

Medical trip Outside a harrowing experience for a patient

By Vivian Munson

Sunday — I have volunteered to accompany my friend Louise, as she travels to Portland, Ore., for major surgery. I plan to pay the airfare myself, with an inherited airline discount benefit. The appointment with a renowned surgeon is set for Wednesday.

Monday — Louise calls to get my birth date. Medicaid will pay my expenses as an escort because the operation is life-threatening. Good news, I guess. Three government offices are involved in this matter — the VA, the Alaska Native Medical Center and the State Medicaid office. What could go wrong? I know nothing about any of it, but note that travel plans have not yet been made.

Tuesday — We appear at ANMC early in the morning, to pick up a letter of introduction from the Anchorage surgeon to the surgeon in Portland. Louise spends the day calling numbers for the VA and Medicaid, as well as her primary care doctor. Just before 5 p.m. we are given the paperwork for flights, a hotel for seven days, meals and cab fare. All the medical records have been sent.

Wednesday — We arrive at the Ted Stevens International Airport and stand in line for the TSA. It's a long line, Louise does not look good, and she walks with a cane. Once again I am shocked that no provision is made for disabled or very elderly people, i.e. if you can't keep up with the herd, stay home.

Louise is taken aside by a female TSA agent and I am randomly selected for special screening. While I am distracted, Louise is raising her arms in the circular glass video machine. She's in there for too long and does not have her cane. Next time I look over, she is standing beside the machine and the TSA agent is patting her down. Louise looks upset, then miserable, as the pat down continues. I am afraid that she will fall and ask why there is no chair for her to sit in. She is traveling for major medical care, has braces on both legs and TSA has her cane. Finally she is led into a private screening room and I am allowed to go with her.

Later Louise explains that in the circular video machine, she could not spread her feet far enough apart to satisfy the TSA agent. When she said that, the agent responded, "You can do anything you want to do." The pat down was aggressive, up to her crotch, front and back, with everyone looking on. When Louise said, "You're getting a little too personal there," the agent said, "Every time you say anything, I have to start all over again," and she did. Then she said, "We're going to take you into a private room and you're going to strip naked."

In the private screening room, the very determined TSA agent tells Louise to undress and someone will bring a drape. I am beginning to worry about time, and something about a drape doesn't sound right, so I say, "Why a drape, we're all



women here?" The TSA agent orders Louise to pull her jeans down and Louise complies, uncovering a very large and horrible disfigurement, the reason for the surgery. Louise is crying now, uncontrollably. I cannot restrain myself and shout, "What is going on here? I have to say something, I'm a lawyer. Why are you do-

ing this? I'm going to take a picture of this."

The TSA agent turns from Louise and raises her hands to block me. No pictures. Louise pulls her pants back on and the TSA agent just walks out. A supervisor arrives as

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Japanese internment survivors speak out

By Monica Elkinton

At the Federal Bar Convention Aug. 14, 2018, several Alaskans who are survivors of Japanese Internment Camps told their moving and dramatic stories. They referred to it as "incarceration" of Japanese-Americans rather than "internment."

Mary Tanaka Abo, daughter of Japanese immigrants, was interned at the Minidoka camp in Idaho as a child. At its peak, the Minidoka camp housed nearly 10,000 Americans of Japanese descent, many of whom were born in the United States and therefore American citizens.

Her brother John Tanaka was set to be the valedictorian of Juneau High School, but was forcefully relocated to the Idaho camp instead. His high school class left an empty chair for him at graduation. Today, there is a bronze empty chair in Juneau

that stands as a memorial for the forced incarceration of Japanese-Americans. On bronze floorboards around the empty chair are the names of 53 Juneau residents who were forcefully relocated.

Mary was born in Juneau in 1940. Her father had emigrated from Japan in the 1880s, and married her mother, also Japanese, in an arranged marriage. Throughout Mary's childhood, her father operated the City Café on South Franklin Street in Juneau.

When Mary was a baby, her father was arrested and imprisoned simply because he was Japanese. Local Juneau white businessmen tried to vouch for him, but he was sent to Haines, Fort Richardson, and eventually to prison in Santa Fe. The family was separated from him for two years. Mary's mother and the other children in her family went to the Minidoka internment camp.

Mary described conditions at the camp. She was around two or three years old. She said they were in barracks #6, which had bunks and a coal stove. They all ate in a mess hall. They had foods her family considered very strange, like Vienna sausages from a little can. The bathrooms were latrines for males and females. They washed their laundry in washtubs. As a toddler, she was happy to be with her mother, but her mother was not happy, and no one else at the camp was happy either. Mary tearfully described a Christmas at the camp when friends from Juneau sent them a blue dress for her sister and a doll for little Mary.

After the internment, the Tanaka family returned to Juneau. The local grocery store gave Mary's father infinite credit for food until he could get his restaurant up and running again. According to Mary, "It's

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Board seeks member comments on Bar office location

By Brent Bennett

'Tis the season when many of our thoughts turn to home, even if only in our minds as the carol goes. As it turns out, the Bar Association is considering its own home. The lease on the space that the Bar currently occupies will be up within the coming year. This has left the Board of Governors with a question: negotiate a new lease on our current space, find a new space to lease or pursue purchasing our own building?

This is a question that we've been pondering for a while. The board has formed a Facilities Management subcommittee to work with a realtor in scouting out potential new locations, both for lease or purchase. The board members agree that it's difficult to decide about which move to make without a real, tangible situation to consider — we really need real numbers to determine whether any decision is economically feasible. Thus far, we have not found

any viable options for new spaces to house the Bar. But it seems to remain open to opportunity.

If the right purchase opportunity comes along, some data supports the idea that buying a building may be a good investment in the future. Based on

the latest statistics available to the Bar, many unified or mandatory bar associations (bar associations like Alaska where the bar is responsible for both licensing and discipline) own their own buildings (or their bar foundation owns the building). About 75 percent of these types of bar associations with membership over 50,000 own their own building, 67 percent with membership between 20,000 and 49,000 own their buildings, 90 percent with memberships between 5,000 and 19,999 own their buildings, and 25 percent of unified or mandatory bars with memberships less than 5,000 members (like Alaska) have purchased their own buildings.

As I have traveled to various national conferences that gather bar presidents and staff I've had the opportunity to ask other bar associations about their experiences. Overwhelmingly, the advice that I and other members of our board have received is to proceed with buying a building. Our counterparts



"I think that one thing the full board agrees on is that we want the membership to be aware of our thoughts on this issue, and we want your feedback."

from other states have acknowledged how much they wrestled with the decision prior to buying their own buildings, but encouraged us to continue exploring the idea. I've been told that once other bar associations purchased their own buildings they couldn't believe they hadn't taken the leap sooner.

There is a give and take to owning our own building to consider. The bar would be responsible for building management. Our staff wouldn't have to depend on an outside management company, but managing our own building may add extra

headaches and costs. Many bars that own their own buildings have become landlords, renting out space to other legal or non-legal entities. This approach may add a revenue source, but would also add the logistical issues that come with being a landlord.

Those board members in favor of a building purchase cite hope for a future where the mortgage is paid and the bar spends less than it currently does to occupy office space. Board members who are hesitant about such a venture worry whether it's appropriate for the bar to make such a large purchase. I think that one thing the full board agrees on is that we want the membership to be aware of our thoughts on this issue,

Those board members in favor of a building purchase cite hope for a future where the mortgage is paid and the bar spends less than it currently does to occupy office space. Board members who are hesitant about such a venture worry whether it's appropriate for the bar to make such a large purchase.

EDITOR'S COLUMN

A memory highlights value of hard copy

By Ralph R. Beistline

So, I understand that the Board of Governors is considering changing the format of the Bar Rag from a hard-copy publication to a solely online publication. The paper is currently available both online and in hard copy. While I understand that this is not a question for me to resolve, it does bring back good memories and some interesting history.

I recall, as president of the Bar Association in 1986, carrying copies of the Bar Rag to the various conferences I attended and placing them out for public consumption. They were always the subject of considerable interest and the first to go.

Then, in 1991, the Bar Rag came in especially handy for me. At the time, I was a lawyer representative and attending a Ninth Circuit Judicial conference in Hawaii. It was a first for me, and I didn't really know anyone. I also was intimidated by all the federal judges and other dignitaries who surrounded me, and was pretty much a fish out of water.

There was one conference ses-

sion that I really wanted to attend. It was a panel discussion featuring Justice Anthony Scalia. However, when I got to the conference hall, I found it completely full, with the exception of one vacant seat very near the front. For me this seemed like a once-in-a-lifetime opportunity, so I mustered the courage and moved forward toward that vacant seat. As I did, I felt the glare of the numerous federal marshals in attendance. These stares only increased as I sat in the vacant seat. I quickly understood,

however, what had generated the concern, for I was seated next to Justice Sandra Day O'Connor.

After a brief greeting, I found myself somewhat tongue-tied until the Bar Rag I was carrying fell in the way of [the Justice's] wondering gaze.¹ It was the February 1991 edition that featured a front page, above the fold picture of Jay Rabinowitz and Charlie Cole. Cole had just been appointed attor-



"Justice O'Connor was grateful when I offered the paper to her as a gift from the Alaska Bar Association."

ney general for the State of Alaska, and the article was about him. More significantly, Cole had been a law school classmate of Justice O'Connor, and she not only recognized him, but recalled him fondly. She then noticed the below the fold article entitled "Lawyer Tackles the Iditarod Race to Nome." Coincidentally, Justice O'Connor had recently met with Iditarod heroine Susan Butcher in the Justice's D.C. chambers, and was very impressed with

Butcher and her many achievements. The next page of the paper held my editor's column which, unfortunately, was not as intellectually stimulating as normal and focused on a dilemma I currently was dealing with related to mismatched socks. (It still plagues me. I attended a trial last month on two different days with a green sock and a gray sock.) But, Justice O'Connor was grateful when I offered the paper to her as a gift from the Alaska Bar Association.

For the remainder of the conference session Justice O'Connor read

and we want your feedback. This isn't the first article in the Bar Rag addressing this issue, and likely won't be the last. As I've met with different groups around the state, the consensus seems to be that members are less concerned with where the bar is housed and more concerned that a purchase or lease decision does not result in increased dues. Please let us know what your thoughts are or if you have any questions about our building considerations. I look forward to hearing from you. Happy Holidays and Best Wishes as we head into 2019.

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The Alaska BAR RAG

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The Denali wolf meets the Alford-Camfield Nexus rule

By Steven T. O'Hara

Fourth and final in a series

The Property Clause is found in Article IV, section 3, of the U.S. Constitution. It provides that "Congress shall have power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States...." This clause is recognized as giving Congress authority over not only federal land, but also land located next to federal land.

Recognition of the Property Clause's extraterritorial reach dates back to 1897, when the U.S. Supreme Court decided *Camfield v. United States*, 167 U.S. 518 (1897). Here the Court held that Congress has the power to enact legislation to protect federal land from being hemmed in on all sides by fences erected on adjoining privately owned land. *Id.* at 528. Another early case is *U.S. v. Alford*, 274 U.S. 264 (1927). Here the Court upheld a statute that prohibited the careless use of fire dangerously near federal land. *Id.* at 267.

While *Camfield* and *Alford* are not co-extensive or interchangeable, I view them as two sides of the same coin, both applying the words "needful" and "respecting" as used in the Property Clause.

The rationale for the rule that Congress may, under the Property Clause, legislate to protect federal land lies in the recognition



"While *Camfield* and *Alford* are not co-extensive or interchangeable, I view them as two sides of the same coin, both applying the words "needful" and "respecting" as used in the Property Clause."

that, as the *Camfield* Court noted, a "different rule would place the public domain of the United States completely at the mercy of state legislation." *Camfield*, *supra*, at 526.

In *Alford*, the Court explained its holding thusly: *The statute is constitutional. Congress may prohibit the doing of acts upon privately owned lands that imperil the publicly owned forests. The word "near" is not too indefinite. Taken in connection with the danger to be prevented it lays down a plain enough rule of conduct for anyone who seeks to obey the law.*

Alford, *supra*, at 267.

While the statute in *Alford* was designed to protect federal land from physical harm, the statute in *Camfield* was designed to protect a congressional policy for the purpose or use of federal land. The *Camfield* Court explained:

[T]he evil of permitting persons, who owned or controlled the alternative sections, to enclose the entire tract, and thus to exclude or frighten off intending settlers, finally became so great that Congress passed the act ..., forbidding all enclosures of public lands....

Camfield, *supra*, at 524-525. The Court concluded: "If it be found to be necessary for the protection of the public or of intending settlers, to forbid all enclosures of public lands, the Government may do so...." *Id.* at 525.

The challenging question is not the extent of the extraterritorial reach to protect federal land from physical harm, as in *Alford*, but the extent of that reach to protect congressional policy for the purpose or use of federal land, as in *Camfield*. If the power to protect congressional policy for the purpose or use of federal land is without limitation, Congress may potentially regulate the entire United States under that power. (The Wild and Free-Roaming Horses and Burros Act of 1971, 16 U.S.C. Sec. 1331-1340 (2018), purports to regulate the entire country.)

An important clue to answering this question is found in *Camfield*. The Court wrote:

So long as the individual proprietor confines his enclosure to his own land, the Government has no right to complain, since he is entitled to the complete and exclusive enjoyment of it, regardless of any detriment to his neighbor; but when, under the guise of enclosing his own land, he builds a fence which is useless for that purpose, and can only have been intended to enclose the lands of the Government, he is plainly within the statute, and is guilty of an unwarrantable appropriation of that which belongs to the public at large.

Camfield, *supra*, at 528 (emphasis added). Thus a clue to analyzing the constitutionality of a *Camfield*-type statute, designed to protect a congressional policy for the purpose or use of federal land, is to remember that a violation of the statute upheld in *Camfield* lay not merely in the obstruction of access to federal land. There also was the intent to obstruct as well as a level of unreasonableness.

Accordingly, an argument can be made that when the extraterritorial reach of a law designed to protect a congressional policy for the purpose or use of federal land is challenged, a necessary element of the regulated activity is that it be culpable in the sense that it threatens to interfere intentionally and unreasonably with the land's designated purpose or use.

The above *Camfield* passage contains another clue. The statute upheld was designed to protect Congress in its proprietary capacity as trustee of the public lands for the public at large.

From the gist of the passages quoted above, an *Alford-Camfield* Nexus Rule can be formulated. Here the rule is offered as follows: An extraterritorial regulation, to be constitutional, must be reasonably necessary, thus satisfying the "needful" requirement of the Property Clause, while the regulated activity on non-federal land must have a substantial relationship to federal land, thus satisfying the "respecting" requirement of the Property Clause. The *Alford-Camfield* Nexus Rule is an ascertainable standard with two elements. The first element asks: Is the law, which regulates activity beyond federal land, reasonably necessary? The second element asks: Does the regulated activity have a substantial relationship to federal land? Faced with a challenge to an extraterritorial provision in a statute or regulation, courts are equipped to ascertain the answers to these questions.

The previous issue of this series proposed a federal statute I call the Denali Wolf Protection Act, which would include the following provisions:

- Section 1. Congressional Findings & Declaration of Policy.
- Congress finds and declares that wolves that make their home in Denali National Park and Preserve ... constitute an essential attribute of the value of the park;
 - Congress finds and declares that ... it is in the national interest to preserve opportunities for the maximum number of Americans to view wolves in Denali National Park and Preserve; that nearly 600,000 visitors to the park in 2016 translates into a high probability that millions of Americans will visit the park over the coming five years alone ...;
 - Congress finds and declares that the intentional killing of the

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A memory highlights value of hard copy

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the Bar Rag and commented to me frequently throughout. I don't know what the marshals thought, but onlookers could see I was her special friend. She only put the paper down to listen when Justice Scalia would speak. As we departed, Justice O'Connor graciously thanked me for the paper and indicated that her husband would enjoy reading it as well. He too had attended law

school with Charlie Cole and apparently had been dealing with a similar problem with mismatched socks.

Anyway, a fond memory among many that probably would have never taken place had the paper only been on line.

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

Footnote

¹ Robert W. Service (1874-1958), THE SHOOTING OF DAN MCGREW.



New A.G. has long Alaska history

By Ralph R. Beistline
If you had asked Charlie Cole 60 days ago what he would be doing today, the last thing that might have come to mind would have been, "Alaska's Attorney General." If you had asked this reporter at the same time what the chances were of Cole accepting such an offer, the answer would have been "zero."
Thanks, though, to some unexpected political developments, a persuasive Governor, and a little soul-searching, Attorney General Charlie Cole most certainly is.
Not long after the recent election, Gov. Walter J. Hickel approached Charlie with an offer the Fairbanks attorney could not refuse. "I can't pay you much, but I can give you the biggest client in the United States." Included in this offer was the opportunity to serve the State of Alaska and its people and to help chart a course for Alaska that will be felt well into the future.
Thirty-eight years earlier, Charlie Cole first arrived in Alaska, fresh from Stanford Law School and a brief, but distinguished, professional baseball career. (When asked why he did not go on to a career in the major leagues with contemporaries like Mickey Mantle, Cole explained that it was the long bus rides that deterred him.)



As Alaska waited patiently for the final step to Statehood in 1958, two young attorneys paused at Cleary Summit outside Fairbanks after a day of skiing together. Who would later become the chief justice of the Alaska Supreme Court (Jay Rabenowitz, left)? Photo courtesy Jay Rabenowitz.

Interestingly, Charlie was not the only Stanford graduate that year who went on to prominence. He sat next to Bill Rehnquist, currently Chief Justice of the United States Supreme Court, and was friends with Sandra Day, later Sandra Day O'Connor, today also a Supreme Court Justice.

Charlie's first job in Alaska was in Juneau as an attorney for the Commission of Veteran Affairs. After about six months, he transferred to the Juneau Attorney General's office where he met a young Ed Merdes, who also later distinguished himself as an Alaska attorney, politician, and community leader.
Soon thereafter, Charlie learned of a law clerk position in Fairbanks for Territorial Judge Vernon Forbes. Cole applied for the position, was hired, and thereafter relocated to Fairbanks where he has resided ever since.
The clerkship lasted approximately 1 year. From there Charlie went into private practice with the firm of Collins, Clabby, and Scudlow. Shortly thereafter, a prominent local attorney, Julian A. Hurley, became ill and Charlie took over his practice in room 218 of the Lawery Building. Charlie has been in private practice in the Fairbanks area ever since.
In 1956, Charlie made what was to be his only venture into politics when he ran for Fairbanks City Magistrate. His opponents were Larry Dworkin and George Sullivan. Sullivan later became Mayor of Anchorage. Charlie ran a full-fledged campaign and was elected. Interestingly, this is the only election that George Sullivan is known to have lost in his 68 years in Alaska.
For the next several years, in addition to maintaining his private

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Lawyer tackles the Iditarod race to Nome

By Kevin G. Clarkson
This winter, while most Alaska attorneys will be inside warm offices (hopefully), performing their usual routines, researching cases, drafting legal documents, briefs and countless discovery requests, one Anchorage attorney, Jim Cantor of Perkins Coie, will be out in the cold, performing a much different routine: feeding and tending sled dogs, shoveling dog manure, and loading, unloading and driving a dog sled.
Is Jim out to prove to our Lower 48 counterparts that their perceptions of Alaska lawyers are right? NO. Is he answering "the call of the wild?" Well, maybe.
This March, Jim will try his hand (or dogs) at the Iditarod, Alaska's 1,162 mile dog sled race from Anchorage to Nome.
Although Jim was raised in Michigan and graduated from the University of Michigan and the Cornell University Law School, he is a long-time Alaskan. He first

came to Alaska in 1977 when he took a year off from his undergraduate studies and "came up here for adventure." During that year, Jim definitely had a lot of adventure — crabbing, substitute teaching in Bethel and driving a truck — and developed an enduring love for Alaska's wilderness.
After completing his undergraduate studies in Michigan, Jim returned to Alaska in 1981 and canoed the Yukon River, "showed Alaska to Susan" (his future wife) and lived in Bethel for a year. Jim received his law degree from Cornell in May, 1986, passed the Alaska Bar the following July and has been working as a litigator in the Perkins Coie Anchorage office ever since.
Jim's mushing experience began in Alaska during his year off from school.
"Susan and I had spent Thanksgiving with friends in Russian Mission near the Yukon River. Being

run for a year and no lead dog) and take a one-month mushing trip to Bethel." This was an experience neither Jim (nor Susan) would repeat — but it was enough to get them hooked and did not diminish their interest in mushing.

