heard. They sent him back to Alaska last Thursday, the day of opening statements."

Rocky Williams was VECO's superintendent/foreman for VECO on work done on Sen. Stevens' home in 2000-2001, and Judge Sullivan stated that he was "flabbergasted" that the government "unilaterally" decided to help Williams leave Washington—particularly when the defense had subpoenaed him as well. There were suggestions that the government was motivated by concerns about Williams' health (Williams died—apparently of liver disease—less than 14 weeks after he left Washington). The judge, however, at least entertained the defense's argument that the government was trying to hide Williams after deciding that he would not be a helpful witness after all.

The defense offered to the court various points gathered from a phone conversation with Williams upon his return to Alaska that the defense viewed as casting doubt on the prosecution's case. Among the allegedly exculpatory points that the prosecution was supposed to pass on to the defense but failed to do so were Williams' statements that he worked substantially less on the renovations than his timecards showed and that Ted Stevens' apparently sole interest in the remodeling job was to keep his wife Catherine happy.

The judge did not dismiss the indictment or grant a mistrial, but he was clearly bothered by the government's conduct in unilaterally deciding to let Williams depart the jurisdiction while under subpoena by the defense. Judge Sullivan called what the government did "very, very disturbing" and said "Somebody's treading in very shallow water here." As remedies, the judge allowed the defense to recall VECO bookkeeper Boomershine. After defense attorney Robert Cary got the bookkeeper to say that she didn't know if Williams worked all the hours on the home renovation that were shown on his timecards, the court struck the evidence related to Williams' timesheets.

The judge's comments on the departure of Rocky Williams turned out to be the first of numerous tongue-lashings related to discovery that the court imposed on the prosecutors during the trial.

Next: Bill Allen testifies

Cliff Groh is an Anchorage lawyer and writer who has worked as both a prosecutor and a criminal defense attorney. This column is an installment in a series on the Ted Stevens case. Groh has blogged about the "POLAR PEN" federal probe into Alaska public corruption for years at www.alaskacorruption.blogspot.com, which in its entry for May 14, 2012 features an expanded and updated list of disclosures. Groh's analysis regarding the Ted Stevens case has appeared in media as diverse as C-SPAN, the Los Angeles Times, Alaska Dispatch, the Anchorage Daily News, and the Anchorage Press. The lifelong Alaskan covered the five-week Ted Stevens trial in person in Washington, D.C. in the fall of 2008. He welcomes your bouquets, brickbats, tips and questions at cliff.groh@gmail.com.

December 2014:

Ethics Palooza!

December 16, 2014 | Hotel Captain Cook | *Presented by: Tom Howe*

Winning Your Case With Electronic Evidence* 8:00 a.m. - 10.00 a.m. 1.0 General & 1.0 Ethics Credits

The Lifestyle Lawyer (Eliminate, Automate, Delegate, Do) 10:30 a.m. - 12:30 p.m. 2.0 Ethics CLE Credits
Effective Use of Technology and Time

Shoelaces, Spokes and Attorney Wellness With Paul Mellor 1:30 p.m. - 2:30 p.m. 1.0 Ethics Credits

Top 10 Family Law Electronic Discovery Tips* 3:00 p.m. - 5:00 p.m. 1.0 General & 1.0 Ethics Credits

**It is suggested that lawyers attend one, but not both, of the electronic discovery CLEs because there is some duplicate content.*

Making Your Case With a Better Memory

Presented by: Paul Mellor
Wednesday, December 17, 2014 | 8:30 a.m. - 4:00 p.m.
Hotel Captain Cook | 6.0 General CLE Credits

Ethics and the Other A.D.A.: Alcoholism, Depression & Addiction

Sponsored by the Lawyers' Assistance Committee
Thursday, December 18, 2014 | 8:30 a.m. - 11:50 p.m.
Hotel Captain Cook | 3.0 Ethics CLE Credits

January 2015:

Trial Skills Intensive

A series of five programs focused on developing and strengthening trial advocacy skills

2.0 General CLE Credits each
Dena'ina Civic and Convention Center

Opening Statements
January 9 | 8:30 a.m. - 10:30 a.m.
Robert Westinghouse will examine the importance of opening statements, development of a case theme and theory and how to embed them within the opening, and how to organize, structure and deliver a persuasive opening statement.

Direct Examination
January 12 | 8:30 a.m. - 10:30 a.m.
Jeff Feldman will look at the role and theory of direct examination and will cover the law and governing rules of direct, developing a strategy for and organizing direct examinations of trial witnesses, determining which portions to emphasize and how, planning witness preparation, execution of direct examinations, and considerations the come into play in deciding whether and how to conduct re-direct examinations.

Jeff Feldman

Cross-Examination
January 15 | 8:30 a.m. - 10:30 a.m.
Bob Bundy will explain and analyze different theories and approaches to cross-examination. The session also will cover strategy issues raised in conceptualizing, organizing, and conducting effective cross-examinations in different settings.

Robert Westinghouse

Expert Witnesses
January 16 | 8:30 a.m. - 10:30 a.m.
Jeff Feldman will look at the purpose of expert witnesses - how, why, and when they are used effectively, the legal standards, procedures and techniques for qualifying expert witnesses, compliance with the disclosure requirements applicable to expert witnesses, and organizing and conducting direct and cross-examinations of expert witnesses.

Closing Arguments
January 20 | 8:30 a.m. - 10:30 a.m.
Jeff Feldman will start with a mock closing argument and then reverse engineer it, explaining the practical and strategic choices that come into play in organizing and delivering closing arguments. The session will identify the types of arguments that are permitted and those that are prohibited, techniques for effective closing argument delivery, and the use of language and rhetorical tools to amplify and reinforce closing arguments.

