



A time for new horizons ...

Farewell Deborah

By *Ralph R. Beistline*

Deborah O'Regan is retiring as executive director of the Alaska Bar Association and, once again, I find myself travelling down memory lane. I may have heard of Deborah in 1982 when she began as CLE director for the Alaska Bar Association, but CLE was not held in high esteem back then by the Tanana Valley Bar Association, so I don't recall much. That all changed in the spring of 1985 when I first recall meeting Deborah. I was attending my first meeting as a member of the Board of Governors at the Bar Convention, held that year in Sitka. I was scheduled to take office at the end of the convention and attended the board meetings as an observer. Deborah was being interviewed for the executive director position, and I got to watch. That was 35 years ago.

The 1985 meeting and Bar Convention held its share of controversy. First, as it turned out, although I was the newest member of the Board of Governors, because of the custom

of rotating Bar presidents from Anchorage to Fairbanks, and then from Anchorage to Southeast, and so on, it was Fairbanks' turn for the presidency, following Harry Branson, who was to take office at the end of the convention. This did not sit well with the board members from Anchorage, who were vehemently opposed to having such a greenie from the hinterlands coming onto the Board as president-elect when there were so many better qualified candidates available. So, they revolted. When it came time to vote for president-elect there was a five-to-five tie. Hal Brown, from Juneau, was president of the Bar Association at the time, and all eyes

turned to him as he pondered his tie-breaking vote. A solemn silence fell upon the room as the excited few glared in the president's direction. He then shattered the silence with a single word. "Ralph." Whether he was just ill or was voting for me is a question for the ages, but it was deemed sufficient. The tradition was

Continued on page 12

Photo album
Pages 12-13

Congratulations Deborah on a job well done

By *Steve Van Goor*

I had the privilege of spending 32 years of more than 40 years practicing law working with Deborah

O'Regan, the finest executive director any bar association of any size could possibly wish for.

Deborah was fond of using bullet points in her memos to the Board, so I've decided to use the same format for this article of notable moments.

- Deborah is from Montgomery, MN, a small community southwest of the Twin Cities. Like virtually everyone from that part of the country, she learned to speak American English without an accent and takes great pride in two uniquely Minnesotan idioms: 1) it isn't a blizzard unless you can't see across the street; and 2) a conversation is ended by one person saying "I suppose" and the other saying "Suppose so."

- Deborah's management style can easily be described as "how do we resolve the issue and how do we do it in the best possible way?"

- Did Deborah inspire a Japanese-style "employment for life" system at the Bar office? One could certainly say so for the Bar's lawyer staff. Bar counsel Mark Woelber has just passed 32 years and bar counsel Louise Driscoll will have 26 years in December.

- The Bar office has been on an odyssey in downtown Anchorage for many years prior to its current location at 840 K Street. The earliest venue I remember

- was the Australaska Building across from the downtown court complex. Following that: the Carr Gottstein building; the Peterson Tower; and the Atwood Building. Deborah was very happy with the corner office she had in the Peterson Tower and thought that would be the only one. Actually, there were two more.

- Deborah had an open-door policy, but she always cringed when someone knocked on her door and asked, "Do you have a moment?" With rare exception, it meant that someone was leaving.

- Deborah would frequently comment on the changing executive directors of state, local and county bar associations she'd meet at National Organization of Bar Executives meetings twice a year. Well, I think it can be said safely that Deborah has outlasted them all. If she doesn't have the longevity record for that organization, I'd be surprised.

- Fiscal responsibility has always been Deborah's forte. After former Board member Joe Faulhaber came up with the phrase "coins in the couch," Deborah and Controller Karen Schmidtkofer made sure that every presentation on the Bar's budget at the October meeting contained a section with that favorite phrase demonstrating how the Bar office was keeping the budget in line and finding savings along the way.

- Long before "global warming" became ubiquitous, we were all accustomed to Alaska's long, cool summers. As a treat to Bar office staff, Deborah would declare an afternoon off if the temperature hit 70 degrees. That was fine as long as it lasted but, alas, I'm sure we all remember that summer when it seemed like every day or every other day was 70 degrees.

- Deborah viewed her relationship with senior staff as a collaborative effort. Whether fiscal and operational issues with Karen, or bar exam and applicant character issues with me, Deborah was always open to input that would help her make a sound, reasoned decision.

- Even though the Alaska Bar was a relatively small organization when she started, it's grown

Continued on page 14

The new president joins in
Page 2

Past presidents speak
Page 14

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We have something to celebrate but it will have to wait

By Ben Hofmeister

If you would have asked me last year at this time what would be dominating the headlines as I sat down to write my first Bar Rag column as president of the Alaska Bar Association, I can say with full confidence that my 2019 self would not have foretold a global health crisis which would dominate every facet of our lives. Now, as 2020 comes to a close, it is getting difficult to remember a time before we had ever heard the term "COVID-19."

With such an unprecedented crisis, I considered using this platform to address the pandemic and how it has affected our legal community in Alaska. For instance, sharing stories of members across the state grappling with the health crisis, highlighting the amazing staff at the Alaska Bar Association and their efforts at keeping the organization on track in unprecedented times, or detailing the court system's balancing act between COVID-19 restrictions and the administration of justice.

These are all honorable topics given these times. But they are the subjects of another column. Because the Alaska Bar Association and, specifically, this edition of the Bar Rag needs to celebrate.

That's right. You read that correctly. Celebrate.

Why celebrate with the pandemic still surging?

In 1982, the Alaska Bar Association hired a young attorney from Minnesota to work as its CLE director. Three years later the Bar Association needed a new executive director and the Board of Governors hired that same attorney to take the reins. Since then, Deborah O'Regan has been the face of the organization for Alaska lawyers who have known no other leader of the Bar Association throughout their careers. But after nearly four decades of service, Deborah decided that 2020 would be her last year as the executive director before she sets sail for the adventures that await her in retirement.

Deborah's name has been synonymous with the Bar Association for a generation. The 38 years she dedicated to the Bar Association serve as reason alone to pay tribute

to her as she enters retirement. Yet longevity is not the only characteristic that defines Deborah as the fearless leader of the Bar Association we have all come to admire over the years. Anyone who has had the opportunity to work with Deborah will undoubtedly vouch for her constant efforts to administer the Bar Association in the most efficient of manners. From running bar exams, to coordinating CLE efforts, to attending countless meetings of the Board of Governors — Deborah has done it all with a positive attitude that never fades, regardless of the challenge.

Deborah has worked tirelessly over the decades to make the Bar Association the incredible organization it is today. I have often wondered exactly how Deborah is able to remain so positive all the time. The answer is surprisingly simple. As she has mentioned on more than one occasion, she loved her job as executive director.

One of Deborah's talents we will miss the most is her seemingly infinite knowledge of the institutional history of the Bar Association. Want to know what resolutions the Bar Association took up in 1988? Ask Deborah. Curious about the evolution of the UBE in Alaska? Ask Deborah. In a trivia contest and need to know the president of the Board of Governors from 1994 to 1995? Ask Deborah, she'll tell you in an instant that it was Justice Daniel Winfree. While we might not have the instantaneous answers to these questions we have been accustomed to over the years, we still have Deborah's contact information. So Deborah if you are reading this, expect some phone calls from us in the future.

Deborah has also represented the Bar Association in national bar activities. If you really want to get a good sense of Deborah's legacy, you need to see her with her peers — the leaders of other bars across the country. Deborah not only knows all of these leaders personally, but she is clearly respected by them. Her opinion is sought out by others and her voice is valued by all. She



Ben Hofmeister

has represented us well among our sister bar associations.

Personally, what I will remember about Deborah is the fact that she always called you back. Throughout the years, I have had to call Deborah on a number of occasions. Every time I left a message I would receive a call

back from her in short order with a pleasant conversation no matter the topic. In a world where our communication sources inundate our lives to the point where phone calls can get easily forgotten, it is good to know that people like Deborah exist who will always return your message and give you the answer you are looking for in the process.

We are fortunate to have found someone to take over as executive director as Deborah steps down. Danielle Bailey comes to us from the Alaska Court System where she has worked for a number of years as an administrative attorney. Like Deborah, we hope to utilize Danielle's talents well into the future. I think it is natural for someone to say to a new employee like Danielle that she has "big shoes to fill," given Deborah's tenure with the Bar Association. But I don't think that is the appropriate analogy. I think of it this way: Deborah helped build a really nice ship, capable of navigating the most difficult waters. Danielle: it is your turn to captain that ship and guide us in a new direction through the challenges that lie ahead.

The Bar Association, the legal profession, the planet — will face many challenges in both the short term and beyond. We will need to figure out how to get our system of justice back to "normal" after the pandemic subsides. We will have a backlog to reckon with in our courts. We will need to find ways to make the Bar Association's resources available to our membership to further facilitate the practice of law in a post-pandemic world. We will meet and conquer these challenges in large part due to the organization that Deborah has left for us as she moves on to the next stage.

EDITOR'S COLUMN

As 2020 fades, valued colleagues seek new horizons

By Ralph R. Beistline

So, we are in the home stretch as 2020 winds down, and the end is in sight. What a year it has been. I am not sure we are quite the same people we were at the beginning of the year. Zoom and virtual hearings are commonplace and some of my favorite restaurants are gone. Early in the year, I came to work in my traditional slacks and tie, even when there were no hearings and few others around. Soon I lost the tie and transitioned to jeans unless I had court. And that was virtual. Now, it's jeans, even when there is court, and the tie comes off as soon as the hearing ends. Where is this leading? I am starting to feel bare now without a mask.

A writer by the name of Annie Dil-

lard once wrote that "HOW YOU LIVE YOUR DAYS, IS HOW YOU LIVE YOUR LIFE." Our challenge now, and for the upcoming year, is to make each day worth living, despite the turmoil that surrounds us. It has been said that "while we cannot change the wind, we can adjust the sails." So, remember the words of James Stewart, "it's a wonderful world." And it really can be as we adjust the sails and as we choose to make it so.

Anyway, speaking of a wonderful world, when I agreed to fill in as editor of the Bar Rag several years ago, after having done it before in the 80s, the plan was not to do so for



"Our challenge now, and for the upcoming year, is to make each day worth living, despite the turmoil that surrounds us."

infinity and beyond. I told Deborah O'Regan that I would stay until she retires. Well, she's retiring. So, among other things, we will be looking for a new editor this year and continue to invite anyone interested in contributing to the paper to join us. I probably will keep writing, on occasion, but it is time for the younger generation to step up.

So, Happy Holidays to all and may it truly be a Happy New Year.

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

Despite the daunting circumstances we face, we need to stop and recognize our friend and colleague Deborah O'Regan and the many years she has given to build our Bar Association into the well-run ship it is today.

We need to celebrate.

But we will not stop our celebration with the many words you will read in this edition of the Bar Rag. Our celebration will not end with Zoom meetings and virtual social gatherings. We need to have a party. A real party. One where we get together in person, raise a glass, and pay tribute to Deborah.

Deborah, thank you for your time and service. We will miss you, even though we will still call you for advice. We will remember what you have taught us; or at least try to remember (again, we know how to get a hold of you). And we will throw you a big party to properly celebrate your retirement when this is all over.

We promise.

Ben Hofmeister is president of the Alaska Bar Association. He resides in Juneau where he is a full-time lawyer for the Attorney General's Office and a part-time novice on the ski slopes at Eaglecrest Ski Area.

The Alaska BAR RAG

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Meet Danielle Bailey, new Bar executive director

By *Monica Elkinton*

Danielle Bailey started in October 2020 as the new executive director of the Alaska Bar Association. The previous director, Deborah O'Regan, had been at the helm of the Bar Association for 35 years.

Like many Bar members, Danielle came to Alaska for an internship in law school and then returned to practice here. She interned at the Anchorage District Attorney's Office. She thought it would be a "free trip to Alaska" where she'd enjoy outdoor recreation and then head back to a joint program with a JD and masters in Urban-Regional Planning at the University of Minnesota. She wasn't even very interested in becoming a practicing lawyer back then.

However, the Anchorage DA's Office was completely different from the other DA's office where she had previously interned, in Philadelphia. In Alaska, "I was going hiking with judges and hanging out with the public defenders," recalls Danielle. "I loved that even though we were on different sides of things, there was a really collegial legal community." One judge in particular pulled her aside and encouraged her to come back to Alaska after graduation. Danielle recalls thinking, "Maybe it's not that I don't want to be a lawyer, I just don't want to be a lawyer anywhere but Alaska."

Danielle went back to law school, finished her joint degree program, and then came back and clerked for Judge Peter Michalski, Judge Cathy Easter and became one of two clerks for the Anchorage District Court. After clerking, she became an administrative attorney for the Alaska Court System as the assistant Court Forms attorney and eventually became the Court Forms attorney. She had previously been editor

of her high school and college newspapers, so she was used to using efficient layout to get ideas across. "I've always loved design, and I loved making things pro se friendly for the court," she said. "I also got to create the processes throughout the court system to make things faster and more efficient, and I got to experience every single area of the law, and work with a variety of people in the courthouse."

Danielle grew up in Montana, and as a high school student she spent one semester of her junior year on the floor of the United States Senate as a page. The semester was Fall 2001, and began with the terrorist attacks of 9/11/01. At the time of the attacks, "I was at work in the Senate cloakroom when a call came in that the Pentagon had been hit," remembers Danielle. "And we were told to evacuate the Capitol immediately. It wasn't on the news until later." There were not enough buses to evacuate all the U.S. Senate pages, so her math teacher gave her a ride out of Washington to safety. All but four of the pages were back on the Senate floor the next day, Sept. 12. After that, Danielle realized how important public service was, and how much of an impact she could have on her community.

While she's been drafting forms for the Court System the last few years for work, Danielle has also been the president of the Turnagain Community Council, and is currently serving as the chair of the Municipality of Anchorage's Planning and Zoning Commission. "Right when I started on the Commission, they started doing the 2040 Comprehensive Plan. It was a great opportunity to think about the long-term vision for the city." She worked with the Alaska Center on a project called "Solarize Turnagain" that installed solar panels on more than 70 households in the west Anchorage neighborhood.



Danielle Bailey is originally from Kalispell, Montana. She received her undergraduate degree from Lafayette College, then her Juris Doctor from University of Minnesota Law School, and her Masters in Urban Regional Planning from the Humphrey Institute at the University of Minnesota. She has been licensed to practice law in Alaska since 2011.

Danielle loves Alaska. "Your friends become your family here in Alaska," she said. "You can make a difference here really easily and I've always liked that." She knows that Alaska attorneys are unique, for their professionalism, collegiality, as well as their accomplishments. "People become experienced attorneys really quickly here. In a different state, it would take so long to be able to do a felony trial."

Outdoors, Danielle is a self-described "jack of all trades, master of none." You can find her on trails in town biking, running, skate skiing, classic skiing, also snowboarding or downhill skiing. She's also rowed down the Grand Canyon twice, is a licensed Wilderness First Responder, has done Crow Pass Crossing, and also an ultra-marathon in Iceland. She's also a previous champion of the Talkeetna Wilderness Woman Contest.

"I think Alaska lawyers are like

Alaskans in general," said Danielle. "People here just look out for each other. One thing that's tough is that I'm starting during COVID. But as people are being separate from everyone, finding the ways for the Bar to build and foster community among lawyers is something we can do." One goal of hers is to expand diversity in the Alaska bar, including hopefully welcoming more Alaska-raised lawyers.

She does have big shoes to fill, and like departing director Deborah O'Regan, Danielle sees this as a job she can stay in until retirement. "I expect to be learning a lot from Deborah and the Bar staff in my first six months. I hope that I can help provide the same kind of stability that Deborah did. I feel like I'm inheriting a very well-functioning ship and I'm very glad for that. I'm so excited to learn from this team."

Monica Elkinton is an assistant municipal prosecutor in Anchorage.



A farewell gift

Outgoing Bar President Rob Stone displays the Henry .45/70 lever action rifle he received as his president's gift, following the annual meeting Oct. 27, 2020, held via Zoom.



Samantha Slanders

Advice from the Heart

Dear Samantha,

I do appreciate your practical advice over the years and have put a lot of it to good use. I never thought, though, that I would have a need to write you myself.

Here it is. Several years ago I started my own law office and have developed a good practice. My problem is that many of my clients seem to want me to work on credit — then never get around to payment. Now my creditors are at the door. Any advice for the future?

A Sucker in Anchorage

Dear Sucker,

I had a similar problem years ago when starting my own counseling service. I solved it by hiring a credit manager by the name of Helen Waite. Since then, whenever anyone sought credit, I simply told them to go to Helen Waite.

Problem solved.

Samantha

Bar association goes virtual with annual awards

The necessity of cancelling the annual Alaska Bar Association convention also prevented in-person acknowledgement for extraordinary services over the course of the past year. As a result the awards will be mailed and recipients recognized at a Zoom business meeting and here. Congratulations to all.



Christine Pate

Rabinowitz Award

Each year the Alaska Bar Foundation presents the **Jay Rabinowitz Public Service Award** to an individual whose life work has demonstrated a commitment to public service in the State of Alaska. Former Alaska Chief Justice Jay Rabinowitz was dedicated to the principle that all Alaskans are entitled to equal access to the judicial system.