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GLOBAL ISSUE: Dateline....
Arizona, Hong Kong, Petersburg, Moscow, Texas, W. Virginia, Juneau, Italy, Fairbanks, France, Anchorage, Ketchikan, Hawaii, Iraq, California, Nome, Australia, Vietnam....Inside

Send in your best lawyer jokes. They don't need to be obscene. The search continues....
See page 23 for details

Is there due process of law on appeal in a criminal case?

By Robert C. Erwin

Recently, I reviewed a decision of the Alaska Court of Criminal Appeals¹ which took more than three years from the filing of the Notice of Appeal to an opinion. The case involved the following delays from the date of filing the Appellant's Brief to a decision.

1. Delay in filing Appellee's Brief – 150 Days
(Objections filed to time extensions over 30 days Under Appellate Rule 503.5)
2. Delay in setting Oral Arguments - 210 Days
(Required a motion to set Oral Arguments)
3. Delay from Oral Argument to Opinion – 426 Days
(Opinion Filed after motion to dismiss to the Supreme Court for failure to reach opinion after 16 months)

A.S. 22.070.020 states "an appeal to the Court of Appeals is a matter of right to all actions and proceedings within its jurisdiction". A.S. 22.05.140b, A.S. 22.07.090 (b), & A.S. 22.10.090(b) provide no Judge shall be paid if he has a matter under advisement for more than six months.

In spite of such statutes the Alaska Supreme Court has promulgated Standing Order 12 (effective Feb 6, 2015) permitting the Court of Appeals to establish new time limits for filing briefs, in criminal cases, in the Court of Appeals.

Standing Order No. 12 is as follows:

1. Court of Appeals Standing Order No. 6 is hereby rescinded
2. The provisions of this Standing Order apply to all appeals governed by Appellate Rules 204, 217, or 215. The provisions of this Standing Order also apply to a petition or application governed by Appellate Rules 302, 402, or 404 if the Court has granted the petition or application and has ordered formal briefing.
3. The Court of Appeals shall publish a schedule of briefing extension



Judge Joanis' family joins him for the installation ceremony. (Alaska Court System photo)

New judge joins Superior Court in Kenai

From the Alaska Court System

Judge Lance Joanis was installed as a Superior Court Judge Sept. 14, 2018, at the Kenai Courthouse in Kenai. A reception followed at the Kenai Visitor and Cultural Center.

Judge Joanis was born and raised in Oregon. He left college to work in an Oregon lumber mill to help out a family member who had suffered a cerebral artery aneurysm. Judge Joanis graduated from Central Oregon Community College in Bend, Oregon, with an associate degree in Liberal Arts. He then went to the University of Oregon, graduating with a bachelor's degree in Planning, Public Policy and Management. He spent nearly 10 years in total working in mills, returning to work as financial needs arose during his undergraduate years. Joanis graduated from the University of Idaho College of Law, where he met and married his wife Jennifer.

Joanis had not traveled much, but Jennifer had a previous career with the Red Cross and had traveled the world extensively. With her influence, the two packed all of their belongings into a Connex box and moved to Bethel, following graduation. There, they both studied for and took the Alaska bar exam before going to work for the Department of Law, in Bethel. Their two children each had their first home in Bethel before the family moved to Anchorage, and then on to Kenai where they have lived and practiced law since 2008.

limits, prescribing the maximum amount of extension that will normally be allowed for a brief, and describing the periods of time that will be exempted from the calculation of the extension limits. The extension limits established in this schedule may vary according to the type of case, the type of brief, and the date on which the party's last request for extension was filed. This schedule shall be included in the Alaska Rules of Court as an appendix to the Appellate Rules.

4. Notwithstanding the provisions of Appellate Rule 503.5(b) and (c), if a party requests a briefing extension that falls within the applicable limit established in the Court's schedule of extension limits, the party's motion will be accepted without a supporting affidavit and without a statement regarding the other party's position on the request. The party's motion must specify:
 - The original due date for the brief
 - The proposed new due date
 - Any exempted periods of time that do not count against the extension limit
 - What the total briefing will be if the motion is granted
5. If a party's requested extension exceeds the applicable limit established in the Court's schedule of extension limits, the party's motion must be supported by affidavit, and in addition to the information listed in paragraph 4, the motion must also specify:
 - How much the requested extension exceeds the applicable extension limit
 - The other party's position on the requested extension
 - The extraordinary and unforeseeable circumstances that justify extending the briefing deadline beyond the Court's limits (When appropriate, this explanation can be submitted in a separate confidential affidavit)²

The Court of Appeals has adopted the following extensions of time for filing a brief before them:

Appendix To Standing Order No. 12

Court of Appeals Schedule of Briefing Extension Limits

Introduction: Over the past several years, this Court observed that the briefing of criminal appeals was taking longer and longer. By the end of the calendar year 2013, the briefing of a felony appeal was taking close to two years.

Our law guarantees a right of appeal to all criminal defendants, and there is no closure to a criminal case until the appeal is decided. Excessive appellate delay harms the interests of all the participants in the criminal justice system – not only the defendants and victims and their families, but also the police agencies who investigated the crime, and the community affected by the crime. This Court owes a duty to all of these people, and a duty to the public at large, to maintain the health and effectiveness of the criminal justice system. Accordingly, we will no longer grant any briefing extensions beyond the deadlines set forth in this schedule, absent truly extraordinary circumstances.

For extension requests filed from Feb. 1, 2014 to Aug. 31, 2014:

Total for the opening brief: 530 days
Total for the appellee's brief: 250 days

For extension requests filed from Sept. 1, 2014 to Feb. 28, 2015:

Total for the opening brief: 500 days
Total for the appellee's brief: 230 days

For extension requests filed from March 1, 2015 to Aug. 31, 2015:

Total for the opening brief: 465 days
Total for the appellee's brief: 230 days

For extensions requests filed from Sept. 1, 2015 to Feb. 29, 2016:

Total for the opening brief: 430 days
Total for the appellee's brief: 210 days

For extension request filed from March 1, to August 31, 2016:

Total for the opening brief: 395 days
Total for the appellee's brief: 205 days

For extension requests filed from Sept. 1 to the present:

Total for the opening brief: 390 days
Total for the appellee's brief: 200 days

The effect of such extensions is to cause every person convicted and in jail to stay there while the appeal process goes forward. Clearly, there is little incentive for the prosecution to speed up the process. Is this the "due process of law" granted under Section 7 of Article One of the Alaska Constitution?

These deadlines can be contrasted with those of the Ninth Circuit Court of Appeals which limits extensions for filing briefs to 14 days with greater extensions requiring "extraordinary and compelling circumstances", Circuit Rule 31-2.

There is nothing in federal law requiring a Judge to render a decision within six months. However, Alaska has two civil cases which discuss the statutory requirement of a six-month deadline for the court to make a decision. In *Hertz vs. Hertz*, 847 P2d 71 (Alaska 1993) the Alaska Supreme Court held a party has no judicial remedy for a Superior Court Judge's failure to rule in a timely manner.

Previously the Alaska Supreme Court had ruled in a per curiam opinion, in *Oaksmith vs. Brusich* 774 P2 191 (Alaska 1989), that the section which

Continued on page 5

Is there due process of law on appeal in a criminal case?

Continued from page 4

governs judicial salaries (A.S. 22.10.190 9 (b)) should not be construed as conferring a right to a new trial for failure to render an opinion within six months by a Superior Court judge.

Neither case discusses criminal due process of law on the right to appeal by a criminal defendant. Further, there is no mention of the requirement of a speedy trial, of 120 days from the date the charging document is served on the Defendant, in all criminal cases under Criminal Rule 45.³ The issue obviously becomes what is due process of law for a criminal appeal to the Alaska Court of Appeals? Is there any time limit on such an appeal? Can it take years? What does the right to appeal mean?

The original statute giving appellate jurisdiction in criminal cases to the Alaska Supreme Court, A.S. 22.05.010, provides for one appeal as a “matter of right”. See *State vs. Marathon Oil, Co. 528 P.2d 293, 294 (Alaska 1974)*. The jurisdictional statement was transferred to the Court of Appeals in A.S. 22.07.202 (d) when it was established with the identical language of “appeal as a matter of right”.⁴

The reference to “appeal as a matter of right” further comes with the opinions of the Alaska Supreme Court that the Alaska constitutional provisions concerning individual rights are to be given an expanded interpretation over similar or nearly identical provisions of the United States Constitution.

In the case of *State v. Marathon Oil, Co. 258 P.2d 293, 295 (Alaska 1974)* Justice Fitzgerald noted that, “Once the appellate process is properly invoked, final appellate jurisdiction is in the Supreme Court; for to hold otherwise would contravene the explicit constitutional provisions.” Article IV, Section 2, Alaska Constitution.

In an early opinion of the Alaska Supreme Court in *Roberts v. State, 428 P.2d 340, 342 (Alaska 1969)*, Justice Boney stated that the Declaration of Rights found in the Alaska Constitution was broader than the similar provisions in the U.S. Constitution:

“...We are not bound in expounding the Alaska Constitution Declaration of Rights by the decisions of the United States Supreme Court, past or future, which expound identical or closely similar provisions of the United States Constitution...”

In *Baker v. The City of Fairbanks, 471 P.2d 401, 402 (Alaska 1970)* the Alaska Supreme Court in an opinion by Justice Roger Conner, again, stated that the Alaska Bill of Rights was to be given an interpretation that was necessary for the kind of civilized and ordered liberty which is at the core of our constitutional heritage:

“...In deciding Appellate has a constitutional right to a jury trial, we have decided to extend this protection. In doing so, we recognize that this result has not been reached in certain other jurisdictions or by the United States Supreme Court. The mere fact, however, that the United States Supreme Court has not extended the right to jury trial to all types of offences does not preclude us from acting in this field. While we must enforce the minimum constitutional standards imposed on us by the United States Supreme Court’s interpretation of the Fourteenth Amendment, we are free, and we are under a duty, to develop additional constitutional rights and privileges under our Alaska Constitution if we find such fundamental rights and privileges to be within the intension and spirit of our local constitutional language and to be necessary for the kind of civilized life and ordered liberty which is at the core of our constitutional heritage. We need not stand by idly and passively, waiting or the constitutional direction from the highest court in the land. Instead, we should be moving concurrently to develop and expound the principles embedded in our constitutional law.”

Subsequently, in the case of *McGinnis v. Stevens, 570 p. 2d 735, 737 (Alaska 1977)*, Justice Jay Rabinowitz noted that due process rights under the Alaska Constitution were more extensive than those delineated under the U.S. Constitution. See also *State v. Browder 486 P.2d 925, 936-937 (Alaska 1971)* for discussion of *Baker v City of Fairbanks*, supra.

An extensive review of the Alaska Constitutional framework and the expansive reading thereof, is set forth in the Article “Justice Rabinowitz and Personal Freedom: Evolving a Constitutional Framework”, authored by Susan Orlansky and Jeffry Feldman and is found in the *Duke University Alaska Law Review*, Volume XV Page 1 (June 1998). This review followed an early article on the same subject by Ronald L. Nelson, “Welcome to the ‘Last Frontier’ Professor Gardner: Alaska’s Independent Approach to State Constitutional Interpretation”, Volume XII *Duke University Alaska Law Review*, Page 1 (June 1995).

There are no Alaska cases on the time limit to decide an appeal in a criminal case. There is a case involving the maximum time to delay a criminal trial of a defendant under Criminal Rule 45. In *Glasgon vs. State, 469 P2 688, 689 (Alaska 1970)* the Alaska Supreme court held that a 120 day delay in holding the criminal trial violated due process of law, and reversed the conviction and dismissed the indictment.

There are no federal cases on appellate due process of law in a criminal case. This was apparently based on the fact that common law permitted no appeal in criminal cases, and that view was reflected in the Bill of Rights adoption in 1789 as amendments to the U.S. Constitution – see *United States v. MacCollum, 426 US 317, 321 (1976)*

It is suggested that due process of law on a criminal appeal must have time limits or almost all criminal defendants convicted of a felony for property or drug related crimes for the first time will serve their entire sentence and be released subject to their terms of parole before their case will be decided. Whether the case was properly determined would mean nothing because the defendant would have suffered the punishment even if the case is ultimately reversed.⁵ The issue of timely appeal in the case herein was raised in this case. by a Writ of Review⁶ before the opinion of the Court of

Appeals was filed (some 16 months after Oral Arguments)⁷ and in a request for discretionary review to the Supreme Court, after the opinion of the Court of Appeals was filed. Both were denied without opinion even though the State did not contest the fact that the defendant had served his entire sentence and had been on parole for almost a year before the opinion was published by the Court of Appeals. Given all of this, what does due process of law in a criminal appeal mean?

Robert Erwin was admitted to practice in 1961 and had done more than 200 appeals. He served on the Alaska Supreme Court from 1970 - 1977. Bob is the only lawyer in the state who has appeared before just about every Supreme Court justice appointed since statehood.

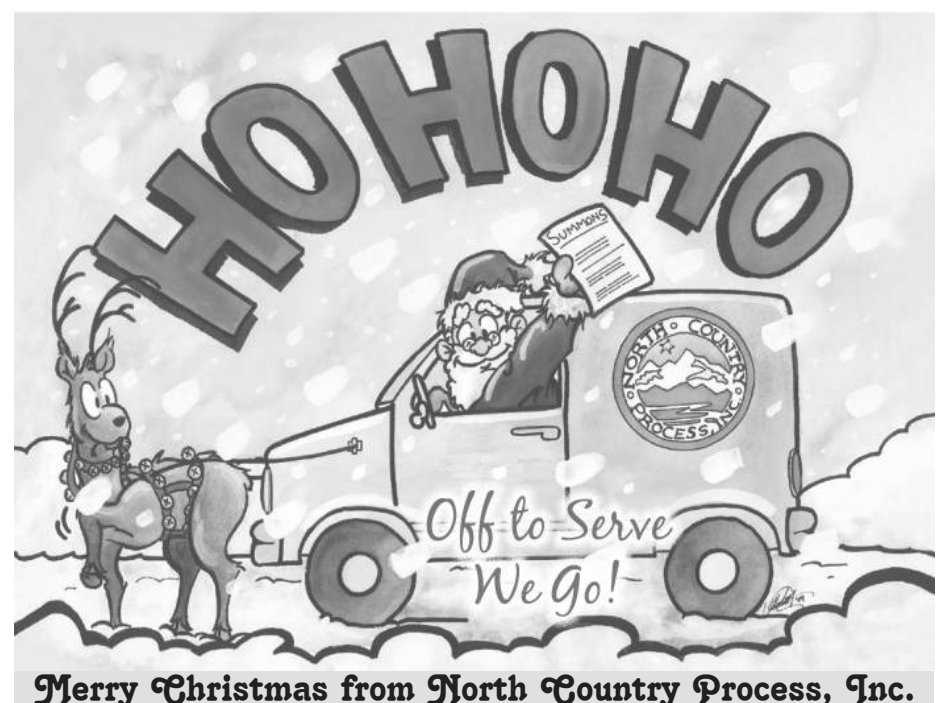
Footnotes

- ¹ Case No. A - 12174
- ² The Rules and Orders of the Alaska Supreme Court are subject to Constitutional scrutiny to meet Due Process of Law. *Etheridge v. Bradley, 502 P2d 146 (Alaska 1972)*
- ³ The Federal Rule for a speedy trial is 70 days under 18 USC 3161
- ⁴ There are no time limits for a decision in the Federal Circuit Courts of Appeal under the Federal Rule of Appellate Procedure 3 and 4; see also 9th Circuit Rule 34.3 where the defendant can ask for priority of his case.
- ⁵ A.S. 12.55.125 (a) (1.) provides maximum punishment for 1st felony conviction 5 to 8 years; A.S. 12.55.155 (a) (1.) Provides the low end of the range under A.S. 12.55.125 (c) is 4 years or less without special circumstances. A.S. 33.20.010 provides that a prisoner convicted of an offense and sentenced to a term of imprisonment is entitled to a deduction of one third of the term of the imprisonment. Thus a sentence for 3 years is 2 years.
- ⁶ Case # 5-17023
- ⁷ Case # 5-17034

Layperson Service award presented to Deirdre Booth



Rob Stone, president-elect of the Alaska Bar Association, presents the Layperson Service award to Deirdre Booth. Deirdre has served on the Bar’s Fee Arbitration Committee since 1999. The Layperson Service Award honors a public committee or board member for distinguished service to the membership of the Alaska Bar Association.



Merry Christmas from North Country Process, Inc.

The Denali wolf meets the Alford-Camfield Nexus rule

Continued from page 3

wolves of Denali both on and off federal land interferes with the purpose of Denali National Park and Preserve; that the interference is unreasonable especially given that the park is home to the First Family of American wolves ...;

- d. Congress finds and declares that state regulation insufficiently protects the wolves of Denali.
- e. Now, therefore, it is the policy of Congress that the wolves of Denali National Park and Preserve shall be protected from harassment, capture, and death; and to accomplish this policy the wolves of Denali National Park and Preserve are to be considered an integral part of the natural system of the public lands known as Denali National Park and Preserve.

Section 2. Definitions. As used in this chapter:

- a. "Secretary" means the Secretary of the Interior;
- b. "Wolves of Denali National Park and Preserve" means all wolves within the Denali Wolf Protection Area;
- c. "Denali Wolf Protection Area" means Denali National Park and Preserve, all non-federal lands within Denali National Park and Preserve, and the area outside the boundaries of Denali National Park and Preserve but not beyond the Scientifically Based Geographical Area; and
- d. "Scientifically Based Geographical Area" means the area hereinafter specified that is outside the boundaries of Denali National Park and Preserve and which is necessary (i) for the preservation of the Wolves of Denali National Park and Preserve and (ii) for the preservation of opportunities for the American people to view such wolves in Denali National Park and Preserve. Such area is specifically identified as follows: [to be identified by Congress].

Section 3. Sanctuary; actions by agent of Secretary. Denali National Park and Preserve is designated as a wolf sanctuary, and within the Denali Wolf Protection Area no wolf shall be harassed and in no event shall a wolf be captured or destroyed except by an agent of the Secretary as determined necessary by the Secretary.

The first question for a court, under the Alford-Camfield Nexus Rule, is whether the proposed act is reasonably necessary. Here the answer would appear to be in the affirmative, assuming Congress were to determine that the killing of the wolves of Denali on non-federal land interferes with Denali National Park and Preserve as such and that the interference is unreasonable as stated in Section 1 of the proposed act.

The proposed act includes the finding "that state regulation insufficient-

ly protects the wolves of Denali." The proposed act also includes the following declaration of policy: "... the wolves of Denali National Park and Preserve are to be considered an integral part of the natural system of the public lands known as Denali National Park and Preserve." The policy and the finding point to the rationale for the Property Clause rule that Congress may legislate to protect federal land – namely, in the words of the Camfield Court, a "different rule would place the public domain of the United States completely at the mercy of state legislation." *Camfield, supra*, at 526.

Having found evidence of a reasonable necessity for the regulation, a court could exercise some deference to Congress' judgment on the needfulness of the act. As the Supreme Court has noted, "while courts must eventually pass upon them, determinations under the Property Clause are entrusted primarily to the judgment of Congress." *Kleppe v. New Mexico*, 426 U.S. 529, 536 (1976)(upholding provisions of the Wild and Free-Roaming Horses and Burros Act of 1971, *supra*).