Robert Bundy

Register at: AlaskaBar.org

A New Age of Decision Makers: The Emerging Face of Diversity

Free Ethics CLE
In Cooperation with the Seattle University School of Law
Friday, January 23, 2015 | Dena'ina Civic and Convention Center
1:00 - 4:15 p.m. | 3.0 Ethics CLE Credits
Reception immediately following

The Many Hats of the In-House Counsel

Sponsored by the Corporate Counsel Section
Wednesday, January 28, 2015 | 8:25 a.m. - 12:00 p.m.
Anchorage Marriott
2.0 General and 1.0 Ethics CLE Credits

Christensen v. Alaska Sales & Service, Inc.

Alaska Supreme Court confirms state's traditional summary judgment standard

By Kevin Clarkson

In its recent decision *Christensen v. Alaska Sales & Service, Inc.*, 335 P.3d 514 (Alaska 2014), the Alaska Supreme Court took the opportunity to reaffirm the traditional summary judgment standard that Alaska courts are to apply under Alaska Rule of Civil Procedure 56. According to *Christensen* Alaska's traditional summary judgment standard is a "lenient standard for withstanding summary judgment" that is "more protective" of "the right to have factual questions resolved by a trier of fact" "following the procedures of a trial" than is the federal standard that is applied under Federal Rule of Civil Procedure 56. *Id.* at 520-521.

Until 1986 the federal and Alaska summary judgment standards were for the most part indistinguishable. But in that year the United States Supreme Court decided two cases in which it fundamentally rewrote the federal summary judgment standard: *Celotex Corp. v. Catrett*, 477 U.S. 317 (1986) and *Anderson v. Liberty Lobby, Inc.* 477 U.S. 242 (1986). In *Celotex* the court explained that summary judgment is not to be regarded as "a disfavored procedural shortcut, but rather as an integral part of the Federal Rules as a whole." 477 U.S. at 327. By *Liberty Lobby*, when making a summary judgment determination a district court is to take into account the precise burden of proof that the non-moving party will bear at trial. By *Celotex* summary judgment is appropriate when, "after adequate time for discovery" a party "fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial." 477 U.S. at 323.

In *Moffatt v. Brown*, 751 P.2d 939 (Alaska 1988), the Alaska Supreme Court declined to follow *Celotex* and *Liberty Lobby*. Thus, a trial court in Alaska should not take into account the precise burden of proof that the non-moving party will bear at trial when it considers whether summary judgment is appropriate. Now, in *Christensen*, the Alaska Court has gone further, holding that state trial courts are to determine whether a non-moving party has demonstrated the existence of "genuine issues of material fact" by a standard that is plainly more lenient than the federal standard, *Christensen*, 335 P.3d at 520-521.

Clarkson

Alaska Rule 56 provides for summary judgment to be granted where "there is no genuine issue as to any material fact and "the moving party is entitled to judgment as a matter of law." There are two distinct parts to this rule. To prevent summary judgment there must be an issue of fact in the case which is both "genuine" and "material." Genuine issues of material fact are to be resolved by the trier of fact after a trial.

Let's consider these two parts in reverse order. An issue is "material" if it is one on which the resolution of an issue turns. Put in the converse, "[a] factual issue will not be considered material if, even assuming the factual situation to be as the non-moving party contends, he or she would still not have a factual basis for a claim for relief against the moving party. *Id.* at 520 and n. 39. In this respect, the Alaska and federal summary judgment standards still match—the United States Supreme Court held in *Liberty Lobby* "the substantive law will identify which facts are material" and "[o] nly disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment." *Liberty Lobby*, 477 U.S. at 248. Under both the Alaska and federal standards factual disputes that are irrelevant or unnecessary will not prevent summary judgment.

It is in regard to the question of what a non-moving party must do in order to demonstrate that an issue is "genuine" where the Alaska and federal summary judgment standards differ significantly. The federal standard established under *Liberty Lobby* provides that a genuine issue for trial exists if "the evidence is such that a reasonable jury could return a verdict for the nonmoving party." 477 U.S. at 248. However, "[t]he mere existence of a scintilla of evidence" in support of a non-moving party's position is not sufficient to create a genuine issue of material fact. *Id.* at 252. The Supreme Court explained in *Liberty Lobby* that federal district judges are not required to submit a question to a jury merely because some evidence has been introduced by the non-moving party.

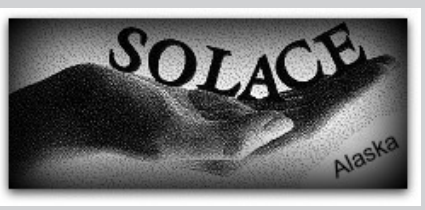
To defeat summary judgment under the federal rule the evidence must be such "that it would warrant the jury in finding a verdict in favor of" the non-moving party. *Id.* at 251. A federal district judge's job on a motion for summary judgment is to determine "not whether there is literally no evidence, but whether there is any upon which a jury could properly proceed to find a verdict for the party producing it." *Id.* And, because the federal standard is premised upon whether the evidence presented would allow "a fair-minded jury" to "return a verdict" for the non-moving party, it necessarily is "guided by the substantive evidentiary standards that apply to the case." *Id.*at 255.

Under the Alaska summary judgment standard enunciated in *Christensen*, the non-moving party must respond to the motion with affidavits or as otherwise set forth in Civil Rule 56 and "set forth specific facts showing that there is a genuine issue for trial." 335 P.3d at 517. Whether the evidence that the non-moving party has presented is sufficient to establish a genuine issue for trial is a question of law that the trial judge is to determine "objectively" employing a "reasonableness standard." *Id.* at 519. According to *Tesoro Alaska Company v. Union Oil Company of Cal.*, 305 P.3d 329, 336 (Alaska 2013), the non-moving party must present "more than a scintilla of evidence" in order to establish a genuine issue. But, according to *Christensen* the evidence presented needs merely (1) not be "too conclusory"; (2) not be "too speculative"; (3) not be "based entirely on unsupported assumptions and speculation," and/or (4) not be "too incredible to be believed by reasonable minds." 335 P.3d at 519-520. And, in addition the evidence "must directly contradict the moving party's evidence." *Id.*

The Alaska summary judgment standard "does not allow trial courts, on the limited evidence presented at the summary judgment stage, to make trial-like credibility determinations, conduct trial-like evidence weighing, or decide whether a non-moving party has proved its case." *Id.* at 520. As the Alaska Supreme Court explained in *Christensen*, "weighing and evaluating evidence intrudes into the province of the jury." *Id.* at 519. Instead, the trial court must simply determine whether the evidence presented "could be believed by a reasonable person" and whether "a reasonable person could conclude those assertions create a genuine dispute as to a material fact." *Id.* at 520.