This year's Rabinowitz Public Service award is presented to Christine McLeod Pate, the Legal Program director at the Alaska Network on Domestic Violence & Sexual Assault.

In 1993 Christine came to Alaska from New York and she worked to ensure access to justice for survivors of domestic violence and sexual assault ever since. Though she started

out her career here with stints as a staff attorney at Alaska Legal Services Corporation and as executive director at Sitkans Against Family Violence, you may know her best for creating the Pro Bono Program at ANDVSA 22 years ago.

Under Christine's leadership, the ANDVSA Legal Program has served more than 2,000 clients and their families through the years. Christine has referred clients to hundreds of pro bono attorneys to assist them with their civil legal matters. She has trained and mentored nearly every single one of those volunteers.

Christine's work in all its forms, whether it's litigation or legislation or building partnerships, is singularly focused on the goal that all Alaskans – especially children can live free from violence.



John Murtagh

Distinguished Service

The **Distinguished Service award** honors an attorney for outstanding service to the membership of the Alaska Bar Association.

John Murtagh has most recently

served as chair of the Alaska Rules of Professional Conduct Committee. He has been involved with the two most controversial bar rule changes; he was professional, collaborative, consensus forming and ultimately helped create progressive rules. He put in an incredible amount of thought and work researching and drafting the proposal and information for the board and members in the Bar Rag.

John has represented many respondent attorneys in discipline matters, and always presents well thought-out arguments and provides good representation in these matters. He has the confidence and trust from the board in his representation and presentations of arguments.

John has served on the Alaska Bar Board of Governors and also participated in CLE presentations for the Bar.



Moira Smith

Professionalism

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 other attorneys. The Professionalism award has traditionally been presented to an attorney in the judicial district where the convention is being held.

Moira Smith is general counsel for Enstar, and previously worked at Ashburn & Mason. Starting in March or April of 2020, Moira started a Facebook group called "Coronavirus Days of Caring," which eventually had 1,400 members. The group made a goal of finding ways to support community members during the initial months of the hunker down in Anchorage. At Moira's urging, members donated lunches and self-care packages to first responders, raised money for Covenant House Class of 2020 graduating seniors, and organized a plan to have children send notes to seniors isolated during the pandemic.

Moira also started another Facebook support group for parents related to the Anchorage School District's virtual school plan. Moira does all of this while balancing a busy career at Enstar and parenting two children. Moira has served on the Lawyers' Assistance Committee and is currently on the Discipline committee. She exemplifies professionalism.



Andy Harrington

Robert Hickerson award

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.

After graduating from Harvard in 1980, Andy Harrington clerked for Justice Jay Rabinowitz. He then dedicated his next three decades to serving low income and disadvantaged residents with Alaska Legal Services, as staff attorney, supervising attorney and executive director. After leaving AK Legal Services, he worked for Consumer Protection in the Department of Law, and is currently associate general counsel with University of Alaska.

Andy has volunteered for the Alaska Network on Domestic Violence and Sexual Assault, the annual MLK Day free legal clinic, and the AFN Elizabeth Peratrovich Legal Clinic. He volunteered for a decade on the Landlord/Tenant hot-line, helped found the Race Against Racism, and volunteered in many other activities and programs. He promoted the principle that "justice should not be a function of wealth" and has dedicated himself to equal access to justice for all Alaskans.



Frances Talbott

Layperson service

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

Frances Talbott has been on both the discipline and Fee Arbitration panels since 2011. She has been on numerous discipline, disability,

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Bar association goes virtual with annual awards

Continued from page 4

reinstatement and fee arbitration cases during that time. We rely on committee members such as Fran to provide the voice of the public when hearing and deliberating a discipline case or fee arbitration matter. For nearly a decade Fran has provided her time and viewpoint to Bar proceedings.



Heidi Ivanoff

Judge Nora Guinn award

The **Judge Nora Guinn Award** is presented to a person 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. Selection and presentation is designated to the Historians Committee.

Magistrate Judge Heidi Ivanoff is from Unalakleet. After attending college and law school and working as an assistant public defender in Kotzebue She returned to Unalakleet in 1998 as the magistrate judge, a position she has held since. Ivanoff is the only court employee in Unalakleet.

She knows every defendant who comes before her, and provides a personalized approach to the criminal justice system in rural Alaska. Each sentencing is punctuated with comments that shows she knows the defendant and their family. She talks about traditional values and disappointing community members. She explains things in arraignments and sentencing in ways that make sense to defendants. She understands seasonal employment, the different forms of travel and regional tournaments and races. She'll knock on jurors' doors if they don't show up for jury duty.

Heidi has provided a personalized service to the criminal justice system in rural Alaska in which everyone can understand and participate.

Pro bono

Lori A. Colbert is the owner of Colbert Family Law, LLC in Anchorage, and was previously a partner with Mendel Colbert & Associates. A graduate of Claremont McKenna College and Willamette University College of Law, her practice areas include divorce, child custody, modification and support, adoption and assisted reproductive technology.

Lori served for eight years as the co-chair of the Family Law Section of the Alaska Bar Association. She

has been active in the American Bar Family Law Section working on the CLE, Diversity, and Member Benefit Committees. She also served for six years as a member of Council for the American Bar Association Fam-

ily Law Section.

Lori is currently the Alaska State Delegate to the American Bar Association House of Delegates where she is a member of the Nominating Committee and the Steering Com-



Lori A. Colbert



Michael Baylous

mittee for the Nominating Committee. Lori is a life-long Alaskan and proud mother of two daughters and grandmother to two grandsons.

Since 2000, Lori has completed 25 Family Law pro bono cases, donating 955 pro bono hours.

Lane Powell has participated in Alaska Legal Services Corporation's Attorney-of-the Day program since its inception in 2006. Every month the firm provides an attorney to give general one-time consultations to ALSC clients.

Lane Powell shareholder Michael Baylous, who accepted the award on behalf of the firm, has done most of these pro bono consultations, more than 50, sometimes taking on the client's case. He's provided 345 pro bono hours since 2000.

Firm attorneys Peter Partnow and Brewster Jamieson also provide consultations with the monthly program. ALSC deeply appreciates all the Lane Powell professional and reliable staff who also assist clients with a variety of matters.

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ALASKA ARMY NATIONAL GUARD

Since the aging process never stops, be ready for change

By Mark Bassingthwaighte

In the middle of a conversation with one of our insureds on the topic of the difficulty of learning to say no, the fine gentleman I was conversing with did a jump shift on me. For whatever reason, he felt it was important to acknowledge that he was cognizant of his age and he wanted me to know he had taken steps to make sure he continues to practice law competently. What really struck me, however, was his desire to also share he had instructed others at his firm to let him know if they were to ever see him start to mentally slip, because in his words “the day will come when...”

As a risk manager, I found his comments reassuring. In my mind, he’s one I would describe as someone who is growing old gracefully. He’s not in denial and, unlike far too many, he doesn’t appear to be fighting the aging process tooth and nail. He also has recognized that with age comes certain age-related risks and he’s doing something about that reality. In light of this conversation, I felt compelled to take a look at a few of these risks and talk about how to responsibly manage them.

The most obvious risk with the aging process is the unexpected event, something along the lines of a medical crisis that leads to a short or long-term absence. Should this ever occur, someone will need to step in and at least temporarily accept responsibility for your client matters, even if you aren’t in a solo

practice. For the solo practitioner, however, this is a particularly significant issue that underscores the necessity of having a backup attorney in place. Regardless of your age, if you haven’t already found one, now’s the time.

Next, don’t overlook the related file status problem. Lawyers don’t always keep files as current as they should. I believe for many it’s a time and trust thing. There’s never enough time and just about everyone trusts their own memory. Here’s the problem with that line of thinking. Memory isn’t as trustworthy as one ages and if you’re not available due to an unexpected event, it doesn’t matter anyway. Given this, committing to keeping the status of all files current at all times is equally necessary regardless of your practice setting.

Then there are the subtler risks that arise as a result of the aging process itself, many of which can be quite gradual. Sooner or later everyone begins to realize their memory, hearing, and/or sight isn’t as sharp as it once was. I’ve heard all kinds of stories and fears. Some lawyers find they have a hard time accurately seeing everything on a computer screen, which leads them to worry about making mistakes due to incorrectly entering a critical date or misreading what’s on the screen. Others struggle with forgetfulness, worrying that it’s only a matter of time before they’ll fail to show up at a hearing, miss a filing deadline, or incorrectly remember what a client’s instructions were. And yet

others have shared they have all kinds of fears about their hearing loss, not the least of which is a fear of mishearing something due to being too embarrassed to ask a client or a judge to repeat what was just said.

There are any number of steps one might take to address these subtle risks. In terms of competence issues, the use of checklists can be a great way to make sure nothing is overlooked. Additional training on how to get the most out of your computer tech might become necessary, if for no other reason than as tech evolves so does the standard of care. You might consider prioritizing the pursuit of relevant CLE in the areas in which you wish to continue to practice. Think about it. Just because you’ve practiced in a given practice area for several decades doesn’t mean you can ignore your obligation to remain current on the impact of any recent changes in relevant law or regulations. And finally, be open to acknowledging that at some point you may need to start slowing down because the time and energy necessary to stay on top of it all is no longer there. When that day comes, this might mean taking on fewer matters or no longer taking on certain types of matters.

With visual issues, the purchase of a bigger monitor or having IT adjust your screen settings might solve the problem. With hearing, it might mean finding time to have your hearing checked. My point with all these ideas is to encourage lawyers to find a way to work the problem of age-related risks instead of ignoring it.

A final risk worth mentioning is the comfort that can arise in long-term attorney-client relationships. Two points to make. First, it’s important to remember that these long-term clients are aging as well. As clients age, their legal needs will also change. In some way we’ve come full circle here. It can be hard to say no to these clients; but that may be exactly what’s called

for. Don’t allow long-term clients to push you into agreeing to help them on matters you have no real experience in. Either refer this work out or do whatever is necessary to come up to speed. Anything short of this is asking for trouble. Second, don’t turn a blind eye to the possibility that forgetfulness or confusion may be in play with some of your older long-term clients. Take whatever amount of time is necessary to make certain these folks understand the advice being given and couple that with a commitment to thoroughly documenting your files, focusing not only on the advice being given but the decision-making process as well.

In sum, since no one has found a way to stop the aging process, the day will come when it’s time to cease practicing law. Until that day arrives, however, do all you can to age gracefully. Be aware of your limitations as they arise and be open to hearing the concerns of others. Find ways to identify your specific risks and work to responsibly address them. I say this because I have had to sit down with a few solos over the years and be the one who had to tell them their time had come. Trust me, aging gracefully is the better choice.

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

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Covid Cat

*This black cat
Who lies on my chest
Is gaining weight.
She comes over
Silently
Whenever I lie down
And stares down at me
Unblinkingly.
I have refrained
From giving her a name
And been advised
Not to let her outside.
But it is getting
Harder to breathe*



*And I am afraid
To close my eyes.
I need to find
Her a new home
If she'll let me up.
— Cam Leonard*

Law Library News

Alaska State Court Law Library working for you

By Ashley Stewart

The law libraries in Anchorage, Fairbanks, and Juneau are currently open with limited hours, but we need your help to stay that way.

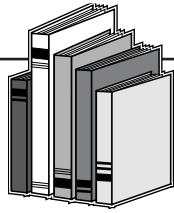
Most library and information services are available remotely. If you can use remote services, please do so and limit your in-person visits for those times when it is absolutely necessary. Masks covering your mouth, nose and chin are required at all times while in the library. Anyone who cannot or will not comply with the mask requirement will not be allowed in or will be asked to leave.

Current hours in Anchorage, Fairbanks, and Juneau are 12-4 p.m. Monday-Thursday; however, staff is available to provide remote reference services during regular court hours.

Remote services include document delivery, curbside pickup, and mediated searching. Access to Westlaw is available through Thomson Reuter's expanded free trial program. Bar members are also eligible for individual accounts with the Lexis Digital Library, which provides on-demand access to many LexisNexis publications.

With the recent rise in COVID cases, we are taking extra precautions to keep our staff and patrons safe. Everyone in the library is required to wear a mask at all times, including staff. We are also sanitizing computer workstations, tables and chairs in between patrons. All other surfaces — door handles, hand rails, light switches, etc. — are sanitized at least once per day. Library materials are quarantined for one week after use before being returned to the shelf.

Your continued support and cooperation will allow us to remain open. Contact us at 907-264-0856 or library@akcourts.us for assistance.



Bar People

Schwabe, Williamson & Wyatt adds attorney

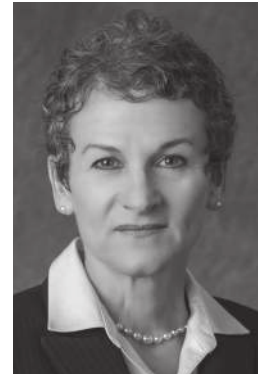
Kayla Tanner joins Schwabe, Williamson & Wyatt's Anchorage office and Natural Resources and Real Estate and Construction industry groups. She advises on matters involving disputes, employment, and benefit issues affecting her clients in the real estate, construction and natural resource industries.



Kayla Tanner

Polaris Law Group, P.C., opens in North Pole

Italia A. Carson recently retired from federal civil service as the Contracts Law Attorney with the Army Contracting Command at Fort Wainwright. She has returned to private practice opening Polaris Law Group, P.C., in North Pole. More than half of her 20-year legal career has been spent as a government contract and fiscal law attorney for the U.S. Army Materiel Command and the U.S. Air Force Materiel Command. Ms. Carson's general civil practice will focus heavily on Government Contract Law through representation of small business contractors in the full range of federal procurement matters from contract formation to administration and close out audits. Other areas of practice include real estate, bankruptcy, immigration, military and Veterans matters, and wills and trusts. Ms. Carson received her juris doctor from the Catholic University of America Columbus School of Law in Washington, D.C., and holds a Master of Laws (LL.M.) with a Certificate in Contract and Fiscal Law from The Judge Advocate General's Legal Center & School, U.S. Army, in Charlottesville, VA. Next year, she will complete the requirements for the LL.M. in Government Procurement and Environmental Law from the George Washington University Law School in Washington, D.C. In 2015, Ms. Carson also retired as a lieutenant colonel in the U.S. Army Reserve after 27 years of honorable service, which included three deployments to Iraq and Afghanistan.



Italia Carson

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Judicial profile: Joshua Kindred, U.S. District Court Judge

By Darrel J. Gardner

PART I OF II

Joshua Michael Kindred received his federal judicial commission on Feb. 8, 2020, as Federal District Court Judge for the District of Alaska. He replaced District Judge Ralph R. Beistline, who assumed Senior status on Dec. 31, 2015.

Kindred was born in North Carolina in 1977. His father was in the Air Force and his family “sort of bopped around the country” during his early years. He spent most of his elementary school days in Augusta, GA, but after his father received a transfer to Elmendorf Air Force Base, the family moved to Alaska. He recalls, “my parents come from very humble beginnings, and most of my childhood, my mother was a stay-at-home mom, but she was going to college at night. By the time we got up here, she had received a degree in respiratory therapy, and began working. My whole family fell in love with Alaska. I sort of knew at the time that this was my home, my place. I went to Wendler Junior High and Bartlett High School, and my dad decided to retire about the time I was in high school. I can’t say that at any point in my early years I had particular plans or ambitions professionally. I came from a family where college wasn’t a necessity, even though my mom had gone. I don’t know that there were a lot of people in my mother’s or father’s family then who had gone to college.”

Kindred recalled that when he was in high school, he was a less-than-stellar student who hadn’t yet formed any plans or ambitions. After high school, he was working full time at a hardware store, and began looking around and thinking, “I didn’t know if this is what I want to do for the next however-many years, so I decided I should go to college. I started going to UAA and was still working full-time. Things were starting to click a bit, and some of the classes I was taking in history and political science were particularly engaging. That was probably the catalyst for me taking a more serious approach to academics.”

In his senior year, he had thought about getting an advanced degree in history and perhaps becoming a history professor, so he met with a history professor who told him point-blank, “You don’t want to be a history professor.” Joshua asked why, and the professor replied, “What if you don’t like it? What if you aren’t good at it? There aren’t any other options; you can’t do something else with a doctorate in history.” He encouraged Joshua to think about law school. At that point, Joshua had never even met a lawyer. He knew little about lawyers outside what he saw in the entertainment media. Like most outside the profession, he had no practical sense of what it meant to be a lawyer. But he respected his professor so much that he asked, “Okay, what does that mean?” The professor said, “You need to sign up for the LSAT.”

Joshua explained, “I signed up for the LSAT and, given my naivete and the fact that I didn’t know any lawyers or have any law school friends to talk to, I went into that exam cold. I thought it was interesting, but — in retrospect — I didn’t understand its importance. I ended up doing fairly well on it, which

served as the momentum for me taking it seriously and applying to law schools.”

He applied to several law schools, but he didn’t grasp the significance of tiers, or what it would mean to go to one law school as opposed to another. In the end, he chose Willamette Law School, “in part just because it was a school I had heard of in the Northwest and it was close to Alaska.”