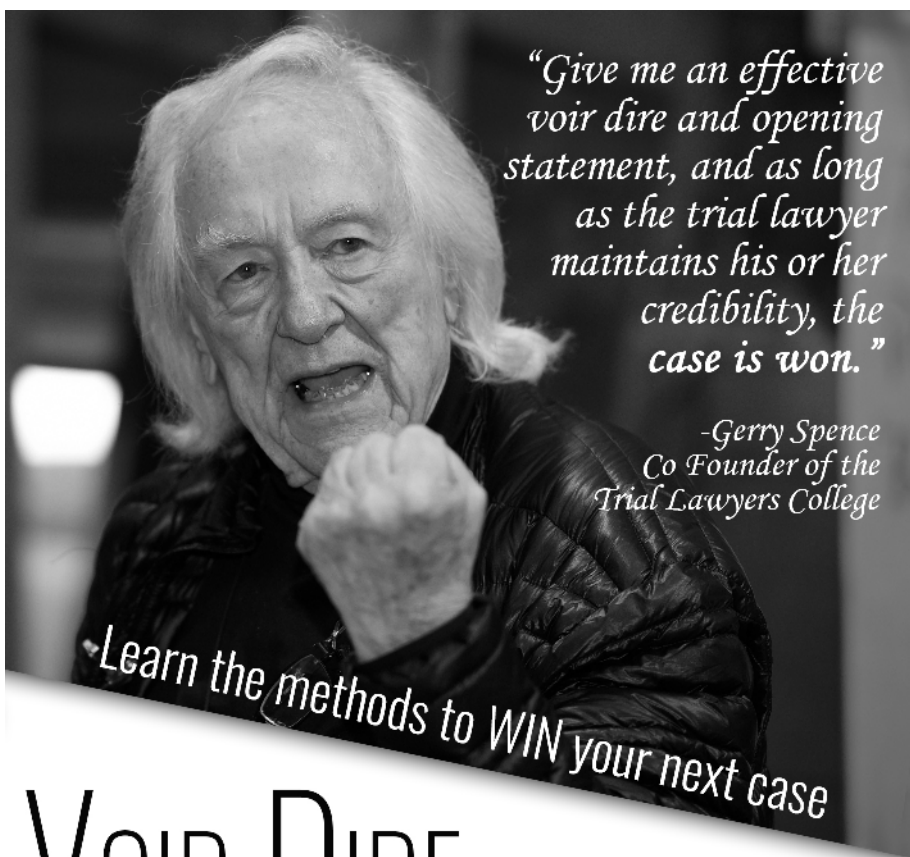
The second question for a court, under the Alford-Camfield Nexus Rule, is whether the regulated activity has a substantial relationship to federal land. The answer would appear to be in the affirmative. While the hunters and trappers of the Denali wolf may not intend to interfere with the purpose of Denali National Park and Preserve, the hunters and trappers intend to do the acts that are the proximate cause of the interference. One trapper reportedly quipped after killing his third female Denali wolf: "That was the third time I ruined millions of people's Denali National Park viewing experience." Tom Clynes, *Denali: How Can Six Million Acres Not Be Enough?*, *National Geographic Magazine*, Jan. 2016 at 69. The trapper may have been joking, but the proposed act includes the finding "that nearly 600,000 visitors to the park in 2016 translates into a high probability that millions of Americans will visit the park over the coming five years alone..."

Moreover, the proposed Denali Wolf Protection Act has a geographic limit, not unlike the statute upheld in *Alford*. Congressional policy would need to define that limit. The proposed act calls the regulated area outside the boundaries of Denali National Park and Preserve the "Scientifically Based Geographical Area." Here congressional policy would reflect study and science, identifying a geographic limit that addresses the killing of the wolves of Denali.

The science used to identify the area needed to preserve the wolves of Denali would highlight the proximity of the regulated area. With the proximity of the regulated area, there would appear to be a substantial relationship between the regulated activity and federal land.

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

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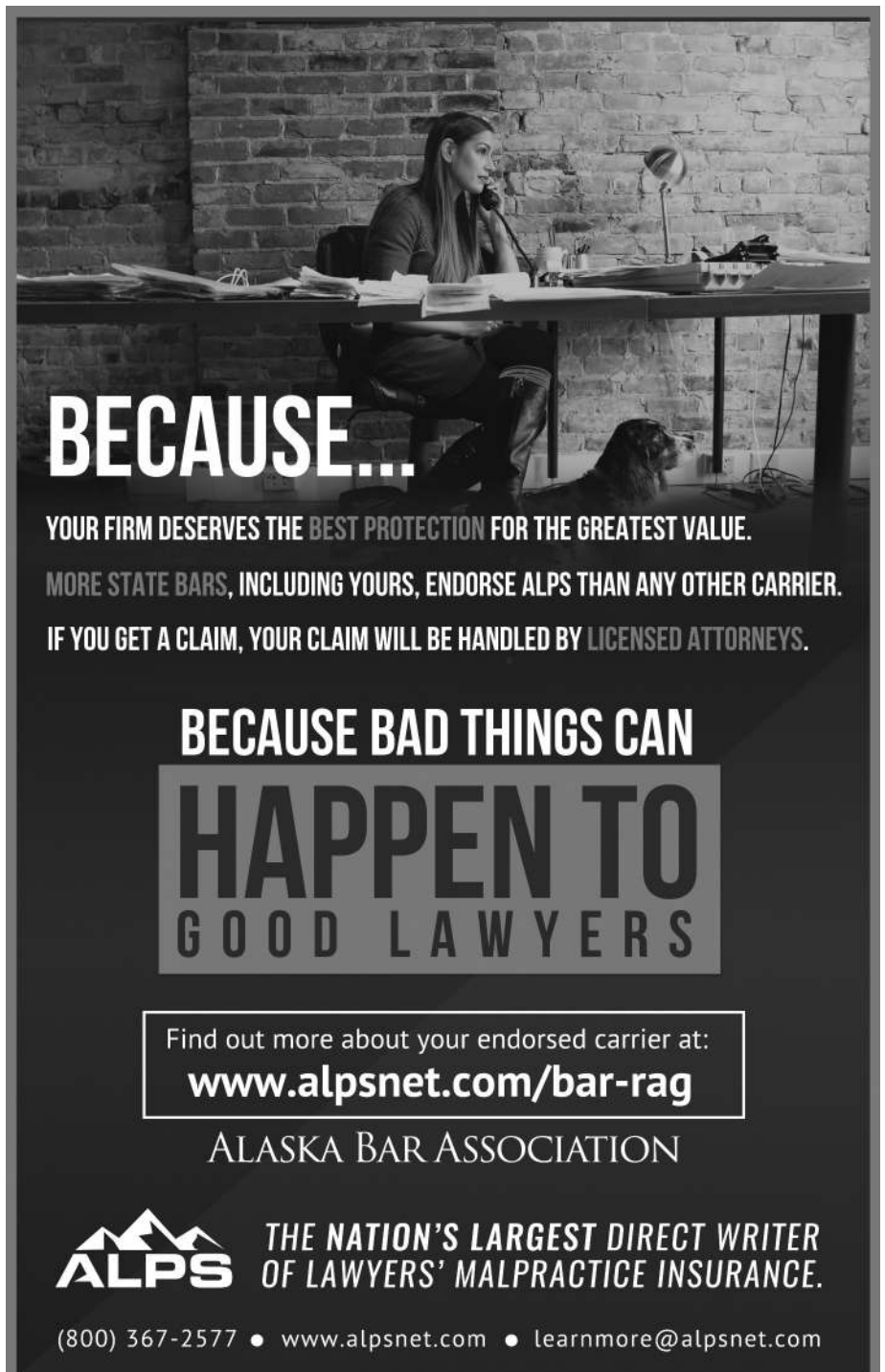
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Volunteers honored for pro bono work with violence, abuse survivors

By *Emelia Vigil*

The Alaska Network on Domestic Violence and Sexual Assault (ANDVSA) Legal Program assists survivors of domestic violence, sexual assault and stalking statewide with a range of civil legal assistance. Volunteer attorneys are the life force of our program, dedicating countless hours and numerous services to survivors. In early October, Attorney General Jahna Lindemuth honored Michael Gershel with the Attorney General's Award for Pro Bono Service, recognizing his many years of helping survivors navigate the civil justice system.

"At a time when we have all been, rightfully, focused on our rising crime rates, it's important to recognize people like Michael, who give of their time and effort to zealously advocate for survivors," said Lindemuth. "Domestic and sexual violence are a scourge on our society. But Michael shows us how much of a difference just one person can make." Freshly out of law school, Gershel took a job at Alaska Legal Services Corporation (ALSC) representing indigent Alaskans needing legal help, beginning what has become a long, successful career in family law. After leaving ALSC for private practice, he has continued to volunteer for more than two decades, advocating on behalf of clients at both ALSC and ANDVSA.

Gershel seeks to empower individuals through his advocacy, expressing the importance of supporting people during difficult times. "Clients faced with violence often have to completely rebuild their lives," said Gershel, "people are very capable and sometimes they don't even know it."

Christine Pate, director of the ANDVSA Legal Program, said, "Michael has been a tremendous resource to our program, both in terms of his mentoring newer volunteers and his direct advocacy with our clients. As a former legal services attorney, he understands how great the demand is for legal assistance and has dedicated a portion of his time in private practice to filling that need." Importantly, Gershel is one among many volunteer attorneys who donate their time and skills to those in need. Two others are Blake Chupka and Theresa

Hillhouse, attorneys recently recognized as ANDVSA Volunteers of the Month.

As the September Volunteer of the Month, Chupka, a Ketchikan-based attorney and volunteer of more than a decade, supports ANDVSA's mission of eliminating violence against Alaskans. Originally from Minnesota, he studied philosophy and economics in college, after which he attended law school at the University of Michigan. During law school, he interned at the Alaska Public Defender office, where he ultimately returned to build a career, family and life. He was originally drawn to law by philosophy, ethics, and morality; dealing with right and wrong; and making "a tangible impact that has the opportunity to influence outcomes and peoples' lives for the better."

Chupka still holds strongly to these principles by utilizing his legal skill to empower those in need. A champion of human rights, he prioritizes, "helping people who otherwise may be unable to navigate the system to the right outcome, who are underrepresented, underserved, and going through a difficult time in their life." To him, the most reaffirming aspect of working a domestic violence or sexual assault case is the relief in the victim's demeanor when the right outcome has been achieved. Having handled a number

At a time when we have all been, rightfully, focused on our rising crime rates, it's important to recognize people like Michael, who give of their time and effort to zealously advocate for survivors

of cases for ANDVSA, his efforts in the courtroom contribute, in no small part, to the positive feelings of those he represents.

Theresa Hillhouse, ANDVSA's November Volunteer of the Month,

feels similarly to Chupka, citing the empowerment of survivors as the driving force of her service. Theresa continually utilizes her legal resources to usher individuals through the legal system, noting, "It's incredible to see how rejuvenated people can be — especially at a time when they're about to give in — by having options and seeing the results."

Hillhouse initially moved to Alaska after college. She attended Antioch Law School in Washington, D.C., and returned to Alaska where she began her legal career, focusing on employment, labor and public law (municipal and state). While working in Anchorage as an

assistant municipal attorney, she became involved with ANDVSA. As Sitka's municipal attorney, she also frequently staffed the twice monthly ANDVSA hotline. She has taken 10 cases with ANDVSA, amounting to hundreds of hours donated to individuals in need. The diversity of cases in volunteering is an aspect that Theresa Hillhouse particularly enjoys: "The pro bono work is a one-stop shop, from everyday counseling with the client to employment issues and everything in between. The learning experience is amazing for this area of law."

Chupka also enjoys ANDVSA cases because it challenges him to "apply his skillset in a different setting." While he notes that work with survivors can include "emotionally difficult cases," Chupka, Hillhouse, and Gershel have successfully navigated the difficult waters of the work, setting a powerful example for other attorneys. Chupka adds, these cases are "a good reminder of the reasons why one may have gone into law in the first place."

Outside of the courtroom, ANDVSA volunteers maintain a work/life balance. Chupka's devotion to families pervades his professional and personal life, adding that his favorite way to spend time outside of work is with his wife and their new

baby. Theresa Hillhouse, though recently retired from state and municipal government practice, continues to work part-time in private practice and to volunteer with ANDVSA. She has, however, sold her sailboat in favor of spending time with her daughter, who is newly admitted to the Alaska Bar and clerking for Judge Wells in Kenai. For Gershel, spending time with his wife of 26 years, Carol Gershel, being with his children, and kayaking out of his favorite locale, Whittier, are his choice leisure activities.

The ANDVSA Legal Program appreciates our volunteers, who in fiscal year 2018 donated over \$700,000

Would you like to be part of the solution in ending violence? We need volunteers to staff our hotline, assist with a range of cases, or co-counsel with newer attorneys. Resources to support attorneys new to family law and protection order practice are provided.

in legal services to survivors. Would you like to be part of the solution in ending violence? We need volunteers to staff our hotline, assist with a range of cases, or co-counsel with newer attorneys. Resources to support attorneys new to family law and protection order

practice are provided. Please visit <https://www.andvsa.org/volunteer-now/> or contact Christine Pate, ANDVSA Legal Program director, at 907-747-2673, cpate@andvsa.org or Senior Staff Attorney Katy Soden at 907-297-2791, ksoden@andvsa.org.

Emelia Vigil is a winter intern with ANDVSA Legal Program. A native of California, she is a recent graduate of Harvard University.

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Ninety students from across Alaska journeyed to Sitka for the program.

90 students attend Color of Justice program in Sitka

From Alaska Court System

The Alaska Court System, Mount Edgecumbe High School and Sitka Bar Association hosted the *Color of Justice* program Nov. 7-8, 2018 in Sitka. Color of Justice is a law-related education program founded by the National Association of Women Judges designed to promote diversity in the legal profession and judiciary by encouraging diverse youth to consider careers as lawyers and judges. More than 90 students from 51 communities and villages across the state participated in two days

of workshops and other activities presented by representatives from Gonzaga University School of Law, Seattle University School of Law, University of Washington School of Law and lawyers and judges from the Alaska Court System, as well as judges from the Sitka Tribe of Alaska.

Color of Justice sessions included “*MentorJet: A Speed Mentoring Experience*,” where students met with a variety of lawyers, judges, and justices. “*Constitutional Cranium*,” a quiz show on constitutional knowledge, a “*You be the Judge*” program,

and a new program called *Legal Monopoly*.

Increasing diversity on the bench is important to fostering public trust and confidence in our justice system, according to Justice Susan Carney who participated in the program this year. Color of Justice serves this goal, she said, by reminding young people that our justice system must be made up of all parts of our community so that people will have confidence in it.

Judge M. Jude Pate, who chaired the Sitka program this year, said, “the Mount Edgecumbe students in this year’s program were extremely intelligent and engaging. They give me confidence that Alaska will have creative and compassionate leaders in the future.”

Mount Edgecumbe students and teachers produced a video of the event which will be viewable soon on the school’s website: <http://mehs.us/>

Court system receives award for diversity efforts

The Alaska Court System’s Color of Justice Program received the CLEO Edge Award at an awards gala Nov. 15 in Washington, D.C.

Judge Pamela Washington, chair of the Anchorage Color of Justice program, accepted the award on behalf of the court system.

The Council on Legal Education Opportunity, Inc. (CLEO), known for its mission to increase the number of lawyers from diverse backgrounds, has announced the recipients of the inaugural CLEO EDGE Award in Diversity. Fifty (50) honorees were chosen for their accomplishments from more than 200 nominees.

CLEO created these recognition awards to promote its focus on the three pillars or characteristics which undergird the organization’s purpose and in recognition of its 50th anniversary. Those pillars are education, diversity, and greater equality.

CLEO, Inc. is a 501(c)(3) charitable organization committed to diversifying the legal profession by expanding legal education opportunities for persons from traditionally under-represented racial and ethnic groups, low-income and disadvantaged communities. Founded in 1968, when the number of lawyers of color was less than one percent, CLEO has produced more than 10,000 individuals who have excelled in every area of the legal profession and include judges, corporate attorneys, law school deans and professors, practitioners, politicians and more.

For a complete list of the 2018



Judge Pamela Washington accepted the CLEO award for the Color of Justice Program.

CLEO Edge Award honorees in diversity, go to <https://cleoinc.org/50/50-for-50/honorees/>

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Diversity lunch participants share experiences

Stories Affecting Our Lives, was the 8th Annual Diversity Lunch where a panel of speakers shared stories of challenges, inspirations, and brought forward a level of awareness to the community variations of what each one of us may go through while feeling alone in our journey. Close to 200 people were in attendance. The panel included Julie Fate Sullivan, communications director, Covenant House Alaska; Miriam Aarons, director of Media and Communications, Bering Straits Native Corporation; Gabriel Kompkoff, CEO of Chugach Alaska, and chair of ANCSA Regional Association; Judge Herman Walker, Anchorage Superior Court. The panel was moderated by Senior Justice Dana Fabe.

This event is brought to the community through the generous sponsorship of Outlook Law, and the event's organizer, Christine



Participants include from left: Gabriel Kompkoff, Julie Fate Sullivan, Miriam Aarons, Senior Justice Dana Fabe, Judge Herman Walker (Photo by Kate Wolgemuth)

Williams, as well as ANCSA Regional Association, Bristol Bay Native Corporation, Davis Wright Tremaine LLP and Dorsey

& Whitney LLP. The event also had the cooperation of the Alaska Supreme Court's Fairness Diversity and Equality Committee, the

Alaska Bar Association, the Anchorage Bar Association and the Anchorage Association of Women Lawyers.

Japanese internment survivors speak out

Continued from page 1

never too late to say you're sorry."

Marie Matsuno Nash was actually born at the Minidoka camp in Idaho. Her father, a U.S. citizen, was born in Hawaii to Japanese immigrant parents. Her mother was Aleut. The family lived in Nushagak, Alaska. Marie's father, although he came from Maui, learned dog mushing, traplines, hunting and fishing. She had six siblings.

Like with the Tanaka family, the order first came for her father to be

imprisoned. He was sent to the jail in King Salmon and then to Fort Richardson. Eventually Marie's mother, pregnant with Marie, decided to go to the Minidoka camp where she could be with her husband instead of wait in Alaska by herself.

Marie's father eventually signed up as a member of the 442nd Infantry Regiment, a U.S. Army regiment made up almost entirely of second-generation Japanese-Americans, and the most decorated unit in U.S. military history. He fought in Italy

and France and received a Purple Heart. After his military service, Marie's father had to write to the government to get permission to go home to Bristol Bay.

Marie's parents didn't talk about the experience very much as she grew up. She finally asked them about it after she worked in Washington, D.C., as an adult and saw an exhibit on the incarceration of Japanese-Americans at the National Archives.

Karen Korematsu, daughter of

Fred Korematsu, who unsuccessfully took the issue of Japanese internment camps to the U.S. Supreme Court, also addressed the Federal Bar Convention. She now runs the Korematsu Institute, an organization that promotes education of the Korematsu story.

Monica Elkinton is an assistant municipal attorney for the Municipality of Anchorage. She's a former co-chair of the Unbundled Services Section and serves on the Alaska Bar CLE Committee.



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Military spouses face procedural hurdles to join bar and practice

By *Natlie Columbus-Schiess*

A search in either the Alaska Bar Association's member directory or the most recent edition of the Alaska Directory of Attorneys for Jessica Bjerke-Owens, Christopher Wateland or Samantha Fleming reveals no records for these military spouse attorneys practicing in Alaska under Bar Rule 43.4. But don't be fooled, these hardworking creative military spouses are hard at work within our legal community. Before I delve any further into the waiver program or these military spouse attorneys — a glance at the background of military spouse attorney careers is paramount to fully understanding the added hurdles these attorneys face.

Imagine for a moment, having to relocate every two to three years because of your spouse's employment, which is tied to national security, and which leaves you with little to no option but to apply for, pay and take a bar exam every two to three years in a new jurisdiction, live and work separate from your service member spouse or give up your career. On top of that, imagine starting entry level jobs, positions without a future for career advancement or the ability to polish your professional craft over and over every two to three years. This is the reality for many military spouse attorneys who face relocation to one of the remaining 18 U.S. states or 13 U.S. territories that do not currently offer military spouse JD waivers. Occupational licensing barriers separating military families who already sacrifice their time together for training and deployments should not continue.