The court in *Christensen* cautioned that the trial court's decision should not be "based on whether the court actually believes the evidence or whether it believes the moving party has better evidence." Rather, "[a]fter the trial court draws reasonable inferences from the evidence in favor of the non-moving party, summary judgment is appropriate only when no reasonable person could discern a genuine factual dispute on a material issue." *Id.*

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 is some meaningful way.

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

Fairbanks: Aimee Oravec, aimee@akwater.com

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

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

2014 Color of Justice program participants gather at Mt. Edgecumbe High School.

Color of Justice program at Mt. Edgecumbe school promotes diversity

Mt. Edgecumbe High School hosted the third Color of Justice program Nov.17-18, in Sitka. Color of Justice is a law-related education program founded by the National Association of Women Judges that seeks to promote diversity in the legal profession and judiciary by encouraging diverse youth to consider careers as lawyers and judges.

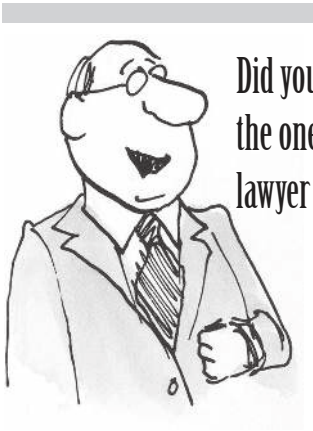
Mt. Edgecumbe High School students from communities across the state and students from other Sitka high schools attended two days of workshops and activities presented by law professors from Pacific Northwest law schools and Alaskan judges, attorneys, and state leaders.

Alaska Supreme Court Chief Justice Dana Fabe, Superior Court Judge Louis Menendez, and Mt. Edgecumbe Superintendent J. Thayne welcomed students on the first day. Students participated in "MentorJet" – where they met with diverse mentors from the legal and judicial community and shared educational and career goals. The second day of the program featured an interview with Mt. Edgecumbe High School graduates now pursuing legal careers and was conducted by Chief Justice Dana Fabe; a mock proceeding on the Indian Child Welfare act featuring state and tribal judges, mentors, and students; and Constitutional Cranium, a quiz show on constitutional knowledge hosted by Judge Patricia Collins (Ret.) of Juneau, and September Horton, director of Admissions and Development for Mt. Edgecumbe.

Increasing diversity on the bench is important to fostering public trust and confidence in our justice system, according to Chief Justice Fabe, who served as president of the National Association of Women Judges in 2009 and 2010. Color of Justice serves this goal, she says, "by affirming for our young women and youth of color that the judiciary is a career path that is open to them."

Color of Justice mentors from left are: Professor Stephanie Nichols, Magistrate Judge Mike Jackson, Nicole Borromeo, Judge Patricia Collins (ret.), Chief Justice Dana Fabe, Representative Jonathan Kreiss-Tomkins, Judge Leonard Devaney, Michele Storms, Judge David Avraham Voluck, Judge Louis Menendez.

One of the student teams from Constitutional Cranium.



A local newspaper mistakenly printed an obituary for the town's oldest practicing lawyer. He called the paper immediately and threatened to sue unless the paper printed a retraction.

The next day, the following notice appeared, "We regret that the report of Attorney Critchley's death was in error."

. . . . . .

The Bar Rag welcomes contributions to this new feature sent to mkelly@gci.com

Legal and business professionals help inmates prepare for release

Members of the National Association of Women Judges in Alaska hosted the ninth annual "Success Inside and Out" conference Oct. 25 at Hiland Mountain Correctional Center in Eagle River.

Chief Justice Dana Fabe of the Alaska Supreme Court founded the conference in 2006 to bring professional women together to help inmates nearing their release date and prepare for transition to life outside prison. Chief Justice Fabe said: "As judges, we see first-hand the need to stop the revolving door into and out of our courtrooms. We designed this conference to provide an opportunity for women judges and professional women in the community to provide mentorship, life-skills training, and support to inmates who are close to their date of release. We want to help these women succeed upon their release to the community."

More than 90 professionals from the community offered their time and expertise to provide practical guidance on finding jobs, housing, and transportation; continuing their education; handling finances; and maintaining personal health. Inspirational keynote addresses were offered throughout the day. During lunch, a fashion show highlighted appropriate dress for the job interview.

Participants in one of the break-out sessions.

More than 100 women inmates scheduled for release within the next year participated in the conference. Co-sponsors included the Alaska Court System, the Alaska Bar Foundation, the National Association of Women Judges, the George Fabe Fund of the Greater Cincinnati Foundation, and Hiland Mountain Correctional Center along with more than 30 conference supporters.

Kelly Taylor, Success Inside and Out volunteer

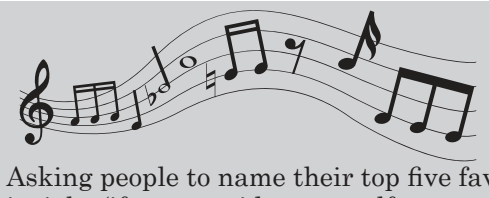
Photos by Aliki Joannides and Bryan Hickok

Shirley Mae Springer-Staten provided the inspirational address: Keep Movin' Forward to participants

Program founder Chief Justice Dana Fabe is joined by program speakes and volunteers. L - R: Susan Schmidt; Joseph Schmidt, former Commissioner Department of Corrections; Sandra Schmidt; Dianne Blumer, former Commissioner of Labor and Workforce Development and Chief Justice Dana Fabe.