Joshua recounted his law school experience: “So I drove down there and started law school, which was a bit of a culture shock for me, for a variety of reasons. First of all, I came from a fairly modest background. My parents worked very hard to give us opportunities that they didn’t have. I sold my car and I was living in a shared, communal apartment complex and walking to school. A lot of the young people at my school had very different backgrounds. It was also different having grown up in a city like Anchorage, which was incredibly diverse; when I was growing up, I didn’t realize how diverse it actually was. The law school wasn’t really very diverse, and there were a lot of other things during that first year that I found particularly eye-opening. It was also the first time I had been in an academic setting where everyone was trying so hard to do well. It was good for me to be challenged and realize that I couldn’t just coast. I was really going to have to commit to my education.”

“I loved law school. It was three of the best years of my life. I was intoxicated about the academics, this learning about the law. I did well, and got involved in Moot Court and Law Review, and just really enjoyed it — although I still hadn’t interacted with many lawyers and didn’t totally understand what it meant to be a lawyer professionally. I was just enjoying the learning aspect of it.”

Return to Anchorage

Joshua returned to Anchorage after his first year of law school, still unsure of his future. There, he ran into a high school friend who — to his surprise — was working in the District Attorney’s office, and who asked, “Why don’t you come intern here?” So he did. Joshua recalled, “I don’t know how functionally beneficial that experience was, because there wasn’t much I could actually work on, but it was good for me to see a group of lawyers working together on a day-to-day basis. It was my first real exposure to the criminal justice system.”

Right at the end of his second year of law school, he was named editor of the Law Review. At that point, there was a backlog of articles that hadn’t been published due to some odd tax issues the Law Review was going through, so he spoke with the Dean and volunteered to work through the summer. He stayed in Salem that summer and worked full time on Law Review articles.

Joshua graduated law school in 2005, and as law school was wrapping up, the one thing he knew for certain was that he would return to Alaska. He had done fairly well academically, but he still didn’t know what he wanted to do or how to make the transition to employment. He signed up to take the Alaska Bar Exam, but he hadn’t applied for any



U.S. District Court Judge Joshua Kindred

law jobs. Before leaving, he was approached out of the blue by Associate Justice Paul De Muniz at the Oregon Supreme Court, who invited him to breakfast.

After the breakfast, Judge De Muniz asked Joshua to clerk for him. Joshua agreed to a 2-year clerkship, went back to Alaska and took the bar exam, and then returned to Salem to start his new job. At that point, he was still somewhat naïve about the importance and prestige of judicial clerkships. At the time, Judge De Muniz was transitioning to Chief Justice. Joshua recalled, “It was probably professionally — and personally — one of the most important periods of my life. I not only had access to his brilliance, but he was also unique in that his whole approach to being a lawyer was always guided by a sense of morality and decency.”

“So often he’d tell me tales of his career, most of which was spent as a criminal defense lawyer. The stories were always lessons — built on the foundation of how much more important it is to be a good person than it is to be a successful lawyer. I don’t know that I always understood the lesson at the time, but I realized that his path was often more arduous because every time there was a fork in the road between doing the easier or more self-beneficial thing and the thing that was right, he would always take the path that was right.”

Joshua said that the two years he spent with the Chief Justice had a profound impact. He learned a great deal about the law, became a much stronger writer, and he got a better sense of what it meant to be a litigant. Joshua mused, “It was something I sort of fell backwards into, but I don’t think I would have learned nearly as much or had as much success professionally if I hadn’t taken that job.”

He clerked for the Chief Justice until mid-summer 2007 and then returned to Alaska with a desire to do something in the public sector. He recalled, “My father had enlisted in the military; he didn’t necessarily preach a lot about that, but I got a strong sense of public service from him. I wanted to spend a few years doing something that wasn’t about the money, but about the service.” After his clerkship, however, Joshua was suddenly approached by several law firms. He interviewed with a few firms, but ultimately he took a job with Lane Powell in Anchorage.

Despite the stint there being “a

positive experience,” he felt that it wasn’t a great fit — but not due to any deficiencies at Lane Powell. As he put it, “I just didn’t have passion for what I was doing. I worked with some incredibly talented lawyers — Brewster Jamison was a managing partner, and he was an excellent attorney. I learned a lot from him and the other attorneys, but I felt a bit ambivalent about my job. I worked hard, but I didn’t have a strong emotional attachment to the work. It was a great firm, but I realized I should be doing something else — I just didn’t know what that something else was.”

After about a year at Lane Powell, Joshua ran into Rob Henderson from the Anchorage DA’s office. Henderson hadn’t been a part of the DA’s office during his earlier internship, so they hadn’t met. During coffee, Henderson told Joshua that he was supervising the DA’s Misdemeanor Unit, and offered him a spot in the office. Working in a courtroom and with a group of attorneys appealed to Joshua, so around July 2008, he made the transition. It turned out to be a good move, satisfying his need to do public service, and providing the joy of being in the courtroom. Although he found criminal law refreshing, he also experienced the inherent pressure — both professionally and otherwise — of doing that job every day.

Joshua noted that during his career, he would hear attorneys talk about pressure, but never felt it like he did at the DA’s Office. Joshua compared the experience to his work later in life, concluding that “working for [the oil] industry involved talking with scientists and engineers and drafting comments, and there was stress about getting the comments in by a deadline. I’d ask, ‘When are comments due?’ They’d tell me, ‘In six weeks.’ I’d say, ‘Well, come and talk to me in five weeks.’ It felt like they had all the time in the world.”

New responsibility

Although Joshua truly enjoyed being a trial lawyer, he felt he didn’t subscribe to the prosecutorial ideology as much as some of his colleagues did, and he found the gravity of his job quite sobering. One night he was on call, and a patrol officer called with a question. It was about a domestic disturbance; the officer wasn’t sure if he should arrest the man or just make sure he found a different place to stay for the night. Joshua told him it was probably better to take the man into custody, but recalled that he was thinking about the case law purely academically. When he got to the office the next day, the file was on his desk. The patrol officer had written, “Contacted ADA Kindred, and based on his recommendation I arrested him.”

“I realized,” said Joshua, “that based on my recommendation, some guy had spent the night in jail. That was really jarring to me. I carried that feeling with me through much of my career, especially after I began prosecuting major felonies. I enjoyed my time in the drug unit — in that I liked the work and the people I worked with — but I think for a lot of prosecutors, the job takes a toll personally and time-wise — and a guilty verdict is what sets them

Continued on page 9

Judicial profile: Joshua Kindred, U.S. District Court Judge

Continued from page 8

right; it's like the emotional payback. I never had that."

It seemed that too often, after a lot of work and a guilty verdict, he would feel melancholy, not with the sense of doing anything wrong or unfair, but that the person he had just been sitting across from was now going to spend the next X number of years in prison. He found it hard to feel celebratory about such an outcome. As far as the trials themselves, however, Joshua never felt as at home as he did in the courtroom; being a trial lawyer really seemed to fit well with his strengths. It was a time of growth professionally, despite his struggle with the broader philosophical question of prosecution. He flourished as an attorney, particularly in regard to overall perspective and confidence in his abilities.

After spending six months in the DA's Office doing misdemeanors, Joshua was promoted to the Felony Drug Unit. He worked there for about a year, and then moved to Violent Crimes. He was a line attorney for about a year and a half before being named as the Violent Crimes supervisor.

He jumped into the deep end quickly. His third felony trial involved a homicide, which he feels was a blessing because it was so challenging right out of the gate. "Sometimes, though," he mused, "I think I could have benefited from a less-rapid ascension through the ranks." He remained in Violent Crimes for a while; there were many trials and plenty of work, and he found it rewarding. He felt he had a seat at the table for discourse with law enforcement about policy, and even up the chain of command in the Criminal division. He found "think-

ing about criminal law and criminal prosecution conceptually extremely gratifying."

One aspect of the job that Joshua found slightly tricky was supervision, as many of the people he supervised at the DA's office had been there longer than him and were far more experienced. He focused on finding ways to make the men and women in the division feel more valued, and to address their stress and workload. At the time, he still carried a fairly heavy docket of cases, but nearly a third of his job was administrative, and he came to enjoy it.

Around 2012-2013, Joshua had been out on two bad homicide calls in one week, and he felt "blank, empty. Not a bad mood, just sort of numb." He told his wife, Talitha (Tali), "I don't think I can be the kind of husband and father I want to be if so much of my emotional well is drained every day at work." They talked, and he decided that it was time to get out. Although he loved the job and the people he worked with, he realized that if he allowed himself to be wholly consumed by his job, any transition to something different would be too difficult. As he put it, "I had to decide, from a professional development standpoint, whether I was going to get out or make this my career. I came to the conclusion that I should try something new. And that decision sounds more simplistic than it was."

As he began to look around, a friend recommended that he apply for a legal position with the Alaska Oil and Gas Association (AOGA). It was unusual because despite growing up in Alaska, Joshua knew almost nothing about the oil and gas industry here — practically or legally. After the stress of the DA's Office, it sounded like a job that

would be unlikely to require serious emotional investment, so he interviewed. He felt the position might allow him to take the kids to school and pick them up, and ease some of the personal demands that he'd experienced at the DA's Office. He took the job and it turned out to be exactly that — it allowed him freedom to put energy and focus on his family as opposed to working late and on weekends. "I rarely thought about work when I was at home; it was a nice reprieve."

AOGA is a trade association that represents the oil industry in Alaska, and its members include most of the oil companies operating in the state. As counsel for AOGA, Joshua found himself enjoying the opportunity to delve into the Endangered Species Act, the Marine Mammal Protection Act, and NEPA (National Environmental Protection Act), and to satisfy his desire to learn. "It was almost like being in a law school course," he said. The oil companies would bring their issues to AOGA, and if they were legal or regulatory, they would fall on his plate.

The AOGA job involved meeting with scientists and engineers from the oil companies and going through regulatory packages, and discussing what was problematic or functionally impossible. Said Joshua, "Some of the packages would have a specific environmental objective. I'd look at it through a legal prism and write comments to the regulatory agency in charge. It seemed that the agencies and those being regulated were having two very different conversations; it was not about having intelligent discourse to produce a better regulatory product. I felt it would be better if there was more trust on both sides, but that could have been a byproduct of my naivete."

Because he had been a trial law-

yer and was comfortable with public speaking, he was also tasked with attending symposiums and speaking on a variety of issues. He traveled to Washington, D.C., a few times and testified in front of various Senate committees. "I learned a lot," said Joshua, "but I don't think it was a job that meshed with my personal ideologies." He stayed with AOGA for almost five years — late 2013 through June 2018.

Joshua found the AOGA was job somewhat unsettling because, unlike the DA's office, it had no organizational hierarchy in which he could move up. He was occasionally approached by law firms or oil corporations about a possible move, but never felt that another law firm job would be a good fit. Despite an occasional brief panic attack about the future, however, he said, "Fortune chose to smile on me once again." A colleague reached out and told him about a posting for a regional solicitor at the Department of the Interior.

Joshua applied and was hired after going through "a rather cumbersome multi-level federal process." He was interviewed by the Solicitor, Daniel Jorjani, and the then-Deputy Secretary of the Interior (now Secretary), David Bernhardt, who made the decision to bring him on. "I moved over there in June 2018. It turned out to be the best job I ever had."

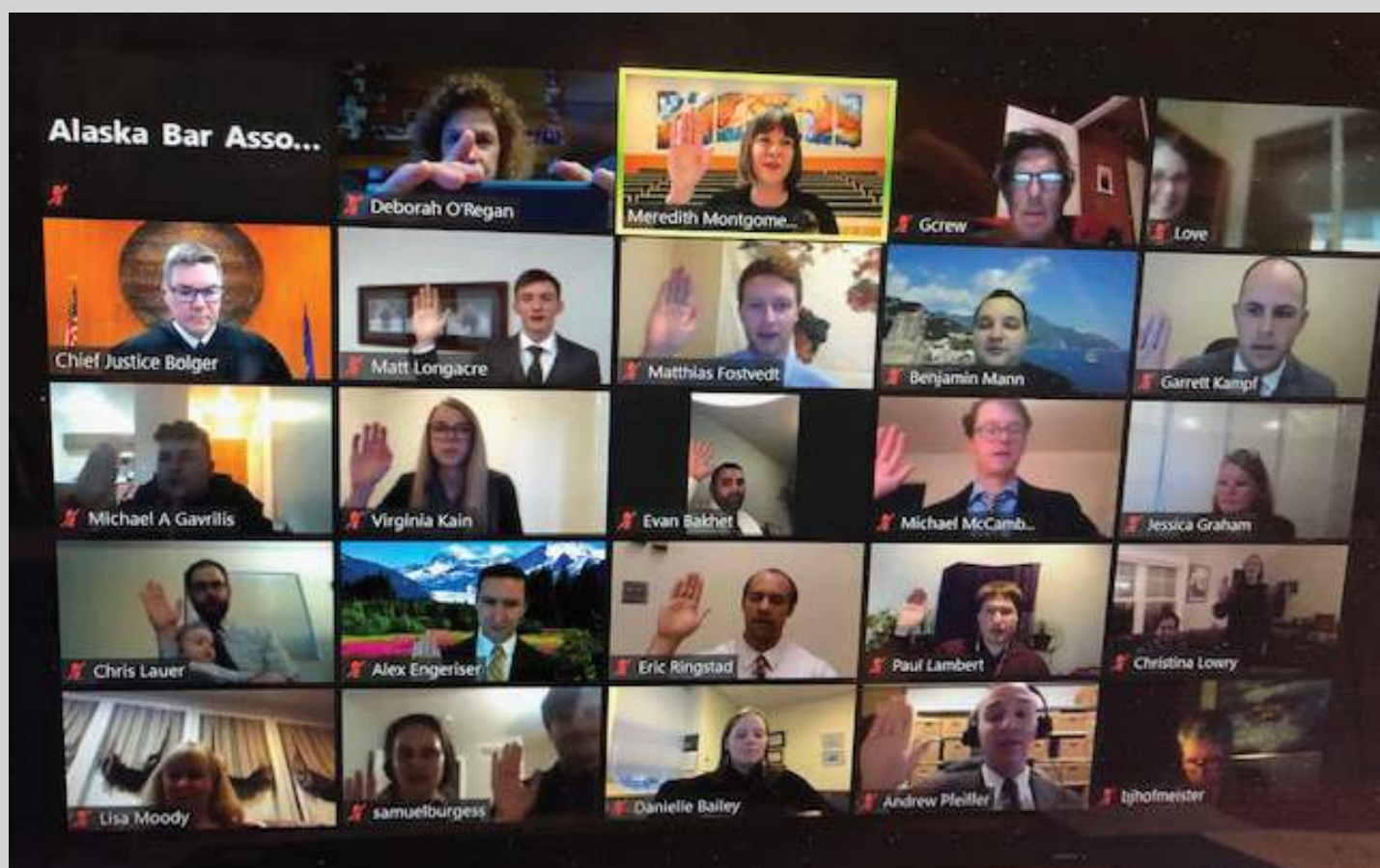
Darrel J. Gardner is currently Ninth Circuit vice president of the Federal Bar Association and, having recently relocated from Alaska to Spokane, he is the CJA supervising attorney for the Eastern District of Washington. Mr. Gardner is a past-president of the Alaska Bar Association.

NEXT PART 2: MOVE TO THE BENCH.

New members

Evan Bakhet
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 Michael A. Gavrilis *
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 Virginia Kain *
 Garrett Kampf
 Paul Lambert *
 Christopher Lauer
 John Matthew Longacre *
 Christina Lowry*
 Benjamin Mann
 Anna Marquez *
 Michael McCambridge
 Case Mohr
 Andrew Pfeiffer
 Jason Ringstad *
 Tylor Schmitt
 John Schroeder *
 Matthew Stinson *
 Jonathan Stinson *
 Emma Timan *
 Eric Watts

*Denotes United States District Court Admission



Virtual oaths: Court and Bar staff successfully organized what is probably the first of its kind — a swearing-in for new lawyers conducted through the remote communications application Zoom. Chief Justice Bolger presided over the virtual swearing-in of 29 lawyers at a ceremony Nov. 19, 2020. There were 136 people participating or watching the ceremony, which included new lawyers located across the country from New Jersey to California to Alaska. Some of the new lawyers can be seen raising their right hands as they take the Oath of Attorney.

In Memoriam

Advocate for Native American rights dies in Anchorage

Lawrence Alden Aschenbrenner, "Lare," 90, died Sept. 5, 2020, at home in Anchorage. He was born in Spokane, WA.

His book, published shortly before he died, tells the story of his work in the south during the Civil Rights Movement, "Civil Rights Lawyers in the South, The untold Story! The Movement, Its Lawyers and the Civil Rights Revolution."

He graduated from Grants Pass High School in Oregon. He then graduated from the University of Oregon and subsequently the U of O law school. He served in the U.S. Army during the Korean War, attaining the rank of corporal.

He was appointed Justice of the Peace in 1958, elected district attorney in 1960, and became Oregon's first public defender in 1964.

In the summer of 1967, Lare spent a month in Jackson, MS, as a volunteer attorney for the Lawyers' Committee for Civil Rights Under Law founded under President John Kennedy. He returned with his family in



Lawrence and Catherine
Aschenbrenner

January 1968 as chief counsel of the Jackson Office of the Lawyers' Committee, at the time the largest civil rights law office in the south.