A 2014 Military Spouse Employment Report revealed that military spouse unemployment rates are doubled compared to their civilian counterparts. Earlier this year, the Department of Defense confirmed little change to this phenomenon and also revealed that military spouses face a 26 percent unemployment rate alongside a 25 percent wage gap compared to their civilian counterparts. What is often forgotten are the mobility issues military spouses endure. The military lifestyle levies unique challenges for military spouses. As the spouse of a Marine Corps veteran of 15 years of active service, I can easily recount such challenges both from personal experiences as well as my own ob-

servations from within the military family community. These challenges included frequent relocations and deployments which often result in barriers to careers and career advancement that most civilians never experience and cannot truly appreciate.

According to the ABA, 1,200 military spouse attorneys are stationed throughout the United States and overseas. In 2012, the American Bar Association's House of Delegates passed Resolution 108, urging "state and territorial bar admission authorities to adopt rules, regulations and procedures that accommodate the unique needs of military spouse attorneys who move frequently in support of the nation's defense." As of November 2018, 32 states and the U.S. Virgin Islands, passed military spouse JD waiver policies.

In March 2017 Alaska became the 25th state to enact a military spouse waiver policy, when the Alaska Supreme Court approved Bar Rule 43.4, which went into effect October 15, 2017. The rule permits a military spouse attorney, not admitted to practice law in the state of Alaska, to obtain a waiver under certain conditions. These conditions include being a graduate of an accredited law school, admitted to practice in another jurisdiction (state, territory, or District of Columbia), status as an attorney in good standing, without pending disciplinary matters in any jurisdiction, and presence in the state of Alaska as a spouse of a member of the U.S. Uniformed Services pursuant to military orders.

I recently had the pleasure of catching up with Alaska's first three military spouse attorneys who were able to continue their careers in the legal profession thanks to Alaska's Rule 43.4.

Navy veteran Jessica Bjerke-Owens is an assistant district attorney with the Alaska Department of Law's Criminal Division, and the first attorney waived in under Rule 43.4. She is licensed to practice in Montana. Bjerke-Owens holds an LLM in tax law and practiced in tax law prior to the family's assignment relocation to California.

She and her spouse, Naval Lieutenant Commander Dave Owens, along with their children, relocated to Alaska in August 2017. With 23 years of active service, the family has already seen four deployments and multiple workups which involve her husband being out at sea for



From top are Jessica Bjerke-Owens, Chris Wateland and Samantha Fleming. (Photo by Natlie Columbus-Schiess)

anywhere from two weeks to three months. Prior to Alaska, the family was previously based in San Diego, California. In an era when dual incomes are common, and sometimes a necessity in a high-cost area like Southern California, California's employment barrier for attorney military spouses resulted in Bjerke-Owens inability to practice law during the period they were stationed there. Unfortunately, California does not currently offer attorney military spouse waivers. Bjerke-Owens persisted in her efforts to continue working in the legal field and went from practicing as a tax attorney in Montana to working as a legal assistant in San Diego. Her resourcefulness landed her a full time position with the U.S. Attorney's Office. Although the one year position was uncompensated, Ms. Bjerke-Owens was fortunate to continue increasing her skill set.

For the most part, the military will send you where the military needs you. However, military families are allowed to list in order of preference the duty stations that are open to them at the time of their relocation. Bjerke-Owens prefers assignment orders to states that already have military spouse JD waivers available. Initially, the family's order of preferences was Nebraska, Washington, D.C. and Virginia — because all three states already had waiver programs. In support of her service member spouse's career and the unique opportunities Alaska offered, the family listed Alaska as their first preference. Although, at the time, Alaska had not yet passed its waiver rule. One week later, to Bjerke-Owens' relief, Alaska passed Rule 43.4 which was coincidentally followed by assignment orders for Alaska. The family is scheduled to relocate to their next assignment station in August 2020, and the order of preference of duty stations will be heavily influenced by the availability of the military spouse JD waiver program. "My husband will retire after the next duty sta-

tion and I will be the bread-winner, so I need to have an established career to support our family," she said.

Christopher Wateland, a naval reservist, relocated to Alaska with his active duty spouse Captain LaTanya Wateland in May 2018. Wateland is licensed to practice law in Minnesota. He joined the team of associates at Walker & Eakes in September 2018 and practices insurance defense litigation. "I'm extremely grateful for the ability to work and practice in Alaska without having to actually get licensed or take the bar again," Wateland said. Alaska is the couple's first duty station and the availability of the military spouse waiver program was a key factor in their decision to accept initial orders to Alaska. Following their arrival in Alaska, Wateland hit the ground running with his early completion of the Alaska license waiver application. Relying on Rule 43.4 he began applying and interviewing for attorney positions in Anchorage. Although Wateland was offered an associate position in May, he faced the additional hurdle of having to wait for the Board of Governors to meet and process his waiver application. The Board meets four times a year.

In what is quickly becoming a reoccurring theme, jurisdictions offering military spouse attorney waivers weigh heavily on a couple's duty station assignment preference. Samantha Fleming is an associate with the Law Office of Blake Quackenbush practicing both civil and criminal defense litigation. She is licensed to practice in California and Oklahoma. Fleming and her active duty husband Air Force Captain Sean Fleming arrived in Alaska in July 2018. Previously faced with the choice of being stationed in Germany or Oklahoma, the couple chose Oklahoma. Had they received orders for Germany, the couple had reluctantly planned to live separately for two to three years, with Fleming returning to California and Flem-

Continued on page 11

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Superior Court judge installed in Anchorage



Attending the installation were from left: Judge William Morse, Presiding Judge, Third Judicial District; Magistrate Judge Donna McCreedy; Justice Susan Carney, Alaska Supreme Court, Judge Una Gandbhir, Anchorage Superior Court; Judge Marjorie Allard, Alaska Court of Appeals; and Judge Kari McCrea, Anchorage District Court. (Photo by Margaret Newman)

From the Alaska Court System

Judge Una S. Gandbhir was installed as a judge of the Superior Court Sept. 27, 2018, in the Boney Memorial Courthouse in Anchorage. She was appointed to the Anchorage Superior Court by Gov. Bill Walker July 20, 2018.

Gandbhir is the daughter of Sharad and Lalita Gandbhir. She was raised in Newton, MA, with her siblings, Geeta and Ashwin, in a large extended family.

Judge Gandbhir received a B.A. in English and Anthropology from Bryn Mawr College in 1988 and a J.D. from Northeastern University School of Law in 1993. After an internship at Alaska Legal Services Corporation, she returned to Anchorage with her now-husband Phil to work for a summer in a small firm. Alaska's rugged beauty and relaxed lifestyle proved irresistible to them both, resulting in a job offer, a Subaru, and a husky puppy (in that order). Judge Gandbhir opened her own practice in 1998, focusing on elder and disability law. She served for several years as co-chair of the Elder Law section of the Bar Association and as a board member of ASAGA, the Alaska guardianship association.

In 2013 she took a position as a magistrate judge and standing master with Alaska Court System. She currently serves as a member of the Alaska Supreme Court's Fairness Diversity and Equality Committee, the Alaska Supreme Court's Elder Task Force and the Mental Health Commitment Review Committee.

Judge Gandbhir lives in Anchorage with her husband, Phil Shanahan and is the mother of Kiran Shanahan, a freshman at West High School. She enjoys spending time with family and friends, travel, rock climbing and reading.

Military spouses face procedural hurdles to join bar and practice

Continued from page 10

ing stationed in Germany. Fleming is also familiar with the demands of deployment with her spouse having already served two deployments during her years of practice. Fleming stresses heightened concern in lack of advancement in her career as one of the main reasons why waivers such as Rule 43.4 are so important to professional military spouses. Fleming has a background in criminal prosecution and hopes to advance her career in criminal law as she balances those goals with supporting her service member spouse.

Having only just celebrated one year in effect, the procedural aspects of Rule 43.4 may need some tweaking to come up with workable solutions taking into account the various dates of arrival of military spouse attorneys in Alaska throughout the year. Military families do not choose the location of their assignments, are often not aware of where they will be stationed next more than a few months in advance, and often do not know dates of arrival at their next assignment until a few months before. Attorney military spouses also find themselves applying for attorney positions with little to no local contacts or network connections. Even under ideal circumstances the relocation process is time consuming and the added time an attorney military spouse faces with bar applications every two to three or four years is not ideal.

Accumulating sufficient experience or expertise for career advancement and growth is a challenge many military spouse attorneys face. Bjerke-Owens, Wateland and Fleming are grateful for the opportunity to practice law in Alaska, and more importantly the ability to advance their careers without having to spend more time preparing for and taking yet another bar exam, and being faced with perpetually applying for entry-level attorney positions. Alaska's military spouse attorney waiver program is a great

way "the state is able to contribute to and support the military's mission," Wateland said.

Additional resources:

Alaska Bar R. 43.4 (2018-2019).

A.B.A. Resolution 108, Report (February 6, 2012). Retrieved from https://www.americanbar.org/content/dam/aba/administrative/dispute_resolution/civility.authcheckdam.pdf

Maury, R., & Stone, B. (2014). *Military spouse employment report*. Syracuse, NY: Institute for Veterans and Military Families.

Military OneSource. (n.d.). Retrieved from <http://www.militaryonesource.mil/education-andemployment/spouse-education-and-career-opportunities>

Military Spouse JD Network. Retrieved from <https://www.msjudn.org/rule-change/>

National Military Family Association. (2007). *Education and the military spouse: The long road to success*. Alexandria, VA: National Military Family Association.

Washington Times, *Pentagon: High Military Spouse Unemployment Rate Threatens Force Readiness, National Security*, July 2, 2018. Retrieved from <https://www.washingtontimes.com/news/2018/jul/2/pentagon-military-spouse-unemployment-threatens-na/>

Natalie Columbus-Schiess is an Associate with Delaney Wiles and focuses on Litigation practice which touches upon Health Care Law, Employment Law and Commercial Law. She is the spouse of a U.S. Marine Corps veteran who served on active duty for more than 15 years. She also faced challenges in career choices and career advancement as a result of military life.

Happy holidays from the Lawyers' Assistance Committee

A few holiday tips from the Lawyers' Assistance Committee



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Lawyers' Assistance Committee
Alaska Bar Association

Spend a few minutes with the Juneau Bar Association

Juneau Bar Association Meeting Minutes Nov. 30, 2018

The meeting was kind of called to order sometime after 12 by Lael Harrison or Trinidad Contreras. Mary Alice McKeen noted that she likes chicken (Tom Wagner ordered seafood chowder).

In attendance were the following luminaries, or lawyers: Leon Vance, Peter Froehlich, Drew Pappone, J Pallenberg, and Eric the other law clerk for the other judge. Rob Palmer sat at the table across from Bud Carpeneti (ret). Monte Brice, Julie Willoughby, me, Tony Sholty, Brent Kavenaugh, Joe Geldhof, Mark (it's about Justice, not money, but money helps) Choate, Methuselah, Debby Holbrook, Gordon Evans. Amy Mead did not show and none of the at-will lawyers hanging on by their white knuckles attended. They must be working on their resumes or re-registering with the division of elections to improve re-hire chances.

Lael nominated Tony Sholty and Debby Holbrook as co-presidents with Drew as Treasurer and Bruce Weyhrauch as secretary, which passed by acclamation because no one at the other end of the table could hear her and it probably wouldn't have mattered any way because she was just glad to be getting outahere. Then Lael gave Bruce a form to file with the state indicating that Tony was president and Debby was vice president, because I guess she is a lawyer and wanted things legal so I guess we will live with the dichotomy between law and reality, which is not the same as the difference between truth and justice, but we will have a speaker on that someday I guess.

Bruce moved to impeach Debby and Tony. Tony seconded. There was not debate because it was not clear if anyone heard the motion or the second so Bruce tabled the motion and no action was taken on any of that. Food was served and eaten by those who ordered. The inauguration of Tony and Debby will take place in the suburbs of Noorvik at a later date.

Bruce moved to set the dues at some amount, but was shouted down because everyone there except Bruce knew that new lawyers (de-

fining as any person who has been a member of any bar for less than 5 years) only have to pay \$25 dues. Regular non-new lawyer dues are set at \$50. Our treasurer will collect that money from all lawyers, at least the ones who want to belong and vote. Payment of dues allows you to vote on motions. Heady power because we know every dues-paying member counts. We look forward to seeing any lawyer from Baxter Bruce Sullivan and Sassoon or Lessmeier and Winters at any of our next 50 meetings. Please call for telephonic participation.

J Pallenberg made an announcement from his end of the table — we will forgive others at the other end of the table who talked over J Pallenberg (and everyone else) who didn't hear or listen. He said Daniel Schally will be on the job in Juneau as a Superior Court judge sometime this year or next. Machinations of the court calendar, particularly the criminal calendar, are ongoing and confusing but that will be organized soon to everyone's satisfaction, or not. He invited you to call him if you had any complaints or questions. His phone number is 463-4742. He didn't give that out but I looked it up.

Folks with the bar will contact persons to be speakers. J Carpeneti (ret) emphasized the importance of speakers and that it takes work but pays off with attendance. Leon Vance nodded vigorously on that point, but he was trying to eat. How about possible speakers Rob Palmer, Tom Wagner, Methuselah or Libby Bakalar, who blogs about life?

It was noted that we might need a round table at lunch because it is odd to scream from one end of a rectangular table to the other end.

Bruce moved and Peter Froehlich (J, Ret too) seconded to give a free lunch to any lawyer if they have never been to a JBA lunch. If such a person comes and gets lunch then they should seek out Bruce for reimbursement. Motion passed, but Tom Wagner objected. He didn't explain why but he did smile cynically because I think he wanted to pay for those lunches because he is a fat cat retiree. And Tier I.

Leon then put down his fork and thanked the speaker's bureau for

having speakers. Gordon suggested that an at-will Ass't AG call Governor-elect Dunleavy, or his new AG to be speakers, and ask senate president Giessel to be a speaker. No one suggested that the new speaker of the House be a real speaker because no one, including that speaker,

knows who that really is yet.

The secretary heard something about a Christmas party and money in the JBA treasury, but left before the meeting adjourned. Later.

Regards,
Secretary Bruce Weyhrauch

In Memoriam

Former state attorney dies in Anchorage

Former assistant attorney general and long-time Alaskan Linda L. Kesterson, 64, died July 21, 2018, at Providence Hospital in Anchorage, from several serious health issues.

Linda started life in Ohio. She was born to Henry and Cora Kesterson on Nov. 29, 1952. She was raised in Cleveland, Ohio, along with her younger brother Larry. She went to college and then law school at Cleveland State University and became an attorney. When she first got out of law school she clerked for the Ohio 8th District Court of Appeals. She then worked for several years as a trial lawyer for a large firm doing class action asbestos litigation.

Linda loved her life in Ohio, but in time she took her Chrysler LeBaron convertible "Babycakes," with her stuffed gorilla riding shotgun, and drove up the Alaska Highway. The Alaska Department of Law snapped her up in the spring of 1991 and tapped her as an assistant attorney general, where she remained for more than 25 years. Over those many years she represented clients in the areas of child support enforcement and child protection. She also represented the Alcohol Beverage Control Board, the Medicaid Rate



Linda Kesterson

Commission and the Division of Motor Vehicles. Linda's work ethic was one of "no nonsense." She was always ready to go to trial. But she also could "problem-solve" with her clients, and the opposition, to avoid nasty and costly litigation.

She loved her friends and her friends loved her. She was always up for an adventure — a train trip to Seward or a road trip to Talkeetna. She loved going to movies or just spending an evening out to eat dinner and enjoy the company of her friends.

Linda's father Henry died in Ohio in 1993. A few years later, her mother, Cora, came to live with her in Alaska. Linda took care of her mother for many years, even as her health steadily declined from Alzheimer's.

Linda loved to read and was part of a book club that is still going strong after 30 years. She also enjoyed community theater, especially Cyrano's.

Surviving Linda are her brother, Larry Kesterson and his wife Patricia of Willoughby Hills, Ohio. Also surviving Linda are her nieces, Jessica Piccirillo and Jessica Hryckowian and their families.

Jacqueline Colson dies after long illness

Jacqueline Francine Colson died Sept. 13, 2018, after a long struggle with Parkinsonism.

She was born on Oct. 13, 1951, in Fernandina Beach, Fla. She has always retained a warm place in

her heart for her southern family, friends, and places. She graduated from the University of Alabama with degrees in biology and law. After graduating from law school, she pursued a career in environmental law with EPA, City of Atlanta, and the State of Alaska in Fairbanks. She received a presidential citation for her legal work while at EPA.

Early in her professional career she was exposed to a range of chemicals in the workplace and developed multiple chemical sensitivity, a chronic illness that affected her to the end of her life and prematurely ended her professional career. However, she continued to write, research, work pro bono, and advocate for environmental issues and causes for the poor, sick, and disadvantaged.

She loved her time on the ranch in Arizona with her horses Mink and Amira, dogs, and a few chickens. Jacqueline is survived by her husband Gary Walklin; her son Alex Hadjidakis, wife Erin and grandson Apollo; father Jack Colson; brothers Blair Colson and Scott Colson, wife Rebecca, and children Olivia and Emily.

Jacqueline is preceded in death by her mother Frances Colson.

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Former state jury coordinator receives Munsterman Award

Pat Young, the state jury coordinator for the Alaska Court System from 2007 to 2016, is the recipient of the National Center for State Courts' (NCSC) 2018 G. Thomas Munsterman Award for Jury Innovation. The Munsterman Award recognizes states, local courts, individuals and organizations that have made significant improvements or innovations in jury procedures, operations and practices.

Young, who received the award Oct. 10 at a judicial conference in Girdwood, Alaska demonstrated exceptional leadership and project management skills in bringing to-

gether many different parts of the court system to propose and implement several significant jury management innovations. She led and worked with a team to spearhead the transition to a postcard summons notification, prompting jurors to complete an online questionnaire. That innovation saves the state about \$70,000 a year. She also was a key player in encouraging

the court system to undertake the development of updated jury videos, and she was instrumental in coordinating the development of a juror services web page. What's more, she developed judicial training on juror utilization, which was new to Alaska and has led to improved juror utilization numbers, greater efficiency for jury clerks and a more positive juror experience.



Alaska Chief Justice Joel Bolger, left; Greg Hurley, from NCSC; and Pat Young display the award. (Photo by Lisa Fitzpatrick, Alaska Court System)

Studies. "Her planning and dedication in carrying out a variety of jury improvement projects over the past five years has yielded great benefits for Alaska jurors."

Superior Court Judge Trevor Stephens said, "Ms. Young's performance of her general duties was excellent and worthy of recognition, but it was her leadership in pioneering innovative changes in how the

Alaska Court System interacts with jurors that is truly remarkable."

The National Center for State Courts, headquartered in Williamsburg, Va., is a nonprofit court reform organization dedicated to improving the administration of justice by providing leadership and service to

the state courts. Founded in 1971 by the Conference of Chief Justices and Chief Justice of the United States Warren E. Burger, NCSC provides education, training, technology, management, and research services to the nation's state courts.



New Alaska lawyers repeat the oath during a ceremony at the Supreme Court room.

16 new lawyers sworn in during courthouse ceremony

Sixteen new lawyers were sworn in to the Alaska Bar Association in a ceremony Oct. 31, 2018 in the Supreme Court room in Anchorage. Attorneys sworn in were:

Brook Boyes	Sara Jones	Andrew Sundboom
Rikki Burns-Riley	Alex Kubitz	Warren Wolfe
Megan Condon	Madison Mitchell	Rebecca Weiant
Brian Gerd	Amy Miller	Patricia Wong
Ryan Jager	Bryn Pallesen	Marriya Wright
Joshua Johnson		

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Kansas Bar Association	Wyoming State Bar
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TALES FROM THE INTERIOR

A successful hunt despite old dogs, children and watered wine

By William R. Satterberg Jr.

Age has a way of creeping up on all of us. Maybe that is why I forgot to write my last Bar Rag article. It wasn't that I wanted to stop. Actually, I enjoy writing my missives. They provide a catharsis. Still, sometimes things simply slip one's mind with age. As Dear Old Dad used to say, "When your memory goes, forget it!"