Second Run owner Ellen Arvold discussing how to dress for job interviews

Dana Hilbish and Margie Mock. Margie moderated the Keynote Address: Success 'Outside' for Those on the 'Inside''



Asking people to name their top five favorite songs presents a uniquely difficult challenge. It also provides insight (if you consider yourself an amateur psychologist) into the personalities of the various members of the Alaska Bar. In this third installment we highlight the top-fives of: Alex Byner; Krista Scully, Alaska Bar Association Pro Bono director; and Deborah O'Regan, executive director Alaska Bar Association.

Alex Bryner

Here are the five songs I happen to like best today. It's definitely not meant to be a list of songs "the kind of man that reads *The Bar Rag*" would like; that list would be completely different – and the top song on it would have to be: "Yakety Yak, Don't Talk Back" by the Coasters:

1. "Night Time Is The Right Time" – Ray Charles and Aretha Franklin
2. "Waiting On A Friend" – Rolling Stones
3. "All Shook Up" – either Otis Blackwell's or Ry Cooder's version
4. "All Along The Watchtower" – Barbara Keith's version
5. "Midnight Hour" –Wilson Pickett

Krista Scully

1. "Soulshine" – Allman Brothers
2. "Crow River Waltz" –Leo Kottke
3. "Case of You" ¬– Joni Mitchell
4. "Three Little Birds" – Bob Marley
5. "Somebody's Baby" – Jackson Brown

Deborah O'Regan

1. "Sultans of Swing" – Dire Straits
2. "Everybody Hurts" – R.E.M.
3. "For a Dancer" – Jackson Browne with David Lindley on violin.
4. "Send Me on My Way" – Rusted Root
5. "As Tears Go By" – Rolling Stones

ESTATE PLANNING CORNER

Tax-free gifts in 2015: Finding shelter from transfer taxes

By Steven T. O'Hara

This article summarizes various exclusions and credits that shelter gifts from transfer taxes. For purposes of this discussion, consider a client 80 years of age. He is single and has sufficient wealth to undertake a gifting plan as discussed below. He resides in Alaska. All his assets are located in Alaska. He has never made a taxable gift.

The client has four children and 10 grandchildren. One of the client's grandchildren is in college and has annual tuition of $30,000. Another is in medical school and has annual tuition of $50,000. Five of the client's grandchildren are in private elementary school. The annual tuition for each grandchild is $10,000.

Three of the client's descendants (a child and two grandchildren) do not have medical insurance. The annual cost of the desired medical insurance plan for this family of three is $25,000. One uninsured grandchild needs an operation that will cost $20,000.

The client would like to undertake a gifting plan with respect to his descendants. He wants to make the maximum amount of cash gifts that he can make for the benefit of his descendants without paying any gift or generation-skipping tax at this time. The client wants to keep things simple. For example, he does not want to combine family giving with charitable planning. He also does not want to fund a family limited partnership or LLC and then gift interests in the entity.

First, the client may use his gift-tax unified credit equivalent amount, known most recently as his basic exclusion amount (IRC Sec. 2010(c)(3)). Effective January 1, 2015, this amount is $5,430,000 (Rev. Proc. 2014-61).

Thus in 2015 the client could form a one-pot trust for the benefit of his descendants and immediately transfer $5,430,000 to the trust without incurring any gift tax. Here the client believes using his $5,430,000 basic exclusion amount is a good idea because all future appreciation and accumulated income will generally avoid estate tax. In addition, the client is concerned if he does not use it, he may lose it. He recalls in 2011 and 2012 the basic exclusion amount was scheduled to shrink automatically to $1 million on Jan. 1, 2013.

The client's lifetime use of the $5,430,000 basic exclusion amount will need to be figured into the computation when estimating the client's exposure to estate taxes (*Cf. IRC Sec. 2001(b)(2)).*

The next transfer-tax shelter to discuss with the client is the gift-tax annual exclusion. For 2015, this exclusion is $14,000 per donee (Rev. Proc. 2014-61). In other words, this exclusion would allow our client to make annual gifts of up to $14,000 to each of his 14 descendants without incurring any gift tax.

The gift-tax annual exclusion is available only for gifts of "present interest." The exclusion does not shelter gifts of "future interest" (*IRC Sec. 2503(b)(1)*). Suppose in our example that the client does not want to give the $14,000 directly to each descendant. Rather, the client wants to transfer an additional $196,000 each year to the one-pot trust he has already funded in 2015 with $5,430,000.

When creating the one-pot trust, the client could provide that the initial $5,430,000 is traditional trust principal held for the health, education and support of the beneficiaries. The client could further provide that the $196,000 additional transfer to the trust in 2015 would be subject to each descendant having a $14,000 Crummey power. Recall "Crummey" is the name of a case, not a description (*Crummey v. C.I. R., 397 F.2d 82 (9th Cir. 1968*)). A Crummey power is a demand right with a limited life. Here each descendant could be given the right to withdraw $14,000 by written demand made to the trustee within 30 days after the $196,000 transfer. If the descendant does not make the demand by that deadline, the Crummey power lapses and the cash relating to that power stays in the trust.

On a technical note, many trusts with Crummey provisions limit the beneficiary's Crummey power to $5,000 per year, for example, even though the gift-tax annual exclusion is currently $14,000. This restriction is often made in order to stay within the $5,000 *or five-percent* safe harbor that exists under the wealth-transfer tax system (*IRC Sec. 2041(b)(2) and 2514(e)*). Here the $5,000 per year limit is not necessary because the trust has assets in excess of $280,000 (five percent times $280,000 equals $14,000). The $5,000 or five percent safe harbor may help in sheltering the trust from generation-skipping transfer tax by use of exemptions and exclusions under that tax system (*Cf. Treas. Reg. Sec. 26.2612-1(c)(1)* (the final two sentences therein) and *26.2652-1(a)(5)(Example 5*)).