Lare's focus shifted to the protection of Native American rights upon returning from Mississippi to Oregon, and he spent the next 34 years seeking to establish and protect the rights and powers of Native American Indians and tribes. He worked for the Native American Rights Fund (NARF) in Washington, D.C., and later opened a new NARF North office in Anchorage in 1984. Lare successfully confronted the federal government's discriminatory policy toward Alaska Natives. His work was instrumental in the federal government's recognition of 226 tribes in Alaska and included important and successful subsistence rights litigation.

In the early 1980s, taking a hiatus from working for NARF, Lare worked for the Navajo Tribe in Window Rock, AZ., and established their in-house attorney general office.

The Alaska ACLU honored Lare in 2002, with the Charlie Parr Lifetime Achievement Award for his lifelong commitment to advancing the cause of basic human rights for all people and his many years of public service. The University of Oregon Law School Alumni Association honored Lare in 2005 with the prestigious Frohnmayer Award for Public Service, which is bestowed on graduates whose public service bring honor to the school.

Lare was also an accomplished athlete. He ran the Boston and New York Marathons. His bicycle adventures included five week-long, 400-mile supported bike rides in Oregon and Washington. Lare enjoyed traveling, hunting and fishing with his sons, numerous friends in Alaska and throughout the world, and many friends who visited Alaska through the years.

Lare is survived by his wife of 67 years, Catherine "Katy"; their children, Ted (Caroline), Dan (Sandy), Connie and John (Mimi); and three grandchildren, Sam, Luke and Annykate.

There will be a memorial for Lare when circumstances allow. In lieu of flowers, donations can be made to the following causes: the Mississippi Center for Justice at mscenterforjustice.org, 963 Division St., Biloxi, MS 39539, phone 228-435-7284; the Native American Rights Fund, 1506 Broadway, Boulder, CO 80302-6217, phone 303-447-8760; and Save the Children.

Attorney, former legislator, dies

Donald Edson Clocksin died Sunday, Oct. 25, 2020, in Portland, OR. He leaves a loving family, a four-decade career devoted to social justice, and many tall tales about bears that will endure for generations.

Don was born July 8, 1944, in Port Angeles, WA. At Hoquiam High School, he was student class president, the captain of his football team, and — to the endless amusement of his family — voted "Mr. Courtesy." He graduated from the University of Washington for both his undergraduate and law school degrees.

Don moved to Juneau in 1973 — just 14 years after statehood — to work at Alaska Legal Services as a lobbyist and head of the Juneau office, providing legal aid to those unable to afford it. In 1980, he was elected to the State House, serving for six years, including two years as majority leader during Alaska's brief liberal revolution. He was also deeply involved in the American Civil Liberties Union as both president of the Alaska Chapter and an ACLU National Board member. He was a tireless advocate for the poor, politically powerless and rural Alaska.

Don was an avid and skilled outdoorsman, equally proud of his solo trip down the Yukon, ice climbing abilities and early REI member number. He could build a fire under any conditions — from frigid temperatures to pouring rain. After moving to Washington state in 1994, Don became an amateur boat captain, providing countless happy weekends for his family and only the occasional headache for the local Coast Guard.

A delightful storyteller, Don loved entertaining friends and family. He would often cook elaborate meals and bake beautiful pies. He was a lifelong gardener who was eternally struggling to grow lilac, his wife's favorite. The two spent decades traveling with their family, resulting in scars from both a local shark and a Malaysian jellyfish — all detailed in his 50 years of journals.

Don is survived by his wife, Betty, who he wooed on Dec. 30, 1975, when the power went out at the Red Dog Saloon in Juneau. Don was the only one with a flashlight.

He is also survived by his sister, Teresa; children, Bree (Drew), Teal (Chandni) and Caley; along with grandchildren, Annecy and Karti.



Clocksin

Attorney, arts supporter dies at 73

Rod Sisson died Oct. 15, 2020, at the age of 73. He was born in Tennessee in 1947, and grew up in Los Angeles, CA.

Rod practiced law in Alaska, California and Hawaii for almost 50 years. He started his career as an attorney for the Municipality of Anchorage where he conducted many jury trials in the public interest. After leaving municipal service, Rod's cases included criminal defense and then almost exclusively civil litigation.

He enjoyed thinking about and resolving complex legal questions.

Rod and Margret met in the artist village of Ein-Hod, Israel, and fell in love at. They married in Anchorage in 1985 and were inseparable throughout their lives. They opened a gallery named Hugi-Lewis Studio in Midtown Anchorage. The gallery space provided endless entertainments such as gatherings, literature reciting, concerts, dance lessons, lectures, and fashion shows. Rod was a big supporter of the art community and the Jewish community. He worked out all his life, dressed to the peak, loved to dance the Argentine Tango, loved Leonard Cohen. He knew how to win, and he knew how to lose. He lived life to the fullest.


Rod was a caring father, grandfather, and great grandfather.

He was preceded by his parents, Ray and Grace Sisson; and brother, John Sisson. He is survived by his wife, Margret Hugi-Lewis Sisson; his stepmother, Bette Sisson; his children, Daphne Ben-Sira, Jasmin Menashe, Ilana Amason and Robert Lewis and their spouses; and his 12 grandchildren and three great grandchildren. Sofie, the Yorkie- Poo and Izzi the Conor, had a special place in his heart.



Sisson

Former Juneau Superior Court Judge Rod Pegues (1932-2020) died November 21, 2020. An obituary will follow in the March Bar Rag.



**Association of Legal Administrators
Alaska Chapter
Salary Survey**

Survey Cost

Members who participated in the survey: \$100
Non-members who participated in the survey: \$150
Non-participants (members and non-members): \$275

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String of historic ‘senior dinners’ a victim of virus

By John Havelock

The virus wiped out the “senior” dinner this year. Too bad. Now 88, will I be there if the spring allows a 2021 reunion?

When I first went to one of these luncheons, it was called the Territorial Lawyers dinner and there were a lot of them. Last time I saw the immortal Charlie Cole from Fairbanks, a fellow ex-AG and one of the good ones and maybe a couple more true Territorials.

As statehood broke, the Territorial lawyers were not very friendly. Inquiries to the association were met with replies that there was no room for more lawyers. The bar exam was fixed to require a year’s residence. The annual winter of ’59 exam failed more than half, including several sons of resident lawyers. This stimulated a widely supported petition for a summer exam. The association apparently yielded but ended up grading the exam around the time of the winter exam and we petitioners had the hollow advantage of being admitted two weeks before the participants of the winter exam.

Our Young Turks “revenge” was to elect me to the Board. The Board promptly adopted a bylaw to the effect that you had to be a member for five years before you could run for the board. The annual meeting followed soon. I will never forget the blast at the board from Cliff Groh. The amendment was unanimously voted down.

The folks who drafted the state’s constitution did a pretty good job — probably the best American state constitution — in 1959. But nobody’s perfect and times change. As I argued in my book on the topic, one of the fixes that would improve the Alaska Constitution would be the creation of an Office of Inspector General, appointed similarly to our judges. The Inspector General would take on internal investigations of legislative and executive allegations of misconduct, as well as election management, the public defender’s office and anything else that does not fit gubernatorial management. This would leave the AG to operate as the director of civil and criminal litigation, advisor to departments and the office of the governor on executive management.

The emphasis is on “office of” as Charlie and I both did which allows independent, lawyerly management of the state’s civil and criminal law responsibilities. Our system is already a huge improvement on the miserable system of elected D.A.s etc. that burdens most of these functions in the rest of the country. The easy campaign is to be “tough on crime” which accounts for our massive over-incarceration.

Just in case I don’t make that dinner, (and just in case I wasn’t invited to speak again) I have a couple of notions to get off my butt that have been bothering me for years and a few historical observations dating from my arrival in 1959.

The Bar in those early years was a bunch of guys who would meet weekly for a two-hour lunch in bars or the Elks in Fairbanks, Anchorage, Juneau or Ketchikan. Most civil stuff and much of the criminal was settled in these meetings with maybe no more than the filing of a complaint. The skill set that went

with this style was important but did not involve a deep knowledge of law.

Everyone went to the annual bar convention. Law offices were all closed. We all knew each other — maybe a hundred lawyers or so, not all regular law school grads. Alcohol flowed over the whole meeting, making for some interesting exchanges, best left to the times.

After Peter J. Kalamarides went to the court, in the mid-sixties, I took over the administration of the bar as a part-time job — that was the whole thing, including admissions, discipline, education seminars, even some litigation. That all changed when I went to D.C. in ’67.

New court buildings were built with thick concrete benches for the judges to duck behind. And here is my first complaint. I was brought up to consider lawyers as “officers of the court.” Not sure what that means practically but the dignity of it disappeared when employees got a free walk into the court building but lawyers had to go in with the

general public and accompanying search. Surely a card and a rule not to bring firearms would have been sufficient. I wonder also whether angry-crazy litigants are not now ready to shoot up supermarkets rather than express their anger in the court room.

Though I have plenty of gripes with some U.S. Supreme Court decisions, one in particular allowed for lawyer degradation through joining the slough of commercial advertising. Professions should not advertise. Advertisement always carries with it some level of misrepresentation as well as creating a firm cost to be recaptured from the consumer. Find your lawyer through talking to friends and a call to the association.

That’s enough. So I’m out of the game now, but if the Bar Rag will tolerate, I will drop in a brief now and then.

John Havelock is an Anchorage attorney and university scholar. In a long legal career, he has served on the Board of Governors, as del-



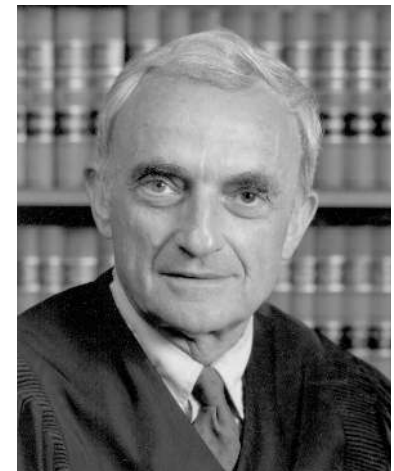
John Havelock

legate to the American Bar Association, Bar Association administrator (once it took only part of one person’s time), professor and founder of University Justice programs and attorney general in Gov. Bill Egan’s administration.

Call for nominations for the 2021 Jay Rabinowitz Public Service Award

The Board of Trustees of the Alaska Bar Foundation is accepting nominations for the 2021 Award. A nominee should be an individual whose life work has demonstrated a commitment to public service in the State of Alaska. The Award is funded through generous gifts from family, friends and the public in honor of the late Alaska Supreme Court Justice Jay Rabinowitz.

ALASKA BAR FOUNDATION



Jay Rabinowitz

Nominations for the award are presently being solicited. Nominations forms are available from the Alaska Bar Association, 840 K Street, Suite 100, P. O. Box 100279, Anchorage, AK 99510 or at www.alaskabar.org.

Completed nominations must be returned to the office of the Alaska Bar Association by March 1, 2021.

The award will be presented at the 2021 Annual Convention of the Alaska Bar Association.



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2020 Recipient



SENIOR JUSTICE
DANA FABE
2019 Recipient



VICTOR FISCHER
2018 Recipient



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ELAINE
ANDREWS
2017 Recipient



JAMES E.
TORGERSON
2016 Recipient



SENIOR JUDGE
MICHAEL I. JEFFERY
2015 Recipient



JANET McCABE
2014 Recipient



KATIE HURLEY
2013 Recipient



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2012 Recipient



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GREENE
2011 Recipient



BARBARA J. HOOD
2010 Recipient



ANDY
HARRINGTON
2009 Recipient



JUDGE SEABORN J.
BUCKALEW, JR.
2008 Recipient



BRUCE BOTELHO
2007 Recipient



LANIE FLEISCHER
2006 Recipient



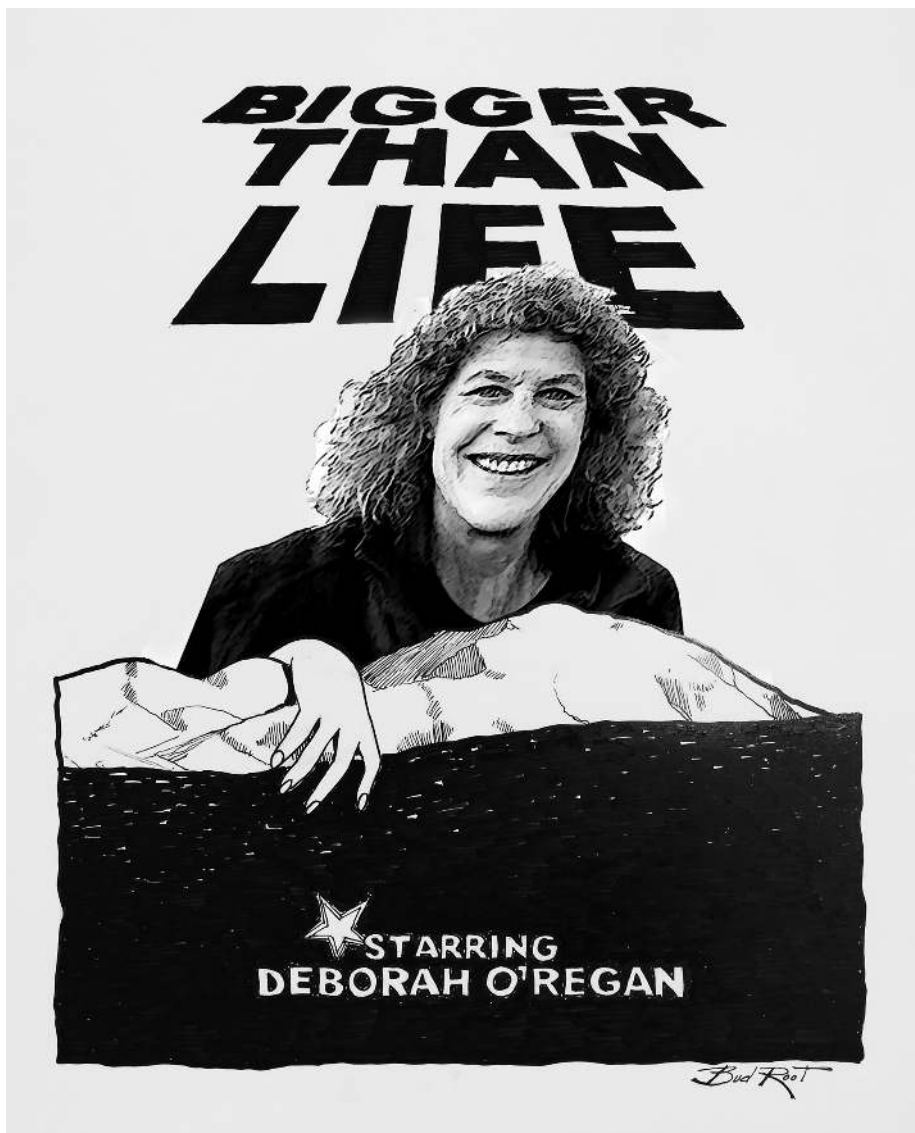
JUDGE THOMAS B.
STEWART
2005 Recipient



ART PETERSON
2004 Recipient



MARK REGAN
2003 Recipient



A rare photo of Deborah O'Regan sitting still.



Former Board member and Bar President Don McClintock and Deborah at the 2012 Convention.



Deborah shares the head table with former Bar president Susan Cox in 2017.



Deborah socializes with Justice Sue Carney and Bar member Stacey Walker at the 2015 Bar convention in Fairbanks.

Bar association has thrived with Deborah at the helm

Continued from page 1

preserved, and I took on the mantle of president-elect that day.

But this was nothing compared to the history President Brown made at this same meeting when, once again, he was called upon to break a tie. You see, Deborah O'Regan was not the only applicant for the executive director position. There were two other very qualified applicants from out of state interviewed that day. When it came time to vote, once again, it was a five-to-five tie, and, once again, it was up to President Brown to break the tie. His vote for Deborah put the matter to rest and set the stage for the next 35 years.

In the years and decades that followed, Deborah proved to be an outstanding executive director. The Bar never stopped progressing under her direction, and Deborah never stopped smiling.

There have been 67 Presidents of the Alaska Bar Association, begin-

ning in 1955. Deborah has trained and guided the last 35 — that is more than half. And somehow Deborah made every one of these presidents think they were in charge, when in fact they just followed her lead. Amazing what a smile can do. The Bar Rag is the same. Deborah has been the heart and soul behind this publication for decades.

When Deborah first started, the Bar Association offices were located at Fourth Avenue and K Street. From there, they moved to 310 K Street (the whale building) and then, in 1992, moved to Peterson Towers at 510 L Street. Then it was on to the Atwood Building and finally, in 2012, the Bar office moved to its current location at 840 K Street, on the park strip. The Bar bought this building in 2020 and likely will reside there forever. In 1982, when Deborah first started with the Bar Association, there were roughly 2,000 members of the Alaska Bar Association. Today there are more

than 4,500. At least 70 bar examinations have been conducted under Deborah's watchful eye, and the Bar Association has continued to grow strong and well, directed by Deborah's steady hand.

When Deborah became executive director of the Alaska Bar Association, there were eight employees — now there are 17. Only four secretaries in the office, and the controller, had computers on their desks. Communication was by telephone and yellow pad, and phone tag was a common experience. Then, in 1987, the Bar got its own fax machine. From there, technology caught on as Deborah led the Bar Association into the 21st Century.