Age also takes effect upon our bodies as we grow older. I reminisce about the song "White Rabbit" sung by the Jefferson Airplane. "One pill makes you larger. One pill makes you small." Little did I realize when that song was written just how prophetic it would be.

Another statement that Dad used to make was that "Billy, there comes a point when your luxuries become necessities." The same is now true with those pills. Especially the blue ones, even if the blue pills just make boy lawyers taller.

On another physical level, I have found that things which were previously unheard of have now become

routine. For example, knee braces. Neck braces. Back braces. Arm braces. The list goes on...

Drugs that were hitherto unknown have now become commonplace. Ibuprofen. Aleve. Flexural. Metamucil. Once again the list goes on...

Many old folks in old bodies, including me, still perceive themselves from when they were the age 25. Young, vital, energetic, and bullet proof. That is how they get hurt. Someday, I will learn.

But the hunting season of 2018 was not to be one of those learning times. One year earlier, a good friend of mine, Craig Compeau, asked me to go hunting with him and a group of our mutual buddies. Ordinarily, my fall hunting trips, should they even occur, would only last 2-3 nights. In fact, the longest hunting trip that I recall ever taking was a three-night trip when I



"The fall 2018 hunt would be a full week hunt over 100 miles up an Interior Alaska river."

was weather-bound in the Brooks Range. I was stir crazy and climbing the walls. I did not have effective communication to the outside world. To alleviate matters, (Aleve is another one of those blue pill drugs), my host sarcastically placed a non-working telephone in my cabin. Regardless, it still provided some solace. I am a communication junkie and the advancement of internet,

cell phones and satellite communications has not helped my addiction.

The fall 2018 hunt would be a full week hunt over 100 miles up an Interior Alaska river. Only certain boats could successfully navigate the river's upper reaches. Fortunately, my satellite texting device would work from the remote location, so I joined the group.

Craig is interesting. Craig's family has been in Fairbanks for years. They even have a recreational trail

named after them. A local celebrity, Craig has appeared in more than one reality TV show, has been qualified as an expert river boat driver in a federal trial I handled, and is a known jokester. He is also an exceptionally competent riverboat driver and accomplished hunter.

Craig's camp was appointed with various conveniences, to include bunk beds, a generator, woodstove, shelter, a fully stocked bar, and other accoutrements designed to make hunting easier. Each year, the camp had improved. It had now become a deluxe operation.

The first year I went to the camp, I drove a riverboat for more than three hours in a stinging rainstorm — one of the heaviest Craig had ever seen. I had a group of my family members from Micronesia riding along with me. To my surprise, they giggled the entire trip, considering it a true Alaska adventure, notwithstanding the fact that I did not know how to really drive a riverboat in such shallow waters. Maybe that and the dangerous sweepers added to their excitement. Although we did not harvest any animals that year, the family still found the expedition exciting. Surprisingly, they speak of coming back again to relive the experience.

Craig's idea of camp food is definitely not Mountain House. To the contrary, Craig likes his libations. And his victuals. In order of consumption, breakfast consists of Baileys and Cream, homemade breakfast burritos, and doughnuts (if available). All are washed down by lavish amounts of coffee. Lunch is catch as catch can (not fish — grayling are catch and release). Dinner finds rib eye steaks. The following morning, breakfast is not breakfast. Rather, it is breakfast.

The daytime routine is established. Everybody on the hunting trip has their own assigned tasks. Some folks are qualified and designated chefs or bartenders. Others are camp cleanup crew. And then there is the camp minion, who is usually the youngest member on the trip. The minion gets orders from everybody. He sometimes even follows those orders to include loading the boats for the day's hunt. This is because, each morning, the group launches out to various river destinations to hunt. Midday finds the obligatory midday naps taking place, followed by the evening hunt.

In 2018, there were two teams in the camp. First, were the young kids — the "children" of the group. These young bucks arguably ate steroids for breakfast. They had unlimited amounts of energy except when hung over, and were incessantly wanting to venture out into the woods to chase animals down. Fortunately, Craig had an unwritten rule that anything shot had to be within 50 feet of the river. If that rule were broken, the chances of getting invited to the next year's hunt diminished substantially. Some hunters still do not put much stock in that rule. In fact, the year that my Micronesian family went hunting with us, one of my nephews was desperately chasing a moose over two miles distant across several creeks on the side of a mountain.

Call for nominations *for the* 2019 Jay Rabinowitz Public Service Award

Jay Rabinowitz

The Board of Trustees of the Alaska Bar Foundation is accepting nominations for the 2019 Award.

A nominee should be an individual whose life work has demonstrated a commitment to public service in the State of Alaska. Nominees need not be lawyers or judges.

This award honors an individual who demonstrates dedication to public service in any realm, which may include, but is not limited to, the field of law.



Nominations forms are available from the

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Completed nominations must be returned to the office of the Alaska Bar Association by March 1, 2019.



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The Award is funded through generous gifts from family, friends and the public in honor of the late Alaska Supreme Court Justice Jay Rabinowitz.

Continued on page 15

New judge joins District Court bench in Bethel

From the Alaska Court System

Judge William T. Montgomery was installed as a District Court judge in a ceremony at the Bethel Courthouse Oct. 17, 2018. He was appointed to the Bethel District Court by Gov. Bill Walker on July 20, 2018.

Montgomery was born and raised in the Twin Cities. He went to college at the University of St. Thomas in St. Paul, MN, and graduated with a B.A. in Criminal Justice. He played baseball at the University of St. Thomas. He was named the Teammate of the Year in 2005 and 2006. In 2007, he was named to the MIAC All-Tournament Team, NCAA All-Region Team, and was the Pitcher of the Year for the University of St. Thomas.

After college, Montgomery attended law school at William Mitchell College of Law in St. Paul. During his 2L and 3L years, he worked as a student certified attorney for the Legal Rights Center (a nonprofit law firm) in Minneapolis. He was supervised and mentored by Trudell Guerue, who advised him to take a clerkship in Alaska.

Montgomery took that advice and moved to Bethel to clerk for Judge Marvin Hamilton III. After the untimely death of Hamilton, he continued his clerkship with Judge Michael MacDonald in Fairbanks. Following his clerkship with MacDonald, he returned to Bethel as an assistant public advocate with the Office of Public Advocacy.

Montgomery is the son of Tom and Bonnie Montgomery. He is married to Winter Montgomery and they have two children, Wynnifred and Franklin.



Judge Montgomery's wife, Winter; daughter, Wynnifred; and son, Franklin, joined him at the ceremony. For the installation he wore one of Judge Hamilton's ties. "I was Judge Hamilton's law clerk in Bethel when he passed away. Judge Hamilton had a thing for "Hawaiian Shirt Fridays" but when he had to be professional on Fridays then he'd wear a Hawaiian tie." (Alaska Court System photo)

A successful hunt despite old dogs, children and watered wine

Continued from page 14

Fortunately, he came back empty handed.

The second group of hunters were the old dogs. These geriatrics spent half the morning trying to don their knee braces, back braces, neck braces, and looking frantically for their misplaced eye glasses before someone stepped on them. Usually, the eyeglasses were forgotten on the end of their nose. Fortunately, the old dogs got preferential treatment by being able to sleep on the lower bunks. This was good since they could not climb up to the top bunks if they had wanted to do so. The old dogs would invariably wake up each morning wanting to trade drugs with each other asking questions like, "Do you have any 800mg Ibuprofens?" "Do you have any Aleve?" "Do you have any Tylenol?" "Do you have anything?!!!" "Where is the damn vodka?" Yet, ironically, it was usually the old dogs who were able to make it out of bed first. Perhaps, it was the reflex of many years of age. Or that the young bucks were still sleeping off the previous night. Personally, however, I think it had a lot to do with having to get up to go tinkle several times during the evening and then finally collectively deciding that it is easier simply to stay up rather than to crawl back into bed. Why the ground was always wet on my bare feet at night when it hadn't rained at all in two days was an unsolved mystery.

In 2018, three of us old dogs hunted in the same boat together — Craig, the boat driver, Kenny, a rather large man who is an excellent shot, and myself, who acted as ballast and was there to make Kenny's shooting look good. And then there was Mike. Mike did not hunt but was there to operate our gas-powered winch and to constantly criticize our style. Among the four of us, we maybe had one reasonably good 45-year-old body. Craig had a bad back, bad ankles and bad knees. Kenny had a bad back and a bad shoulder, and could only lift with one arm. As for myself, even though I was the oldest member of the team at age 67, I, too, had physical limitations consisting of a rather large belly (I am in shape. Round is a shape.), and occasionally a sore back, questionable knees, and weak arms and poor shooting eyesight, not

to mention selective hearing. Yet it was the three of us who seemed to do the best during the hunting expeditions. Mike, as indicated, only had to run the winch and kibitz.

Our first hunt was a caribou hunt. On the day following our arrival to camp, three boats headed out in search of caribou reputed to be in the area. (The reader should notice that I will not be giving out the exact coordinates of any kill sites. That would be improper.) To cover more territory, our boat separated from the other two.

It was a nice sunny day during the second week of September. Indian Summer. Although there were numerous caribou signs present, no caribou were seen that morning. As such, I chose to fall asleep in the bottom of the boat as we waited on a riverbank. Approximately one hour later, I received a quick tap on the shoulder. Craig was whispering "Bill, wake up! We've got bool!"

Pulling out of my groggy haze, I looked upstream. Three hundred yards distant, a herd of caribou had walked out to a sand bar. We each selected a suitable target and World War III began. When it was over, three caribou were harvested. We had work to do. To my surprise, Craig, Kenny, and our cynical winch operator, Mike, looked at me expectantly. It was apparent that the job had fallen to me to field dress these animals. I was the designated "gut-master." So, for the next one and one half hours, I diligently cleaned the animals. Fortunately, we had a capstan winch. As such, we were able to drag the gutted animals into the boat to ferry them down to our camp that afternoon where they could be hoisted into a tree for final cleaning and field dressing. It was a good night. We ate caribou tenderloin steaks and drank watered-down wine. The best dessert was that we old dogs were the envy of the children who had all come back empty handed.

The following day, the kids took their bucks. Ultimately, out of the eight of us who went on the hunting trip, each one of us had punched our tag. Moreover, one of the younger kids had actually managed to shoot a moose, as well.

We were scheduled to leave the following Saturday. That Friday morning, after the obligatory heavy night of celebrating the previous

evening, only Craig, Kenny, and myself were able to hoist ourselves out of bed. Even cynical Mike slept in. After consuming our required morning beverage and pain pills, we left camp at 7 a.m., hearing the snores of the rest of the animals in our hunting party growing distant. Less than 10 minutes later, we drifted around a bend and saw a large 54 inch moose standing on the river bank. That moose soon became a casualty, and, once again, the processing duties fell to myself. As I set about my job, Craig returned to the camp and announced that we just jumped a moose less than 10 minutes away. We needed help.

Two hours later, the crew began to show up. By then, the old guys had succeeded in skinning the moose and had almost completed the quartering process. Still, we had help packing the animal the six feet that it took to get it to the boat.

While cleaning the moose, Craig, Kenny and myself unanimously voted that the hunting trip was over. We would not look for any more moose. We reached agreement, that, should a moose appear, regardless of size, it would receive a field pardon. I do not know how serious that particular pact was, since I suspect that, if a very large moose had presented itself, it might also have

found the larder. Fortunately, that event never occurred.

Later that day, camp having been broken down and the boats loaded, we returned to Fairbanks. For the next five days, we butchered the game each afternoon/evening and responsibly wrapped and froze our bounty. The reason the work had to take place in the afternoon and evening was not necessarily because of the work schedules. Rather, for almost a week, old muscles were sore, old knees would not work, old shoulders would not function, and old backs were in cramps. Plus we had our respective physical therapy appointments.

Will I go hunting with this group next year? Probably. That is, if they invite me. After all, one thing that I did bring to the hunt, even if not a sniper's aim, was an ample supply of game bags, batteries, cheap, watered-down wine, and the ability to bend over and work while the others simply moaned and groaned. Plus I'm told I brought ample comedy relief, and I have a scope scar to prove it.

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

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Poem from long ago reminds us what it takes to be American

By Dan Branch

It's just gone past 11 in the morning on Nov. 11. In England everyone stopped whatever they were doing on the 11th hour for a moment of silence to commemorate the end of the War to End All Wars 100 years ago. In America, our Veteran's Day has evolved into a holiday for honoring and thanking our military veterans, living and dead, who served in the First World War and all the others that followed. It is no longer a joint prayer of thanksgiving for peace.

During early Armistice Day silent remembrances, those who had lost someone might have focused their thoughts by remembering the first lines of a poem by John McCrae: "In Flanders Field, the poppies blow, between the crosses, row on row."

I memorized *In Flanders Field* at a time when American war veterans sold blood-red paper poppies for people to pin on their lapels.

While McCrae's poem helped to unify English speakers after the first world war, another, older poem might be needed for the same task today. Written by John Donne in 1624, six years before the founding of the Massachusetts Bay Colony, "For Whom the Bell Tolls" asks and answers the question we should be considering every day. It should be recited at the White House before the first tweet.

"For Whom the Bell Tolls

"No man is an island,
"Entire of itself;
"Every man is a piece of the continent,
"A part of the main.
"If a clod be washed away by the sea,
"Europe is the less,
"As well as if a promontory were,
"As well as if a manor of thy friend's
"Or of thine own were.
"Any man's death diminishes me,
"Because I am involved in mankind;
"And therefore never send to know for whom the bell tolls;
"It tolls for thee."



"Isn't the bell also tolling for the truth or at least the for time when Americans could hold their elected officials responsible for lying?"

For whom does the bell toll in present day America — victims of war and global climate change, immigrants facing a wall when seeking asylum, single moms, the hungry, the homeless, the overworked and underpaid, alcoholics or addicts without treatment options? Is the bell tolling for the fabric of our society, where labels like red and blue reduce our neighbors to objects of derision? As Donne points out, what diminishes others diminishes us.

Isn't the bell also tolling for the truth or at least the for time when Americans could hold their elected officials responsible for lying?

Can anyone hear the bell over the sounds of smart phone notifications?

Are we in danger of becoming a nation of stoop-shouldered people bent toward the screens of our fancy phones? We share what we like, and only read what we agree with. The Internet, rather than freeing us to make knowing decisions, has been manipulated by foreign governments to divide our people. The Russian funders of troll farms believe that their fake social media posts will reduce the greatness of America by fueling hatred

and distrust.

To help heal the damage done by the agents of derision and division, we should all reacquaint ourselves with Abraham Lincoln's Gettysburg Address. Standing on a battlefield where only Americans died, the president reminded Americans that "... our fathers brought forth on this continent, a new nation, conceived in liberty, and dedicated to the proposition that all men are created equal." He told his listeners that they were on the battlefield to dedicate "a final resting place for those who here gave their lives that that nation might live." He called for the living to be highly resolved to ensure "that these dead shall not have died in vain — that this nation, under God, shall have a new birth of freedom — and that government of the people, by the people, for the people, shall not perish from the earth."

Today Americans fight each other with labels and catch phrases rather than guns or bombs. But if we want to truly stand again united under one flag, we need to start acting like we understand the words of Lincoln's Gettysburg Address.

Dan Branch, a member of the Alaska Bar Association since 1977, lives in Juneau. He has written a column for the Bar Rag since 1987. He can be reached at avesta@ak.net

Law Library News

Changes coming as Law Library moves more into electronic presence

By Susan Falk

The Alaska State Court Law Library serves the legal needs of Alaskans throughout the state. We support the judiciary, members of the Alaska Bar, and self-represented litigants of varying levels of sophistication. Collectively, our patrons are a diverse group, both in their experience and their location. We at the library strive to reach Alaskans around the state, providing the best sources of information, with the greatest depth, at a reasonable cost. It is important that we grant access to legal resources to Alaskans wherever they may be.

To that end, the law library has initiated changes in how we reach our patrons. We are transitioning from a print presence to an electronic presence in most locations around the state. While Anchorage will continue its role as a premiere research facility, and Fairbanks and Juneau will maintain robust print collections, our other branches will move away from print material and focus on the same wide-ranging electronic resources users enjoy in our bigger communities.

Over the last few years, the library has vastly increased its electronic holdings. While we have offered Westlaw to public patrons for many years, free of charge, the content included in our Westlaw contract has grown exponentially. We still offer primary law from all U.S.

jurisdictions, but we now have briefs and trial court orders as well, along with a generous slice of secondary materials and treatises. Many of the Thomson Reuters treatises available in print in Anchorage can also be found on Westlaw, in every library location.

Many of you have already registered for the Lexis Digital Library, but every Alaska Bar member can contact us for login credentials. The Lexis Digital Library includes ebook versions of nearly every Lexis treatise we own in print. Bar members can check these ebooks out remotely, but the material may also be accessed on our public computers in all library locations.

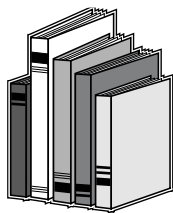
Library computers also offer access to HeinOnline, National Consumer Law Center, and the Legal Information Reference Center. Hein maintains an amazing database that continues to add content at a fast clip. In addition to their ever-growing collection of law reviews and federal material, they most recently added the U.S. Congressional Serial Set, the definitive collection of House and Senate documents necessary to conduct federal legislative history research. National Consumer Law Center contains the current version of all NCLC publications. The Legal Information Reference Center provides access to information geared toward the general public but most notably has all the current Nolo titles online.

Several factors shaped the li-

brary's decision to shift from physical to electronic access. As more and more material becomes available electronically, we have found digital access levels the playing field for Alaskans in far-flung communities. Budget constraints, and our efforts to help the judiciary and the state cut costs where we can, also affected

the decision. Our primary motivation, however, is to offer the widest variety of tools to all Alaskans, everywhere. We hope our expanded digital resources will help all of you, and all Alaskans, meet their legal information needs.

Susan Falk is the Alaska law librarian.



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

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

Fairbanks: Aimee Oravec, aimee@akwater.com
Mat-Su: Greg Parvin, gparvin@gparvinlaw.com
Anchorage: open (seeking volunteer)

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



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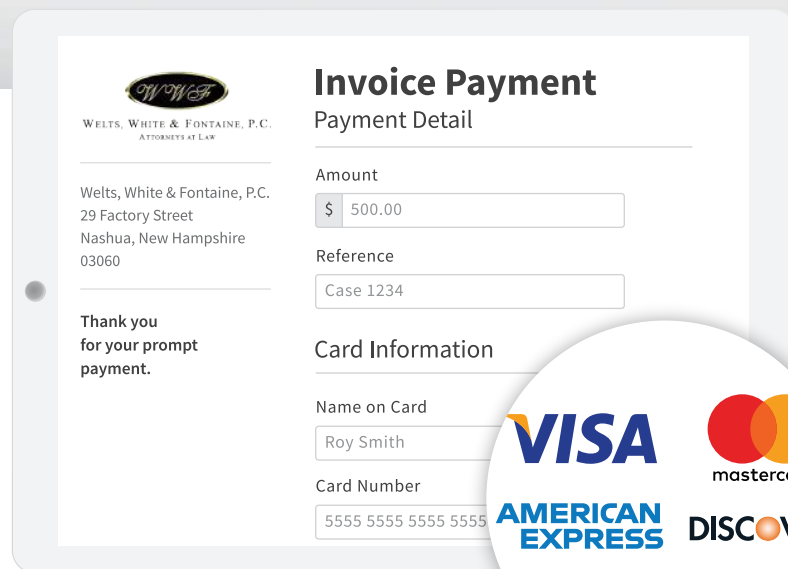
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NEWS FROM THE BAR

ALASKA BAR ASSOCIATION
ETHICS OPINION NO. 2018-2DIRECT COMMUNICATIONS WITH
REPRESENTED PARTY
WHEN SPECIFIC NOTICE IS REQUIRED
TO BE SERVED
ON THE PARTY

ISSUE PRESENTED

May an attorney send a “notice” contemplated by a contract directly to one of the contracting parties when the attorney has reason to believe that the party to whom the notice is sent is represented by legal counsel?

