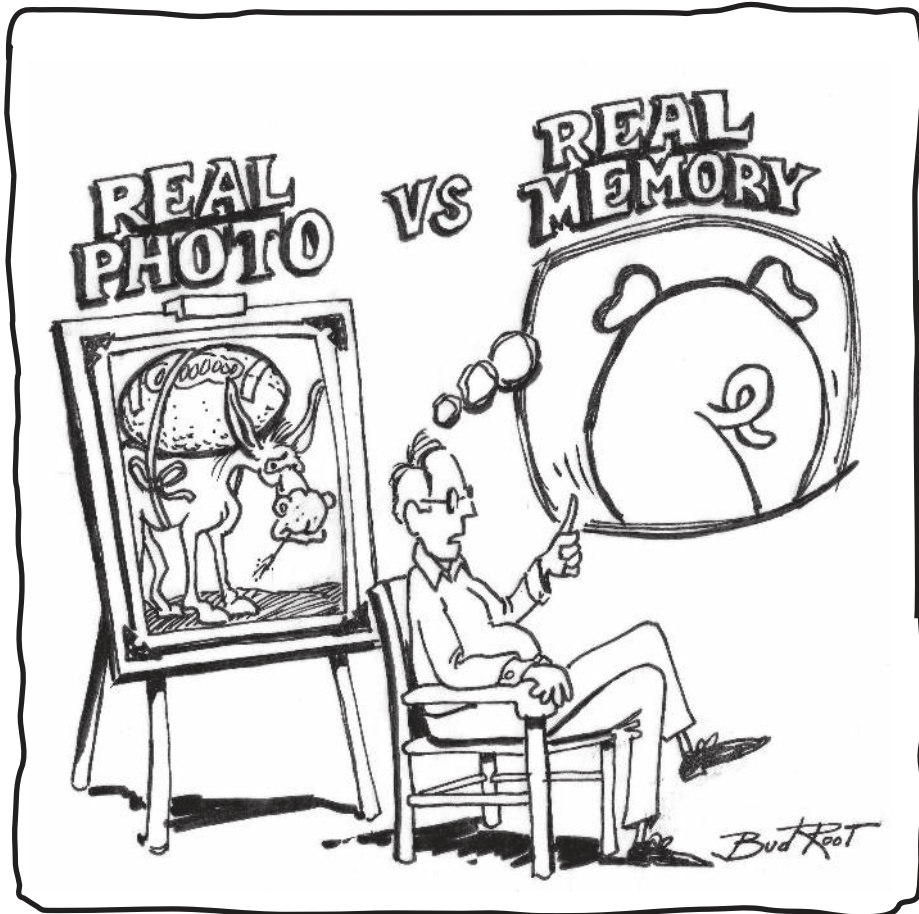


# The Alaska BAR RAG

Dignitas, semper dignitas

VOLUME 42, NO. 4 October - December, 2017



## There's more to photographic perception than meets the eye

By Joe Kashi

Visual evidence has some unique aspects that should also be borne in mind when planning your evidentiary presentation and evaluating the admissibility and weight of evidence offered by other parties.

We'll start with Alaska's evidentiary principle that, broadly speaking, visual evidence should be consistent with what would be perceived visually by a human witness.

However, human vision is a complex result of the interaction of the human eyes and brain, the original "computational photography." How something is visually perceived by a person results from their brain's processing of raw optical perceptions. This can affect the weight and admissibility of visual evidence deviating from normal human perception.

A camera and lens, on the other hand, visually record in a more physically accurate manner, but one that doesn't inherently correspond to how our eye and brain would perceive the same scene. For example, people see in stereo at closer distances because our brain combines the two separate images from both eyes into a single blended image. That stereo vision results in depth perception and perspective. Similarly, some people are color-blind yet much of our visual data results from perceiving colors and subtle color differences.

It's always important to consider the equivalent magnification used to make any visual evidence. The unaided human eye has magnification and apparent perspective.

Continued on page 27

## Yes, there are public defenders in Palestine

*Editor's note: Brant McGee has volunteered this year to provide training and mentoring to local public defenders in Tunisia and the West Bank for the International Legal Foundation (ILF). Between those assignments he served as a pots and pans washer at the Veteran's Kitchen at Standing Rock. He will return to Afghanistan in January to continue his work for the ILF.*

By Brant McGee

Ahmed gently led his grandmother into the courtroom for the 17th hearing on his case in the West Bank. He had been charged as a 19-year-old accomplice in the theft of 22 liters of gasoline in January 2015.

None of the witnesses had appeared at any of the previous hearings for two years and eight months. The court, believing that it did not have the authority to subpoena police witnesses, granted the prosecution yet another continuance.

Pre-trial delay is one of several widespread problems the International Legal Foundation intends to address at its offices in the West Bank. My job last summer was to introduce the concept of strategic litigation to the staff public defenders. It focuses on issues that are common to many cases and is designed to achieve systemic change that addresses major injustices. It often involves attacks on general and widely accepted practices that violate basic rights like the right to legal representation.

Strategic litigation is common in civil cases in the U.S. and is often employed in concert with political campaigns devoted to single issues such as reproductive rights or fights to protect indigenous lands from development. Strategic litigation in criminal cases is more problematic because defendants here have a right to appeal — even in cases where such an appeal will clearly make or strengthen bad law.

Briefly, the practice of strategic litigation first proceeds from gathering the very best arguments on the chosen issue from many lawyers in a comprehensive motion to suppress or dismiss. Often such arguments should define the pervasiveness of the problem, such as the use of statistical data as evidence to describe delays in the trial court. If we lose at the trial court, then we try for a win in the appellate courts that will create either binding or persuasive authority.

The ILF started and supports public defender offices in Afghanistan, Nepal, Tunisia, Burma and the West Bank where its volunteers train and mentor local staff lawyers.

Unlike the teaching mission in the West Bank, my service in Afghanistan and Tunisia was devoted to daily meetings with the staff lawyers to discuss individual cases through interpreters. Most of my mentoring focus was on written and oral advocacy and finding the best arguments on both legal and factual issues.

Ahmed's case may be an ideal basis for strategic litigation for several reasons. First, the facts regarding delay are outrageous even for Palestine. He was arrested at age 19 and is now 22. The alleged crime is minor and non-violent. He has a clean record. Because of the delay, he cannot marry or hold a steady job because of the many court hearings. His life has been on hold for nearly three years.

Second, he has not suffered any strictly legal prejudice — such as

the loss of witnesses or physical evidence. This is important because we don't want a decision based on legal prejudice. That would set a nearly impossible standard for later cases because legal prejudice from delay is rare. (Ironically, delay often harms the prosecution and, in serious cases, the defense usually welcomes it.) But in Palestine, delay is endemic and wastes the time and resources of all justice system players.

Pre-trial delay has been formally condemned in the West since the 12<sup>th</sup> Century and in the Islamic world since 1526. The U.S. Constitution, several international covenants, and the Palestinian Basic Law (like a constitution) all contain general provisions calling for a "speedy trial" or "trial without delay." Many jurisdictions, from Afghanistan to the U.S., have codified specific time limits to prevent undue delay, but Palestine has not.

However, Palestine has ratified many human rights agreements, including the Arab Charter on Human Rights, which, by happy coincidence, employs the same language on speedy trial as the European Court of Human Rights. So cases interpreting those provisions by the European Court of Human Rights can be cited as persuasive authority in Palestinian courts.

International law can play an important role even at the trial court level in many countries with the notable exception of the U.S. For example, European cases re-

Continued on page 5

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

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

# Plans are in place for the 2018 association convention

By Darrel Gardner

We're well into winter, and those warm, sunny, summer days seem much too far away. Since the last issue of the Bar Rag, the Board of Governors (BOG) has had two meetings, in September and October. We've been working hard here at the Bar, and I want to share what we've been doing.

**The 2018 Bar Association convention will be totally awesome.** We have confirmed some incredible speakers, so mark your calendars now, and get ready to be entertained, educated, and inspired by:

**Scott Turow**, whose books have sold more than 30 million copies and include *One L, Presumed Innocent*, and *Reversible Errors*. His non-fiction book, *Ultimate Punishment*, received the 2003 Robert F. Kennedy Center for Justice and Human Rights Book award, given annually to a novelist who "most faithfully and forcefully reflects Robert Kennedy's purposes — his concern for the poor and the powerless, his struggle for honest and even-handed justice, his conviction that a decent society must assure all young people a fair chance, and his faith that a free democracy can act to remedy disparities of power and opportunity."

**Piper Kerman**, whose 2010 memoir *Orange is the New Black: My Year in a Women's Prison*, became the basis for Netflix's most-watched original series. The critically acclaimed show, now in its fifth season, has garnered close to 20 Primetime Emmy Award nominations. *Orange Is the New Black* is the first series to score Emmy nominations in both comedy and drama categories. The series has also received six Golden Globe Award nominations and six Writers Guild of America Award nominations. Piper works

with nonprofits, philanthropies, and other organizations working in the public interest and serves on the board of directors of the Women's Prison Association. She has been called as a witness by a U.S. Senate Judiciary Subcommittee to testify on solitary confinement and women prisoners.

**Andrew Fastow**, former CFO of Enron, was featured in the film documentary *The Smartest Guys in the Room*. He spent six years in federal prison and now lectures on business and legal ethics. Before its bankruptcy filing Dec. 2, 2001, Enron was one of the world's major electricity, natural gas, and communications companies, with claimed revenues of nearly \$101 billion in 2000. *Fortune* named Enron "America's Most Innovative Company" for six consecutive years. Enron has since become a well-known example of willful corporate fraud and corruption. The scandal also brought into question the accounting practices and activities of many corporations in the United States and was a factor in the enactment of the *Sarbanes-Oxley Act of 2002*. Fastow is the only Enron executive who has accepted responsibility for the massive American corporate fraud. Fastow asserts that, to this day, major American companies — including Apple — continue to use the same creative bookkeeping techniques that brought down Enron.

**Dean Erwin Chemerinsky** and **Professor Laurie Levenson** will return with a comprehensive Supreme Court and Alaska Supreme Court review. Plus, **Dan Ne-**



"We have confirmed some incredible speakers, (for the 2018 Bar Association convention) so mark your calendars now, and get ready to be entertained, educated, and inspired..."

**groni, David Mann, and Roy Ginsburg** will round out the star-studded convention lineup.

The opening reception on Wednesday will be at the newly expanded Anchorage Museum, with music by the Melissa Bledsoe ("Jazz Mom") Trio. Join us Thursday evening for the banquet dinner with keynote speaker Scott Turow, followed by the fabulous 80s cover band "I Like Robots." Dance away the evening to the sounds of Prince, The Clash, U2, Tom Petty, Michael Jackson, Journey, and more.

**Bar to offer law student scholarships.** This is something I'm really excited about. Way back when I was a first year law student, I was honored to receive a \$1,000 scholarship from the Bar. You might be asking yourself, "Since when did the Bar offer scholarships?" My point, exactly. A few months ago I formed a subcommittee of members of the BOG to explore the possibility of re-establishing a scholarship fund for first- or second-year law students who are from Alaska and who intend to return to Alaska following the completion of their legal education. The Bar offered similar scholarships in the 1980s, but the program was discontinued many years ago. The \$1,000 that I received from the Bar is about \$2,700 in today's dollars. I remember how excited and grateful I was, and it really helped me out (San Francisco, where I attended Hastings, was a relatively expensive city to live in, even back then). One thing that's clear from the bar leadership conferences I've attended

in the past year is that law students today face a much larger financial burden than most seasoned practitioners did when they were in law school. Even if we only offered a few scholarships, I think it'd be money well spent.