Suppose under our example that we are now in 2015 and the client has been able to transfer, on a gift-tax free basis, $5,626,000 in cash to a one-pot trust for the benefit of his descendants. Suppose the client wants to gift more, and he is *not* concerned about making equal gifts to each descendant.

The next transfer-tax shelter to discuss with the client is the exclusion for certain payments of medical expenses or tuition. Under this exclusion, *direct* payments of tuition or for *uninsured* medical care are not transfers for gift or generation-skipping tax purposes, regardless of the amount of the payments (IRC Sec. 2503(e) and 2611(b)(1)). Amounts paid for medical insurance on behalf of another are considered medical expenses for purposes of the exclusion (*Treas. Reg. Sec. 25.2503-6(b)(3)*).

Two words in the preceding paragraph bear repeating. The first word is "direct." Direct payment to the educational organization or medical-care provider is required in order for the exclusion to apply (*Treas. Reg. Sec. 25.2503-6(c)(Examples (2) and (4*)). The second word is "uninsured." The exclusion does not apply to amounts paid for medical care that are reimbursed by medical insurance (*Treas. Reg. Sec. 25.2503-6(b)(3*)).

"The advantages of lifetime giving are not limited to taxation."

The educational organization must be qualified in order for the exclusion to apply. For these purposes, a qualifying educational organization is one that maintains a regular faculty and curriculum and has a regularly enrolled student body (*Treas. Reg. Sec. 25.2503-6(b)(2)*). The exclusion is not available for amounts paid for books, supplies, dormitory fees, board, or other similar expenses (Id.).

Therefore, under our facts, the client could directly pay each year – without incurring any gift or generation-skipping tax – the $130,000 in tuition that his family incurs each year. In addition, the client could directly pay each year the $25,000 needed for the desired medical insurance plan for his three otherwise uninsured descendants. He could also directly pay for his grandchild's $20,000 operation without incurring any gift or generation-skipping tax.

Clients may wonder where qualified state tuition programs fit within the various transfer-tax shelters. Qualified state tuition programs are sponsored by various states, including Alaska. These programs allow clients to shelter transfers into managed funds, for the benefit of designated beneficiaries, through use of the $14,000 gift-tax annual exclusion (*IRC Sec. 529(c)(2)(A)(i)).* Indeed, it may be possible for a client to transfer to a qualified state tuition program – in a single year – $70,000 per beneficiary, without incurring any gift or generation-skipping tax (*IRC Sec. 529(c)(2)(B)*). In other words, a client may elect to treat transfers made in one year to a qualified state tuition program as made ratably over five years. If a client makes this election and then dies within the five-year period, part of the transfers made to the program will be included in the client's estate for tax purposes (*IRC Sec. 529(c)(4)(C*)) and generation-skipping tax could be triggered.

Thus the foundation of qualified state tuition programs is the $14,000 gift-tax annual exclusion. Unfortunately, transfers into qualified state tuition programs do *not* qualify for the tuition exclusion under the gift and generation-skipping tax (*IRC Sec. 529(c)(2)(A)(ii)*).

In our example, the client has decided not to use a qualified state tuition program. He has determined it is more efficient from a tax standpoint for him to pay tuition directly to all schools. Then the payments will qualify under the tuition exclusion, which is in addition to the $14,000 gift-tax annual exclusion.

The client intends to use his $14,000 gift-tax exclusion by making annual gifts of $196,000 to the one-pot trust he has created for his 14 descendants. The client has determined that if he is not alive someday when tuition payments are needed, those tuition payments can be made either out of the one-pot trust or another trust funded at his death. If the trust would otherwise be subject to generation-skipping tax, the trustee could avoid this tax by using the tuition exclusion and paying the tuition directly to the schools. The tuition exclusion is not only available to individuals; it is also available to trusts subject to generation-skipping tax (*IRC Sec. 2611(b)(1)).*

In other words, if the client participates in a qualified state tuition program, then the client is using part or all of his $14,000 gift-tax annual exclusion for each designated beneficiary. To that extent, the client will have less shelter to make annual gifts to his one-pot trust. Moreover, for each designated beneficiary in the qualified state tuition program, the client may be giving up the opportunity for him or a trust to make direct tuition payments and thus qualify transfers under the tuition exclusion.

Clients have a number of options in undertaking annual gifting. The sooner they start giving the more effective their plans may be.

The advantages of lifetime giving are not limited to taxation. As the old saying goes, *Do your givin' while you're livin' so you're knowin' where it's goin'.* This saying rings true whether the giving is within a family or among charities.

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.

Supreme Court takes educational program to Ketchikan High School

The Alaska Supreme Court visited Ketchikan High School Nov. 19, for the Supreme Court LIVE educational program. Supreme Court LIVE brings Supreme Court oral arguments in actual cases to student audiences at Alaska high schools. Designed to help students better understand the justice system, this unique learning opportunity debuted in 2010.

The court heard oral argument in *State of Alaska v. Central Council of Tlingit and Haida Indian Tribes*, before an audience of nearly 350 high school students. Volunteer attorneys from the Alaska Bar Association and staff from the court system visited Ketchikan High School the week before the program to help students understand the appellate process and the case itself. The program included question-and-answer sessions for the students with the attorneys arguing the cases, and with members of the Supreme Court.

The video of the program has been archived by 360 North at http://www.360north.org/gavel-archives/?event_id=2147483647_2014111006.

The court with the Supreme Court Live case attorneys back row from left: Justice Peter Maassen, Justice Daniel Winfree, Justice Dana Fabe, Justice Craig Stowers, Justice Joel Bolger; front row from left: Erin Dougherty, Holly Handler, Jessie Archibald, Stacy R. Stoller and Mary Ann Lundquist

The Alaska Supreme Court with timers from the Ketchikan High School National Honor Society and ushers from the Ketchikan Youth Court: back row from left: Justice Peter Maassen, Justice Daniel Winfree, Justice Dana Fabe, Justice Craig Stowers, Justice Joel Bolger.