SHORT ANSWER

The attorney for a party to a contract may initiate notice to another party to that contract even if the other party is represented by counsel so long as the notice is contemplated by the pre-existing agreement of the parties. Such a notice must not include arguments or inquiries and must be strictly limited to the purposes the notice provisions of the agreement were intended to fulfill. Though not required by the Rules of Professional Conduct, common professional courtesy suggests that, except in unusual circumstances, a copy of the notice should be sent to opposing counsel simultaneously with the sending of the notice to the designated nonclient party.

STATEMENT OF FACTS

In the situation presented to the Committee, Attorney A sent a notice of default with respect to a contract directly to a represented party. The contract at issue specifically required written notice of default. The contract was not specific as to the appropriate entity to receive such notice (i.e., the contract did not specify whether the notice should go to the party or to counsel for the party). Attorney B, counsel for the party, was copied contemporaneously with the notice of default.

Attorney B accused Attorney A of violating Alaska Rule of Professional Conduct 4.2 by sending the notice of default directly to a represented party.

ANALYSIS

Alaska Professional Conduct Rule 4.2 states in full:

In representing a client, a lawyer shall not communicate about the subject of the representation with a party or person the lawyer knows to be represented by another lawyer in the matter, unless the lawyer has the consent of the other lawyer or is authorized to do so by law or a court order.

The commentary to this rule states that it contributes to the proper functioning of the legal system by protecting a person who has chosen to be represented by a lawyer in a matter against possible overreaching by other lawyers who are participating in the matter, interference by those lawyers with the client-lawyer relationship, and the uncounseled disclosure of the person’s confidences and secrets.¹

Commentary to Rule 4.2 also makes clear that the rule does not prohibit communication “concerning matters outside the representation.”² In the context of discussing this issue, the commentary further states that “a lawyer having independent justification or legal authorization for communicating with a represented person is permitted to do so.”³ The question presented thus appears to be whether the written notice of default is an independently justified or legally authorized communication. If it meets this standard there is no violation of Rule 4.2.

A notice from one party to a contract to another party to the same contract, especially if contemplated by the very language of the contract, seems independently justified. So long as the notice does no more than announce the position, intention or prospective behavior of the party, as contemplated by a preexisting contract, such a notice is not a “communication” within the meaning of Rule 4.2. If the notice goes beyond the requirements of the contract pursuant to which it is given, and ventures into arguments or inquiries not required to fulfill its fundamental purpose the notice may well become a “communication” subject to the prohibitions of Rule 4.2.

The Committee believes that this interpreta-

tion supports the purposes of Rule 4.2 without detracting from the policy of enforcing contracts as they are written. By limiting the notice, the sending attorney is unlikely to take advantage of an opposing party, or to interfere with an opposing party’s relationship with counsel. Care should be taken in the drafting of the notice and in abiding by the precise terms of the contract to ensure that the notice does not venture into classification as a communication. This is consistent with other authorities that have considered this issue.⁴

The attorney for a party to a contract may initiate a notice to another party to that contract even if the other party is represented by counsel so long as the notice is contemplated by the preexisting agreement of the parties. The notice must not include arguments or inquiries and must be strictly limited to the purposes the notice

provisions of the contract were intended to fulfill. Though not required by the Rules of Professional Conduct, common professional courtesy suggests that, except in unusual circumstances, a copy of the notice should be sent to opposing counsel simultaneously with the sending of the notice to the designated nonclient.

Approved by Alaska Bar Association Ethics Committee on October 4, 2018.

Adopted by the Board of Governors on October 9, 2018.

Footnotes

¹ Alaska Professional Conduct Rule 4.2, Commentary Para. 1 (as adopted in 2009).

² See Commentary Para. 4.

³ Id.

⁴ The Committee found the analysis from the Indiana Legal Ethics Committee particularly persuasive. See Indiana State Bar Ass’n, Legal Ethics Committee Op. 2003-01 (2003); see also Restatement (Third) of the Law Governing Lawyers § 99 cmt.g.

Board of Governors action items October 19, 2018

- Voted to certify the results of the July 2018 bar exam and approve 24 passing applicants.
- Voted to approve nine reciprocity applicants and eight UBE score transfer applicants for admission.
- Voted to approve the 2019 budget, and to put \$200,000 into the long term capital reserve fund.
- Voted to pass a resolution, in accordance with our mission and consistent with the Alaska Constitution and laws, urging the State of Alaska to provide funding for indigent representation that complies with an appropriate standard for maximum ethical caseloads and ensures that the constitutional requirement to provide effective assistance of counsel is met.
- Voted to approve the request to form a Cyber, Blockchain & Technology Section.
- Voted to adopt the ethics opinion, “Direct Communications with Represented Party When Specific Notice is Required to be Served on the Party.”
- Voted that anyone attending the convention who does not pay the regular convention registration fee (other than sponsors or exhibitors who pay a fee) must pay a registration fee of \$25 to subsidize the cost of food and meeting space.
- Voted to publish an amendment to Bylaw Article III, Section 1(a) which would limit the senior lawyer discount to those eligible by Feb. 1, 2020.
- Voted to approve the minutes from the Sept. 6, 2018 meeting.

ATTENTION
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ALASKA BAR ASSOCIATION



Medical trip Outside a harrowing experience for a patient

Continued from page 1

Louise continues to cry. Louise says that she is a veteran and should not be treated this way. She has medical conditions, takes 45 pills a day and has titanium throughout her body. The supervisor apologizes profusely. I do not thank her.

I leave Louise sitting at the gate and run off to get the name of the sadistic agent, and to deliver a written request to the TSA, for the video of the screening to be preserved. Then we fly to Seattle where a wheelchair is provided for the trek to the plane bound for Portland. The voucher for cab fare from the airport to the hotel in Portland is useless. No cab company in Portland is set up to accept the vouchers.

We arrive at the University Hotel where the housing voucher is accepted. It is 10 p.m..

The food vouchers are actually prepaid credit cards, \$36/day for each of us on Wednesday, and \$36 for me only for the next six days. I decide to use them for cab fares as well as food.

Thursday — The high point of the day is the tram ride through the sky from the main University Hospital building to the waterfront building where we are scheduled to show up at 8:15 a.m.. We meet the renowned surgeon at 10 a.m.. He is congenial and encouraging as he shows us a CAT scan sent from the Alaska Native Medical Center and explains what he will do to correct the problem. He says, "We do 10 or 12 of these surgeries every week, and we see a lot of patients from

Alaska." His examination of Louise takes about 15 minutes, then he leaves a resident surgeon to do the follow-up.

She states that surgery will be scheduled in two weeks. She is surprised that we expected the surgery to take place the next day. That is not the protocol. Who told us to expect that? Louise is bawling her eyes out, devastated, hysterical. I am stunned: We traveled 1,800 miles, through three airports and the ordeal with the TSA, for a meet and greet with the surgeon? And we have to turn around and fly another 1,500 miles to return home immediately, the same day?

That is Medicaid protocol. If the surgery was not approved for the next day, we were authorized to fly home on the next available flight, which was at 9 p.m. Louise broke down crying on and off all day. She was afraid that Medicaid would not approve another trip, and terrified at the thought of any TSA contact looming at the Portland International Airport. There, we were run through the same drill, but Louise was given a chair. No trauma. She made it home alive and I made it home ready to write this account.

I am wondering now: is there a protocol for basic respect, one American human being toward another? Has medical care become a fantastic, tangled web of agencies, competing interests and financial agreements where patients are mere fodder to be fed into the machine? A disabled woman in her fifties is made to travel more than 3,000 miles for a meet and greet?

Should the TSA just display a sign? If you are disabled and use a cane, we will treat you as a terrorist. We'll take your cane from you and make you stand and move about without it. We'll run our hands right up into your groin. If you complain, we'll do it again. If you show up hot on our machines, we'll send you into a private room to strip. We

are protecting the homeland from people like you.

Immediate thoughts: Maybe medical travel for patients should be looked at. Understatement, but it's the renowned surgeon's protocol that most gets to me. His patients are coming from Alaska for major/life-threatening surgery, and he has them make the exhausting two-day trip that Louise and I made, just to check in? How much are we going to

let the medical care system transfer patients around? It's a whole new frontier.

The TSA just can't treat disabled people the way it does. I don't know anything about security but I do know that a bully is always a coward. The TSA agent who went after Louise was a bully. Yet her supervisor said that she followed the protocol. I know that the TSA does not want to humiliate disabled people, but it happened.

Epilogue: I sent this report to the TSA Contact Center and received an auto reply advising me of the steps I needed to take to complete my civil rights complaint pursuant to Department of Homeland Security regulations. I had no intention of filing a civil rights complaint — total waste of time. But just to make sure, I googled *TSA abuse*, where I found pictures of TSA agents groping elderly women, babies and elderly men in wheelchairs. My favorite pictures featured younger men, buck naked, being groped in full view of the traveling public, and standing in line waiting for the experience. To me this was convincing evidence that a civil rights complaint would definitely be a waste of time.

Vivian Munson graduated from Boston University School of Law in 1984 and was fortunate to work for retired justice Bob Erwin before opening a trial practice in Anchorage. She is the author of two source books about Paul Tiulana and the King Island people, and other biographies "in their own words." Her first novel, a murder mystery, has just been published.

Book Release

"The great thing about writing fiction is the freedom that I have to make events turn out the way I want them to. My past books are all nonfiction."

Vivian Munson announced the publication of her first novel, *Don't Leave Town*, with an email "to all the lawyers I know." She describes the book as a murder mystery set in Anchorage in the late 1970's, with true Alaskan characters she has known and loved, plus a few killers.



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Job Posting Summary: Assistant Professor of Justice

The University of Alaska Anchorage Justice Center invites applications for a full-time, tenure-track, appointment, commencing in August 2019, at the rank of Assistant Professor. The appointment period is nine months, from August to May, each academic year.

This position is responsible for (1) teaching, and, (2) providing professional service to the university, the profession/discipline, and the community. The successful applicant will be expected to teach undergraduate legal studies courses on a variety of substantive and skills-based law related topics and to serve as liaison with the Alaska legal community developing career, service, and internship opportunities for students. The standard instructional workload is 4 courses per semester. Experience practicing criminal law is preferred, but not required.

UAA is committed to building a culturally diverse faculty and strongly encourages applications from women, minorities, individuals with disabilities, and veterans. We especially encourage applications from candidates who reflect the increasing diversity present in our community and student body. UAA is an affirmative action/equal opportunity employer and educational institution that prohibits discrimination on the basis of race, religion, citizenship, age, sex, physical or mental disability, sexual orientation, gender identity, or other legally protected status.

The UAA Justice Center, established by the Alaska Legislature in 1975, has a mandate to provide statewide justice and law-related education, research, and service. Its academic programs include a Bachelor of Arts in Legal Studies, a minor in Legal Studies, an Associate of Applied Science in Paralegal Studies, a Post-Baccalaureate Certificate in Paralegal Studies, a Bachelor of Arts in Justice, and a minor in Justice. All four Legal Studies programs are approved by the American Bar Association. For more information about the Justice Center, visit <https://www.uaa.alaska.edu/academics/college-of-health/departments/justice-center/>.

For position details and to apply, visit **Careers at UA**, <https://alaska.edu/jobs/>, and search for position 510591. Or enter <http://careers.alaska.edu/cw/en-us/job/510591/assistant-professor-of-justice>.



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NEWS FROM THE BAR

Bar Association board proposes change in seniors' dues

The Board of Governors proposes an amendment to the bylaws to phase out the active senior lawyer dues discount. Senior lawyers currently pay an amount that is one half of active dues.

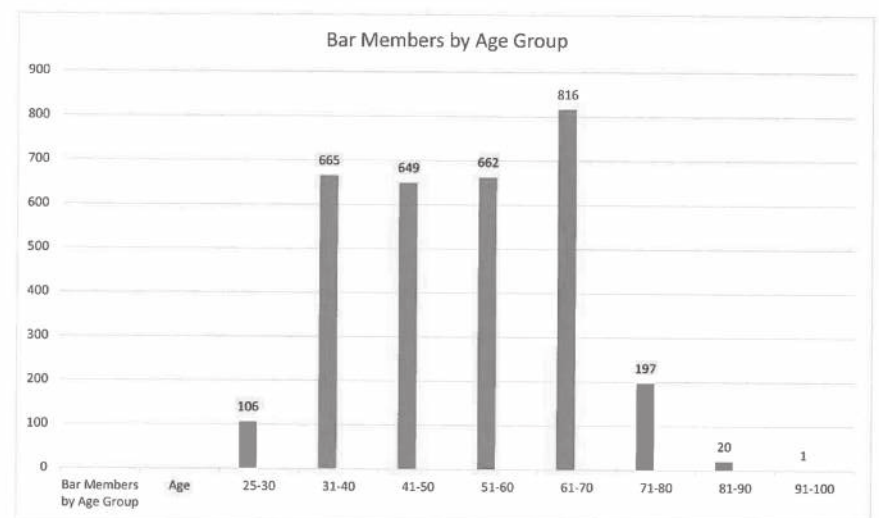
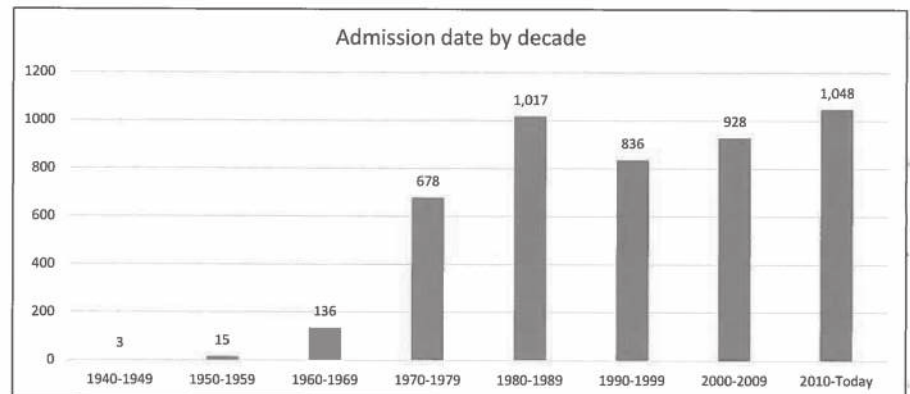
When the senior lawyer dues discount was first adopted in 1989, there were about 50 lawyers who qualified. Dues were \$300, and the \$150 discount resulted in a total reduction of dues income of \$7,500. Today there are more than 275 senior members who receive a discount, and the \$325 discount per attorney results in a total reduction of dues income of over \$89,000. (graph 1)

Just six years ago, there were only 87 members who qualified for the active senior discount compared to the more than 275 members who qualify today.

During the 1980s the Bar experienced a large growth in the number of members admitted. (graph 2) Members who are between 61 and 70 years old now comprise the largest group of active Bar members. (graph 3) This “bubble” coupled with the “graying” of the Bar has seen active senior membership increase by 216% since 2012.

The Board is concerned that the continued senior discount would be a significant factor in requiring a dues increase for all attorneys in the future. The proposal would grandfather in those who currently qualify for the discount, and those who will qualify by Feb. 1, 2020. Once the discount is eliminated, all active members would pay the same dues, and the Bar would not have to make up the lost revenue through a dues increase sooner than otherwise necessary.

Send comments to the Board to Deborah O'Regan oregan@alaskabar.org.



Article III. Membership Fees and Penalties.

Section 1. Annual Dues.

(a) **Active Members.** The annual membership fee for an active member is the amount approved by the Board, \$10.00 of which is allocated to the Lawyers' Fund for Client Protection. The annual membership fee for an active member, who, by February 1, 2020, is 70 years of age or more and who has practiced law in Alaska for a total of 25 years or more, is one half of the total amount assessed to each active member, \$10.00 of which is allocated to the Lawyers' Fund for Client Protection. No annual membership fee shall be assessed to an active member who has been admitted to the Association for a total of 60 years or more.

My Five



This edition of My Five includes selections from Carina Uraiqat, a federal law clerk; Jack McKenna, a lawyer with Birch Horton Bittner & Cherot; and Tara Wheatland, an attorney with GCI.

Carina Uraiqat

It's hard to distill a lifetime of music appreciation to five songs; and here I didn't even hit all of the genres I love. These songs sound so soulful and wholehearted; especially Mary Alee, by Athabaskan and Inupiaq singer-songwriter Quinn Christopherson — we're really lucky to be able to see him perform in Anchorage.

- “Strange Fruit” — Billie Holiday
- “Mary Alee” — Quinn Christopherson
- “Little Plastic Castle” — Ani DiFranco
- “Formation” — Beyoncé
- “Lifted” — Mona Haydar

Jack McKenna

- “Apartment Story” by The National
- “Jacksonville Skyline” — Whiskeytown
- “One More Dollar” — Gillian Welch
- “Hard to Explain” — The Strokes
- “Casimir Pulaski Day” — Sufjan Stevens

Tara Wheatland

Modern Originals (new-ish, non-traditional Christmas songs)

- “All I Want For Christmas Is You” — Mariah Carey. My mom and I have had to agree to disagree on this, but if I could only hear one Christmas song for the rest of my life, it'd be this one.
- “Just Like Christmas” — Low. A true indie Christmas standard, complete with jingle bells.
- “Merry Christmas, Baby” — Beach Boys. This one has been around so long it's almost a classic at this point. Happy and clappy and an instant mood-booster.

- “All I Ever Get For Christmas is Blue” — Over the Rhine. Even more moody and gloomy than “Blue Christmas.” If you've never heard Karin Bergquist's voice, you'll fall immediately, heartbreakingly in love with it when you hear this song.
- “Christmas Tree On Fire” — Holly Golightly. Dark and funny and festive. This is my most-stuck-in-my-head holiday song.
- BONUS ODDITY: “Hooray for Santy Claus” — Señor Tonto Christmas Combo. This song, which ran over the credits of the 1964 sci-fi film “Santa Claus Conquers the Martians,” is the weirdest Christmas song you'll ever hear.

Modern Classics (modern versions of traditional tunes)

- “God Rest Ye Merry Gentlemen” — Bright Eyes. This jaunty, haunting song is a perfect fit for Bright Eyes.
- “O Holy Night” — Mariah Carey. A transcendently beautiful version of this beautiful tune. That high note!
- “Peace On Earth/Little Drummer Boy” — David Bowie and Bing Crosby. Modern meets traditional in this stirring collab. For an extra-trippy experience, seek out the YouTube video of Bowie and Crosby singing together standing next to a piano and a Christmas tree.
- “Alan Parsons in a Winter Wonderland” — Granddaddy. A truly modern, self-referential take on this happy Christmas classic.
- “Auld Lang Syne” — Andrew Bird. I know, I know, it's a New Year's song, but close enough. If you like Andrew Bird's complex and plucky instrumentation style, you'll love this sweet and peppy rendition.
- BONUS ODDITY: “I'll Be Home For Christmas” — Bob Dylan. To quote my all-time favorite burn from a music review, Bob Dylan manages to make his version of this song “sound more like a threat than a promise.”

Bahá'ís in Iran suffer legal discrimination and persecution

By Daniel B. Lord

Second in a series

In the first part of the series, I touched on the legal situation of the Bahá'ís in Iran, one where their ongoing discrimination has become legitimized in that country's Islamic penal code. In this second part I will take a closer look at the provisions in the Constitution of the Islamic Republic of Iran, and how the unjust treatment and persecution of the Bahá'ís can be traced to its provisions.

It is the Islamic penal code on punishment where the force of law, buttressed by the issuance of the *fatwas*, is explicitly stacked against the Bahá'ís. This is illustrated in both the current round of arrests and raids of the homes of Bahá'ís, as well as in a case only last year when a court in Yazd sentenced a man, convicted of the brutal and public stabbing to death of an innocent Bahá'í, to 11 years, with two confined to home. The court justified this astonishingly light sentence for the admittedly religiously motivated murder on the basis that, according to the penal code, the accused and the victim were not equal under the law for *qisas* (retributive justice). Bahá'í World News Service (25 July 2017), Religious discrimination explicit in Iran's penal code, available at <https://news.bahai.org/story/1182/> (accessed 11/10/2018).