The Bar's executive director, Deborah O'Regan, conducted some research and determined that a number of other state bars offer law student scholarships, including Idaho, the Virgin Islands, Rhode Island, South Carolina, Wisconsin, Kansas and Arizona, plus several local bars. The scholarship funds are typically handled through the bar association's foundation, in order to allow 501(c)(3) tax deductions to be claimed by contributors. The Alaska Bar scholarship subcommittee was in favor of re-establishing a law stu-

Continued on page 5

## The Alaska BAR RAG

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

**President:** Darrel Gardner  
**President-Elect:** Brent Bennett  
**Vice President:** Hanna Sebald  
**Treasurer:** Bill Granger  
**Secretary:** Molly Brown

### Members:

Sharon Barr  
Blake Chupka  
Susan Cox  
Bill Gordon  
Cam Leonard  
Rob Stone  
Adam Trombley

**New Lawyer Liaison:**  
Mari Carpeneti

**Executive Director:** Deborah O'Regan  
**Editor in Chief:** Ralph R. Beistline  
**Social Media Director:** Ruth Anne Bergt

**Managing Editor:** Tim Jones  
**Editor Emeritus:** Harry Branson

### Contributing Writers:

Peter Aschenbrenner  
Dan Branch  
Jason Brandeis  
Mamie Brown  
Kevin Clarkson  
Monica Elkinton  
Darrel Gardner  
Cliff Groh  
Susan Falk  
Steven T. O'Hara  
Steve Pradell  
William Satterberg

**Contributing Photographer:**  
Mara Rabinowitz

**Contributing Cartoonist:**  
Bud Root

**Design & Production:**  
Sue Bybee

**Advertising Agent:**  
Alaska Bar Association  
840 K St., Suite 100,  
Anchorage, Alaska 99501  
(272-7469)

Publication Dates	Editorial Deadlines
March	Feb. 10
June	May 10
September	Aug. 10
December	Nov. 10

**Board of Governors meeting dates**  
January 18 & 19, 2018 (Thurs. & Fri.)  
May 7 & 8, 2018 (Mon. & Tues.)  
May 9-11, 2018  
(Wed.-Fri.: Annual Convention)

[Editor's Disclaimer: As with all Bar Rag articles, advertisements and letters, we do not vouch for, stand by, or support most of what we publish. Nor have we cleared any of this with either the FDA or the Department of Homeland Security (aka Interior Ministry). We sure as hell won't be responsible for your hurt feelings or misguided reliance on anything we publish or not]. TVF 2000

## EDITOR'S COLUMN

# Politics then and now, get the better picture

By Ralph R. Beistline

OK, time for another Editor's column. It seems like I just finished my last one yesterday. But I do have a couple of thoughts.

First, I have not been able to come up with a better picture to accompany this article, at least not one taken in this decade, so I am going to stick with this one until I do.

Second, after returning from a recent trip to Philadelphia and a tour of the Independence Hall Historical Park, and then reading Ron Chernow's book on Alexander Hamilton, it occurs to me that despite all the clamor regarding the lack of civility displayed today by politicians and lawyers, it not only could get worse, but it has been worse.

President George Washington really had his hands full. He was trying to build a new nation, not an easy task, and many of his cabinet members seemed to hate each other and made no secret of it. Most of them wanted to be president themselves and seemed anxious to disparage anyone who saw things differently or who might

stand in their way. They didn't tweet, but they set forth their thoughts very publicly in local publications and used the rumor mill just as effectively to ridicule one another. They not only questioned the intelligence and motives of their opponents, but their fundamental character, their morality, and, in some cases, even their parentage. This is not to say that our current hostile discourse is good, it is not — it is just not new.

And then of course there was Alexander Hamilton and Aaron Burr. Both lawyers, both politicians, and both close acquaintances of President Washington. In 1804 Burr was Vice President of the United States and Hamilton had been the first Treasury Secretary, among other things, and a war hero. These two lawyers actually lived and practiced law on the same street and knew each other's families but they let their political disagreements overwhelm them. Ultimately, because



"The challenge for all of us, as we begin a new year, is to learn from past mistakes and to make 2018 better than ever..."

Burr felt that Hamilton had maligned his character, he challenged him to a duel. (Something not even covered by the Alaska Rules of Professional Conduct.)

As you all know, Burr shot Hamilton in this duel on July 11, 1804, and Hamilton died the next day after bidding farewell to his wife and seven living children. Absolutely nothing good came of it.

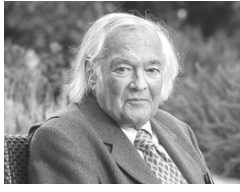
So, although we have a long way to go in terms of our political dialogue and civility among counsel, we have made some progress over the last 237 years. (We are not killing each other.) The challenge for all of us, as we begin a new year, is to learn from past mistakes and to make 2018 better than ever, even better than President Washington could have imagined.

Anyway, what was I saying? Oh, we need a better picture.

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

## In Memoriam

# Robert Wagstaff, Alaska's flying attorney, dies



Robert Hall Wagstaff died Oct. 8, 2017, in Carmel, CA. Robert was born Nov. 5, 1941, in Kansas City, MO, to Robert and Katherine Wagstaff. Lawyer, aviator, and lifelong student of history — bon vivant, raconteur and loyal colleague — Robert touched and enriched many lives.

Robert attended Border Star Elementary and Pembroke Country Day School in Kansas City before graduating from Dartmouth College in 1963, where he was a member of Sigma Nu. He then graduated from the University of Kansas School of Law in 1966. In 1967, after serving as assistant attorney general for the state of Kansas, Robert ventured to Fairbanks at the request of Alaska Attorney General Edgar Paul Boyko, where he polished his skills in the trial and appellate courts as an assistant district attorney for two years.

Robert then moved to Anchorage and embarked upon a distinguished career as a trial lawyer and appellate advocate. His work ranged from criminal defense, aviation law, Native American rights to medical malpractice, and culminated in a 14-year real estate fraud class action lawsuit. But he was best known and admired as an implacable force dedicated to constitutional rights and civil liberties, representing many clients pro bono. Robert argued more than 70 appeals before the Alaska Court of Appeals, Alaska Supreme Court and the Ninth Circuit Court of Appeals. In 1973, at the age of 32, he made his first of two appearances before the U.S. Supreme Court, successfully arguing the denial of his client's right to confront witnesses under the Sixth and Fourteenth Amendments. Robert was nationally known in particular for the *Ravin v. State* right to privacy case, which affirmed limits on government intrusion into the home. Universally respected, Robert became president of the Alaska Bar Association, a member of the Alaska Judicial Council, and his dedicated support of the American Civil Liberties Union resulted in his being elected to ACLU National Board of Directors from 1971 to 1977.

Equally accomplished in aviation, Robert began flying in 1967 and became a passionate and extraordinarily knowledgeable pilot and flight instructor. He flew single and

multi-engine aircraft, seaplanes, helicopters and jets. He thrilled in flying the Douglas DC-3, an historic aircraft which he described as a war hero and the ultimate taildragger. He flew widely over Alaska Canada, and the lower 48 states. For a time he flew to his satellite law office in Dillingham where he slept on the floor, and he relished flying to remote villages to meet with clients. He served as president of the United States Aerobatic Foundation for eight years, as a member of the Airspace Committee, Alaska Airman's Association for three years, and was a recipient of the Fédération Aéronautique Internationale Air Sports Medal in 1991.

In 2002 the University of Oxford accepted Robert in a postgraduate law course. His spirit of adventure led him to fly his own twin-engine plane to England, choosing the northern route across Labrador, Greenland and Iceland. He spent a total of 17 hours in the air over eight days.

Although Robert and his wife Cynthia planned to stay in Oxford for only a year, they found it so stimulating they stayed for 10 years. Robert earned a Master of Studies in Legal Research in 2006 and a Doctor of Philosophy in 2011. Robert and Cynthia found their lives enriched by their academic pursuits and their friendships with their colleagues in Oxford and London and during their frequent flights into the Scottish Highlands, the Isle of Jersey and the Continent.

Robert participated in numerous international human rights forums during these years. Robert's thesis research resulted in his book, *Terror Detentions and the Rule of Law*, that Oxford University Press honored with publication in 2014.

Robert was also a "petrol head" (a keen fan of motor sports), a passion he shared with friends at home and abroad. He was a member of the Royal Automobile Club in London and very appreciative of the club's sartorial regulations.

In the words of a good friend and colleague, "It goes without saying that he was a powerful and accomplished lawyer and understood his first duty was to bring the law to bear in defense of justice and equality. He was a great man in his lifelong dedication to law and justice ... I will miss his unshakeable belief that all the identifiable failures in justice and equality could ultimately be fixed."

He is survived by his wife Cyn-

thia Fellows, brother Thomas and wife Starr, sister Katherine, sons Ian, Robin (Mandy) and Dylan (Michelle), grandsons Alexander and William, granddaughter Lily, stepdaughter Jada Quinn Livingston, her husband Trevor and their chil-

dren Rose, Mack and Louis.

A memorial service was scheduled for Nov. 18, 2017, at Grace and Holy Trinity Cathedral, Kansas City, MO. Donations to the ACLU are appreciated.

## Contemporaries reflect on a storied career

*From George T. Freeman —*

One late night in mid-summer in Anchorage, Robert Wagstaff, about 31 or 32 years old, had been returning to his home in Indian after a party on the Hillside, when he noticed a newspaper at the Carr's in South Anchorage with a headline announcing that the United States Supreme Court had taken a case from Alaska. Interested, Wagstaff started reading the article and noticed to his delight that it was his case representing Joshaway Davis, which eventually became *Davis v State*, on the constitutional right of a criminal defendant to confront witnesses against him.

Robert had filed the final appeal to delay Davis' incarceration. Robert then went to D.C. for the argument, which was attended with his father, a Harvard Law graduate, by his side. Robert descended from a long line of distinguished lawyers.

Before the argument, Robert went to the United States Supreme Court law library to do some research. While in the library, one of the clerks asked him to come to a meeting with the United States Supreme Court Clerk. Hoping he had not done anything wrong, Robert went to the Clerk's office, where the Clerk and several other clerks were present. The Clerk asked Robert to take a seat. Wagstaff was quite hirsute and bearded, the unmistakable figure of the righteous lawyer protecting the constitutional rights of the common person in Alaska.

The Clerk thanked Mr. Wagstaff for coming. The Clerk then said that the clerks had been talking about his upcoming argument. The Clerk then complimented Wagstaff by informing him that when he made the argument the next day that he would have the longest hair of any advocate before the United States Supreme Court "in this century." The lawyers in the Nineteenth Century apparently appeared with even longer hair.

Robert's argument focused upon the part of the trial where he had prevented from cross-examining a key juvenile witness, who was actually on probation for burglary, in Davis' burglary trial. Robert's description of this part of the record particularly impressed Chief Justice Warren Burger. The Supreme Court reversed.

One can listen to the completely confident oral argument by Robert Wagstaff, one of the greatest constitutional lawyers in American history, by accessing the Supreme Court arguments for *Davis v Alaska* at: [www.oyez.org/cases/1973/72-5794](http://www.oyez.org/cases/1973/72-5794)

By then Robert Wagstaff had made many oral arguments before the Alaska Supreme Court, and while the greatest of honors, Robert conducted his argument before the highest American court fully in stride.

*From Jim Kentch —*

How to describe that Force of Nature that was Robert Wagstaff? What the hammer? What the chain? In what furnace was his brain?

My path first crossed Robert's around 1986 when he hired me to write pleadings. I soon learned he marched to the beat of a different drummer. The bookcase in his office hid a secret exit. He represented Irwin Ravin in a marijuana possession case everyone knows. He would select a field of law that in his opinion needed changing and then do so. "Make it so!" was his frequent peroration.

And we became friends. I visited him in Oxford during his self exile and dined in his college's refectory. Charles I gazed sternly from a huge portrait, perhaps foreseeing his own beheading. Robert hosted me at his London club, The Royal Automobile Club. The smoking room had a large sign: NO SMOKING!" Robert turned to me and quoted Stanley Kubrick, "Gentlemen! You can't fight here! This is The War Room!"

And now he is gone, a tough act to follow. A vivid spark has disappeared and, as Cicero said of Cato the Younger, the world is the worse for his absence. Let us remember how he often signed his letters: Sworn to the Quest.

*From Jim Gilmore —*

**The Fifth Japanese Carrier:** I was privileged to work with Robert Wagstaff on several cases. The most memorable involved a multimillion dollar settlement conference. Robert brought me into the case about a month before trial, and my first assignment was to help him with the conference.