Deborah worked with Bar Counsel Steve Van Goor for 32 of her 35 years as director. Steve used to say, "If I don't remember it, and Deborah doesn't remember it, it didn't happen." And it probably didn't.

And not only has the Bar functioned well under Deborah's leadership, but the Bar Conventions have attracted some top-quality speakers, including six United States Supreme Court Justices, and have always been exceptional. Throughout it all, the Bar Association has continued to adhere to the highest professional standards.

It has been said that "some people come into our lives and quickly go; others stay for a while and leave footprints on our souls, and we are never the same."

Deborah O'Regan has contributed more to the Alaska Bar Association than any other human being. Her footprints will remain imprinted indelibly on the history of the Bar and we will always be the better for it. Thank you, Deborah, for a job well done.

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



Deborah poses with a plaque given to her during a BOG Zoom meeting Oct. 26, 2020.



Deborah O'Regan and Bar members receive their 25-year pins at the 2007 convention.

“

... Deborah proved to be an outstanding executive director. The Bar never stopped progressing under her direction, and Deborah never stopped smiling.

”



Bar Presidents join Deborah O'Regan for a photo at the 2007 convention (Standing L-R): 1994-1995 Justice Daniel Winfree; 1982-1983 Judge Andrew Kleinfeld; 2007-2008 Matt Claman; 2005-2006 Jon Katcher; 1998-1999 Will Shendel; 2005-2006 John Tiemessen; 2004-2005 Judge Keith Levy; 1986-1987 Judge Ralph Beistline; 1989-1990 (Seated L-R) Jeff Feldman; 1983-1984 Mary Hughes; Executive Director, Deborah O'Regan; 2001-2002 Mauri Long; 1993-1994 Judge Phillip Volland; and 1988-1989 Judge Larry Weeks.



Socializing at the 2019 Bar Convention – former Bar Counsel, Nelson Page, Bar member Colin Middleton, Deborah O'Regan and Bar staff, Louise Driscoll, Mark Woelber and Holly Rhoden.



Deborah and Mark Woelber share a moment at the 2018 convention.

Past presidents recall their years with executive director

As Executive Director Deborah O'Regan moves on to retirement, several former Bar presidents offered their sentiments on her tenure with the Alaska Bar Association.

Jeff Feldman (1989-90): It's tough to think of a worse job than running an organization of lawyers. Let's face it. We're pretty demanding and high maintenance. That Deborah could successfully run the Alaska Bar Association for a period that was longer than many lawyers' entire careers is as amazing as it is impressive. If you added up the years of service of all of the association's executive directors who preceded her, it's still less time than the period of Deborah's stewardship of the organization. I worked with Deborah for six years as a member of the Board of Governors, and for one year as president. She unfailingly was supportive, helpful, kind, smart and patient. I enjoyed working with her, and appreciated the many times she rescued me from a bad decision or response, as well as her ability and willingness to make me look better than I deserved.

The year I served as president, the Bar undertook what became known as the 1990 Northern Justice Conference. We invited a large group of lawyers and judges from Russia, several Scandinavian countries, and the northern provinces of Canada to a conference in Anchorage. It seemed like a good idea when the planning started a couple years earlier. As the months unfolded, and the problems and challenges expanded, it became less clear that was true. Access to Russia still was limited in the run up to 1990, and simply arranging for the participation and transportation of the Russian delegation required a combination of international diplomacy and American street smarts. Deborah had both. The conference mostly was held at the Performing Arts Center, and because the participants spoke different languages, we had to have the PAC wired with headphones and UN-style simultaneous translation for all of the attendees. Done. We had arranged for several prominent journalists and jurists to serve as program moderators, and they all needed care and feeding. Check. And the Russians ... well, suffice it to say that they needed to be kept well stocked with vodka. Check, check.

Somehow, against all odds and logic, Deborah and her team pulled it all off without a glitch or stumble. The conference was emblematic of the clear-eyed, no drama, sound judgment and sharp competence that Deborah brought to the job year after year. And a generation and a half of Alaska lawyers owe a debt of gratitude to her for steering the organization so ably these past many years. Thanks Deborah, for taking good care of us. You'll be missed.

Judge Andrew Kleinfeld (1982-83): (Deborah) has been the best executive director we ever had. She professionalized the office. She also made the Bar much more pleasant to deal with than it had ever been. I guess her idea of superior administration included more pleasant administration. She was right, and she did a wonderful job. We are so fortunate to have had her.

Mary K. Hughes (1983-84): Deborah's tenure is truly remarkable and I am honored to be requested to lend my voice to those of Alaskans most grateful for her service to the Alaska Bar Association and the State of Alaska. I was a member of the Board of Governors from 1981-1984. During my tenure, Deborah began her service to the Alaska Bar Association in 1982. She was a tremendous addition, smart, articulate and so enthusiastic. Her title was assistant executive director/CLE director. As president-elect (1982-83) and president (1983-84), I collaborated with Deborah and Executive Director Randall Burns (who ably served the Alaska Bar Association from 1979 to 1985). It was an era in which the Bar grew in membership as Alaska's oil pipeline provided economic opportunity (for Alaskans and many from the lower 48 states). It was an exciting time and one in which there seemed to be no limit on good ideas.

The Alaska Bar Foundation, incorporated but dormant, became the depository for IOLTA funds. Those funds have been distributed for years, serving many economically disadvantaged Alaskans. Many years later, the Alaska Bar Foundation was again the depository for funds; more than \$1.2 million made available to Alaska through a 2014 settlement on mortgage-related litigation between the U.S. Department of Justice and Bank of America Corporation. Over the years, as trustee and president of the Alaska Bar Foundation (1984-1998) and as trustee (2001-2007), I marveled as Deborah always knew the status of fundraising and IOLTA accounts. She was also in touch when a potential donor or project appeared. Always with foresight, she led with grace and confidence.

There are so many occasions that Deborah made even more memorable. One was the Bar's recognition of Daddy's (John C. Hughes) 60 years of membership. The 2007 convention was in Fairbanks so Daddy and I flew to Fairbanks, visited Bernie Carle at Chena Hot Springs, met with our first "Patti Ann" scholar, walked fondly about the University of Alaska campus (viewing classes convening in the sunshine on Cornerstone Plaza), and, after a full two days, attended the Alaska Bar Convention dinner at the Westmark during which the awards were to be announced. Deborah warmly greeted us, chatted with Daddy and endeared herself to him. She was the perfect host, intuitively bonding with guests, even a nonagenarian. Every so often my spouse and I would run into Deborah and Ron in the Chugach Mountains, as both couples enjoyed a trail hike among Alaska's beauty. On each encounter, Deborah always, with a smile, shared recent news of mutual friends or activities. Those wonderful encounters made our hikes even more special.

Deborah's composure, intelligence, temperament, savvy and love for Alaskans and Alaska ensured that once she was at the helm, the Alaska Bar Association was in capable hands and Deborah had found a professional home. Alaskans were fortunate. It is not often that such a match endures for nearly four decades. Alaskans are grateful and thankful for Deborah's dedication and commitment.

Justice Daniel Winfree (1994-95): Currently Justice Daniel Winfree of the Alaska Supreme Court. Prior life: president of the Alaska Bar Association 1994-95, BOG 1990-96, 2000-03. I look back on my president's year with great fondness, primarily because of Deborah. She was incredibly hard-working, always positive, and a joy to work with for all my years on the BOG. More importantly, she's a wonderful person and a great friend.

Nelson Page (2015-16): I had the good luck to work with Deborah in every possible capacity over many years. My observations about Deborah were consistent throughout: organized, friendly, accessible; devoted to delivering service to the members of the bar; no-nonsense, knowledgeable, practical; caring, fun and a pleasure to be around. This was true whether she was working with me in my capacity as a general member of the bar, as a person active in bar committee work, as a member of the Board of Governors, as president of the Board of Governors and, ultimately, as Bar Counsel.

The job of executive director of any organization can be tricky. This is especially true if the organization is made up of and run by lawyers. Each of us pays dues that may seem exorbitant, to an organization that controls our ability to make a living and has the power to take that ability away. When I was appointed to the Board of Governors I got to see how Deborah addressed the many demands — some of them entirely

unreasonable — that were constantly placed on her by our esteemed colleagues.

When I became president of the Board of Governors I was impressed by how well she juggled the need to make sure that my exalted powers were recognized and respected, while at the same time making sure that I did not make a fool of myself, or the Bar or the bar staff. I admit that it was sometimes a close-run thing. But she was respectful of my thoughts and proposals, no matter how half-baked they might have been. She was always gentle in her advice. I always thought that she was in my corner, which included both helping me get things done and keeping me from running off the rails. I hope that I did not make that job too difficult for her. From my perspective on the Board of Governors, she was the perfect executive director. When I became Bar Counsel my perspective changed and I got to really see how the sausage was made. And, strangely enough, there were no real surprises. The staff was competent, well trained and happy. Everyone pretty much knew what they were supposed to do and did it well. People were courteous and fun to be around. And the work got done as needed and on time. I still consider the bar staff to be friends and close colleagues. I enjoyed coming to work every day. This is a good group of people, with real depth of experience and knowledge, and they reflect extraordinarily well on Deborah.

Continued on page 15

Congratulations Deborah

Continued from page 1

to over 4,000 members. Along the way, Deborah has embraced the new technology that enabled and continues to enable a small staff to get the important work of the Bar done. She remembers a WANG disk drive that was as big as a washing machine and the relatively primitive workstations that stared back at you in light colored letters on a green screen. The advent of PCs in the late 90s and their rapid development since then has enabled the Bar office to function in this difficult time with staff having to work from their homes.

- There was always one unspoken rule when talking to Deborah. You never ever called her anything but "Deborah." I can still see that face crumple when a Bar member might call her "Deb" or "Debbie" on a conference call or during an office visit. I know that the Bar member meant no disrespect, but there was no doubt that Deborah was "Deborah."

- A number of innovative Bar programs either came into being or were shepherded along during Deborah's 38 years: the Substance Abuse Committee later renamed the Lawyers' Assistance Committee; the Pro Bono Program; the Fair and Impartial Courts Committee; Bar Exam Tutors, and Law Related Education and others I've no doubt let slip my memory. It was often said that a Bar president could only really try to accomplish one or two new things during his or her presidency. But, whatever that important idea was, the president could count on

Deborah to make it happen.

- Deborah balanced her work life with her home life raising Katie and Ryan with husband Ron and enjoying the outdoor activities that Alaska has to offer. Not content to limit her adventures to the states, Deborah and Ron have even trekked in Nepal. I know what you're thinking, but I assure you that Deborah has the slides to prove it. Come on, how many executive directors do you know that have trekked in Nepal?

- It can be safely said that Deborah not only knows everyone in the Bar, but everyone knows her. All told, the Alaska Bar Association could not have been better served than by an executive director of Deborah's caliber. I join her staff and all our Alaska colleagues in the Bar in wishing her nothing but the best for a wonderful retirement and her new adventures. Congratulations, Deborah!

Steve Van Goor served as Bar Counsel for the Alaska Bar Association from 1983 until 2015. Prior to his work for the Bar, he served as a military lawyer (JAG) in the U.S. Army and was in private practice in Anchorage. In addition to the Alaska Rules of Professional Conduct Committee, he was a member of the Ethics Committee and regularly provided informal ethics guidance to members of the Bar. He was a frequent CLE speaker on ethics and professional responsibility issues. He is a 1975 graduate of the University of Kansas Law School and is admitted in Alaska, Kansas, Colorado, and Arizona.

Past presidents recall their years with executive director

Continued from page 14

rah's leadership and management style. We were so lucky to have her for so many years and we will miss her. But if anyone deserves commendations and congratulations for an exemplary career it is most certainly Deborah O'Regan. Well done! We'll miss you! Have fun!

Mitch Seaver (2008-09): My favorite recollection is rafting down the cool waters West Branch of the Clark Fork River with Deborah on a 100-degree day in Montana.

Jonathan Katcher (2005-06): The Alaska Bar Association has been among the most important and satisfactory elements of my life as a lawyer. In my many interactions with the Bar I have found the staff to be uniformly professional, courteous, competent and gracious. These qualities of Bar staff are the direct result of Deborah O'Regan's leadership.

The Bar is more than a governmental entity that regulates the legal profession and promotes the advancement of justice. The Bar is a culture. The history, richness and depth of that culture serves to enhance the quality of life for every Alaskan. Deborah has been a key nurturer of that culture. It's hard to imagine the Bar without her. But thanks to her many, many, years of exemplary leadership, the members and the public can know that the Bar will carry on.

I wish Deborah the very best for her well-deserved retirement.

Matt Claman (2007-08): Deborah was an expert at balancing her position as the executive director who managed all of the day-to-day operations of Alaska Bar with providing advice to the Bar president in their work as Chair of the governing body. She knew how to make me, as Bar President, feel like her idea was really my idea. Our success during my term as President of the Board to work with the Alaska Supreme Court to approve a mandatory ethics CLE rule, adopt a pay-as-you-go structure for annual bar dues, and host the most-attended bar convention in history with Justice Ruth Bader Ginsburg as the keynote speaker was grounded in Deborah's guidance and wise counsel. The lessons I learned from Deborah O'Regan have served me well on other boards and continue to serve me well in state government.

Deborah brought unmatched knowledge of bar history, a commitment to excellence, and an everyday understanding that people are precious to her work as executive director. We were lucky to have her for all these years. Thanks again!

Bruce Weyhrauch (2000-01):
O'Regan came North
A director herding cats
With a smile and wit

Mauri Long (2001-02): Deborah: Thank you for your understated strength, plain speech and gentle guidance. You led us all through many challenges drama free and created, through your vision and choice of the best and brightest staff, a strong and independent bar association that meets the highest standards in the land. Thank you for your grace-filled service.

Geoffry Wildrige (2014-15): On the eve of her retirement, I am pleased to have this opportunity to express my thanks to Deborah O'Regan for her many years of service to the Bar and the people of Alaska.

Sadly, many lawyers don't know of the importance of the Alaska Bar Association. Or of the enormity of Ms. O'Regan's contributions to its evolution and effective operation during her long career as its executive director. But in fact, we should all know that we are extremely fortunate to have a bar association that serves our profession and the public so very well. That's Deborah's legacy. For many years, I was among those who took the Bar Association for granted. As a long-time public defender and private criminal defense attorney, I had been focused on the representation of my many clients. And when I sought election to the Bar's Board of Governors, it was prompted by a related concern: I was upset about the Board's initial failure to support the amendment of the ethical rule concerning the obligations of prosecutors.

As a member of the Board of Governors, however, I soon learned that my world view and understanding of the Alaska Bar Association's importance had been far too limited. The Bar Association plays an integral role in promoting our competence and ensuring our profession's integrity, matters of the utmost importance to the public we serve. It is charged with the promotion of needed reforms in the law, and with facilitation of the administration of justice—including equal access to justice. It recognizes the importance of the law and lawyers to Alaska's social fabric, and is committed to service to our community through the law.

And as a Board member, I soon learned the value of Deborah O'Regan's leadership in the effectuation of these important goals. The day-to-day operation of the Bar Association is, to put it mildly, a complex task. It involves not only a comprehensive understanding of the Bar Association's broad objectives, but effective management of staff and the resources needed to accomplish those objectives. Administration of the bar exam (including Alaska's recent transition to the Uniform Bar Exam); overseeing continuing legal education; providing support to the many bar committees and sections; promoting the Bar's pro bono program; directing public education and outreach efforts; assisting with the organization of the bar convention; and of course, providing guidance to the Board of Governors: These are but a few of the myriad responsibilities Deborah carried out flawlessly as executive director.

My appreciation for Ms. O'Regan grew enormously during my time on the Board, as a result of having had the opportunity to work with her. This was particularly true during 2014-15, the year that I served as president. Deborah embodied our institutional memory, which was pretty amazing. She knew how to get the job done. I am grateful for her friendship and guidance, which were invaluable.

My appreciation for Deborah O'Regan continues to grow. There are no superlatives sufficient to describe Deborah's integrity and com-

petence, or her commitment to the Bar and the public we serve. Alaska's lawyers and all those devoted to the rule of law owe her our gratitude.

Thank you, Deborah. You have left us a very impressive legacy. I wish you the very best in your future endeavors, wherever they may lead you.

Rob Stone (2019-20): I still remember my first significant interaction with you. I went into the Bar office in 1995, at Judge Singleton's suggestion, and introduced myself to you. Not surprisingly, you remembered me from the 1994 bar examination. I later learned that this was not unusual; you remember all bar applicants. I asked whether I could sit in on the Board of Governor's meeting. You were so kind and generous with your time, explaining to this baby lawyer law clerk how the Bar operated. And this was the beginning of me getting to know you over the next 25+ years, first as the Young Lawyer Liaison, then as a member of the Board of Governors, and then finally, as the last president to have the pleasure of finishing my term working with you. It has been an honor!