In contrast, Articles 4 and 19 of the Constitution, when as previously mentioned they are considered together, provide the groundwork for legal discrimination on the basis of religion, and do so more by implication. Also pertinent is Article 13, which states that "only" Zoroastrians, Jewish and Christian Iranians are recognized as religious minorities under the Constitution. See goo.gl/kYFMnN. It is this provision, in particular, that has given Iranian authorities the constitutional cover they apparently need for a systematic and planned persecution of the Bahá'ís.

As observed by a notable researcher in international criminal law, a host of other legislative acts and administrative regulations "refer back to Article 13 of the Constitution." Salim A. Nakhjavani, *Constitutional Coherence and the Legal Status of the Bahá'í Community in Iran*, FICHL Policy Brief Series No. 70, 1, 3 (2016). As a consequence, the Bahá'ís are excluded from the legal rights and protections otherwise set forth for those who belong to Islam or the three recognized religious minorities. "The diffusion of

Article 13 across the Iranian regulatory framework," was his conclusion, "works grievous injustice in individual cases" involving the Bahá'ís. *Id.*

The exclusions flowing from the provision underscore its persecutory intent. As noted by an astute political science professor, Article 13 is aimed at the Bahá'ís. That is, "anti-bahaism was obvious throughout the proceedings" in drafting the Constitution, and "haggling over every word and expression of certain articles was to ensure the exclusion of the Bahá'ís." Eliz Sanasarian, *Religious Minorities in Iran* 1, 53 (2000).

This persecution extends to the execution of other provisions of the Constitution. Article 49 provides for the power of the government to confiscate property, a power which is monitored by "Article 49 Courts." In practice, however,

these Courts regularly use their power to arbitrarily confiscate property and assets belonging to both the Bahá'í community and individual Bahá'ís merely on the basis of their religious affiliation and practice, often leaving Bahá'ís destitute. Nakhjavani, *supra*.

To appreciate how such courts operate, there is the following example. In 2014, a group of 46 Bahá'ís from the village of Eyval petitioned the head of the judicial system in the province of Mazandaran to seek an end of their continued harassment because of their faith. They had fled to nearby Sari, but were able to visit their homes, and even work on their farms and cultivate their lands. Their homes were then demolished, their orchards and fields destroyed, and their furniture and other effects left along the Sari-Semnan road by the same persons harassing them. They sought justice in district court, which rejected the evidence proffered as to ownership. On appeal, the court appeared to be taking steps to establish the guilt of those persons. The Article 49 Court in Sari intervened, and put a stop to the investigation by placing the property, without reference to any court order, under the management of the "Executive Committee of the Imam." "Letter of 46 Bahá'í Citizens of Iran to the Judicial Authorities," available at goo.gl/NLH5pR (accessed 11/10/2018).

The seizure of properties and assets owned by Bahá'ís is unrelenting. Since 1979, there have been thousands of documented cases of confiscation, whether of "houses and apartments, office and shops, factories, farms and land." Bahá'í International Community, Statement to

23rd Session of the Human Rights Council (5 June 2013), available at <https://www.bic.org/statements/situation-bahais-iran-0> (accessed 11/10/2018). They implemented the official policy of Iranian authorities as reflected in a confidential memorandum dated 1991 from the Supreme Revolutionary Cultural Council, ratified by the Supreme Leader, which outlines repressive measures to be taken against the Bahá'ís, including restrictions on their economic and educational activities. See Bahá'í International Community, "Their Progress and Development Are Blocked": The Economic Repression of Iran's Bahá'ís 1, 23-25, 50 (2015).

Even where a provision would apply to all Iranians, it is relegated in practice to the exclusion of the Bahá'ís. Article 23 provides, "Investigation into one's ideas is forbidden. No one can be subjected to questioning and aggression for merely holding an opinion." See goo.gl/7QMuvSV Naim Abid, *Human Rights Denial in Iran: An Introduction to the Bahá'í Question*, 1 Int'l J. Innovation, Management & Technology 136, 139 (2010) (translating "ideas" as "beliefs" and "holding an opinion" as "holding a belief"). Despite this clear prohibition, systematic efforts on the part of the Iranian authorities have been under way at identifying Bahá'ís, one purpose being to block the latter's access to universities. See also Milad Haghani, *Iran Denies Education Rights to Bahá'ís*, 4 Western J. Legal Studies 1 (2014) (recounting number of international laws violated by Islamic Republic of Iran in its treatment of Bahá'í students).

Such efforts follow a plan of distinct phases, with the dismissal of Bahá'í staff and professors at universities, and the expulsion and denial of admission to Bahá'í students. Saman Sabeti, *Iran's Systematic Denial of Access to Higher Education*, FICHL Policy Brief Series No. 84, 1 (2017). The current phase entails a calculated process of exclusion by identifying Bahá'ís on the university entrance examination and denying access during subsequent stages of the admission process, during their course of university study, and even at graduation. See *id.*, at 3 (describing a complex "new strategy" devised to block access, and reporting that since 2004 "only a handful of students who either could not be identified as Bahá'ís or whom the state purposefully allowed to study as a pretense to the outside world, have graduated from universities").

Along with Article 13 there is Article 26, which provides, in part,

The political parties, associations and trade unions, Islamic associations, or associations of the recognized religious minorities are free to exist on the condition that they do not negate the principles of independence, freedom, national unity, Islamic criterion, and the foundation of the Islamic Republic.

See goo.gl/K5KUX8. Here, the implication to be drawn is that as a non-recognized religious minority the Bahá'ís are not free to associate, nor even exist. Essentially, they are considered juridical non-persons in their own country. Nazila Ghanea, *Human Rights, the UN and the Bahá'ís in Iran* 1, 258 (2002).

But the Bahá'ís in Iran are citizens, being native to their country. They constitute the largest religious minority in Iran, are widespread, and not affiliated with any specific geographical region. They come from diverse ethnic backgrounds, are found in all walks of life, and have "no kin-state relationships as there are no Bahá'í states." Nazila Ghanea, *Driving while Bahá'í: A Typology of Religious Persecution*, 14 The Equal Rights J. 53, 55 (2015). They are not migrants from another state of origin, and do not wear a distinctive attire or dress in a manner that sets them apart. They do not reject Muslims or the followers of other religions. They are non-partisan, "do not even insist on formal state recognition," *id.*, and in fact they shun politics. In the opinion of fair-minded Iranian courts, the Bahá'ís "have no intention to protest against or defame the regime" and "are absolutely obedient to the government." Bahá'í International Community, *The Bahá'í Question: Cultural Cleansing in Iran* 1, 18 (2008) (quoting from 2007 and 2008 decisions of appeals court of Hamadan province and Semnan Court of Appeals, respectively).

The Bahá'ís in Iran love their homeland; it is the birthplace of the founders of their faith. As with Bahá'ís everywhere, they work for society's betterment, and hope to take an active part in their country's peaceful development. Bahá'í International Community, *Situation of the Bahá'ís in Iran*, retrieved from <https://www.bic.org/focus-areas/situation-bahais-iran>. They seek those same rights that are accorded to their compatriots.

Daniel B. Lord was Of Counsel with the law firm of Tindall Bennett & Shoup, as well as an assistant public defender and public advocate. He is a member of the International Law Section.

NOTICE TO THE PUBLIC

By order of the Alaska Supreme Court,
entered 11/5/2018

JEFFREY H. VANCE
Member No. 0111080
Anchorage, AK

is reinstated
to the practice of law
effective November 5, 2018.

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

NOTICE OF PUBLIC DISCIPLINE

By the Alaska Bar Association
Disciplinary Board
entered September 6, 2018,

HAFEZ DARAEI
Member No. 0809057
Tigard, Oregon

is Publicly Reprimanded
based on an order by the Oregon Disciplinary
Board of the Supreme Court of the State of
Oregon.

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

Casemaker launches updated, improved version 4 platform

By Norman Woolworth

(Editor's Note: At the time this article was written, Casemaker4 was still in beta testing. As a result, it is possible that features described may have been modified slightly in the final version of the new platform's release.)

In January, Alaska Bar Association members will be introduced to Casemaker4, the next generation legal research platform from Casemaker.

In creating Casemaker4, to which Alaska Bar members will have free access, the Casemaker development team was presented with two overarching imperatives:

- On the one hand, improve search speed, modernize the interface to enable more intuitive site navigation, and upgrade design responsiveness to better accommodate mobile devices;
- On the other hand, retain features and design elements that loyal Casemaker users value and trust, and minimize changes with the potential to disorient.

Put another way: Make it new. Make it better. But avoid change for change's sake.

"The history of platform re-designs across various industries is littered with examples of solutions in search of problems," said Dan McCade, Casemaker's chief information officer. "We were very conscious throughout the development process of only adding features that would matter to our users, and of not throwing out the baby with the bath water, so to speak."

Guided by several years of user feedback and incorporating refinements suggested through an extensive beta testing process, the team managed to achieve the desired balance, producing a new and improved platform that remains, nonetheless, reassuringly familiar.

Casemaker4 features a clean and uncluttered layout, with all of the features ABA

Guided by several years of user feedback and incorporating refinements suggested through an extensive beta testing process, the team managed to achieve the desired balance, producing a new and improved platform that remains, nonetheless, reassuringly familiar.

members previously enjoyed, along with faster search speeds, better search filter tools, and new functionality such as type ahead searching. It is both W3C and ADA compliant and includes a much more responsive design for enhanced display on smaller devices.

Not every change to the new platform is visible to users. As McCade explained, Casemaker invested in significant "back end" enhancements.

"We have upgraded our load balancing and database clustering technologies," McCade said. "And then, along with hardware improvements, we've invested in our server operating system, and database and search engine software. The result is faster response time and greater platform stability."

In designing the new platform's user interface, much thought was put into making the user experience not only more intuitive, but also more efficient. To that end, notable enhancements include:

- Moving the main navigation to the header area so there is no longer a need to return to the home page.
- Enabling a search of anything from anywhere by including the jurisdiction selection menu on every page. In concert, the system automatically updates the search jurisdiction as the site is navigated, so that searching on just the content you are browsing remains the default.
- Adding time-saving options to the Search Input box, including "Recent Searches," "Search Tips," "Advanced Search," and predictive "Type Ahead" functionality.
- Adding Casemaker Digest (daily summaries of leading cases), Casemaker Libra (eBooks), CiteCheck and CLE Events to the main navigation for easier access, as well as the inclusion of links to Libra citing references where applicable.
- A new Alerts feature that allows users to be notified of any new developments pertinent to a predefined topic based on a saved search or list of primary sources.
- Incorporating intelligent algorithms to suggest related primary and secondary materials not previously displayed.

What's not changing? The expert care and handling of legal content by editorial staff that has long distinguished Casemaker among low-cost legal research providers, who tend to rely more heavily on algorithmic approaches to capturing and organizing legal content, with comparatively little to no human intervention.

In a study circulated at last summer's annual meeting of the American Association of Law Libraries, entitled "Database Evaluation: Drawing The Silken Thread,"* three highly respected Connecticut law librarians set out to objectively evaluate seven legal research services by researching six topics. They performed identical searches on each service, and then assessed each result set against five pre-determined criteria.

The study showed that Casemaker consistently returned more relevant results than other low cost services, that its content was more current, and that its citator, CaseCheck+®, was more precise and less cumbersome to use than other providers' citation checking tools. In fact, Casemaker performed on a par with (and in some cases even surpassed) the leading high cost services across multiple points of comparison.

As Casemaker Chief Operating Officer Sarah Gorman said at the time, "These results are truly gratifying. Our editors take great pride in their work and here we can see that the human touch really does make a difference."

Soon, as an Alaska Bar member, you can have the best of both worlds: a much-improved platform with state-of-the-art functionality, and content you can continue to rely on with confidence.

The full study may be found at <http://casemakerlegal.com/pdf/public/database-comparison.pdf>.

Bar People

Former Administrative Law judge joins Dillon & Findley



J.P. Wood

The law firm of Dillon & Findley, P.C., welcomes J.P. Wood as of counsel. Wood comes to the firm from the Regulatory Commission of Alaska (RCA) where he served as the agency's Chief Administrative Law Judge. Wood began service with the RCA as an Administrative Law Judge in 2006 and was appointed to the Chief Administrative Law Judge position in 2009. At the RCA, Wood presided over complex public utility regulatory matters involving natural gas distribution, natural gas storage, telecommunications, and electrical service under the Alaska Public Utilities Regulatory Act, as well as pipeline regulatory matters under the Pipeline Act. Wood brings his experience in these areas to Dillon & Findley where his practice focuses on public utility regulatory matters. Wood was a law clerk for the Alaska District Court, Third Judicial District, in 2002-2003, then worked at local law firms engaged in civil litigation practice before joining the RCA. Wood is a graduate of the University of Denver, College of Law. A lifelong Alaskan, he received a bachelor's degree in journalism and public communications from the University of Alaska, Anchorage.



Named Super Lawyers are (from left): John Tiemessen, Matthew Peterson, John Thorsness and Linda Johnson.

Four named to the 2018 Alaska Super Lawyers List

Clapp Peterson Tiemessen Thorsness & Johnson LLC is honored to have four partners selected for the 2018 Super Lawyers List. This is a recognition of excellence and respect by fellow practitioners. John Tiemessen as a Medical Malpractice Lawyer, Matthew Peterson in the field of Mediation and Arbitration, John Thorsness for Product Liability and Linda Johnson in Employment and Labor Law.

Birch Horton Bittner & Cherot introduces new associate

The law firm of Birch Horton Bittner & Cherot is pleased to announce the addition of Shane C. Coffey who is returning to Birch Horton Bittner & Cherot after completing a clerkship with the Justice Peter J. Maassen. He had joined the firm in April 2017 after graduating early from the University of Oregon School of Law.



Shane C. Coffey

Coffey is a lifelong Alaskan, born and raised in Anchorage. He completed his undergraduate coursework at the University of Alaska Anchorage, obtaining a BBA in Finance and receiving the 2012-13 Shari M. Randall Award for Excellence in Finance.

During law school, Shane was an associate editor for the Oregon Law Review and a member of the Moot Court Board. He twice served as a judicial extern to the Lane County Circuit Court, a state trial court of general jurisdiction, and also worked as a research assistant for both his law school's legal research and writing program and his commercial law professor during this period.

Shane's practice primarily focuses on commercial litigation and municipal law. Outside of work, he enjoys hiking, biking, cross-country skiing, snowboarding, flying and fishing.

Robert H. Wagstaff Memorial Fund



Lover of Justice

Champion of Equality

Defender of Constitutional Rights

"A vivid spark has disappeared and, as Cicero said of Cato the Younger, the world is the worse for his absence."

"Twinkly, zany, compassionate sense of humor."

"His passion for civil rights, his dedication to clients, and his spot-on advice to the [ACLU] board were brilliant."

"His generosity and kindness will never be forgotten."

"He was a man of enormous stature and achievement and he enriched my life and the lives of many others."

"I am proud to have walked under the same sun as this great man."

To continue Robert Wagstaff's legacy of fighting for constitutional rights, his wife Cynthia Fellows established this fund to advance civil liberties in Alaska and the United States.

Join Cynthia, friends, and colleagues in celebrating and furthering Robert Wagstaff's legacy: donate to the ACLU of Alaska's newly established Robert H. Wagstaff Memorial Fund at <https://tinyurl.com/RHWagstaff>.



Attending the ceremony from left are: Judge Bethany Harbison, Presiding Judge, Fourth Judicial District; Judge Ralph R. Beistline, Senior U.S. District Judge; Chief Justice Joel Bolger, Alaska Supreme Court; Judge Thomas I. Temple, Fairbanks Superior Court; and Judge Matthew Christian, Fairbanks District Court. (Photo Credit: Carolyn Rocheleau)

Fairbanks lawyer joins Alaska Superior Court

From the Alaska Court System

Judge Thomas I. Temple was installed as a Superior Court judge Sept. 18, 2018 at a ceremony in the Rabinowitz Courthouse in Fairbanks. He was appointed to the Alaska Superior Court in Fairbanks July 2, 2018, by Gov. Bill Walker.

Temple was born in Louisiana and raised in Virginia. Upon graduating high school he enlisted in the U.S. Marine Corps. During his four-year stint in the Marines, he served as a rifleman and machine gunner. Temple deployed three times, including a combat tour during the Gulf War. Upon completing his service with the Marines, he married his wife, Amy. Temple subsequently attended George Mason University, graduating in 1998 with a degree in Administration of Justice. During both college and law school, Temple continued to serve in the military with the Army National Guard.

Upon graduating law school, he moved to Fairbanks. He began his legal career as an assistant district attorney, serving in Fairbanks, Anchorage and Utqiagvik. Temple made the move to private practice in 2004 as an attorney with the law offices of William R. Satterberg, Jr. During his career as a trial attorney, he tried cases from Unalaska to Utqiagvik.

Temple lives in Fairbanks with his wife of 26 years, Amy Frazier Temple, and five children, Cinnamon, Ruger, Sage, Saffron and Cayenne.

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2019 Alaska Bar Association Budget

REVENUE

AdmissionFees-Bar Exams	59,700
AdmissionFees-MotionAdmit	53,250
AdmissionFees-Exam Soft	7,800
AdmissionFees-UBE	28,000
AdmissionFees-Rule 81s	87,750
CLE Seminars	182,165
Accreditation Fees.....	4,400
Lawyer Referral Fees.....	28,510
Alaska Bar Rag - Ads,Subs	11,336
Annual Convention.....	73,171
Substantive Law Sections	27,070
AccountingSvc Foundation	9,645
Membership Dues	2,063,395
Dues Installment Fees	8,850
Penalties on Late Dues	14,990
Labels & Copying.....	740
Investment Interest	80,174
Miscellaneous Income	200
SUBTOTAL REVENUE	2,741,146

EXPENSE

BOG Travel.....	61,438
Committee Travel.....	1,000
Staff Travel	51,473
New Lawyer Travel	3,000
CLE Seminars	122,011
Free Ethics Course.....	2,500
Alaska Bar Rag	33,541
Bar Exam	46,249
Other Direct Expenses.....	75,639
Annual Convention.....	72,915
Substantive Law Sections	5,793
AccountingSvc Foundation	9,645
MLK Day	5,000
Casemaker	24,850
Committees.....	7,364
Internet/Web Page.....	7,060
Credit Card Fees.....	67,192
Miscellaneous	12,560
Staff Salaries.....	1,131,273
Staff Payroll Taxes.....	93,841
Staff 401k Plan	56,304
Staff Insurance	487,938
Postage/Freight.....	19,105
Supplies.....	13,794
Copying	4,730
Office Rent	167,146
Depreciation/Amortization.....	79,372
Leased Equipment.....	31,916
Equipment Maintenance.....	66,523
Property/GLA/WC Insurance	32,349
Programming/Database Maint	35,296
Temp Support Staff/Recruitment	9,413
SUBTOTAL EXPENSE.....	2,838,231

NET GAIN/LOSS (97,085)