It started with Robert demanding \$10 million, the insurers offering \$100,000. When we broke for lunch, the insurers were up to \$300,000. But right after lunch, the offer jumped to \$1.3 million. I couldn't believe it. "Robert," I said, "you made a million dollars over the noon hour!" Robert dropped his demand to \$9.5 million. I was nervous, surely we should come down to \$3.5 million. I didn't want to risk those guys walking out.

We slogged through the afternoon. They came up a little. We came down

*Continued on page 4*

## Letters to the Editor

### Kenai Peninsula Bar Association marks 50 years

I believe it was 50 years ago this year that my former law partner, James E. Fisher, called the organization meeting together for the Kenai Peninsula Bar Association. Attendees included: Fisher, Bob Hahn and myself. We immediately began a campaign for a local Superior Court Judge. Jim Hanson was the first Kenai Superior Court judge. We demanded all applicants agree in writing they would move to the Kenai or else we would oppose them. Tom Wardell was our first DA and Bob Coats was our first Public Defender. Jess Nicholas followed Commissioner Stan Thompson as Magistrate. I was the first District Court Judge in Homer. Happy 50th birthday to the Kenai Peninsula Bar Association.

— James C. Hornaday

## In Memoriam

# Contemporaries reflect on a storied career

Continued from page 3

a little. By 3 p.m., Robert was growing bored. He left the conference room, and I later learned that he spent the rest of the afternoon eating oysters on the half shell in the bar at Elevation 92.

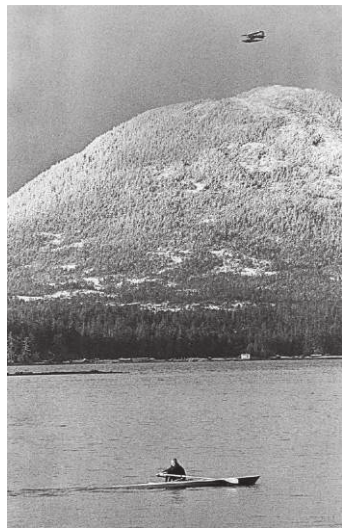
When Robert returned at 5 p.m., they had increased their offer to \$4 million and said that was their final offer, that they had to catch a cab to make an evening flight. I think we were down to \$7 million, and I said “Good God, four million dollars! You have to accept their offer.”

No dice. Robert had told me earlier that his rock bottom number was \$5 million. I asked why he was so set on that number, and he asked if I had seen the movie “The Battle of Midway.” Set in early June 1942 (six months after Pearl Harbor), the Fifth Carrier Division of the Japanese Navy is trying to lure the U.S. Pacific Fleet, under the command of Admiral Chester Nimitz, into an ambush close to the Island of Midway. In the ensuing battle, the U.S. Fleet disables four of the five Japanese carriers. But the fifth escapes and the U.S. Fleet loses track of it.

Nimitz meets with his admirals to discuss the next move: Do they break off the attack and avoid any losses, or do they continue to pursue the fifth Japanese carrier? His admirals advise Nimitz to break off, play it safe, and avoid any losses of ships this early in the war. Nimitz (played by Henry Fonda) squints his eyes, and says, “Gentlemen, I want that fifth Japanese carrier.” So Robert looked at me, narrowed his eyes, and said: “I want that fifth Japanese carrier.”

About noon the next day Robert called to tell me that the case had settled. Apparently the claims men had stopped by Robert’s office “on their way to the airport” to make a final offer of \$4.5 million, which had to be

## Ketchikan attorney Peter Ellis dies



That’s Pete Ellis paddling down the channel near Ketchikan, his home town for most of his life. He has herring onboard to feed the eagles. He was happiest when surrounded by his family, hosting loved ones, friends and fellow attorneys, be it around the “big table,” at the office on the 4th of July, on the beach at Ellis Island, onboard the Sunshine or dip-netting for sockeye at Kegan Cove.

Pete was an aviator at heart, flying Navy bombers off carriers in the late 1950s, and became an attorney after Ellis Airlines merged with Alaska Airlines. He added partners to his solo practice and introduced multiple new attorneys to the legal world before retiring in 2015. Over the years, Pete served on the City Council, was active with the Chamber of Commerce and a devoted member of the Alaska

Bar Association’s Board of Governors.

Peter married Roz Oliver in 1959 and in 2016 they celebrated 57 years together. Peter was a man before his time and raised three strong, independent and self-sufficient daughters, Marzette, Brigitte and Janette (Nettie). He was the loving leader of annual subsistence fishing trips, Christmas tree harvesting on Gravina, domino games, hearty discussions, dinner parties, abalone hunting, clam digging and huge bonfires. The traditions have continued as the family has grown. Nettie and Kevin, their sons Ellis, Alec and granddaughter Addison, Brigitte and Marvin, their children Brian, Lisa, Owen, Izzy and Sam, and Marzette and Geord, her children Sabra and Jared and their father Geo, will be telling stories and setting examples that were laid down by Peter. Pete’s brother Mike, wife Susan, and sister Sabra continue to carry the family torch, in Port Angeles and Sitka. A special salute goes out to Tore Lynne and his wife Margaret for years of setting halibut skates, great dinners, happy and hilarious conversations, and of course Tore and Pete’s weekly lunches over the last few years.

Pete will be remembered for his eccentricities as well. He swore that his Volkswagen Rabbits and Dodge Neons would be collector cars, and he made sure the family had matching red coats and yellow bicycles. His daughters were raised with a 13-foot whaler powered by a 65, he made the best root beer and ice-cream oats (his homebrew was pretty good too), and was known to save just about everything that came his way.

You may have seen him walking his beloved standard poodles over the years, at one time three dogs ruled life at Roz’s Roost. We never did figure out how to knit him a poodle hair sweater.

Pete did not want any special festivity, just asked for stories to be told, toasts to be made and traditions be continued. Both his and yours.

We would love to hear your memories of Peter, please send them to us at 2051 Sea Level Drive #301, Ketchikan, Alaska 99901. Pete’s family would like to give a tremendous thank you to all the staff at PeaceHealth and to the Ketchikan Pioneer Home, especially the entire second floor crew. We encourage any monetary donations to be sent to the Pioneer Home, 141 Bryant St., Ketchikan.



accepted before they got back in the cab waiting outside. I don’t know if Robert told them he wanted “that fifth Japanese carrier” or simply refused their offer. They got back in the cab, circled the block, and returned. Robert never told me the final settlement number, but, miraculously, in that last trip around the block, they must have found that carrier.

Oysters on the half shell in the middle of a multimillion dollar mediation, a settlement target inspired by a World War Two war movie, and the tenacity of a bulldog — that was Robert Wagstaff. We will miss his sense of style (motorcycles, fast cars and airplanes), his magnificent voice, and his great sense of humor.

### From Collin Middleton —

Robert and I practiced together for perhaps eight years in the 1970s. Others joined us from time to time, and we had other litigation, Ravin, comes to mind. But, the litigation I think of most frequently, is Carlos Frank, an Athabascan who in 1975 transported a moose shot out of season for a funeral in his home town, Minto.

This was a simply wonderful case for us both. We needed to prove there was an Athabascan religion, that the funeral was a part of it, and that moose was necessary for the funereal celebration, a potlatch. In 1975 because of Vietnam there were conscientious objector cases. They had great language on religion, quotes from Tillich, and William James. And from the Supreme Court itself “Men may believe what they cannot prove.” We had only to apply that to the Athabascan peoples. We had anthropologists, and other experts, of course. But, the potlatch occurred in Minto, and it was the Athabascan people, themselves, who had to tell us about the religion and its practice for the celebration of death.

We went to Minto. One of the benefits of practicing with Robert was that he had an airplane and a license to fly it. So, we visited Minto a few times. The political and spiritual leader of Minto was Chief Peter John, a necessary witness. But, the chief refused to testify at a trial in Fairbanks, a place he apparently detested. So, we traveled to Minto with a court reporter and a videographer, Robert flying, by then, a twin engine airplane, there to perpetuate the testimony of the chief.

The camera was up and ready and the court reporter set. I gave the stenographer my card. Chief Peter John saw it. The firm was Wagstaff and Middleton. Where is Wagstaff? Well, of course, Robert was right there. The chief would speak only to the boss, who clearly, according to the card was not me. No matter that I had prepared. Preparation was overrated for Robert. He looked briefly at my notes and began. Now, we need also remember that Robert at times was somewhat imperious. I am not sure imperious is the right description, but it is the word that comes to mind. So, the deposition became a sort of chief to chief exchange. Robert would ask a question. The chief would consider it thoughtfully and then answer. And Robert would then reflect upon the answer a suitable length of time, and ask another question.

So the deposition went. It was beautifully successful; the Alaska Supreme Court would later rule that the potlatch was a religious ceremony protected by the First Amendment. And, there are now regulations allowing the taking of a moose for a funeral potlatch.

## Former Alaska attorney dies in Colorado



Stan B. Stanfill

Stan B. Stanfill died peacefully in his sleep Aug. 15, 2017, at the home of Catie Mientka in Grand Junction, Colo.

Born in Fort Collins, Colo., in 1932, Stan was the eldest of the three sons of Stanfill Day Stanfill and Katherine Stanfill.

Music was always a central part of his life. His early music education was listening to the Metropolitan Opera Broadcasts on KOA station in Craig, Colo.

Stan graduated from Texas Tech University with a business degree. He then worked at the electric company in Steamboat Springs, Colo., where he played the organ at the Episcopal Church. The church priest, Father Lycett, introduced Stan to MaryDee (Silver) Richards, who was then a counselor at the nearby summer arts camp Perry Mansfield. Stan and Silver married in Anchorage in 1961. They lived through the 1964 Good Friday Earthquake and in his role for the power company Chugach Electric, Stan surveyed the earthquake damage to the electric lines by helicopter.

After studying law at Colorado University, Boulder, Stan joined the Anchorage law firm that became Hahn, Jewell and Stanfill, where he practiced for the following two decades. In the early 1990s, Stan investigated savings and loan closures in Alaska and California in the aftermath of the FDIC financial crisis. Stan and Silver moved to Montrose, Colo., in 2000, where Stan volunteered his time to Meals on Wheels and Christ’s Kitchen.

Stan is survived by his daughter, Sonnet Stanfill and husband Jeff Orenstein in London; his son, Marcus Stanfill and wife Adrienne in Buffalo, N.Y.; his grandchildren, Eitan and Madeleine Orenstein and Willa Stanfill; his brother, Shelton Stanfill his wife Brigitte in Atlanta, Ga.; and his nieces and nephews.

Stan is preceded in death by his wife, Silver; and his brother, William Stanfill.

# Yes, there are public defenders in Palestine

*Continued from page 1*

quire “special diligence” by prosecutors to avoid undue delay and mandates that they present “exceptional grounds” to explain any delay.

Efforts in court can be readily supplemented by persuasive presentations at meetings involving all players in the criminal justice system. ILF leadership in the Ramallah office has successfully persuaded several judges that they do have the authority to subpoena police officers and thereby address a primary reason for pre-trial delay.

I was able to travel to Nablus and Hebron to search for other cases and issues that might be appropriate for targeting through strategic litigation. The Palestinian countryside is largely composed of steep hills and lovely hillsides with ancient rock terraces among the olive trees.

I had worked in several other

Muslim countries and found Palestinians to be typically warm, hospitable, generous and always ready to laugh. The ILF first opened an office in Palestine in 2010 so many of the lawyers are not only very able but quite experienced. It was a pleasure to work with interpreters who had lived in the U.S. and thus spoke American

English.

I so enjoyed my time working with Palestinian lawyers that I have applied to go back.

*Brant McGee is a native Alaskan who served as Public Advocate (1984-2003) before becoming engaged in international human rights issues, including indigenous land rights in Latin America, federal litigation against Shell and Chevron in the Southern District of New York, and the rights of accused citizens in other countries.*

**I had worked in several other Muslim countries and found Palestinians to be typically warm, hospitable, generous and always ready to laugh.**

# Plans are in place for the 2018 association convention

*Continued from page 2*

dent scholarship program, and the BOG voted in October to move forward with plans for a new scholarship program.