Color of Justice 2014

Fostering Diversity in the Legal Profession & Judiciary...One Student at a Time

Anchorage, Alaska September 17, 2014
Sitka, Alaska November 17-18, 2014

Barbara Armstrong, UAA Justice Center
Nicole Borromeo, Alaska Federation of Natives
Peter Boskofsky, Afognak Native Corporation/Alutiiq, LLC
Judge Patricia Collins (Ret.)
Perry Comas, Mt. Edgecumbe High School
Steven Courtright, Mt. Edgecumbe High School
Judge Leonard Devaney, Sitka Superior Court
Whitney Earles, Seattle University School of Law
Chief Tribal Judge Peter Esquiro, Sitka Tribe of Alaska
Paul Fitzgibbon, Mt. Edgecumbe High School
Stephanie Galbraith, Chair, Alaska Bar Association Law Related Education Committee
Yessenia Z. Garcia-Lebron, Law School Admission Council
Bernie Gurule, Academic Principal, Mt. Edgecumbe High School
September Horton, Director of Admissions and Development, Mt. Edgecumbe High School
The Bruce Horton Foundation
Magistrate Judge Mike A. Jackson, Kake District Court
Representative Jonathan Kreiss-Tomkins, Alaska Legislature
Susan Lee, Gonzaga University School of Law
Kent D. Lollis, Executive Director for Diversity Initiatives, Law School Admission Council
Mindy Lowrance, Sitka Tribe of Alaska
Kerry McAdams, Mt. Edgecumbe High School
Neil Nesheim, Area Court Administrator, First Judicial District, Alaska Court System
Margaret Newman, Alaska Court System
Prof. Stephanie Nichols, Seattle University School of Law
Deborah O'Regan, Executive Director, Alaska Bar Association
Jude Pate, Sitka Public Defender Agency
Prof. Deb Periman, UAA Justice Center
Mara Rabinowitz, Alaska Court System
Greg Raschick, Technology Director, Mt. Edgecumbe High School
Angela Ross, Law School Admission Council
Josh Stevens, Mt. Edgecumbe High School
Michele Storms, Assistant Dean for Public Service & Executive Director, Gates Program, University of Washington School of Law
Amy Stus, Sitka Tribe of Alaska
J. Thayne, Superintendent, Mt. Edgecumbe High School
Jessica Twydell, AmeriCorps, Mt. Edgecumbe High School
Judge David Avraham Voluck, Central Council of Tlingit & Haida Indian Tribes of Alaska, the Aleut Community of St. Paul Island Tribal Government, and the Sitka Tribe of Alaska

NAWJ-Alaska COJ Committee:
Chief Justice Dana Fabe, *2014 COJ Chair*
Judge Louis Menendez, *Chair, COJ Sitka Program*
Judge Pamela Washington, *Chair, COJ Anchorage Summer Program*
Judge Stephanie Joannides (Ret.), *Founding Chair*
Judge Beverly Cutler (Ret.), *Founding Member*

Bruce E. Horton Foundation

Attorney steps off the boat

Continued from page 1

into glacial melt on a sunny, almost hot day, sipping something special at the Kodiak Brewing Company's tasting room.

There are certain aspects of life on land that we do not relish, and we knew it would be a challenge to negotiate the transition back to regular office jobs. I was excited – I enjoy what I do, and I want to pay my dues – but I also knew that, especially in light of my experience of the past two years, my work would have to be interesting and meaningful to measure up. So I was gratified, and a little bit relieved when, just a few days after my return to the office, I began work on *Hamby v. Parnell*, a constitutional challenge to Alaska's laws barring same-sex couples from marriage.

My firm represented plaintiffs in the challenge, and our motion for summary judgment was due in short order upon my arrival. I reviewed co-counsels' drafts and familiarized myself with the law of the land and the appeals pending in the Sixth, Seventh, and Ninth Circuits. At this point, the Fourth and Tenth Circuits had both ruled that state laws banning same-sex couples from getting married violated the Due Process and Equal Protection Clauses of the Fourteenth Amendment to the United States Constitution. These two circuits, in *Bostic v. Schaeffer* and *Kitchen v. Herbert*, reasoned that marriage is a fundamental right upon which the government cannot infringe unless it satisfies a strict scrutiny level of review. On Aug. 26, just three days before our motion was due, the Sev-

The author and husband Mark enjoy coconut cocktails.

enth Circuit held oral argument in *Baskin v. Bogan*, another case involving same-sex couples' right to marry. Having listened to the argument, I felt fairly confident the Seventh Circuit would go our way. It did, finding that Wisconsin's and Indiana's marriage laws violated equal protection – just days after we filed our motion.

Meanwhile, in the Ninth Circuit, *Latta v. Otter*, a case challenging Idaho's and Nevada's marriage laws, was pending on appeal. Plaintiffs in the Ninth Circuit had the added advantage of *SmithKline v. Beecham*, a case from 2013 holding that the Supreme Court's decision *United States v. Windsor*, striking down the Defense of Marriage Act, required the application of heightened scrutiny to equal protection challenges based on sexual orientation discrimination. The Ninth Circuit heard arguments in *Latta* on Sept. 8, after we filed our motion for summary judgment but before the reply was due. On Oct.7, after all summary judgment briefing was complete in *Hamby*, the Ninth Circuit issued its decision: finding that the laws prohibiting same-sex couples from marrying violated equal protection. This decision was binding on our case, but it did not hold that the marriage bans violated due process based on the fundamental right to marry (one of the arguments made by plaintiffs in *Latta* and also in *Hamby*, and the basis for the Fourth and Tenth Circuit rulings). The Federal District Court of Alaska informed us that oral argument in our case would proceed on Oct. 10, as scheduled, and that the parties should be prepared to discuss *Latta*.