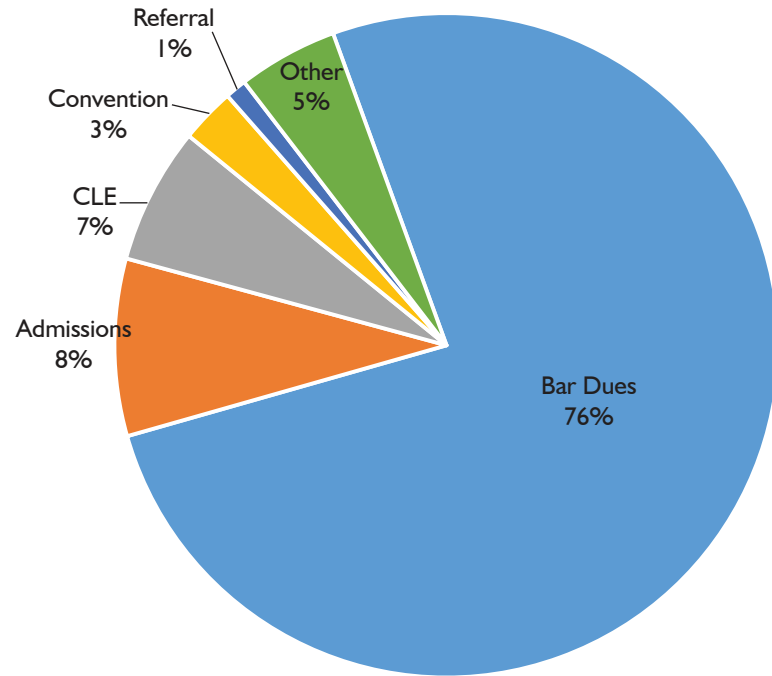
2019 Bar Dues Breakdown

Dollars per Active Member at \$660 Dues

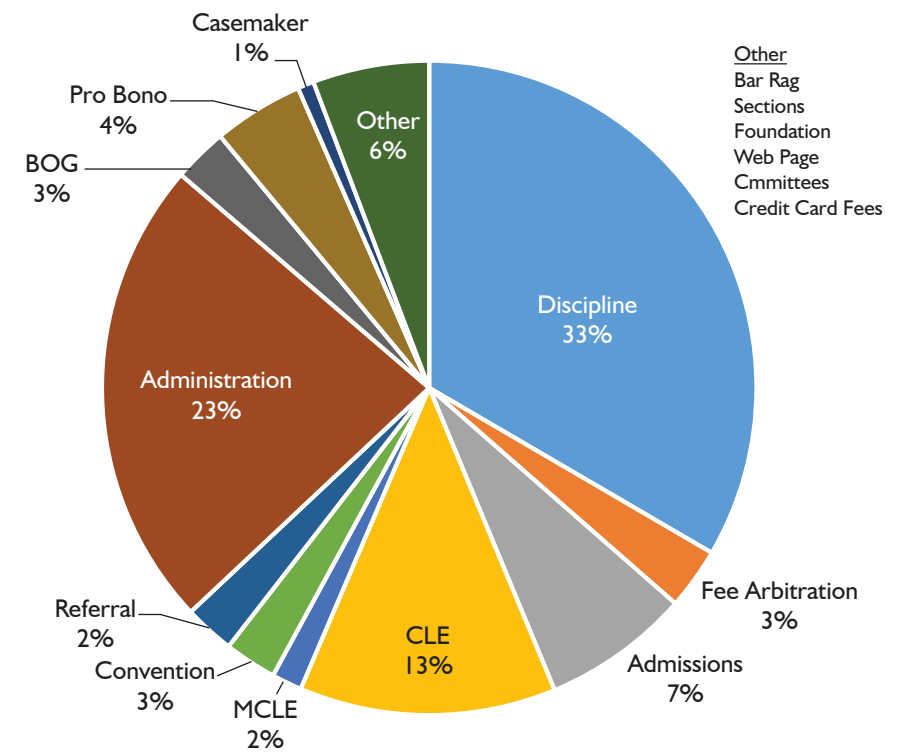
Discipline	275
Administration	192
CLE.....	52
Pro Bono.....	37
Fee Arbitration	25
BOG	22
MCLE.....	11
Lawyer Referral	12
LFCP.....	10
Casemaker.....	7
Bar Rag.....	7
Sections.....	3
Web Page.....	2
Committees.....	2
MLK Day.....	1
New Lawyer Travel	1

660

Revenue



Expense



Federal Bar Association installs new president

By Darrel J. Gardner

The Alaska Chapter of the Federal Bar Association (FBA-Alaska) is pleased to announce that Mary Pinkel has become our new chapter president; she started her one-year term Oct. 1, 2018. In addition, current FBA-Alaska board member Kevin Feldis has become president-elect. Pinkel is currently an assistant attorney general in Anchorage, although she will be leaving state employment at the end of the year. Mary plans to continue to work as a practicing attorney in Alaska. Feldis, a former assistant U.S. attorney, is presently a shareholder

at the Anchorage office of Perkins Coie.

In September, FBA-Alaska presented a lunchtime CLE featuring the federal Bureau of Prisons' (BOP's) Western Region General Counsel, Dominic Ayotte. Ayotte spoke on a number of topics related to the BOP and prisoners' issues. The program was well-attended, particularly by federal prosecutors and defense attorneys.

In November, FBA-Alaska hosted another lunchtime CLE – a "primer" on Section 1983 cases. The presentation panel included U.S.



Darrel J. Gardner

District Judge Sharon Gleason, U.S. Magistrate Judge Deborah Smith, attorney Holly Wells, and Assistant Attorney General Matthias Cicotte. Anchorage attorney Susan Orlansky moderated the discussion. The program was designed as an introduction for attorneys interested in participating in the court's *pro bono* program, to provide limited legal representation to *pro se* litigants pursuing civil rights litigation, typically involving prisoner treatment and excessive force claims. If you are interested in federal *pro bono* opportunities, a one-day video training program is available on DVD from the federal court and the Alaska Chapter of the FBA. Please contact Natalie Wicklund at the court: Natalie_Wicklund@akd.uscourts.gov (677-6135). Natalie has replaced Catherine Rogers as the court's *pro se* law clerk. The position was vacant for several months, but with Natalie now on board we hope to see a groundswell of interest in federal *pro bono* activities!

The FBA-Alaska board members are busy planning other events and meetings for the upcoming year. On Jan. 15, 2019, Anna Russell, the federal court law librarian, will be giving a presentation on new techniques for legal research. On April 2, 2019, attorneys Dan Rodgers and Julie Fields will be giving an immigration law update. FBA-Alaska is also exploring a joint CLE co-hosted with the Alaska Association of Criminal Defense Lawyers. FBA-Alaska noontime meetings include lunch and are free to FBA members; non-members may attend for \$15, payable at the door.

Following a successful event last December, FBA-Alaska and the Anchorage Bar Association are again jointly hosting a holiday party at Williwaw Dec. 13. The event is free to members of both organizations. Join the FBA and come to our memorable parties!

Other federal court news includes the installation of Matthew M. Scoble as the District of Alaska's newest full-time magistrate judge. Although there have been nearly 30 part-time magistrate judges since Alaska became a state, Scoble is only the fourth full-time magistrate judge to serve the district. Judge Scoble was administered the oath of office by Chief Judge Timothy M. Burgess at an investiture ceremony held at the James Fitzgerald Courthouse Nov. 20, 2018. His investiture was very well attended by members of the bar, court system employees, federal probation officers, and U.S. Marshals. Special guests included Judge Scoble's wife, mother, and son, who assisted in the robing of his father. Judge Scoble moved to Alaska several years ago in order to work for the Federal Public Defender. He had been an assistant federal defender for more than a decade in Sacramento before coming to Alaska with his family to start their new adventure. Indicative of Judge Scoble's drive and dedication, he taught himself Spanish to better serve his clientele in California. Magistrate Judges serve eight-year terms and are eligible for re-appointment to

additional terms.

Burgess recently appointed two new lawyer representatives, Kevin Feldis and Danee Pontious. Feldis previously served as a lawyer representative several years ago, but was unable to finish his term due to his acceptance of a foreign posting with the Department of Justice. Pontious is a private attorney in Anchorage, and her main practice focus is criminal defense. She is a long-standing member of the District of Alaska's Criminal Justice Act (CJA) Panel. (Panel members are accomplished criminal defense attorneys who have had training in federal criminal practice and who are willing to accept court appointments to represent indigent criminal defendants when the Federal Public Defender has a conflict of interest in representing a particular defendant.) Feldis and Pontious are replacing outgoing lawyer representatives Mary Pinkel and Dick Monkman. A hearty "thank you" to Pinkel and Monkman for their 3 years of service to the District of Alaska and the Ninth Circuit.

Special section: What is a lawyer representative?

Lawyer representatives play an important role in the administration of justice in the Ninth Circuit. Lawyer representatives work to foster open communication between judges and attorneys, and provide support and advice in the functioning of the courts by serving as liaisons between the federal bench and practicing bar. Lawyer representatives are chosen to serve three-year terms representing attorneys practicing in each of the Ninth Circuit's 15 districts in nine western states and two Pacific Island jurisdictions. Currently, there are 168 Lawyer representatives. Through the years, attorney support and contributions to the administration of justice in the Ninth Circuit have been invaluable and have resulted in positive changes that have improved the functioning of the courts.

On a local level, many lawyer representatives work closely with the District, Bankruptcy, and Magistrate Judges in their home districts. Lawyer representatives sit on various court committees; help plan and present the local District Conference in association with the Federal Bar Association; meet quarterly with District and Circuit judges, the Federal Public Defender, the U.S. Attorney, and the Chief U.S. Probation Officer; and attend the Ninth Circuit Judicial Conference, held annually at various locations throughout the Circuit. The 2018 Ninth Circuit Conference was held in Anaheim, CA, and the 2019 Ninth Circuit Conference will be held next July in Spokane, WA. Partial funding for reimbursement of travel and conference registration fees is available from the District Court Fund.

On a national level, the "Lawyer Representatives Coordinating Committee" (LRCC) is composed of the chairperson or co-chairs of each delegation of lawyer representatives from each of the 15 districts. The LRCC acts as a liaison for the lawyer representatives to the Ninth



New U.S. Magistrate Judge Matthew Scoble and his wife, mother and son celebrate after his investiture at the federal courthouse.

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 Casemaker®

Continued on page 27

PRACTICE POINTER

Tanana Valley Bar hears tips gained from experience

For Tanana Valley Bar Association luncheons the association has been asking members to present a five-minute talk about practicing law. The following was presented by Bob Noreen at the Nov. 2, 2018 meeting.

1. Go out of your way to be friendly to support personnel (main-tenance, security, court clerk, secretary), the favor and respect will be returned.
2. Find a hobby or activity you enjoy — practicing law can become depressing.
3. Dating and relationships outside the legal profession can be rewarding.
4. Don't quibble with the Court or blame office staff.
5. Men don't like being referred to as *dicks* or *dickhead* any more than women being referred as *bitches*.
6. Using the *F-word* socially will offend someone. It's not a sign of toughness.
7. Try to Leave disputes in the courtroom.
8. Make use of the "struck" method to the maximum advantage in voir dire.
9. Don't waive opening statements — it's the only time you have the last say as a defense attorney.
10. Develop one theory of defense, and only one in criminal trials.
11. Don't use the word "I" in closing and don't let opposing counsel do it.
12. Wherever you practice — the legal community is a small forum.
13. The Bar requires an e-mail address AND its mail contains a "do not forward" strip on its envelopes so your mail from them will not be forwarded in the event you move.

Federal District Court rules revised

The Local Civil Rules and the Bankruptcy Rules for the District of Alaska have been revised effective Dec. 1, 2018. Please check the Courts' webpages for the new versions.



Joining FBA's September CLE on Federal Pro Bono project panel are from left: Susan Orlansky (moderator); U.S. Magistrate Judge Deborah Smith; Alaska AAG Matthias Cicotte; U.S. District Judge Sharon Gleason; and Holly Wells.

Federal Bar Association

Continued from page 26

Circuit Judicial Council's Conference Executive Committee. As its name implies, the LRCC also coordinates the activities of the lawyer representatives across the circuit. The LRCC presents educational programs during the Conference of Chief Bankruptcy Judges and the Conference of Chief District Judges. This year's Conference of Chief District Judges was held in Tucson, AZ, in February. The LRCC also undertakes special projects throughout the year. For instance, in the recent past, the LRCC has conducted a survey regarding the use of Magistrate Judges to conduct trials, has worked with the Ninth Circuit to address the backlog of immigration appeals, and has sponsored resolutions at the annual Ninth Circuit Conference. Alaska's LRCC chair is the senior-most lawyer representative. The LRCC chair is also responsible for writing the annual District Report for Alaska, which is published on the Ninth Circuit's website.

The number of district lawyer representatives is based on the number of District judges in each Ninth Circuit District. In the District of Alaska, there are four lawyer representatives. The terms are staggered, and every third year, two lawyers are selected to be new Lawyer representatives. The current Alaska lawyer representatives are:

Andrea Hattan (LRCC Alaska chair for 2018-2019—term ends Sept. 30, 2019). Email: andrea.w.hattan@usdoj.gov

Jamie McGrady (Term ends Sept. 30, 2020). Email: Jamie_mcgrady@fd.org

Kevin Feldis (Term ends Sept.

30, 2021). Email: kfeldis@perkins-coie.com

Danee Pontious (Term ends Sept. 30, 2021). Email: dlp@pontious-law.com

Next fall, when Andrea Hattan completes her service, the court will be seeking another lawyer representative who will begin a term starting in October 2019. The Alaska Bar Association handles the application process, and the Chief Judge of the U.S. District Court (currently Chief Judge Timothy M. Burgess) makes the final selection.

For more information on becoming a lawyer representative, or if you have any questions, comments, or concerns regarding federal courts or federal practice, please contact any of the Alaska lawyer representatives listed above. Information is also available on the Ninth Circuit website at www.ce9.uscourts.gov/lawyer_reps.

Finally, SAVE THE DATE for the 2019 Alaska Federal Bar Conference, which will be held Aug. 6 in Anchorage. The conference is in early planning stages but likely include a program with the visiting Ninth Circuit Court of Appeals panel that will in Anchorage for oral argument that week.

For more information, or to join the Federal Bar Association, please contact Mary Pinkel (mary.pinkel@alaska.gov) or visit the Alaska Chapter website at www.fedbar.org; like us on Facebook at "Federal Bar Association – Alaska Chapter;" and follow us on Twitter "@bar_fed."

Darrel Gardner is a past-president of FBA-Alaska, and current national FBA vice president for the Ninth Circuit.

Clerk of the Appellate Courts announced

The Alaska Supreme Court has selected Meredith Montgomery, current chief deputy clerk of the appellate courts, to succeed Marilyn May as clerk effective Jan. 1, 2019.

The clerk of the appellate courts supports the work of the Supreme Court and the Court of Appeals. The clerk's responsibilities include monitoring caseload through the Supreme Court and the Court of Appeals and making recommendations for improvements in appellate procedure. The clerk is also responsible for all case filing and calendaring, publishing opinions and related tasks. The clerk's office is located in Anchorage.

Montgomery has held the position of chief deputy clerk since June 2015. Prior to that time, she was a staff attorney for the Anchorage Trial Courts for three years. She also has experience in private practice and was a law clerk for Superior Court Judges Craig Stowers and Sen K. Tan, and U.S. District Court Senior Judge James K. Singleton. She is a graduate of the Seattle University School of Law.

Montgomery's experience with the trial and appellate courts should help to ensure a smooth transition. If you have questions about appellate procedures, feel free to call on her or one of our case managers.



Meredith Montgomery

Board awards nominations sought

The Alaska Bar Association Board of Governors is soliciting nominations for awards to be presented at the annual convention. Send your nomination letter to oregan@alaskabar.org. The deadline is March 23.

The **Professionalism Award** recognizes an attorney who exemplifies the attributes of the true professional, whose conduct is always consistent with the highest standards of practice, and who displays appropriate courtesy and respect for clients and fellow attorneys. The Professionalism award has traditionally been presented to an attorney in the judicial district where the convention is being held.

The **Layperson Service Award** honors a public committee or Board member for distinguished service to the membership of the Alaska Bar Association.

The **Robert K. Hickerson Public Service Award** recognizes lifetime achievement for outstanding dedication and service in the State of Alaska in the provision of pro bono legal services and/or legal services to low income and/or indigent persons.

The **Judge Nora Guinn Award** is presented to an individual Alaskan who has made an extraordinary or sustained effort to assist Alaska's rural residents, especially its Native population, overcome language and cultural barriers to obtaining justice through the legal system. See the Bar website for the nomination form.



Nora Guinn



Robert K. Hickerson

Juneau attorney installed to Superior Court bench

From the Alaska Court System

Judge Amy Gurton Mead was sworn in to the Juneau Superior Court Oct. 26, 2018, in a ceremony at the Dimond Courthouse in Juneau. Chief Justice Joel Bolger administered the oath of office. She was appointed to the court by Gov. Bill Walker July 2, 2018.

Mead was born in New Jersey and raised in New England. She is the daughter of Aurora and Richard Lockhart, and Richard Gurton. She attended Boston University, graduating in 1989 with a B.A. in Psychology, and earned her J.D. cum laude from Tulane Law School in 1996.

After graduating, she moved to Ketchikan, beginning her career clerking for Superior Court Judge Thomas Jahnke and working as an assistant district attorney with the Ketchikan District Attorney's Office. In 1998, she relocated to Juneau where she worked as an assistant attorney general and a litigation associate with the firm of Robertson, Monagle and Eastaugh. In 2010, Mead joined the City and Borough of Juneau's Law Department as an assistant municipal attorney. In 2013, the City and Borough of Juneau Assembly appointed her to be Juneau's municipal attorney, where she served until being appointed to the bench.

Mead was appointed to the Alaska Commission on Judicial Conduct in 2012 by Gov. Sean Parnell, and was re-appointed for a second term by Walker in 2016, serving as the commission's chair from October 2016 until



Judge Amy Gurton Mead



Supreme Court Chief Justice Joel Bolger administers the oath to Judge Amy Mead. (Photos by Matt Miller/KTOO)

her appointment to the bench. In 2017, she served as the president of the Alaska Municipal Attorneys Association.

Mead lives in Juneau with her husband, Travis Mead, and their two teenagers, Elijah and Samantha.

The full KTOO story of the installation: <https://bit.ly/2PstqVl>



Samantha Slanders *Advice from the Heart*

Dear Samantha,

On a gray summer day 10 years ago, I joined three friends on the Sunny Jim Golf Course for a round of 18. It was my first time using a driver. My sniggering friends told me to go first. I teed up my Walmart #3 ball and without thinking drove it right down the middle of the fairway. I've spent every summer day since trying to recapture the feeling I had watching that ball drop onto the green. I have spared no expense

— moving to Palm Springs for lessons, purchasing Ping clubs and fancy shoes. I even spent valuable golfing time at an Ashram for damaged putters. Nothing has worked. I heard that you can par out on your local pitch and put course. Do you have any advice?

Sincerely,
Desperate Wish to be Tiger

Dear Desperate,
Everyone knows that the golfing gods only allow each punter

one perfect drive in their life. Yours came the first time you picked up a wood. It is now your lot to suffer and spend, suffer and spend. Perhaps you should take up fly fishing. It's almost as frustrating.

Sincerely,
Samantha Slanders

Dear Samantha,
Christmas is charging toward me. Holiday muszak is everywhere reminding me of all the presents I need to buy and send out to relatives in the Lower 48. Yikes. Do you have any gift ideas? My relatives already have Anchorage made ulus, salad tongs in the shape of bear paws and moose nugget swizzle sticks. I'd send smoked salmon but they can get that at their local Costco store. Any help would be appreciated. Thanks.

Sincerely,
Flat Out of Ideas

Dear Out of It,
You probably already named a star after your mom and purchased a lama in honor of your Auntie Sue. If they aren't squeamish or vegan, consider sending down a package of reindeer sausage. It can add a festive taste to Christmas dinner when chopped up and stuffed into grandma's turkducken.

Sincerely,
Samantha Slanders

Dear Samantha,
I hate spending the holidays with my family. They are nice folks, for the most part. But there is something about our mom's dining table that brings out the weirdness in my siblings. My unmarried brother always shows up with a new "girl friend," that he hired from an acting agency. Last year's model effected an Italian accent and spoke like an extra in a Fellini movie. My married sister brings all three of her kids, who grab all the dinner rolls from the plate before it reaches me. They like to stuff them in their cheeks and climb my mom's drapes pretending to be squirrels. I just married a wonderful man and don't want our relationship to end after he witnesses Uncle Teddy igniting his flatulence with a Bic lighter. I want to beg out of the annual holiday disaster. Can you help me come with an excuse?

Sincerely,
Tired Sister

Dear Sis,
Have you recently been to the tropics? If yes, claim that you have suffered a recurrence of malaria or dengue fever. To justify a last minute cancellation, the flu always works. Your family might thank you for your consideration. No one wants to watch you sneeze and spread contagion.

Happy Holidays at Home,
Samantha Slanders

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