The scholarship program will work as follows: The Bar Association will solicit funds from donors, including current Bar members, who will contribute to a special fund managed by the Bar Foundation. The Bar will not use bar dues for the payment of any scholarship (although there will be some cost to the Bar associated with staff time required for administering the scholarship program, the amount will be *de minimus*). Advertising will be done through the Bar’s electronic newsletter and website, as well as through emails to law school financial aid departments and to potential donors, and in *The Bar Rag*. Interested law students will be required to submit an application (to be developed) and a one-page essay about why they want to come back and practice law in Alaska. A Bar subcommittee will review the essays and determine who gets the scholarships. The subcommittee may request proof of residency or enrollment in law school to verify applicant eligibility requirements. At this point, we are waiting for final approval from the Bar Foundation, which meets Nov.29. However, the foundation’s president, Kim Colbo, has stated that she thinks there will be no problem in setting up the scholarship fund through the foundation. Assuming that we receive final approval, I hope we will be able to start soliciting donations before the end of the year.

**New look for the Bar’s website.** After many months of hard work by Bar staff, we are just about to roll out the Bar’s newly designed website. By the time you read this, the new site may already be up and running; if it’s not, it will be soon. Our old site, while functional, was a bit clunky and dated. Our new site will be much more user friendly, easier to navigate, and not as “cluttered” as the old site. A lot of research went into the design update, and we are very proud of the results, so be sure to take it for a spin!

**Bar building occupancy options.** Currently, the Bar Association leases commercial space in an office building at 840 K St. in Anchorage. Over the past year or so, the BOG has been discussing other possible options for headquartering the Bar Association. The Bar utilizes 13 offices for staff, four support staff

work stations, plus a reception area, common work space, file storage, kitchen, and two conference rooms, occupying about 5,600 usable square feet. If you’ve never been to the Bar offices, believe me — there’s not an inch of unused space. The lease expires in about two years. There are three options: (1) continue to rent

office space, either at the current location or at a new spot; (2) buy a building to house the Bar offices; or (3) build a building. At the September 2015 BOG meeting, the board created a Long Term Capital Reserve account, and allocated \$100,000 of unappropriated capital to this account. The BOG allocated another \$100,000 in 2016, and \$200,000 in 2017. These reserves were accumulated from the Bar’s significant under-budget operations over the past few years, accomplished mainly through the hard work of staff. The Bar has done more with fewer staff, saved money by renegotiating staff health insurance coverage, and reduced other expenditures to the bare necessities. The Bar has also realized a net gain of revenue over costs and expenses in a few areas. The Bar maintains several reserve accounts, including a Capital Acquisition Account that will be used to replace and update the its computer systems and software as needed, and a Working Capital Reserve, which is equal to seven months of projected expenses for the upcoming budget year.

The Long Term Capital Reserve account is intended to reserve funds for a possible opportunity for the Bar to purchase a building, or to build a building, to house the Alaska Bar Association in the future. A survey has shown that many other state bar associations own their own facilities, either through the association itself, or through a foundation of the association. In states with bar associations of 10,000–19,999 members, such as Oregon, fully 100% own their own headquarters. In states with 5,000–9,999 members, such as Hawaii and Idaho, 90% own their buildings. Very large bars, such as those in Florida, Texas, and California, all own their buildings. The Federal Bar Association owns its headquarters.

The advantages of a bar owning its own building are similar to the advantages of home ownership. Instead of just paying rent, the association would be building equity in a

piece of commercial real estate. The goal would be to finance a purchase with a monthly mortgage and maintenance expenses in an amount similar to the current rent payment, which is about \$15,500 per month. The disadvantages of owner-occupancy are also similar to the disadvantages of home ownership: the


owner is responsible for maintenance, insurance, taxes, and other similar expenses. In September, the BOG voted to formalize a relationship with John Opinsky of Frampton & Opinsky Commercial Real Estate to help the board explore available and viable options in the Anchorage

real estate market. John’s firm was the manager of the Peterson Towers when the Bar was housed there from 2002 to 2012. We have also tapped the wisdom of former BOG president Don McClintock to help guide us. The Board of Governors is committed to fully researching the pros and cons of building ownership before making any decisions. We would also appreciate any input from our members, so please feel free to contact any BOG member or Deborah with your comments.

Finally, have a great holiday season, and best wishes for the coming New Year.

*Darrel Gardner is an assistant federal defender in Anchorage; he is a past president of the Alaska Chapter of the Federal Bar Association, and the current president of the Alaska Bar Association.*

**The Long Term Capital Reserve account is intended to reserve funds for a possible opportunity for the Bar to purchase a building, or to build a building, to house the Alaska Bar Association in the future.**



**BECAUSE...**

YOUR FIRM DESERVES THE BEST PROTECTION FOR THE GREATEST VALUE.

MORE STATE BARS, INCLUDING YOURS, ENDORSE ALPS THAN ANY OTHER CARRIER.

IF YOU GET A CLAIM, YOUR CLAIM WILL BE HANDLED BY LICENSED ATTORNEYS.

**BECAUSE BAD THINGS CAN HAPPEN TO GOOD LAWYERS**

Find out more about your endorsed carrier at:  
[www.alpsnet.com/bar-rag](http://www.alpsnet.com/bar-rag)

ALASKA BAR ASSOCIATION

**ALPS** THE NATION’S LARGEST DIRECT WRITER OF LAWYERS’ MALPRACTICE INSURANCE.

(800) 367-2577 • [www.alpsnet.com](http://www.alpsnet.com) • [learnmore@alpsnet.com](mailto:learnmore@alpsnet.com)

# Land tenure precedents: Slip Op. 7207 explained

*Peter J. Aschenbrenner*

Generalissimo Boffo enters the assembly. He is quite downcast.

"Boffo downcast," he clarifies matters.

Dolley Madison and Eleanor Roosevelt step forward and minister accordingly. "The Generalissimo has seen a ghost," Dolley opines.

"Banquo?" I ask.

"Is no hoax," Boffo gasps. "Perhaps it is Konrad the First knocking at the door. On the other hand —"

"I assume you refer to Slip Opinion No. 7207 decided 20 October 2017," Gov. Jay Hammond addresses the assembly. "It shocked us all."

"We're eager for you to enlighten us," Gov. Sarah Palin joins in. "It is, and most certainly, a blunder."

"No!" the Generalissimo gasps. "The glorious decree of the high and mightier than thou Supreme Court — saints attend the wisdom of their gatherings! — is truth, every word!"

Eleanor Roosevelt adds her 'lo juro' but we have already taken the Generalissimo at his word.

"Permeso," Boffo takes the seat provided, mops his brow against the chills and frosts of Spenardtown and pitches in.

"It all started with King William. Guilegmo the First," he adds. "In the beginning, it was pretty easy stuff. Every property owner in the kingdom was regarded as having conveyed to William an interest in his land. 'An' as in 'an,' if I may clarify things."

"I'm beginning to see how this ties into *Dixon v. Dixon*, of which we speak," Dolley addresses the assembly. "Under the ancient forest

charters of Ketchikan, all rights, powers and dignities of the monarch were preserved, even *in absentia* and accordingly vested in the maternal line. Therefore, 'Ma' — privacy thereby preserved — held an interest in 221B Baker Street. As if she were royalty herself."

"I don't know that *that* was the address. There isn't even a tube station in the neighborhood," Gov. Egan adds.

"Ditto, facts malleated to preserve the dignity of the parties," Dolley retorts. "Just as we do with *our* parties."

"So the works of the son," Boffo continues, "must be regarded as fulfillment of his feudal duties. Paying the mortgage, refurbishment of premises, and so forth."

"But he lost the case —"

"The facts are as follows," Boffo interrupts. "In Ketchikan, Alaska, custom of longstanding requires family members to sue one another. This, of course, makes the population of Revillagigedo Island unique throughout the length and breadth of Alaska."

"This is true," Gov. Terry Miller adds. "I mean, down there, a homeowner must summons international arbitrators to locate the monuments marking out her backyard."

"The house on Warren Street had become art studio for, let us say 'Pa'." The Generalissimo continues. "After his death, 'Ma' retained all emoluments pertaining theretofore."

"Bravo!" Jemmy Madison applauds. "So much for the relations between the King and — well, whoever."

"William the Conqueror cares not who or whom he conquers," Boffo explains. "That's why taxes are secured to municipalities as lien. No extra charge for Law French."

The assembly goes wild.

"But Boffo," Gov. Sarah studies the Slip Op. "Real property taxes were not mentioned in the opinion. So where does '1066 And All That' fit in?"

"Boffo sad," the Generalissimo shrugs his downcast demeanor. "The word 'mortgage' mentioned 19 times; ergo, real property taxes going back to the Battle of Hastings must be paid."

"Boffo," I redirect fire, "the case involves a complete and total mutual mis- 'understanding of all the essential terms of their bargain.' That is, between the family members."

"Boffo explain everything. But only this one time. Understood?"

The assembly draws near.

"Is why people were put on earth. To fight over land titles and the myriad usufructory interests apurtenant thereto."

"The Generalissimo may be on to something," The Sarah opines. "The battle-royal among the family may be only so much noise. Background noise, to be sure, but left over from —"

"The Charters of Cluny!" Boffo cries out, throwing a platter to the floor.

"Boffo referenced Konrad the First, so that takes us back to 912 AD," Dolley and Eleanor consult the tea leaves germane to this point.

"More knocking at the door," Eleanor muses. "Could it be Harry Truman?"

"Charters are a personal endowment of public space, available for intimate discourse or nurturing vegetable gardens and other truck. There were 5,246 charters, in the case of the Abbey of Cluny, granted over a thousand years. Some big, some trivial. 'Magna this' was quite the mantra. And then Robin Hood ran the whole thing into the toilet."

"Boffo, clear up this point," Dolley and Eleanor speak up. "Why do we have court systems?"

"Answer arrives with every new decision, cloaked in the rattle-trap of contract succeeding status. Henry Maine's name be accursed!"

"I think I see where this is going," Governor Egan pitches in. "Once upon a time you had to be noble or rich to have a charter written; bespoke compositions, if you will. Then the world changed on 6 January 1775 with the adoption of the New Hampshire Constitution."

"It wasn't granted by anyone," I gleam. "Hence, constitutional watershed, big time."

"Court systems gave each one his equal chance to claim that he was the beneficiary of a grant," Governor Knowles explains. "New Hampshire started it all, democratizing the Cluny Charters."

"Boffo impressed! But how," and here he throws a sidelong glance at the Peanut Gallery of Governors Assembled in their Robèd Majesty, "do you explain the Seventh Amendment?"

"Jemmy," Dolley nudges her husband. "You wrote it. Answer the Generalissimo's unanswerable query."

"But Boffo," I tremble at the coming 'buff. "The Slip Op. in question notes the case was not tried to a jury."

Governors Egan and Hammond offer to escort me from the premises. "Haven't you ever heard of talking for the sake of talking?" the former explains. "The Supreme Court employed the dictionary definition of 'ambiguous' which licensed everyone to have his or her say in court. So what happened in Ketchikan may be pedigreed back to Cluny."

"Hence the homage to the Holy Roman Empire and 912 AD," the latter adds, "if you need any further help. 'As the superior court aptly noted: I don't see how you can get around the fact that the charter granted the property to Austin not to Dan.' In paraphrase, to be sure."

"Charters were an early form of social media," Governor Knowles explains. "As long as everyone was talking about whatever you were talking about, then the charter had served its purpose. Quiet title proceedings are merely devolutionary thereto. And not revolutionary."

"You want to know how I spent the summer of '89?" Jemmy speaks up. "Only a jury can vote you money. Someone else's money!"

"Bar the door! It could be Margaret Thatcher," Boffo quails.

"Juries spend other people's money," The Sarah notes. "And I thought it was all Obama's idea. Sorry, Jemmy."

"Good heavens," Mr. Whitecheese studies the porthole to Spenard Road. "It's George!"

"Boffo ready to meet his predecessor in office. All hail, Washington!"

"What an extremely handsome man," Eleanor and Dolley press forward for celebrity autographs and other memorabilia.

"I heard my bandied about and thought I would drop in. What's all this about Clooney's five thousand? Sounds like a great idea for a caper flick."

"Boffo promise 'A' list celebrities," the Generalissimo beams, "and Boffo delivers. Big league!"