Whether you ask an attorney, judge, court employee or anyone else with a connection to the practice of law, the name "Deborah O'Regan" is synonymous with the "Alaska Bar Association." For the past three-plus decades, you have gracefully molded the Alaska Bar Association into one of the most highly regarded bars in the nation. It is abundantly clear, when we travel to national conventions, that other bar leaders

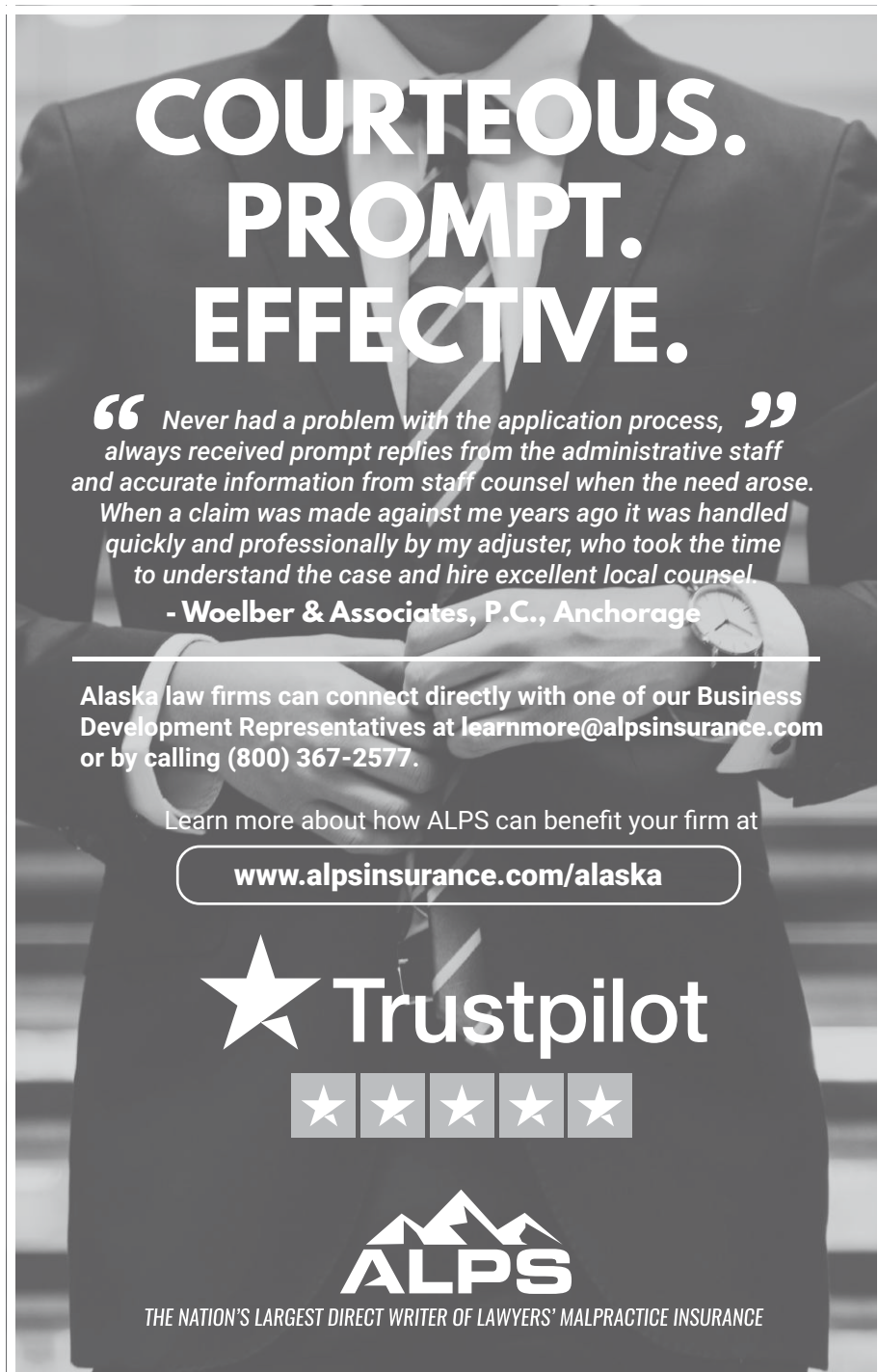
look to you for guidance and wisdom. Your leadership and character have earned you this respect. You have created a true legacy, both within and outside Alaska.

I feel very fortunate to call you my friend. I look forward to our continued friendship, as you and Ron travel and enjoy your well-deserved retirement. We'll keep in touch and continue to share pictures of fish and wildlife. Blue Skies and Tailwinds!

Harold Brown (1984-85): Deborah O'Regan has dedicated the last 35 years of her working life as executive director of the Alaska Bar Association. Through her dedication, perseverance, and intellect, she has converted the Alaska Bar Association into one of the most successful, truly independent, State Bar Associations in the United States.

Before starting her journey as executive director, she served as director of CLE for the Alaska Bar Association. In 1985, at the time of her appointment as ED, I was serving as president of the ABA Board of Directors. The lengthy process of selecting the most qualified candidate ended in a tie vote by the board. As president, I only voted in the event of a tie. No muse whispered in my ear. I received no premonitions of what she would achieve over the next 35 years. But, she was a terrific CLE director and a well-qualified candidate and, in my opinion, a qualified candidate already working for the ABA deserved a chance to become our executive director.

I voted for Deborah O'Regan demonstrating, once again, how important one vote can be. She will be missed. God speed.



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Virus creates a perfect judicial storm in Alaska

By William R. Satterberg Jr.

I enjoy movies. I even took a week-long screenwriter's class once so I could produce an epic. To date no epic has resulted. But I did learn a lot about how to present a trial. After all, a trial, in essence, tells a story just like a movie tells a story. One of the keys to presenting a case is to find the correct story line, develop your characters, and present the case in the manner of an opening, middle and closing. The same sequence exists in most screenplays with 20 minutes devoted to an opening, the middle devoted to story development, and the final 20 minutes devoted to closing. Some of my trials have been dramas. And some have been comedies.

Movies have entertained me quite well over the years. I keep going back to some movies like *Animal House*, *Caddyshack*, *Happy Gilmore*, *Paul*, and that timeless classic, *Deep Throat*. Yet, I have never watched *On Golden Pond*. Nor have I watched *Schindler's List*. Both are much too serious.

One movie that I did find interesting was *The Perfect Storm*. For those who do not know the movie, it deals with a storm which historically was one of the largest storms on the United States' east coast and the fate of a fishing boat, *The Andrea Gail*. Over the years, *The Perfect Storm* title has also become synonymous to explain how cer-

tain parts of a puzzle can come randomly together to produce a unique catastrophic result.

For example, there was once a tsunami in Southeast Alaska which literally tossed a wave hundreds of feet up the side of a mountain in a small bay. A fishing boat was in that vicinity at the time and experienced the event first hand, with no loss of life contrary to those who perished on the *Andrea Gail*.

And then there have been other notable catastrophes such as Krakatoa, Typhoon Yutu, the San Francisco earthquake, and The Dallas Cowboys. To me, the legal profession is no different. Unanticipated catastrophes can and sometimes do occur — such as Coronavirus-19.

It is well-known that the number of judges and district attorneys tasked to administer cases in Alaska judicial districts do not have the depth to handle the load in the event that all cases were to proceed to trial within the required deadlines. Rule 45, otherwise known as the "Speedy Trial Rule" or "120 Day Rule" mandates that a defendant has the right to have his or her case dismissed if 120 days have elapsed without a trial occurring. But there are many exceptions. In fact, the ex-



Over the years, *The Perfect Storm* title has also become synonymous to explain how certain parts of a puzzle can come randomly together to produce a unique catastrophic result.

ceptions to Rule 45 are now so numerous that Rule 45 is virtually a nullity. Exceptions to Rule 45 exist in motions being filed, requests for extensions being filed, material witnesses being unavailable, announcing changes of pleas, or sometimes, apparently, possibly even judicial whim.

That said, a former associate of mine, Tom Temple (now a Fairbanks Superior Court judge) actually was twice successful in having cases dismissed for violation of Rule 45 during his 14-year tenure at my office. Sadly, I have never been so lucky. True, I arguably did have one case several years ago that had violated Rule 45, but I made the mistake of filing the dismissal motion on the 120th day of delay. As such the court ruled I had tolled the deadline. Never again.

But, that does not mean that cases do not need to be resolved. In order to accomplish criminal case resolution, the court has a proceeding known either as trial call (if you live in a civilized environment like Anchorage) or calendar call (if you live in Fairbanks). Personally, I prefer to refer to the event colander call, since the court sifts through the cases. At calendar call, three options exist:

1. We need more time.
2. We have a deal.
3. We are going to trial.

Realistically, those are the only three options. Of course, certain whining does take place at calendar call when defense counsel bemoans the fact that the district attorney has not provided discovery in a timely manner (a regular occurrence). Or when the district attorney announces (relatively often) that it has witness availability problems even though it had previously represented that the case was good to go. In some respects, calendar call can be likened to a modern-day version of *Romper Room*. Attorneys struggle to resolve cases, with the in-custody defendants in their yellow pajamas getting to go first. After the in-custody defendants have been addressed, it then becomes a free for all with respect to the out of custody defendants. Of course, there

are times when defendants simply do not show up for calendar call. Bench warrants are then issued. Nevertheless, the weekly proceedings do move cases forward.

A sorting out mechanism exists at calendar call. The first category are cases that are obviously losers that everybody recognizes. I have always felt badly for the public defenders who are assigned to any losers whom a client insists be tried.

The second category are those cases that arguably have a chance of survival. In these cases, negotiations are most fruitful and delay can have advantages for both sides. So, again, it is a sorting process. Both the prosecutors and defense counsel try to work out reasonable resolutions. Various considerations exist, including the seriousness of the crime, the nature of the defendant's behavior, the defendant's prior faults, and whether the case was properly prepared for trial.

Finally, there are the clear winners (clear losers from the prosecution's perspective). In these cases, the defendant has every reason to go to trial in front of a jury. Those are cases the prosecution looks at more closely and usually offers a compromise deal, but rarely a dismissal. Even if the case is a clear-cut winner for the defense, the expectation of the prosecutor often seems to be that some blood must be spilled, much like a Gurkha soldier who, once drawing their blade, must draw blood. Ethically, clear losers should be dismissed by the prosecution, or, better yet, never even filed regardless of whether or not the arresting officers object.

Admittedly, the system is not perfect. But it works. Or at least it has worked rather well until more recently.

There have always been complaints about trial delays. Under the Alaska's Victim's Rights Act, alleged victims (complainants, accusers, etc.) have a right to have the case decided in a timely manner. This is weighed against defendants' rights to have due process when they are facing serious criminal sanctions. So, a balance must be struck.

I remember another movie where generals sat on their horses on opposing ridges watching a bloody battle unfold in a valley below them.

Continued on page 17

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Virus creates a perfect judicial storm in Alaska

Continued from page 16

As the generals sat astride their magnificent steeds, commenting eloquently about the progress of the battle, those in the field became gruesome cannon fodder. It was a sad commentary. Yet, this is the way it has been for many years in many walks of life. Those in high places have the luxury of safely sitting by and giving life-altering directions while watching those struggling to comply below. Sort of like an executive order to cut the budget, regardless of the consequences.

To draw an analogy to the court system, one has the supreme administrators on lofty heights watching the damages unfold below in the district and superior court trenches. The parties are being ordered over the top and into trial, regardless of case status, in order to maintain consistency. Ralph Waldo Emerson once wrote, "A foolish consistency is the hobgoblin of little minds, adored by little statesmen and philosophers and divines." (My Dad used to love that quote.)

Having decided that cases were not being resolved as quickly as desired, an edict was issued that all district court cases must be resolved within six months. On paper, the concept had cause. In reality, however, it set the stage for the perfect judicial storm in Alaska's trial courtrooms.

I have empathy for the judges charged with administering calendar calls. They now sit at the bench and order that trials must be resolved within six months in accordance with the edict. But what has failed to be appreciated is that there are only so many judges available, so many prosecutors, and so many defense counsel, not to mention juror parking spaces. And, in reality, there are far more defense counsel available than prosecutors, judges, courtrooms or possibly even parking spaces.

So, what has developed is a classic clogging of the system. In the past, I have witnessed attorneys announce that they are ready for trial with judges struggling to figure out who will cover the cases, how many days remain available under Rule 45, and whether or not there are any legitimate excuses to delay the case. I recently sat in a felony calendar call which had six cases announce ready for trial. The court confessed that it could not find judges to cover the other cases. Accordingly, the court began assigning cases for trial in priority of the Rule 45 expiration dates. At the time, I suspected that the reason the court could not find other judges to handle cases was because the same problem also existed elsewhere.

At the district court level, the crisis is even more apparent. In order to bring cases to resolution, the district court has engaged in a process of stacking the cases for trial usually in the order of projected Rule

45 expiration dates. The problem is that procedure is uncertain. Defendants cannot be assured if they are going to trial or not until literally the start date of the trial. As such, when trial is due to commence, the courtroom will find several defense counsel with their clients sitting expectantly waiting to start jury selection if the case in front of them folds. But this is not fair to those whose lives must revolve around an uncertain court schedule.

For several months, the six-month resolution order had certain effectiveness. The intent was laudable. But this attorney could see the crisis approaching — even before the Coronavirus-19 shutdown. Eventually, defense counsel would


start announcing ready for trial on cases where the state simply was not willing to relent. Once that happened, the entire court system would clog like my office's unisex bathroom's toilet. And, again, there would not be enough parking for jurors. There would not be enough judges for trials. There would not be enough jurors for trials or available courtrooms. And that is what is on the judicial horizon: Alaska's Perfect Judicial Storm.

It is a serious problem, but there may be a solution. For a workable solution to develop, however, it will require good faith, constructive consultation between the judiciary at all levels and the defense and prosecution bars. These meetings should

not involve just the government entities, either. Rather, active private criminal defense counsel need to be enlisted, for input. Civil litigation should also be involved. Otherwise, with time, the spillover effect will begin to impact civil cases which already must take second seat to criminal cases.

Until then, those on the proverbial hill above can watch and comment upon the legal carnage below. Well played counselors. Bloody well played, indeed!

Admitted to the Alaska Bar in 1976, Bill Satterberg 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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Unique body of law applies to ordinary trusts

By Steven T. O'Hara

IRS Form 706-GS(D-1)

Trusts seem to be everywhere these days. Whether we realize it or not, the requirement of IRS Form 706-GS(D-1) is everywhere, too. This tax return's full name is Form 706-GS(D-1) Notification of Distribution From a Generation-Skipping Trust. This tax return must be filed regardless of a trust's size and whether or not any tax is payable.

Consider Jane Doe, a U.S. citizen who had never made a taxable gift and who had never more than a modest estate. A widow, she died in 2020 with all her children and grandchildren surviving her. Her estate, consisting of a \$200,000 bank account, passed by Will in trust for her children and grandchildren. A family friend became trustee of the trust, which became irrevocable at Jane's death. In 2020, the trustee distributed \$1,000 to a grandchild to help the grandchild pay rent.

Under these facts, the distribution triggered the requirement for the trustee to file IRS Form 706-GS(D-1) by April 15, 2021. The tax return is required even though Doe's trust and its beneficiaries do not have to pay federal generation-skipping transfer ("GST") tax because Congress gave Doe, and every individual, a GST exemption, which has never been less than \$1 million. IRC Sec. 2631.

The GST tax system applies to applicable transfers made after October 22, 1986, except those made from trusts that were irrevocable on Sept. 25, 1985, and to which no additions have been made after that date. Treas. Reg. Sec. 26.2601-1. In creating the GST tax, Congress believed that the very rich can afford to create trusts that run for multiple generations and avoid estate tax in the skipped generations. Congress believed that other taxpayers, on the other hand, cannot afford to create long-term trusts and may be subject to estate tax at each generation. The GST tax was created to close what Congress considered to be a loophole available to only the very rich. R. Adams, *Estate Planning Manual for Trust Officers* 5-1 (3rd ed. 1989).

Today we know clients of even modest estates choose to pass assets through the protection of long-term trusts. Certainly over the years since the GST tax system was enacted, long-term trusts have become more popular and valued. Indeed, Alaska has enacted a whole body of law whereby you may even create and fund a trust for yourself and, if the rules are followed, obtain protection from creditors and predators. You, as the creator of the trust, cannot be trustee of the irrevocable trust for yourself. AS 34.40.110(g). By contrast, where a third party, such as a parent or grandparent, creates a trust for you, the trust can be designed to allow you to be trustee without compromising creditor protection. *Id.*; and *cf.* AS 13.36.153 and 34.40.113.

Since trusts are widely used, an appreciation of the GST tax and its vocabulary is required knowledge.

Inclusion Ratio. Under the GST tax system, the first question to ask when money or money's worth changes hands is, what is the inclusion ratio? In the language of the GST tax system, the inclusion ratio is said to be either one, zero, or something in between. IRC Sec. 2642(a)(1) and (2) and (c). An inclusion ratio of one, for example, means the GST tax, which is currently 40 percent, is payable on the entire applicable transfer. IRC Sec. 2641. An inclusion ratio is always one, except with respect to certain nontaxable gifts and transfers sheltered by GST exemption. IRC Sec. 2642(a)(2)(A) and (c).

In our example, the trust's inclusion ratio is zero because, upon Jane Doe's death, her unused GST exemption was automatically allocated by law to the trust she created under her Will. IRC Sec. 2632(a) and (e)(at death unused GST exemption is deemed allocated pro rata to direct skips (defined below) and then pro rata to trusts; decedent's personal representative may allocate GST exemption differently on a timely filed federal estate tax return).