Of course, the possibility of Supreme Court review loomed large. On Oct. 6, the Supreme Court declined to review the marriage cases from the Fourth, Seventh, and Tenth Circuits. But on Oct. 8, Justice Kennedy temporarily stayed the proceedings in *Latta*—ostensibly to allow the party seeking a stay to make its case. He vacated this stay on Oct. 10. At the beginning of the *Hamby* oral argument, *Latta* was stayed. By the end of the argument, Justice Kennedy had vacated his previous order and denied the stay.

United States District Court Judge Tim Burgess issued his decision in *Hamby* just two days after oral argument, on Oct. 12. In a 25-page order, he declared Alaska's same-sex marriage laws unconstitutional. He went further than *Latta* required, finding that the right to marry is fundamental and applies to individuals who wish to marry another individual of the same sex. The order enjoined Alaska from enforcing the unconstitutional marriage bans, effective immediately. On Monday, Oct. 13, the State of Alaska filed a notice of appeal with the Ninth Circuit and asked the district court to stay its order pending appeal. The district court denied the stay. On Tuesday, Oct. 14, in the late afternoon, the state filed an emergency motion with the Ninth Circuit asking it to stay the district court's order. Shortly thereafter, later in the evening of Tuesday, Oct. 14, I learned that the Ninth Circuit wanted a response from us by 11 a.m. on Wednesday Oct. 15. We filed our response, and the Ninth Circuit issued a temporary stay through 11 a.m. on, Friday, Oct. 17, to allow Alaska the opportunity to seek a stay from the United States Supreme Court. The state did so, and, having received extensive briefing of the issue just one week prior, it came as no surprise that the Supreme Court did not ask the plaintiffs to weigh in. I was relieved when Justice Kennedy denied Alaska's application for a stay, just moments before 11 a.m. on Friday, Oct. 17.

While writing this article, I learned that on Nov. 18 the Ninth Circuit denied Alaska's petition for initial hearing en banc. I am hopeful that the new governor's administration will not pursue the appeal, given the clarity of the law in the Ninth Circuit. However, since the Alaska District Court's order, the Sixth Circuit has upheld similar marriage bans, finally establishing a split among the circuits. The plaintiffs from the Sixth Circuit have filed petitions for review with the Supreme Court. And plaintiffs in *Robicheaux v. Caldwell* have asked the Supreme Court to review a U.S. District Court decision upholding same-sex marriage bans in Louisiana directly, arguing that review by the Fifth Circuit would serve little utility in light of this circuit split. So perhaps we will hear from the Supreme Court during this term after all.

It has been an adventure and a privilege for me to be involved in the *Hamby* litigation. In the end, the time my family spends here in Anchorage is just another part of our journey. Perhaps one day we'll move back onboard, simplifying and eliminating some of the redundant costs of living a land-based existence. *Radiance* is still our home. In the meantime, it feels good to stay put for a while, gaining experience and doing our best at work that we believe in.

Laurence Blakely maintains an appellate practice at Mendel & Associates, Inc.

Turtle nests on Rongerik Island.

A curious bear joins the berry picking in Geographic Harbor.

2015 Alaska Bar Association
BUDGET REVENUE/EXPENSE 2015

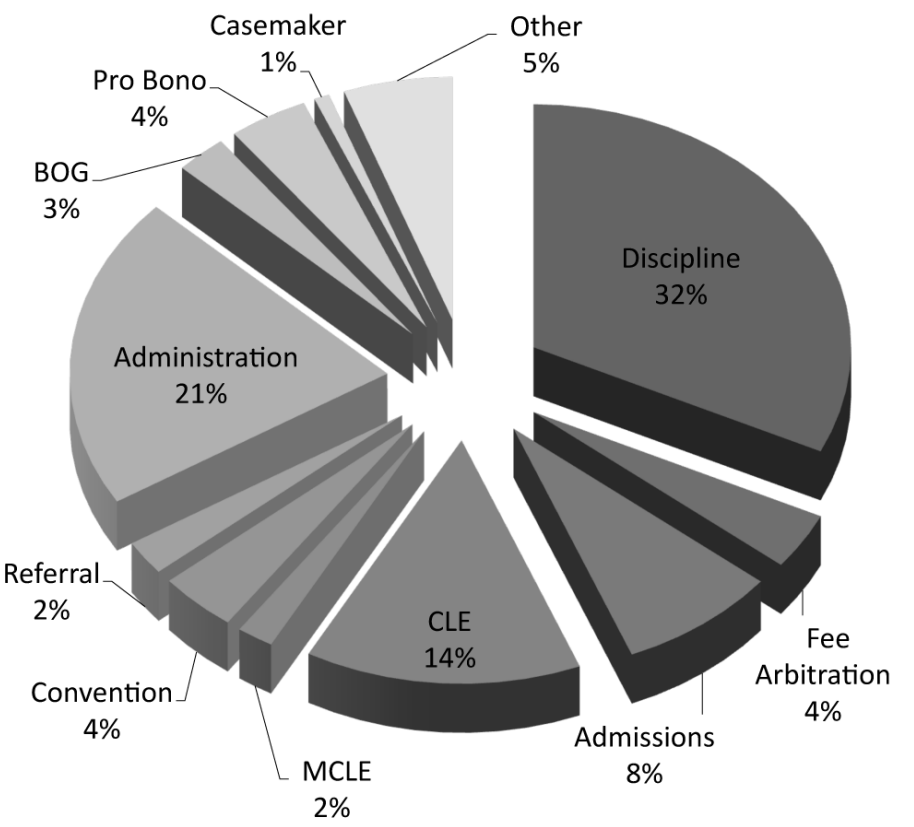
REVENUE

Admission Fees - All	296,150
Continuing Legal Education	193,228
Substantive Law Sections	26,910
Mandatory Continuing Legal Education	4,200
Lawyer Referral Fees	36,710
The Alaska Bar Rag	7,750
Annual Convention	144,685
Accounting Svc Foundation	9,509
Membership Dues	2,138,630
Dues Installment Fees	10,675
Penalties on Late Dues	16,840
Disc Fee & Cost Awards	0
Labels & Copying	1,916
Investment Interest	31,500
Miscellaneous Income	500
SUBTOTAL REVENUE	**2,919,203**