*Peter J. Aschenbrenner has practiced law in Alaska since 1972, with offices in Fairbanks (until 2011) and Anchorage. From 1974-1991 he served as federal magistrate judge in Fairbanks. He also served eight years as a member of the Alaska Judicial Conduct Commission. He has self-published 16 books on Alaska law. Since 2000 the Bar Rag has published 47 of his articles.*



*Best in Every Case.*

## NORTHERN LIGHTS

### REALTIME & REPORTING

*Our experienced and highly skilled reporters utilize the latest technology to provide the ultimate in instant transcription from voice to text, along with a wealth of additional reporting and access services, including:*

<ul style="list-style-type: none"> <li>✦ Depositions</li> <li>✦ Arbitrations</li> <li>✦ Court Trials</li> <li>✦ Meetings</li> <li>✦ Voice to Text...Instantly!</li> </ul>	<ul style="list-style-type: none"> <li>✦ Digital Video</li> <li>✦ Webcasting</li> <li>✦ Captioning</li> <li>✦ LiveNote</li> <li>✦ C.A.R.T.</li> </ul>
---	---

Sandra M. Mierop, President ✦ Certified Realtime Reporter  
 545 E. 12th Ave. ✦ Anchorage, AK 99501 ✦ info@nlrr.com  
 Tel 907.337.2221 ✦ Fax 907.337.2231 ✦ WWW.NLRR.COM

## Want to purchase mineral and other oil/gas interests

*Send details to:*

P.O. Box 13557, Denver, CO 80201

# Federal property rules could apply to Denali wolf issue

By Steven T. O'Hara

## First In a Series

Estate planning means property planning. As property planners, we are interested in all things property, both public and private. Since law school I have been a student of the Property Clause in the U.S. Constitution, especially its extraterritorial reach in conjunction with the Supremacy Clause.

Alaska is home to Denali National Park and Preserve. A keystone species is the Denali wolf, about which much has been written. (See L. Mech, L. Adams, T. Meier, J. Burch and B. Dale, *The Wolves of Denali* (University of Minnesota Press 1998); A. Murie, *The Wolves of Mount McKinley* (U.S. Government Printing Office 1944); and Gordon Haber and Marybeth Holleman, *Among Wolves: Gordon Haber's Insights Into Alaska's Most Misunderstood Animal* (University of Alaska Press 2013).)

In 2017, as Denali National Park and Preserve turned 100, the Alaska Board of Game unanimously rejected proposals for reinstating a no-wolf-kill buffer zone on state land next to the park. Also in 2017, the Alaska Legislature considered a bill (H.B. 105) designed to create a permanent no-wolf-kill buffer zone on the eastern border of the park. The measure was front-page news as it passed the Alaska House of Representatives, only to be dead on arrival in the Alaska Senate. (Nathaniel Herz, *House Passes Bill To Add Wolf Protections Near Denali*, *Alaska Dispatch News*, May 19, 2017, at 1, col.4.)

If the idea of a State of Alaska sanctuary has failed to protect the Denali wolf from hunters and trappers, the failure guarantees new ideas. At some point Congress could, I believe, exercise the Property Clause to protect the Denali wolf from being killed when it happens to step outside the protected area of the park. (Cf. the Wild and Free-Roaming Horses and Burros Act of 1971, Pub. L. No. 92-195, 85 Stat. 649.)

Looking back, the State of Alaska has recognized that the federal government has extraterritorial power under the Property Clause. Harry R. Bader, a former assistant to the director of the Alaska Department of Fish and Game, provides an insider's view when he writes:

*A successful example of state and federal cooperation in the recognition of extra-territorial interests held by the federal government is found in the Alaska wolf predator control plan promulgated by the Alaska Department of Fish and Game in 1993. The Wolf Management Plan included provisions for the creation of a buffer strip system around federal park lands in which no active predator control efforts would be implemented by the state, even on lands owned by the state or by Native corporations. The State of Alaska voluntarily sought and incorporated federal input in the development of its wolf control plan through the National Park Service, U.S. Fish and Wildlife Service, and the U.S. Bureau of Land Management. Conse-*

*quently, the federal government made no objection to the program that led to the Alaska Department of Fish and Game trapping wolves on federal lands as well as state lands. Had it not been for the very real possibility of federal intervention under the Property Clause, the Alaska wolf plan would not have accommodated Park interests in wolves.* (Harry R. Bader, *Not So Helpless: Application of the U.S. Constitution Property Clause to Protect Federal Parklands from External Threats*, 39 Nat. Resources J. 193, 200-201 (1999) (emphasis added, footnotes omitted).)

Both Articles I and IV of the U.S. Constitution have clauses that grant power to the federal government over property. These separate property clauses explain the dichotomization of federal lands into Article I property and Article IV property.

Just as Vatican City is an independent jurisdiction within Italy, so Article I land has traditionally been viewed "as to the state as much a foreign territory, as if it had been occupied by a foreign sovereign." (*United States v. Cornell*, 25 F. Cas. 650, 653 (No. 14,868)(C.C.D.R.I. 1820)(Justice Story on circuit in Rhode Island, explaining the federal government's power over land

on which a U.S. fort had been built). This view was modified in 1940 when the Supreme Court held that when the federal government acquires Article I property, state civil laws contin-

ue in force over the property until abrogated by federal enactment. (*James Stewart & Co. v. Sadrakula*, 309 U.S. 94 (1940).) Yet the traditional view of Article I property continues to prevail. (See, e.g., *Pacific Coast Dairy, Inc. v. Department of Agriculture of California*, 318 U.S. 285 (1943).)

For federal land outside the District of Columbia to qualify as Article I property, two requirements must be satisfied. First, the land must be purchased for the erection of "needful Buildings," such as military bases. (U.S. Const. Art. I, Sec. 8, cl. 17.) Second, the legislature of the state in which the property is located must consent to the United States' acquisition of general jurisdiction over the property. (See *Paul v. United States*, 371 U.S. 245, 264 (1963); *Kohl v. United States*, 91 U.S. 367, 371 (1875).)

The Article I property clause, also known as the Enclave Clause and the Jurisdiction Clause, provides that Congress shall have the power:

*To exercise exclusive Legislation in all Cases whatsoever, over such District ... as may ... become the Seat of the Government of the United States, and to exercise all Authority over all Places purchased by the Consent of the Legislature of the State in which the same shall be, for the Erection of Forts, Magazines, Arsenals, dock-Yards, and other needful Buildings....* (U.S. Const. Art. I, Sec. 8, cl. 17.)



**"As property planners, we are interested in all things property, both public and private."**

By contrast, the Article IV property clause is known as the Property Clause. It simply provides that "Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States...." (U.S. Const. Art. IV, Sec. 3, cl. 2.) The Supreme Court has long recognized that the "term territory, as used here, is merely descriptive of one kind of property; and is equivalent to the word lands." (*United States v. Gratiot*, 39 U.S. (14 Pet.) 526, 537 (1840).)

Rather than empowering the federal government with general jurisdiction over Article IV lands, the Property Clause has traditionally been read to place the federal landowner in a limited position akin to that of a proprietor. (*Paul v. United States*, *supra*, at 264 (dicta); *Ft. Leavenworth R.R. Co. v. Lowe*, 114 U.S. 525, 527 (1885) (dicta).) The traditional view is that the states retain general jurisdiction over Article IV lands. (Engdahl, *State and Federal Power Over Federal Property*, 18 Ariz. L. Rev. 283, 296 (1976).)

In a 1976 unanimous decision, the U.S. Supreme Court strongly implied that Congress possesses, under the Property Clause, full legislative power over conduct taking place on federal land regardless of the conduct's relationship to the land. In upholding the Wild and Free-Roaming Horses and Burros Act of 1971, the Court held that Congress has, under the Property Clause, the power to regulate wildlife living on federal land even though the wildlife is not itself federal property and is not damaging federal land. (*Kleppe v. New Mexico*, 426 U.S. 529, 536-537 (1976).)

The Court wrote that the federal government "doubtless has a power over its own property analogous to the police power of the several States...." In short, Congress exercises the powers both of a proprietor and of a legislature over the public domain." (*Id.* at 540.) Here the Court quoted from *Camfield v. United States*, 167 U.S. 518, 525 (1897),

the seminal case on the Property Clause's extraterritorial reach.

In *Camfield*, the federal government had granted Union Pacific Railroad certain odd-numbered sections of land in two adjoining townships in the State of Colorado. (*Id.* at 519 and 526.) Daniel Camfield and another investor then acquired from the railroad the right to use the odd-numbered sections; the even-numbered sections remained in federal ownership. (*Id.* at 519-520.)

To help irrigate their odd-numbered sections, the investors built fences only on their odd-numbered sections but with the effect of enclosing 20,000 acres of federal land. (*Id.* at 519-520.) The federal land was Article IV land located within the State of Colorado, and the federal government filed suit in federal court to compel removal of the fences under the Unlawful Enclosures of Public Lands Act of 1885. (*Id.* at 521.)

The lower court found for the federal government and ordered the removal of the fences, even though the

fences were on private land; the Eighth Circuit affirmed. Appeal was taken to the Supreme Court on the grounds that the Unlawful Enclosures Act was unconstitutional insofar as it applied

to fences on private property. (*Id.* at 521-522.)

The Supreme Court unanimously found the enclosure of federal land a nuisance and held "that it is within the constitutional power of Congress to order its abatement notwithstanding such action may involve an entry upon the lands of a private individual." (*Id.* at 525.) At the end of its opinion, the Court restated its holding thusly: "in passing the act .... Congress exercised its constitutional right of protecting the public lands from nuisances erected upon adjoining property...." (*Id.* at 528.)

In the next issue of this column, I will share some debate among law professors over the extent of the Property Clause's extraterritorial reach.

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

Copyright © 2017 by Steven T. O'Hara. All rights reserved.

**Rather than empowering the federal government with general jurisdiction over Article IV lands, the Property Clause has traditionally been read to place the federal landowner in a limited position akin to that of a proprietor.**



**30<sup>th</sup> Anniversary**

Looking forward to the future — Celebrating our past!

**NORTH COUNTRY PROCESS INC.**  
274-2023

# Reflections on a day meandering through the streets of Seoul

**Story and Photos**  
By Dan Branch

Four monks in golden-orange robes sat on a concrete bench. Around them a thick stream of Korean shoppers flowed. Susan and I crossed the stream, dodging motor scooters overloaded with vendor supplies and Koreans moving with purpose. Some of the latter wore traditional Hanbok clothes. I carried a bag of roasted chestnuts just bought from a street vendor who had reminded me of Susan's father. They were still warm in my hand. *Am I supposed to offer the monks my fragrant, sweet treats? Better to walk by as if we, in our American travel clothes are indistinguishable from the locals.*

Even though we might have benefited from spending a few peaceful minutes with the monks, I effected an interest in a Korean street sign as we approach them. It was not concern for the chestnuts that motivated me but a strong inclination to avoid the awkwardness of foreign

I thought back to yesterday's flight from Seattle on Korean Air flight 20. The plane carried hundreds of Koreans and one Japanese-American woman. She occupied a middle seat between the only other non-Koreans on the plane — a white miner from the American mid-west on his way to a Mongolian mining camp and me, her husband. The miner worked six-week on, six week off shifts so he had earned more than a million frequent flier miles on Korean Airlines. But he never did more in Korea than transfer flights at the Seoul-Incheon airport.

For some reason, I thought of the overweight miner as we entered one of wooden palace buildings. It had been a gray morning but a shaft of light forced through the building's lattice-work walls to paint a lacy pattern on a floor packed smooth by shuffling school children and supplicants. The miner, accepting his



"I'd already passed through the four stages of traveler's grief . . ."

pany bouquets of flowers in America on Valentine's Day. Perhaps the Korean supplicants were concerned that without the cards the petitioned deity would not notice their flowery prayers. Buddhist nuns wearing wide-brimmed soft hats and robes walked with hidden hands among the flowers. The pale gray of their hats and robes accented the almost albinotint of their skin.

Attracted by the smell of sweet batter being heated to a golden brown, Susan walked over to three women making cookie-sized pastries. First, they filled a metal teapot with batter then poured enough of it into thirty metal molds until each was half full. An open flame kept the molds hot. After the poured batter firmed enough, the ladies dobed in lemon curd or sweetened red bean paste. Another layer of batter followed. After the bottom browned, they lifted the half-finished pastries

resist sampling her purchase in the courtyard of flowers even though they were still hot enough to burn our tongues and the women had baked them for use as offerings. We left before any of the faithful could see our acts of sweet sacrilege. From the temple, we walked down the shopping street where the monk sat counting his money.