"The GST tax was created to close what Congress considered to be a loophole available to only the very rich."

You would be right to think a zero inclusion ratio means that the \$1,000 distribution from Doe's trust does not trigger a GST tax payable. And you would think, perhaps, that under such circumstances there would be no requirement to file a GST tax return. However, the instructions for form 706-GS(D-1) state: "The trustee must file a return for each skip person even if the inclusion ratio applicable to the distribution is zero." Instructions for Form 706-GS(D-1)(Rev. November 2017) at 1.

Skip Persons. An individual two or more generations younger than the transferor is known as a skip person. IRC Sec. 2613(a)(1). A trust may also be considered a skip person if, in general, all interests in the trust are held by skip persons, such as if Jane had named only skip persons as beneficiaries under her trust. IRC Sec. 2613(a)(2).

Generation Assignment. What if one or more of the beneficiaries of Doe's Trust were unrelated to her? Who would be within the class of skip persons then? Where the parties are not related by blood, adoption, or marriage, they are assigned to a generation on the basis of their relative age. IRC Sec. 2651(d). An individual born within 12.5 years after Jane Doe's birth is considered a member of her generation. IRC Sec. 2651(d)(1). An individual born more than 12.5 years but not more than 37.5 years after Jane's birth is considered a generation younger. IRC Sec. 2651(d)(2). An individual born more than 37.5 years after Jane's birth is considered two or more generations younger. IRC Sec. 2651(d)(2) and (3).

Direct Skip. The first of three transfers under the GST tax system is the so-called direct skip. IRC Sec. 2611(a)(3). Here, a grandparent, for example, makes a transfer (such as a gift or a bequest) directly to a grandchild or a certain kind of trust for a grandchild. IRC Sec. 2612(c) and 2642(c). A direct skip can also occur from a trust, such as a trust included in the gross estate of a grandparent. Treas. Reg. Sec. 26.2612-1(f)(example 5). In the case of a direct skip, any GST tax payable is the obligation of the transferor, except in the case of a direct skip from a trust, in which case any GST tax payable is the obligation of the trust. IRC Sec. 2603(a)(2) and (3). Direct skips are reported to the Internal Revenue Service on gift and estate tax returns.

Taxable Distribution. The second transfer under the GST tax system is the taxable distribution. IRC Sec. 2611(a)(1). This transfer is a made by a trust to a skip person — that is, to a beneficiary two or more generations younger than the person who contributed the property to the trust. IRC Sec. 2612(b). In our example, the trustee's distribution of \$1,000 to Doe's grandchild is a taxable distribution even though no GST tax is payable. If GST tax were payable, it would be the obligation of the beneficiary. IRC Sec. 2603(a)(1). Here, as we said, the Trustee must file IRS Form 706-GS(D-1) regardless of whether GST tax is payable.

Taxable Termination. The

third transfer under the GST tax system is the taxable termination. IRC Sec. 2611(a)(2). This transfer is deemed to occur when a trust interest terminates and thereafter only skip persons are beneficiaries, such as in our example if all of Jane's children die leaving only skip persons as beneficiaries under the trust. IRC Sec. 2612(a). In the case of a taxable termination, any GST tax payable is the obligation of the trust. IRC Sec. 2603(a)(2). Regardless of whether GST tax is payable, the Trustee must file a GST tax return for the tax year in which the termination occurred. Here, IRS Form 706-GS(T) is the GST tax return.

Exclusion for Educational and Medical Expenses. The federal gift-tax exclusion for payments for educational and medical expenses is also an exclusion for GST tax purposes. IRC Sec. 2611(b)(1). In our example, if the trust had paid \$1,000 to a grandchild's medical care provider, the payment would not be a taxable distribution, and there would be no requirement to file IRS Form 706-GS(D-1).

Predeceased-Parent Exception. In limited circumstances, an exception to the generation-assignment rules may be available where an individual's father or mother has died. IRC Sec. 2651(e). For example, suppose one of Doe's children had predeceased her leaving descendants. Suppose one of those descendants is the grandchild who received the \$1,000 distribution. Under such circumstances, the grandchild would be considered only one generation below Jane. In other words, the grandchild would not be considered a skip person and the distribution would not have to be reported on IRS Form 706-GS(D-1).

Estate Tax Inclusion Period. If Doe's irrevocable trust had been created during her lifetime, she could have allocated GST exemption to the trust in her federal gift tax return. Proactive allocation of GST exemption to appropriate trusts is a good thing, because although there are certain automatic allocations of GST exemption to lifetime trusts, the rules governing those automatic allocations are by no means clear cut. See IRC Sec. 2632(c). A limitation on the authority to allocate GST exemption is imposed during the so-called estate tax inclusion period ("ETIP"). ETIP is the period during which, should death occur, the transferred property would be includable in the gross estate of either the transferor or her spouse, other than by reason of the three-year rule of IRC Sec. 2035. IRC Sec. 2642(f). An ETIP would exist, for example, if Jane had created the trust during her lifetime and had reserved the right to amend or revoke the trust. *Cf.* IRC Sec. 2038.

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

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

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ECLECTIC BLUES

Back in the day politics and politicians were almost civil

By Dan Branch

In the 1970's, when Alaskans were adapting to changes brought by the Native Claims Settlement Act, and I was living in an unplumbed shack in Bethel. I worked as an attorney for the Alaska Legal Services Corporation. On a visit to Bethel, Sen. Ted Stevens came into our office and asked if he could make a call on one of our phones. He ended up using mine.

His back was as stiff as his manners. I don't think he smiled. But, I was thrilled to see him talk on my phone. This was back when U.S. Senators like Stevens followed a gentleman's code of respect for their fellow senators. Stevens formed a special friendship with Democratic Sen. Daniel Inouye of Hawaii.

After Ted Stevens' airplane crash death in 2010, a former staff member of the Senate Appropriations Committee, Charlie Houy, wrote an interesting paper that describes in detail the close and personal relationship of Stevens and Inouye. Both senators were members of the committee during much of their time as U.S. Senators. They served together for 40 years. Houy served the committee for 30.

According to Houy, "Senators Stevens and Inouye would seem to have little in common. Sen. Inouye represented the progressive wing of the Democratic Party on most issues and Sen. Stevens was a conservative. Sen. Inouye had a calm demeanor, was rarely agitated and almost never angry. Sen. Stevens seemed to be in a near constant state of agitation with a fuse so short it could ignite with the slightest spark. Despite their many differences, over the years a friendship blossomed and deepened between these two men of very dissimilar tastes, habits and philosophies. They were the quintessential yin and yang."

Sen. Stevens worked with Inouye to strengthen the military and the U.S. government's ability to maintain peace and prosperity in our country. But he also took time to help Alaskans with their community problems. While I didn't feel comfortable mentioning it to Stevens when he was in my legal aid office, I was impressed with the help he provided some of my clients.

One morning, a group from one of the YK Delta villages asked me to find a way to get the U.S. govern-

ment to build them a new school. I sent Senator Stevens a letter asking him to file an appropriations bill covering the construction costs. He had done this in the past. The senator's written response helped the village leaders and me obtain federal funding for the new school. Sen. Stevens didn't seek credit for the good result.

These days, few U.S. senators form alliances with senators from the other party. But Alaska has at least one — Sen. Lisa Murkowski. On more than one occasion, she and a few other U.S. senators have worked to resolve national problems. Murkowski is one of the Republican senators willing to resist pressure from our current U.S. president. Her dad, Sen. Frank Murkowski would have done the same.

Lisa Murkowski grew up in Ketchikan. She was serving as state senator for an Anchorage neighborhood when I lived in her old home town. Sometimes, when the priest asked us to share a sign of peace with those surrounding us during Sunday mass, I'd be surprised to find Lisa or her dad Frank extending a hand in peace. This also happened in the Catholic Cathedral in Juneau when I moved to the capital city in 1995.

While I haven't always approved of Lisa Murkowski's political positions in the U.S. Senate, I've always respected her work and the way she treats others. She has an incredible ability to remember the names and faces of Alaskans she had known.

A few years ago, she really surprised me. On a hot Juneau day in May, I was waiting in a line of others who had just graduated from the University of Alaska. My old boss and former Alaska Attorney General, Bruce Botello, was there to give us graduates inspiration. So was Sen. Lisa Murkowski. I was in my late 60's at the time, there to receive an MFA in writing from UAA. Juneau's university gave me permission to receive my Anchorage degree on their campus.

Wearing a graduate gown given to me by someone who received an MFA last year, I took the last place in the graduation line. We processed in while a Tlingit dance group per-



"These days, few U.S. senators form alliances with senators from the other party."

formed a classic tribal song. I couldn't keep my feet from moving Tlingit style to my seat.

Murkowski and Botello gave great talks. One of the respected Juneau elders from a Tlingit clan added more. Then a long line of graduates moved forward to receive a blank paper the size of an actual diploma. Even though I knew two of the speakers and respected the rest, I approached

the graduation stage like I had the ones at the University of California, Berkeley, and the University of San Francisco.

I said "Hi" to Murkowski and Botello when I passed them. I had to then kneel so one of the university administrators could drop a master's sash around my neck.

All the graduates returned to our seats for the remainder of the ceremony. Then we had to walk by the speakers on the way outside. Lisa

Murkowski called out "Congratulations Dan" as I walked past her. I turned and quietly said, "Thanks."

I now wish that I had walked up to Lisa and Bruce for a little chat. I could have thanked Bruce for the great job he did helping me and the other assistant attorneys general provide good services to our state government and its people. I should have told Lisa how amazed I was at her reaction to my old man graduation. I could have shared how much I respected her work as an Alaska legislator and as one of the state's U.S. senators. I might have apologized for never sending her a letter approving the good work that she had done as our senator. I should have told her that I, like most of my friends, voted for her as a write-in candidate after those voting in that year's Republican primary had chosen a different candidate.

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

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 NALA Advanced Certified Paralegal – Workers' Compensation
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2021 Alaska Bar Association Budget

REVENUE

| | |
|-----------------------------------|-----------|
| Admission Fees-Bar Exams | 75,900 |
| Admission Fees-Motion Admit | 60,900 |
| Admission Fees-Exam Soft | 8,900 |
| Admission Fees-UBE | 36,800 |
| Admission Fees-Rule 81s | 104,000 |
| CLE Seminars | 104,520 |
| Accreditation Fees | 2,600 |
| Lawyer Referral Fees | 21,170 |
| Alaska Bar Rag - Ads, Subs | 14,500 |
| Annual Convention | 137,690 |
| Substantive Law Sections | 25,990 |
| Accounting Svc Foundation | 12,539 |
| Membership Dues | 2,104,865 |
| Dues Installment Fees | 6,875 |
| Penalties on Late Dues | 15,540 |
| 840 K Street Rental Income | 358,283 |
| Disc Fee & Cost Awards | 0 |
| Labels & Copying | 906 |
| Investment Interest | 28,758 |
| Miscellaneous Income | 2,250 |

SUBTOTAL REVENUE..... 3,122,986

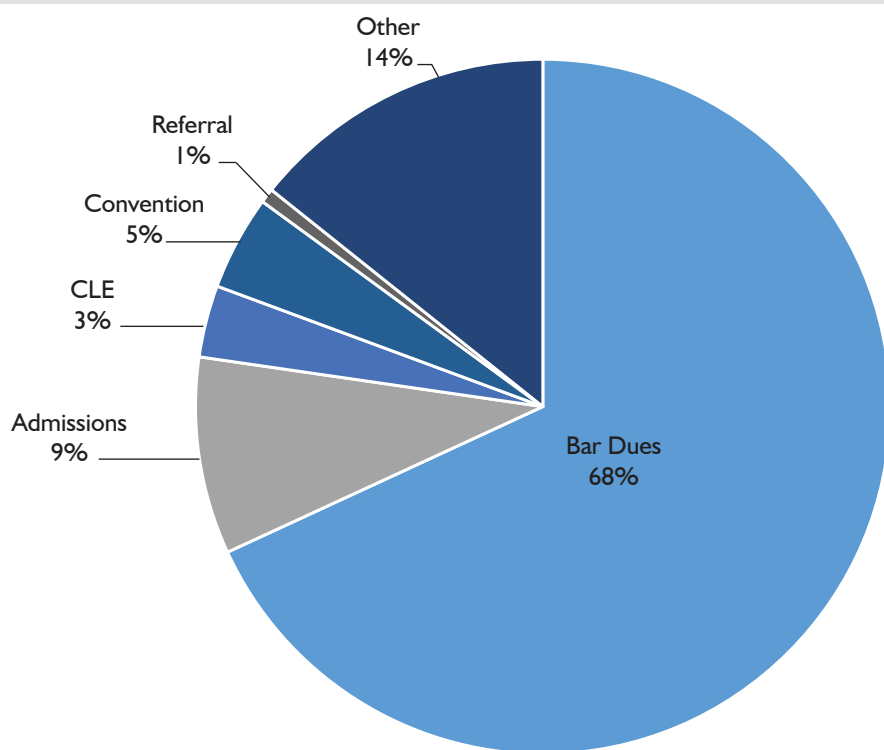
EXPENSE

| | | | |
|---------------------------------|---------|--------------------------------------|-----------|
| BOG Travel | 49,523 | Credit Card Fees | 65,332 |
| Committee Travel | 1,000 | Miscellaneous | 6,075 |
| Staff Travel | 45,867 | Staff Salaries | 1,185,944 |
| New Lawyer Travel | 1,500 | Staff Payroll Taxes | 98,531 |
| CLE Seminars | 65,367 | Staff 401k Plan | 51,029 |
| Free Ethics Course | 350 | Staff Insurance | 529,019 |
| Alaska Bar Rag | 33,939 | Postage/Freight | 12,436 |
| Bar Exam | 53,550 | Supplies | 15,289 |
| Other Direct Expenses | 69,058 | Copying | 4,609 |
| Annual Convention | 137,690 | Office Rent | 79,997 |
| 840 K Street Expenses | 417,647 | Depreciation/Amortization | 57,942 |
| Substantive Law Sections | 5,901 | Leased Equipment | 32,642 |
| Accounting Svc Foundation | 12,539 | Equipment Maintenance | 76,327 |
| MLK Day | 4,000 | Property/GLA/WC Insurance | 24,869 |
| Casemaker | 24,847 | Programming/Database Maint | 25,468 |
| Committees | 7,516 | Temp Support Staff/Recruitment | 6,928 |
| Duke/Alaska Law Review | 0 | | |
| Internet/Web Page | 9,352 | | |
| Lobbyist | 5,000 | | |

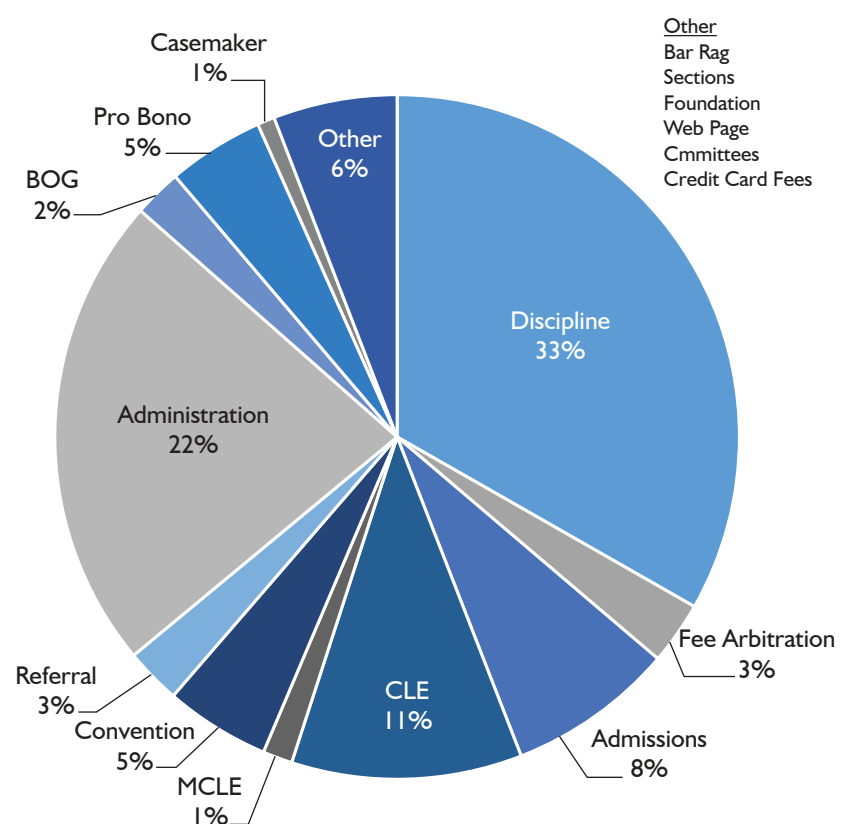
SUBTOTAL EXPENSE 3,217,083

NET GAIN/LOSS (94,097)

Revenue



Expense



DO YOU KNOW SOMEONE WHO NEEDS HELP?



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

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

Fairbanks: Aimee Oravec, aimee@akwater.com

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

Anchorage: Stephanie Joannides, joannidesdisputeresolution@gmail.com

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

The Alaska Bar Association helps members save thousands of dollars on legal research every year.