EXPENSE

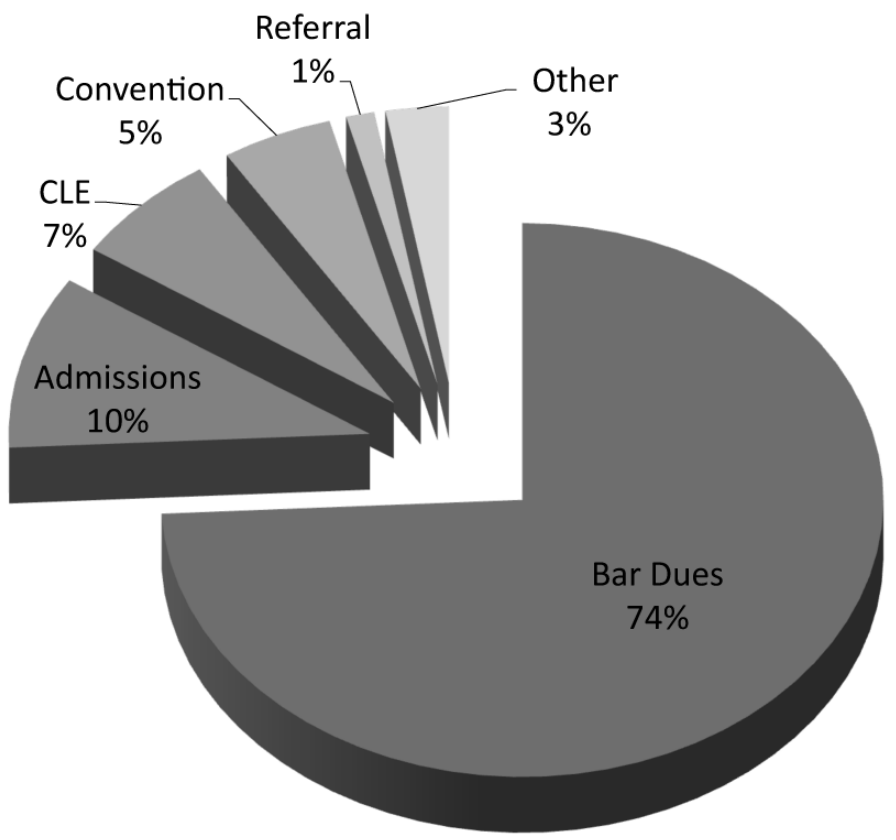
Admissions	237,587
Continuing Legal Education	410,921
Substantive Law Sections	33,592
Mandatory Continuing Legal Education	54,816
Lawyer Referral Service	67,262
The Alaska Bar Rag	37,355
Board of Governors	76,412
Discipline	936,542
Fee Arbitration	110,080
Administration	608,962
Pro Bono	117,930
Annual Convention	117,469
New Lawyers Travel	3,000
Accounting Svc Foundation	9,509
MLK Day	5,000
ADA Member Services	500
Casemaker	18,563
Committees	8,575
Duke/Alaska Law Review	0
Miscellaneous Litigation	0
Internet / Web Page	15,120
Lobbyist	0
Credit Card and Bank Fees	52,837
Computer Training / Other / Misc.	1,000
SUBTOTAL EXPENSE	**2,923,033**
YEAR TO DATE EARNINGS	***-3,830***
NET GAIN/LOSS	***-3,830***

2015 Expense Budget



Other: Bar Rag, Sections, Foundation, Web Page, Committees, Credit Card Fees

2015 Revenue Budget



Young Lawyers' Corner: 'Tis the season for getting involved

The members of the Young Lawyers Section of the Anchorage Bar Association, YLS, have been busy this fall. Our Oct. 1 membership meeting hosted two spokespersons, one on each side of the issue, for lively discussion on Ballot Measure 2.

And while we are sad to say that October was the last lunch meeting to take place at Orso, as they are discontinuing lunch service, we have decided to embrace change. YLS will now meet on the first Thursday of every month, and we hope we have found a new home at The Boardroom. This dynamic new co-working space is located on the second floor of the Key Bank building on Fifth Avenue. We love this location, and it provided the perfect spot for November's meeting topic: the decision to hang your own shingle. Local practitioners Carina Uraiqat, Gavin Kentch and Chris Hoke gave a great talk on their decisions to fly solo, as well as some insider tips for young lawyers considering the same path.

On Nov. 14, following the Swearing-in Ceremony, YLS welcomed new members of the Alaska Bar with a lively reception on the Skybridge of the Performing Arts Center.

This year's events and festivities are nowhere near complete. Coming up is one of the biggest YLS events of the year: the Covenant House Professional Clothing Drive and Holiday Party. Covenant House provides refuge, education, counseling and other crucial services to homeless youth. Often times these young people lack appropriate attire necessary for interviews or jobs in professional settings. From Dec. 3 through Dec. 12, local law firms will be collecting donations of professional clothing and accessories for the young people at Covenant House. Items that are in particularly high demand include men's dress shirts and slacks, men's shoes and new ladies' undergarments. If your firm would like to participate, contact Andrew Neidhardt at andrew.neidhardt@gmail.com.

The Holiday Party is the other great part of the event. The Young Lawyers will spend an evening of food, fun and games with the young people currently residing at Covenant House. If you or your firm would like to make a contribution to that event, or are interested in attending, please contact Chelsea Ray Riekkola at cray545@gmail.com.

In closing, YLS wishes you the happiest of holidays! If you would like more information on becoming a member of YLS or participating in future events, contact us at ylsanchorage@gmail.com.