After passing the monks, we looked for somewhere to eat on the shopping street. Already over stimulated by city noise, we wanted to avoid an indoor restaurant so we bought a paper bowl of deep-fried rice dough and chicken from a street vendor and ate it while sitting on a stone bench, spearing each sweet, greasy chunk with the over-sized toothpicks supplied for that purpose. Koreans dressed in traditional Hanbok robes, monks and street workers watched the foreigners, a mixed couple, eat what they might if they could stop in midstream.

At day's end, we wandered into a maze of alleys lined with small storefronts. Electric signs blinked out seductive messages in a mix of Korean and English. A woman dressed in a cat suit danced among the shoppers. She handed out flyers for a cat cafe. A person dressed in a pantomime dog suit made a half-hearted attempt to entice us into a dog cafe. I wondered out loud if we are meant to eat cats or dogs in these places. Susan told me that they are for customers who like to eat *with* their dog or cat.

When we entered another alley, I forget about the cats and dogs. It started raining but that didn't dampen the enthusiasm of skills who called out for us to enter their stores, which offered sunglasses, tee shirts, or ceramic models of Korean palaces. Loud pop music, seductive and punishing at the same time, moved us along. We had lost our landmarks and managed an exit only after the bell tower of a Catholic Cathedral appeared above a noodle shop marquee.

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](mailto:avesta@ak.net)



Photos illustrate the beauty and the life along the streets of Seoul. Photos by Dan Branch.

relations. Out of the corner of my eye I saw one of the monks counting money. With the practiced skill of a street bookie, the shave-headed man snapped through a fist full of folding money, muttering the building subtotal after separating each bill from its brothers. The other monks smoked cigarettes even though the nearest designated smoking area was a-half-a-kilometer away.

We had been walking for hours through the odd conglomerate of old and new that is Seoul. Each second reminded me of my ignorance — ignorance of Korean history, language, culture and custom. (*Wait, what is this money called?*) I'd already passed through the four stages of traveler's grief — anger at myself for not preparing for the trip, denial that I am 30 miles from a hostile army armed with nuclear weapons, guilt for not knowing the Korean word for "thank you," and after finishing a late-breakfast of kimchi-fried rice, acceptance of my stranger-in-a-strange-land status. I embraced my ignorance.

After breakfast, Susan and I had walked to the restored ruins of Deosugung palace. Modern glass and steel buildings loomed over the palace's walled gardens. Accepting free senior citizen admission tickets, we entered the empty grounds. We would only see four other visitors, all Koreans, during our visit.

large paycheck for time spent in a Mongolian copper mine, will never see this small beauty. Nor did the Korean guard, the only other person in the building. The sunlight shaft disappeared while he watched a magpie-like bird with an iridescent-blue wing patch hopping near the palace wall.

After photographing the shadows and lights inside the palace, I joined the guard in stalking the long-tailed corvid. It could have been one of the magpies that rips flesh from wolf-killed deer near our Juneau home but for the shiny blue patch on its wing. I knew I should have solved the mystery of the blue patch, used the Internet to track down a post that explained what evolutionary advantage a bird in this gray, industrial city gains by having a flash of color on its black and white body. But, I chose to remain ignorant. *Maybe after the jet lag resolves in a few days and we have moved on to Japan, I thought, I'll have more interest in bird feathers than greedy monks.*

Later in day we visited a Buddhist temple, drawn there by the sound of chanting and the sight of sculptures made of potted flowers. Each potted plant was a supplicant's prayer, made explicit by Korean words written in bright blue or red with a permanent marking pen on a white card — the kind that accom-

out of their molds, flipped them over and plopped them back in. The woman who accepted Susan's order assumed that she wanted the traditional five pastries — two to eat at home with tea after placing the other three on her home's ancestor shrine. Neither Susan nor I could



Members from the 1990s Office of Public Advocacy Criminal Section reunited in July at Glenda Kerry's home in Girdwood. From left: Glenda, Heather O'Brien, Averil Lerman, Phil Shanahan, Darrel Gardner, Chet Randall, Brant McGee, Sid Billingslea, Donna McCready and Leslie Hiebert.



# Four new judges installed to Alaska judiciary



Judge Tina Reigh puts on her robe assisted by her husband and surrounded by her children at her installation ceremony in Dillingham. Photo from KDLG Radio Dillingham.

## Judge Tina Reigh installed as Superior Court Judge in Dillingham

An installation ceremony was held June 2, 2017, for Judge Tina Reigh. Judge Reigh was appointed to the Dillingham Superior Court in February by Gov. Walker. Judge Reigh graduated from Seattle University Law School in 2003. She moved to Dillingham to work for Alaska Legal Services Corporation in 2004, visiting nearly every village in Bristol Bay as part of her work. She served as Dillingham's Magistrate Judge since 2014, and lives there with her husband and three children.



Judge Jennifer Henderson's husband and son help her with her robe at her installation ceremony in the Supreme Court Courtroom in Anchorage. Photo by Lesa Robertson.

## Judge Jennifer Henderson installed as Superior Court Judge in Anchorage

An installation ceremony was Oct. 6, 2017, for Judge Jennifer Henderson. Judge Henderson was appointed to the Anchorage Superior Court Bench in May by Gov. Bill Walker. Judge Henderson served as a District Court judge in Anchorage since 2013. She received her Bachelor's Degree in politics, philosophy, and economics from Claremont McKenna College in 1998, and practiced law for more than 13 years. Prior to her District Court appointment, Henderson clerked for Alaska Supreme Court Justice Warren Matthews, and Judge Kim McLane Wardlaw of the Ninth Circuit Court of Appeals. She also served the Anchorage District Attorney's Office from 2003-2007, and transitioned to private practice at Farley & Graves, P.C. from 2007-2012. She lives in Anchorage with her family.

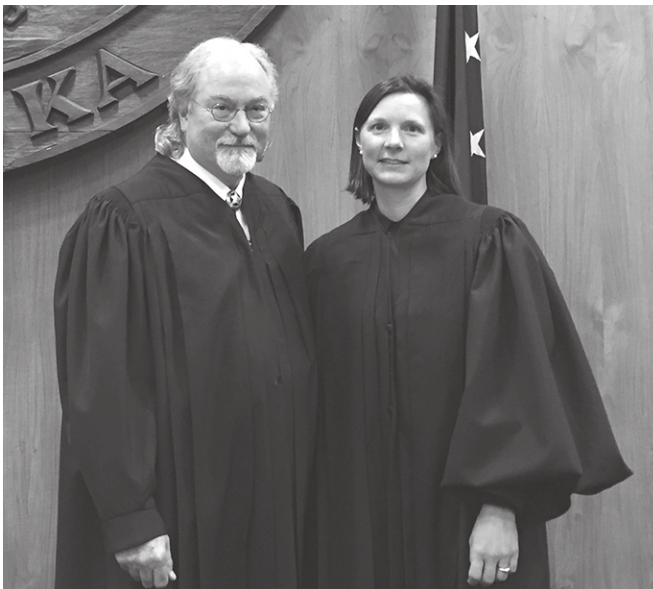


Judge Jennifer Wells, right, at her installation ceremony in Kenai speaks with Judge Anna Moran. Photo by Elizabeth Earl/Peninsula Clarion.

## Judge Jennifer Wells installed as Superior Court Judge in Kenai

An installation ceremony was held July 27, 2017, for Judge Jennifer Wells. Judge Wells was appointed to the Kenai Superior Court in February by Gov. Walker. Judge Wells graduated from Suffolk University School of Law in 1990. She clerked for Anchorage Superior Court Judge Dana Fabe, and worked as a public defender in Kenai for three years. Since 1994, she served as a Magistrate Judge, Master, acting District Court Judge and Training Judge in communities throughout Alaska, including Unalaska, Nanknek, Dillingham, Kodiak, Glennallen, Palmer and Anchorage. She and her husband live in Nikiski.

## Judge Yvonne Lamoureux installed as Superior Court Judge in Anchorage



Judge Yvonne Lamoureux joins Chief Justice Craig Stowers at her installation ceremony in the Supreme Court Courtroom in Anchorage. Photo by Darrel Gardner.

An installation ceremony was Oct. 20 for Judge Yvonne Lamoureux. Judge Lamoureux was appointed to the Anchorage Superior Court Bench in May by Gov. Walker. Judge Lamoureux graduated from the University of Virginia School of Law in 2003 and has practiced law for 14 years. She clerked for U.S. District Court Judge Christopher F. Droney in Connecticut for two years, and then for Alaska Superior Court Judge Morgan Christen from 2004-2006. Lamoureux worked in private practice at Stoel Rives LLP before being appointed to the position of Assistant U.S. Attorney for Alaska. She resides with her husband and child in Anchorage.

## My Five . . . . .



This edition of My Five is brought to you by three devoted music lovers who couldn't play by the rules. Pick just one song? Very difficult. Please enjoy the picks from two members of the Board of Governors and this esteemed publication's managing editor.

### Cam Leonard

- "O Danny Boy" — traditional Irish
- "Born to Run" — Bruce Springsteen
- "Cheap Thrills" album — Janis Joplin, Big Brother and the Holding Company
- "Hallelujah" — written by Leonard Cohen, performed by K.D. Lang, Winnipeg, 2005.
- "Whiter Shade of Pale" — Procol Harum

### Hanna Sebold

- "Miss Halfway" — Anya Marina
- "Nick of Time" — Bonnie Raitt
- "Raise Your Glass" — Pink
- "When we were Young" — Adele
- "Not Tonight" — Elle Varner

### Tim Jones

- "Southern Cross" — Crosby, Stills and Nash
- "Layla" — Derek and the Dominos
- "Bad Romance" — Lady Gaga
- "A Pirate Looks at 40" — Jimmy Buffett
- "Hey Jude" — The Beatles

# Anchorage Bar president reflects on his years with group

By Shane Levesque

The Anchorage Bar Association officially marked its 60th anniversary in 2017. In light of that auspicious occasion, and the upcoming membership year, the organization's Board of Directors has spent a good deal of time reflecting on the Anchorage Bar Association's history, accomplishments and role that it plays in the professional and personal lives of its member attorneys who practice in Anchorage. For this outgoing president, that role has been truly meaningful.

I'll admit — I never set out to become a member. In the first years of my legal career, I was far too occupied with navigating the then-unfamiliar highways and byways of practice to ever consider participating in law-related activities that were extracurricular. Although my brother, also an attorney in Anchorage, spent no small amount of time trying to talk me into tagging along with him to Anchorage Bar events, he hadn't succeeded. There was always more work to do, or another personal activity that seemed to me a lot more attractive than going to what I assumed would be just some stuffy cocktail party.

I attended my first Anchorage Bar event in December 2014. Outside it was cold and dark, and on a whim I decided to pick myself up out of my office chair and follow my brother into what turned out to be the organization's annual membership meeting. The venue was packed. In no time I found myself chatting with other attorneys, judges and clerks. Not only did I agree to become a member of the Anchorage Bar Association at that event, I was also elected to its Board of Directors.

It wasn't until after I became a member that I really began to understand what makes membership in the Anchorage Bar Association so meaningful. Some of that comes from its storied history. Thanks to the work of Pamela Cravez, who in 2002 authored a series of articles for the Bar Rag detailing that history, I now know that while the Anchorage Bar Association formally orga-

nized in 1957, it had already existed in some form or another for years. I became familiar with the colorful cast of characters who were integral to its formation — including attorneys and judges whose names are affixed to buildings and boulevards throughout Anchorage.

It is also through Ms. Cravez's scholarship that I learned that the Anchorage Bar Association has for years committed itself to making investments in the community that achieve its mission of "Promoting Collegiality, Professionalism and Good Works." For example, it was the Anchorage Bar that provided the initial funding for this very publication, and for the Anchorage Youth Court.