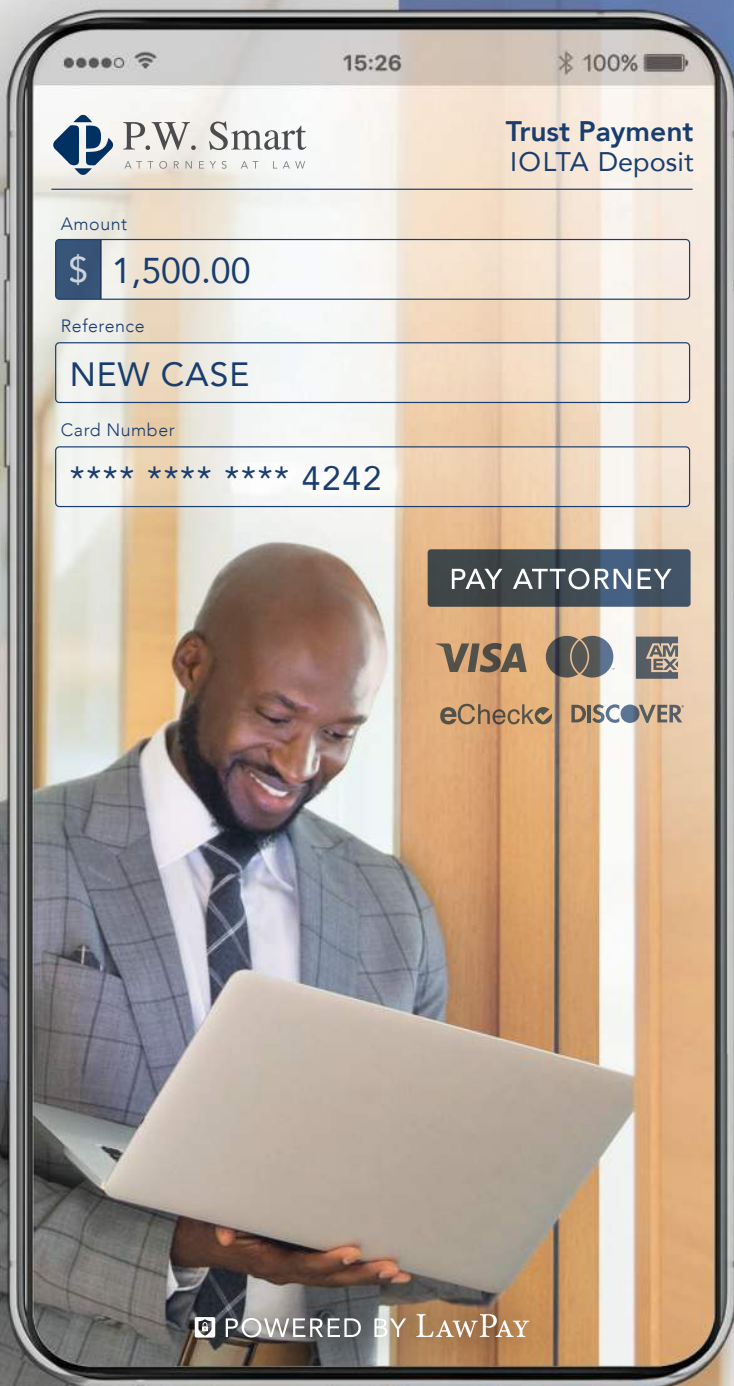
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Board Proposes Amendments to Bar Exam Application Deadline

The proposed amendments to Alaska Bar Rule 3 would amend the deadlines to apply for the Alaska bar exam. Alaska has the latest application deadlines in the country, with the

exception of Florida and Georgia, and the latest application deadline of UBE states. Most of other states' final deadlines are the same or sooner than our first deadline.

The amended rule would keep the first deadline and eliminate the late filing deadlines, with the exception of reapplicants for the July exam.

The results from the July exam generally are released at the end of October, and the February exam results are generally released the first week in May. The extension for those reapplicants who failed the February exam will allow them time to find out their results and decide whether to apply for the July exam.

These deadlines would put us more in line with the rest of the country.

Please send comments to Executive Director Danielle Bailey at bailley@alaskabar.org by January 10, 2021.

Rule 3. Applications

Section 3. An application shall be filed not later than May 1 for the July bar examination and not later than December 1 for the February bar examination. ~~In the event that~~

~~an application is filed late, an additional late filing fee of \$25 shall be paid if filed not later than fourteen days after the last day for filing a timely application, and a late filing fee of \$100 shall be paid if filed thereafter; provided, however, no application shall be accepted for late filing unless such application is filed at the office of the Alaska Bar Association not later than June 15 for the July bar examination and January 15 for the February bar examination. The Executive Director may, for good cause, accept applications for late filing after the June 15 and January 15 May 1 and December 1 deadlines. A total late filing fee of \$125.00 shall be paid for applications accepted after June 15 and January 15 May 1 and December 1.~~

Section 6. An applicant who has failed to pass a bar examination required by Rule 2 may reapply for admission to take a subsequent bar examination. Reapplications shall be made by filing a reapplication form as required by the Board by ~~January 15~~ December 1 for the February bar examination and by ~~June 15~~ May 31 for the next July bar examination following failure of the most recent February exam.

CLE

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All CLE programs will be presented in a virtual/webinar format

DECEMBER 2020:

December 11:

The Bad Lawyers of Hollywood: An Ethics Program
1.0 Ethics CLE Credits

December 11:

Can I Curse? A Lawyer's Guide to Profanity
1.0 Ethics CLE Credits

December 11:

What Creepy Characters Teach About Corporate Practice
1.0 Ethics CLE Credits

December 18:

Fetal Alcohol Spectrum Disorder: Medical, Developmental, Neurocognitive & Legal Issues
3.0 General CLE Credits

December 18:

Deposing Experts - A Conceptual and Practical Model for Deposing Experts
3.0 General CLE Credits

JANUARY 2021:

January 7:

Cybersecurity & IT Made Easy
1.0 Ethics CLE Credits

FEBRUARY 2021:

February 5:

Lawyer Survival Skills – Tools of the Trade
3.0 Ethics CLE Credits

February 11:

ABC's of Story Telling and Legal Writing
3.0 General CLE Credits

MARCH 2021:

March 19:

The Accidental Lawyer: Terms of Engagement - How to Stay Out of Trouble When You Are Out of the Office
3.0 Ethics CLE Credits

March 24:

Nobody Told Me There'd Be Days Like These - Stress, Pressure and Ethical Decision-Making in the Practice of Law
3.0 Ethics CLE Credits

Board of Governors Action Items

September 1 & 2, 2020

- Conducted interviews for applicants for the Executive Director position.
- Approved nine reciprocity applicants and nine UBE score transfer applicants for admission.
- Approved a Rule 43 (ALSC) waiver for David Ballard.
- Approved a stipulation in a discipline matter for a recommendation for public discipline which will go to the Supreme Court.
- Denied the request by a potential reciprocity applicant to reduce the application fee.
- Heard public comment on proposed ARPC 8.4.
- Approved reimbursement of \$8,600 from the Lawyers' Fund for Client Protection to Scott Sterling for his work as trustee counsel in the matter of Glenn Price.
- Voted to approve the ARPC Committee's recommendation to pass the proposed amendments to ARPC 8.4.
- Announced that the dates for the 2021 convention will be September 14 – 16, 2021.

October 26 & 27, 2020

- Approved five reciprocity and five UBE applicants for admission.
- Approved a ALSC waiver for Maria Dyson.
- Approved authority for the Executive Director to implement tiered registration for the February bar exam if necessary.
- Voted to publish proposed Bar Rule amendments regarding the bar exam deadlines.
- Eliminated the long term capital reserve account and established the 840 K Street building reserve account.
- Approved the 2021 budget.
- Bar President will appoint an HR

subcommittee.

- Adopted the Ethics opinion entitled "What are Counsel's Ethical Duties Regarding Publicizing Client Recoveries?"
- Proposed a slate of Bar officers: president-elect Jessica Graham; vice president Hanna Sebold; secretary Diana Wildland, treasurer Bill Granger.
- Ratified the one year property management contract with Frampton & Opinsky.
- Modified the Standing Policy to add "targeted" before amount of the working capital reserve.
- Bar President will appoint an MCLE committee.
- Appointed Meghan Topkok from Nome as the New Lawyer Liaison.
- Voted to publish a proposed bar rule amendment regarding publication of discipline notices in newspapers.
- Bar President appointed a board subcommittee to draft a policy regarding the selection of keynote speakers for the convention: Graham, Hafner, Robinson and Topkok.
- Bar President will appoint a committee to assist in a broader way to plan convention and speakers.
- Bar President appointed building oversight committee: Stone, J. Cox, Leonard and Granger.
- Appointed members to ALSC Board of Directors: Karen Lambert – Kenai/Kodiak; Elizabeth Pederson and Dan Winkelman to regular and alternate seats in the 4th JD; Myra Munson and Andrew Dunmire to the regular and alternate seats in the 1st JD.
- Approved minutes of board meetings from May forward.
- Agreed with the staff decision regarding a request to be considered eligible for reciprocity.

NEWS FROM THE BAR

ALASKA BAR ETHICS OPINION 2020-02 WHAT ARE COUNSEL'S ETHICAL DUTIES REGARDING PUBLICIZING CLIENT RECOVERIES?

QUESTION

The Committee has been asked whether a personal injury lawyer may conduct an advertising campaign featuring client testimonials about the amounts the lawyer has recovered on the clients' behalf.

SUMMARY

Testimonials disclosing amounts of recoveries are consistent with the Alaska Rules of Professional Conduct only if the clients provide informed consent.¹

DISCUSSION

Rule 1.6(a) of the Alaska Rules of Professional Conduct prohibits a lawyer from revealing a current client's confidence or secret unless the client gives informed consent. Rule 1.6(a) further states:

For purposes of this rule, "confidence" means information protected by the attorney-client privilege under applicable law, and "secret" means other information gained in the professional relationship if the client has requested it be held confidential or if it is reasonably foreseeable that disclosure of the information would be embarrassing or detrimental to the client. In determining whether information relating to representation of a client is protected from disclosure under this rule, the lawyer shall resolve any uncertainty about whether such information can be revealed against revealing the information.

Similarly, under Rule 1.9(c), a former client's confidences and secrets are protected and cannot be disclosed absent consent: a "lawyer who has formerly represented a client in a matter...shall not thereafter...(2) reveal confidences and secrets except as these Rules would permit or require with respect to a client." It is axiomatic that a lawyer "should not use information acquired in the course of the representation of a client to the disadvantage of the client and a lawyer should not use, except with the consent of his client after full disclosure, such information for his own purposes."² And under Rule 1.8(b), "[u]se of [a] client's confidences and secrets to benefit either the lawyer or a third person" is prohibited absent client consent.³

Disclosure of confidential settlement amounts could have adverse effects to the client. Even where the amount recovered is a matter of public record, e.g., when a final judgment is entered after trial, it is reasonably foreseeable that dissemination of the recovery could be detrimental to the client. The definition of a "secret" includes "information that becomes known by others, so long as the information does not become generally known."⁴ The Comment to Rule 1.6 adds, "This prohibition also applies to disclosures by a lawyer that do not in themselves reveal protected information but could reasonably lead to the discovery of such information by a third person." A final judgment may be public information, but the judgment amount may not be widely disseminated, and use of the client's name together with the recovery amount could expose the client to attempts at fraud, thievery or unwelcome requests for loans or gifts. The greater the amount, the greater is the potential risk of client harm.

Rule 9.1(g), Alaska Rules of Professional Conduct, defines "informed consent" as the agreement by a person to a proposed course of conduct after the lawyer has adequately explained the material risks of, and the reasonably available alternatives to, the proposed course of conduct. The Rule 9.1 Commentary further clarifies the necessary steps associated with obtaining a client's "informed consent":

The communication necessary to obtain such consent will vary according to the Rule involved and the circumstances giving rise to the need to obtain informed consent. The lawyer must make reasonable efforts to ensure that the client or other person possesses information reasonably adequate to make an informed decision. Ordinarily, this will require communication that includes a disclosure of the facts and circumstances giving rise to the situation, any explanation reasonably necessary to inform the client or other person of the material advantages and disadvantages of the proposed course of conduct and a discussion of the client's or other person's options and alternatives. (emphasis added). In some circumstances it may be appropriate for a lawyer to advise a client or other person to seek the advice of other counsel. A lawyer need not inform a client or other person of facts or implications already known to the client or other person; nevertheless, a lawyer who does not personally inform the client or other person assumes the risk that the client or other person is inadequately informed and the consent is invalid. In determining whether the information and explanation provided are reasonably adequate, relevant factors include whether the client or other person is experienced in legal matters generally and in making decisions of the type involved, and whether the client or other person is independently represented by other counsel in giving the consent. Normally, such persons need less information and explanation than others, and generally a client or other person who is independently represented by other counsel in giving the consent should be assumed to have given informed consent.

Obtaining informed consent will usually require an affirmative response by the client or other person. In general, a lawyer may not assume consent from a client's or other person's silence. Consent may be inferred, however, from the conduct of a client or other person who has reasonably adequate information about the matter.

While not expressly required by Rule 1.6, before using a client testimonial or disclosing amounts recovered for the client, the most prudent course of conduct is for the lawyer to confirm the client's consent in writing, i.e., a tangible or electronic record of a communication or representation. See Rule 9.1(t), Alaska Rules of Professional Conduct. On this issue, the Commentary to Rule 9.1 states:

If it is not feasible to obtain or transmit a written confirmation at the time the client gives informed consent, then the lawyer must obtain or

transmit it within a reasonable time thereafter. If a lawyer has obtained a client's informed consent, the lawyer may act in reliance on that consent so long as it is confirmed in writing within a reasonable time thereafter.

In sum, the Committee concludes that use of client testimonials and amounts recovered for clients in a lawyer's advertising is allowable provided informed consent is first obtained by the lawyer.

Approved by the Alaska Bar Association Ethics Committee on August 18, 2020. Adopted by the Board of Governors on October 26, 2020.

¹ This opinion assumes that the content of the lawyer's advertising and the client testimonials are not misleading and otherwise fully meet the requirements of Rules 7.1, 7.2 and 7.3.

² Former ABA Model Code of Professional Responsibility, DR4-101, EC4-5(1980) (emphasis added), https://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/mrpc_migrated/mcpr.pdf The Alaska Comment to Rule 1.6 states that "The terms 'confidence' and 'secret' are defined in the amended rule in substantively the same way as those terms were defined in DR 4-101(A) of the ABA Model Code of Professional Responsibility."

³ Rule 1.8, cmt. ("Use of Information Related to Representation").

⁴ RESTATEMENT (THIRD) OF THE LAW GOVERNING LAWYERS § 59 (AM. LAW INST. 2000).

Board Proposes Amendments Regarding Discipline Notice Publication in Newspapers

Alaska Bar Rules 28 and 30 require the Bar Association to provide notices of public discipline and disability transfers to various entities. In addition, Rule 28(g) and Rule 30(e) require these notices to be published in newspapers of general circulation in Anchorage, Fairbanks, and Juneau.

In addition to disciplinary and disability notices, the Bar publishes notices of reinstatement from disciplinary suspension or disbarment as well as from disability inactive status.

The cost of a display ad in these newspapers is significant. While lawyers may have clients in cities other than where their practice is located, the most important public notice would be in the lawyer's home community.

The notice would continue to be published in the *Alaska Bar Rag* and will also be published on the Alaska Bar Association website.

Please send comments to Executive Director Danielle Bailey at bailey@alaskabar.org by January 10, 2021.

Rule 28. Action Necessary When Attorney is Disciplined.

(g) **Public Notice.** The Board will cause a notice of the disbarment, suspension, interim suspension, probation, public censure, or public reprimand to be published in

(1) a newspaper of general circulation in Anchorage, Fairbanks, and Juneau;

(2) an official Alaska Bar Association publication; and on the Alaska Bar Association's website; and

(3) a newspaper of general circulation serving the community in which the disciplined attorney maintained his or her practice.

Rule 30. Procedure: Disabled, Incapacitated or Incompetent Attorney.

(e) **Notice to Public of Transfer to Disability Inactive Status.** The Board will cause a notice of transfer to disability inactive status, whether imposed after hearing or on an interim basis, to be published in

(1) a newspaper of general circulation in the cities of Anchorage, Fairbanks, and Juneau, Alaska;

(2) an official Alaska Bar Association publication; and on the Alaska Bar Association's website; and

(3) a newspaper of general circulation primarily serving the community in which the disabled attorney maintained his or her practice.

When the disability or incapacity is removed and the attorney has been restored to active status, the Board will cause a notice of transfer to active status to be similarly published.

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



We are especially grateful to our 2019-2020 campaign co-chairs: Nicole Borrromeo, Charles Cole, J.C. Croft, Andrew Harrington, Carolyn Heyman, Liz LeDuc, Erin Lillie, Jim Torgerson, and Emily Wright.

Justice Society \$5000+

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Calista Corporation
CIRI
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First National Bank Alaska
Norton-Cruz Family Foundation Fund
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Leon T Vance
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Geoffrey Wildridge

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Suzanne La Pierre
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