The Anchorage Bar has carried on a tradition of hosting social events, free to its membership, which provide an opportunity for attorneys to forge connections with others within the Anchorage legal community. It is through these events that I have formed some of my most important professional and personal relationships, and identified important mentors. Each year, its Young Lawyers section hosts a 5k Race Judicata to raise funds that enable the organization to continue its support of the Anchorage Youth Court, and dedicates countless volunteer hours to various other causes each year.

But it is only able to do so because of the support that it receives from its members in the form of membership dues, which is a mere \$65.00 per year for voting members, \$25.00 per year for law clerks and other non-voting affiliate members, and completely free during an attorney's first year of practice. If you are a current member, we hope that you'll continue to support the Anchorage Bar. If you're not a current member, we hope you'll join us as we continue our work. And finally, even if you don't live or practice in Anchorage, we encourage you to support your local bar association.

*Shane Levesque is a principal attorney at the Levesque Law Group and has practiced in many communities in Alaska since joining the Bar in 1987.*

**I'll admit — I never set out to become a member. In the first years of my legal career, I was far too occupied with navigating the then-unfamiliar highways and byways of practice to ever consider participating in law-related activities that were extracurricular.**



## 16 join Alaska Bar Association

Sixteen new lawyers were sworn in to the Alaska Bar Association in a ceremony Nov. 8, 2017, in Anchorage. Attorneys sworn in were: Britt Bachtel-Browning; James Croft, Monique Eniero, Anna Jay, C. Maeve Kendall, Whitney Leonard, David Long, Jeff McAlpin, Dan Olsen, Naomi Palosaari, Glen Rice, Holly Snead, Taylor Thompson, Randi Ann Vickers, and Shelley White.

## Alaska Law Review seeks submissions for symposium

In recognition of the 60th anniversary of Alaska statehood in January 2019, the *Alaska Law Review* is dedicating its December 2018 issue to the Alaska Constitution and hosting a symposium on that topic in October 2018 in partnership with the University of Alaska Anchorage Justice Center.

The journal is inviting papers relevant to Alaska's Constitution. Suggested topics include:

- The history and evolution of the Alaska Constitution.
- Important Alaska Supreme Court constitutional law cases.
- Significant provisions of the

Alaska Constitution.

- Emerging constitutional issues.
- Recommendations for amendment.
- Comparison to other state constitutions.

Submissions of any length are welcome, and the deadline for manuscript submission is Aug. 1, 2018, with the possibility of extension if necessary. For more information, please contact the *Alaska Law Review* staff by email at [alr@law.duke.edu](mailto:alr@law.duke.edu). You can also find more information on the *Alaska Law Review's* submission guidelines by visiting [goo.gl/K2E4Pd](http://goo.gl/K2E4Pd).

**SEATTLEU**  
SCHOOL OF LAW

LAW SCHOOL IN  
**ALASKA**

←→

Educating Powerful Advocates for Justice  
at our **Alaska Satellite Campus**

2L Austin Fischer, US Air Force JAG summer intern in Anchorage

**Find out more: [law.seattleu.edu/alaska](http://law.seattleu.edu/alaska)**



**As an attorney, you're a member of a professional association; your legal administrator should be too.**

The Association of Legal Administrators, Alaska Chapter, is looking for local administrators. Is your manager or administrator a member? If not, your firm is missing the following benefits:

<ul style="list-style-type: none"> <li>Legal Management Resources</li> <li>Human Resources</li> <li>Financial Management</li> <li>Marketing</li> <li>Technology</li> <li>Industry Advances and Trends</li> <li>Vendor Discounts &amp; References</li> <li>Certified Legal Manager (CLM) Certification Program</li> <li>Industry Publications</li> </ul>	<ul style="list-style-type: none"> <li>Continuing Education</li> <li>Webinars</li> <li>Conferences</li> <li>Retreats</li> <li>Local Salary &amp; Benefits Survey</li> <li>Educational Scholarships</li> <li>Professional Networking and Support</li> <li>Local &amp; National Discussion Forums</li> </ul>
---	--

**It's time to get connected!**

For more information contact Debbie Swinney at (907) 793-2200 or [dswinney@guessrudd.com](mailto:dswinney@guessrudd.com)

**[www.alaskaala.org](http://www.alaskaala.org)**

# Bar People

## Attorney joins Jermain, Dunnagan & Owens

Jermain, Dunnagan & Owens, P.C. has announced **C. Cody Tirpak** has joined the firm. Tirpak's practice focuses on civil litigation and commercial law. As a defense litigator, he has represented both individual and corporate clients in cases involving wrongful death, catastrophic injury, premises liability, real property disputes, environmental contamination, and contract disputes. Prior to joining the firm, he worked as an associate for an Alaska litigation defense firm where he specialized in personal injury cases arising out of automobile and aviation accidents. After graduating law school, Tirpak served as a law clerk for Judge Michael D. Corey of the Alaska Superior Court in Anchorage. Tirpak earned his law degree from University of South Carolina and his undergraduate degree from Clemson University.



C. Cody Tirpak

## Firm's attorney becomes shareholder

Manley & Brautigam, P.C. announced that **Steven Mahoney** became a shareholder with the firm as of Feb. 1, 2017. An attorney since 1986 and with Manley & Brautigam for the past 10 years, Mahoney holds an accounting degree and is a certified public accountant. His practice focuses on income tax and property tax controversy resolution, nonprofit law and entity formation/governance, limited liability companies, partnerships and corporations. The Manley & Brautigam P.C. firm moved to new offices at 1127 W. Seventh Avenue, Anchorage, May 1, 2017.

## Legal tweets

HUMOROUS LAWYER @HumOrousLAWYER 30

"@chiclitigatrix: Law school prepared me for no part of being a private practice lawyer #lawyered"

## Three Alaskans named to '2018 Best Lawyers in America'

Sonosky, Chambers, Sachse, Miller & Monkman, LLP announced that three of its Alaska lawyers have been recognized as among the "2018 Best Lawyers in America" in the 24th Edition of *Best Lawyers in America*, and that two new partners have been named to the firm's Alaska offices. Anchorage partner **Lloyd B. Miller** was named the "2018 Native American Law Lawyer of the Year." Juneau partner **Richard D. Monkman** was named as a "2018 Best Lawyer" in Native American Law, and was named as a "2017 Distinguished Attorney" by the Martindale-Hubbell firm. **Myra Munson** was named a "Super Lawyer" in the areas of Native American, Health Care and Nonprofit Organization Law. The firm is also announced two new Alaska partners. **Kendri M. M. Cesar** has been named a partner in the Juneau office. Cesar is a graduate of Dartmouth College, Harvard Law School and Juneau Douglas High School, and recently successfully argued an important tribal sovereignty case before the Alaska Supreme Court. Cesar clerked for Barrow Superior Court Judge Michael Jeffries before joining the firm. **Rebecca Patterson** has been named a partner in the Anchorage office. Patterson is a graduate of Washington University and Harvard Law School. She clerked for former Alaska Supreme Court Justice Walter Carpeneti and United States District Judge Sharon Gleason.

## Attorney recognized as one of top by the Expert Network

**Patrick N. Bergt**, of Counsel, **Guess & Rudd P.C.**, has joined The *Expert Network*®, an invitation-only service for distinguished professionals. Bergt has been chosen as a Distinguished Lawyer™ based on peer reviews and ratings, dozens of recognitions, and accomplishments achieved throughout his career. Bergt outshines others in his field due to his extensive educational background, outstanding client service, and numerous awards and recognitions. He graduated *cum laude* with a Bachelor of Science in Criminal Justice from Southern Oregon University. In 2006, he enrolled at Thomas Jefferson School of Law, and worked at the District Attorneys Office for the whole of his third year in school. After earning his Juris Doctor in 2009, Mr. Bergt returned to Alaska and accepted a position as an assistant District Attorney, during which time he tried more than 20 cases to verdict in a variety of matters such as violent, drug, and white collar crimes. In 2017, Bergt joined Guess & Rudd.



# THANK YOU!

The Alaska Court System wishes to express its profound gratitude to the attorneys who volunteered for the Early Resolution Program in 2016 and 2017, as well as to Alaska Legal Services who coordinates the volunteer attorneys:

<p><b>Anchorage:</b> Rhonda Butterfield Bradly Carlson Cameron Compton Lindsey Dupuis Monica Elkinton Bobbi Erwin Justin Eschbacher Adam Gulkis Kris Jensen Russell Leavitt Guy Kerner Zach Manzella Sarah Monkton Kara Nyquist Doug Perkins Jody Reausaw Ryan Roley Jacob Sonneborn Jes Spuhler Jennifer Wagner Ian Wheelers Adolf Zeman</p>	<p><b>Palmer:</b> Kurt Autor James Bauman Kathleen Barron Deb Burlinski Eric Conard Ann DeArmond Dave Golter Mike Gorman Jon-Marc Petersen Ryan Lonergan Jenn Messick</p> <p><b>Kenai:</b> Scott Bloom Josh Cooley Eric Derleth Katie Elsner Blaine Gilman Jennifer Joanis Sean Kelley Noah Mery Gwen Neal Andy Pevehouse Shana Theiler</p>	<p><b>Juneau:</b> Libby Bakalar Blake Chupka Lee Cole Paul Grant Lael Harrison Michael Heiser Kevin Higgins Debbie Holbrook Jennifer Lanz Jan Levy Doug Mertz Janine Reep Jan Rutherfordale Kathleen Strasbaugh Ted Vosk Samantha Weinstein</p> <p><b>Special thanks</b> to our partners at JBER Legal Assistance and CSSD for their ongoing participation.</p>
---	---	---

Your generous gifts of time and expertise helped to sustain and grow a program that processes more than fifty percent of the domestic relations cases involving two self-represented litigants in participating court locations, and settles over eighty percent of them.

We encourage attorneys interested in future volunteer opportunities to contact **Loren Hildebrandt** at 907-264-0484 or [lhildebrandt@akcourts.us](mailto:lhildebrandt@akcourts.us) or **ALSC's Laura Goss** at [lgoss@alsc-law.org](mailto:lgoss@alsc-law.org).





## Bankston Gronning O'Hara

A Professional Corporation

601 West Fifth Avenue, Suite 900  
Anchorage, AK 99501  
[www.bgolaw.pro](http://www.bgolaw.pro)

1977 - 2017

### Celebrating 40 years and counting

Thank you for all the referrals.

## Pacific Islanders join Uncle Bill's great Alaska moose hunt

By William R. Satterberg Jr.

In 1981, Brenda and I were adopted into a family in the Northern Mariana Islands — the Concepcions. Actually, the cultural adoption took place somewhat after that. I cannot say precisely when. But that is when we met our dear friends, Ben and Ki Concepcion and their young children. Due to our relationship with the Concepcion family, over time, we were assimilated into the clan. We ultimately came to be known as Uncle Bill and Auntie Brenda. The names have stuck for over 35 years. Needless to say, it is a rather interesting hodgepodge, since everyone in the family is brown in complexion, whereas Brenda and I are two white onions. Still, the family has accepted us wholeheartedly. By culture, when we meet any younger children of the family for the first time on any particular day, the members will bow to us and extend their right hands, requesting our blessings which are dutifully given in return. It is a ritual which has carried on for years in the islands and which is very important.

To the same degree, when I was speaking with a legislator on the Island of Saipan recently, I was told that I was well known locally to be in the Concepcion family. I was asked if I had married a local to earn that honor. I advised, "No, Brenda and I were adopted." The congressman then advised me that the cultural adoption was every bit as valid as having been married or born into the family.

It is not just a simple family matter. Rather, the Commonwealth of Mariana Islands is a close-knit community where all families have interrelationships. Virtually everyone is a cousin. Moreover, any member of the island can recite the rules of consanguinity with respect to their respective clans. So, where Brenda and I may be aunt and uncle to one particular family, the relationship does not stop there. Rather, it extends like an Amway network to reach all different levels. There are some from whom I must also seek blessing, or "Amen." And there are some from which I must receive blessings and bestow blessings in return. The irony which sometimes exists is that a young child will be the uncle of a rather older person. Yet, the protocol continues.

For example, it was determined

some time ago that I was an uncle to a group of local attorneys and their brother, who is the Commonwealth's governor. These family members chose to come to Alaska to visit two of their relatives, namely myself and Brenda. As an added extra, they were all accomplished big game hunters, having been raised in part in Idaho, the domain of large elk. The lure of being able to hunt moose in Alaska with their Alaskan uncle was obviously overwhelming. Fortunately, for me, I was not dealing with a bunch of rookies that I would have to babysit in the wild Alaska woods. Those guys knew their stuff.

There was an initial, fainthearted attempt by some of the brothers to hunt in Alaska during the summer of 2015. The decision to come, however, was made at the last minute. Wiser minds prevailed and realized that something more than two days' planning was needed before launching into the Alaska wilds. After all, people have been lost simply trying to trek on foot to locate an abandoned bus near Denali Park. And, of even greater fear was that these Pacific predators would be hunting moose with me — not particularly the most accomplished Alaskan wilderness guide. In fact, my concept of hunting ordinarily delves down to finding a nice patch of sunlight on the side of a hill and napping.

The fall of 2016 was different. This time, the Torres brothers decided in earnest that they would come to Alaska. And come they did. Originally, there were only supposed to be three brothers on the trip consisting of two lawyer brothers and their youngest governor brother. By the time the clan started arriving, however, that number had changed from three to five, to four, back to five, and then to six as the absolute maximum, finally landing on the number seven when everybody had disgorged in Fairbanks. Added to that number were myself, another Alaskan Fairbanks friend, Tom Carter, and the ever-present and very capable riverboat runner and realty TV star, Craig Compeau. Craig never misses a moment to brag about his SJX and Predator



"I said a silent prayer at that point, asking the Great One to do everything in His power to keep these two zealots from killing a moose and ruining a perfectly good hunt."

boats which can run on a wet garage floor — at least according to his advertisements.

Upon arrival, the first thing the brothers did after seeking their obligatory blessings from me was to go to the local supermarket to buy a load of raw salmon and scallops. At midnight on the day of their arrival, I ventured over to the guest house on our property expecting to see them peacefully sleeping. Instead, I saw the entire group assembled around a table in half-

copious amounts of salmon sashimi and raw scallops, washed down by copious amounts of Budweiser, the favorite beer of Micronesia.

The following day, after picking up hunting licenses and game tags, the clan then left in the mid-afternoon for the Goodpasture River to meet Captain Craig Compeau for the perilous 90-mile trip upstream, braving shallows, sweepers, and the weather.

According to Craig, the trip up the river was the rainiest trip he had even taken on the "Goody." A torrential downpour followed us for virtually the entire journey. It was a blinding rain which soaked us to the bone. Still, despite a couple of close scrapes with river bottoms and banks, we finally arrived at our accommodations which were actually quite comfortable. It had been set up in an igloo-type fiberglass shell. It had its own wet bar, bunk beds, heating system, generator, and food supply. As an afterthought, Craig even left some room for rifles.

The next day, having feasted upon Compeau's signature breakfast burritos, which were made out of a concoction which must remain secret, we ventured even farther up the Goodpasture. True to all good hunting expeditions, everyone fell asleep on the bank except for Tom and my Micronesian nephew, Vince, who decided to go exploring.

There is a statement in Alaska that the best way to ruin a good moose hunt is to kill a moose. After approximately two hours, Craig came roaring into camp in his jet boat and woke up everyone. Craig loudly announced that Vince and Tom were moving in on a very large moose about one half mile up a steep hillside on the other side of a seven-foot wide, two-foot deep creek and a bunch of tussocks in the tundra.

They were last seen working their way through thickets of alder and bearfriendly underbrush.

I said a silent prayer at that point, asking the Great One to do everything in His power to keep these two zealots from killing a moose and ruining a perfectly good hunt. After all, being 65 years old, it was not my desire to be stuck having to pack out for a well over one-mile hike some mammoth which had been improvisely executed.

For several hours, the tension in the air floated as the rest of the brothers were countering my prayers hoping that their intrepid, oldest brother, Vince, would blast a moose. Fortunately, in the end, my karma prevailed. Craig announced that the moose had escaped. The brothers were dejected. But I was elated. I could scarcely control my glee.

It is not that I did not want the brothers to shoot a moose. To the contrary, I would have loved to have seen them shoot a moose so that I could have filled my freezer with the meat that they intended to take home. If necessary, I would have even alerted TSA to a moose being

smuggled out of Alaska in order to intercept the shipment. But, on the other hand, the concept of being stuck in the Alaskan wilderness for an extra two days while this committed crew hauled over 1,000 pounds of meat out of the woods amid swarms of mosquitoes and gnats was not attractive.

In the end, we returned to Fairbanks. The brothers were all quite gracious in acknowledging that they had enjoyed a delightful period in Alaska, had learned a lot, and had relished their time with Uncle Bill and Auntie Brenda. And, pursuant to my unspoken expectations, the clan announced that they would be returning to Alaska in 2017 to continue their quest, this time in earnest. In fact, they are now talking about being abandoned for 10 days in the rugged Alaska wilderness and to be left completely alone while they forage the wilds in search of big game. However, as for me, I plan to stay home, climb in my hot tub, and enjoy a fine glass of wine while I watch the Northern Lights dancing happily in the skies above me. Ribeye steaks are much less challenging.

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

### Experienced medical paralegal serving your injury claim needs

- Specializing in litigation support for ALL TYPES of injury claims
- Medical records gathering, deciphering, digesting, summarizing, etc.
- Paralegal in personal injury and workers' compensation since 2003
- 17 years prior as a medical professional
- Flat rate services or hourly billing available
- Work samples available - CALL 277-1328



**Joaquita B. Martin, BS, ACP**

NALA Advanced Certified Paralegal – Workers' Compensation  
907-277-1328 • www.meddiscoveryplus.com

## OFFICE SHARE AT FIREWEED AND DENALI

\$400/Month Rent Includes: All utilities, reception (including phone answering), internet (unlimited), photocopier, fax, separate personal office (14' by 17') and shared use of conference room, kitchenette, file storage, parking and reception areas.

— Contact Kim at 276-5307 —



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 in honor of our 50th anniversary including those that donated to the Robert Hickerson Partners in Justice Campaign.



We are especially grateful to our 2016-2017 campaign co-chairs: Anne Carpeneti, Charlie Cole, Saul Friedman, Josie Garton, Jonathon Katcher, Erin Lillie, Peter Michalski, Susan Orlansky, Joe Paskvan, and Jim Torgerson.

July 1, 2016 to June 30, 2017

**CHAMPIONS OF JUSTICE - \$10,000 +**

ALASKA USA FEDERAL CREDIT UNION FOUNDATION  
BENITO & FRANCES C. GAGUINE FOUNDATION  
CALISTA CORPORATION  
CIRI  
FIRST NATIONAL BANK ALASKA  
MARIE C. & JOSEPH C. WILSON FOUNDATION  
MYRA MUNSON

**JUSTICE SOCIETY - \$5000 TO \$9,999**

ALASKA COMMUNITY SHARE ANONYMOUS DONORS  
FAIRBANKS GOLD MINING, INC.  
SEALASKA CORPORATION  
JAMES TORGERSON

**SENIOR PARTNERS - \$3,000 TO \$4,999**

ALASKA STATE EMPLOYEES SHARE CAMPAIGN  
VIRGINIA BAIM  
BRISTOL BAY NATIVE CORPORATION  
FIRST BANK  
ANDREW HARRINGTON  
DAVID WOLF

**BENEFACTORS - \$1,000 TO \$2,999**

ALASKA COMBINED FEDERAL CAMPAIGN  
ALASKA COMMUNITY FOUNDATION  
ALEUT CORPORATION  
ARCTIC SLOPE REGIONAL CORPORATION  
BIRCH HORTON BITTNER & CHEROT  
CHUGACH ALASKA CORPORATION  
CONOCO PHILLIPS  
DILLON & FINDLEY  
DOYON, LIMITED  
DURRELL LAW GROUP, P.C.  
FAULKNER BANFIELD  
KEYBANK FOUNDATION  
MUNICIPAL EMPLOYEE CAMPAIGN  
NOME ESKIMO COMMUNITY  
NORTH SLOPE BOROUGH  
POULSON & WOOLFORD  
PERKINS COIE  
SEADOR, WENDLANDT, EVANS, & FILIPPI, LLC  
SOUTHCENTRAL FOUNDATION  
STATE OF ALASKA SHARE CAMPAIGN  
UNITED WAY OF ANCHORAGE  
KATHERINE ALTENEDER  
NICHOLAS BAILEY  
ILONA BESSENVEY  
JUDY CAMINER  
ANNE CARPENETI  
ROBERT COATS  
CHRISTOPHER COOKE  
JOSEPH COOPER  
JENNIFER COUGHLIN  
BRADLEY CRUZ  
WILLIAM CUMMINGS  
CAROL DANIEL  
MARYANN FOLEY  
SAUL FRIEDMAN  
BILL GORDON  
TINA GROVIER  
LAWRENCE HANDLER  
THOMAS HENNESSY  
BREWSTER JAMIESON  
MARC JUNE  
GEORGE KAPOLCHOK  
JON KATCHER  
HEATHER KENDALL-MILLER  
AMRIT KHALSA  
LISA KIRSCH  
GABRIELLE LEDOUX  
JAMES LEIK  
JANICE LEVY  
ERIN LILLIE  
DON MCCLINTOCK  
JAMES MERY  
PETER MICHALSKI  
LLOYD MILLER  
SUSAN ORLANSKY  
GREGORY PARVIN  
DUANE PETERSEN  
ART PETERSON  
BARBARA POWELL  
GREGORY RAZO  
JANINE REEP  
STOEL RIVES  
DANIEL RODGERS  
JANE SAUER  
R. SCOTT TAYLOR

**PARTNERS - \$500 TO \$999**

LEON T VANCE  
VANESSA WHITE  
DONNA WILLARD  
ALASKA NATIVE TRIBAL HEALTH CONSORTIUM  
ANGSTMAN LAW OFFICE  
BESSENVEY & VAN TUYN, L.L.C.  
CALL & HANSON, P.C.  
CLAYTON AND DIEMER  
COOK INLET TRIBAL COUNCIL  
CROFT LAW OFFICE  
DAVIS WRIGHT TREMAINE, LLP  
DENALI ALASKAN FEDERAL CREDIT UNION  
EYAK CORPORATION  
GAMING ACCOUNT - JUNEAU  
GLACIER VALLEY ROTARY CLUB  
GENEVA WOODS BIRTH CENTER  
HOLLAND & KNIGHT, LLP  
LANDYE BENNETT BLUMSTEIN  
LAW OFFICE OF HOZUBIN & MOBERLY  
NORTON SOUND ECONOMIC DEVELOPMENT CORPORATION  
NYQUIST LAW GROUP  
UAA COMMUNITY CAMPAIGN  
CARL & RUTH BENSON  
SUSAN BAILAR  
DANIELLE BAILEY  
STEFANIE BAIRD  
JUDITH BARNES  
JOEL BOLGER  
TERESA BORMANN  
BARBARA BRINK  
BILL CALDWELL  
LINDA CERRO  
JOHN CHENOWETH  
TERESA CRAMER  
GLENN CRAVEZ  
CHANCY CROFT  
JON DAWSON  
KENNETH EGGERS  
APRIL FERGUSON  
MARY GEDDES  
MARLA GREENSTEIN  
RICHARD HARREN  
CONNIE J SIPE  
MIKE JEFFERY  
KATHY KECK  
KARLA KOLASH  
KAREN LAMBERT  
YVONNE LAMOUREUX  
TERRI LAUTERBACH  
DAVID LEVY  
NANCY MEADE  
DENNIS MESTAS  
ROBERT MINCH  
JOSEPH NELSON  
NEIL O'DONNELL  
MELANIE OSBORNE  
LARRY PERSILY  
CHARLES RAY  
MARK REGAN  
CHRIS REILLY  
NORMAN RESNICK  
FRIEDMAN RUBIN  
VANCE SANDERS  
THOMAS SCHULZ  
TIMOTHY SEAVER  
JOHN SEDWICK  
NATASHA SINGH  
ANSELM STAACK  
LEONARD STEINBERG  
SHARRY SULLIVAN  
MAILE TAVEPHOLJALERN  
WILLIAM TIMME  
FREDERICK TORRISI  
ERIC TROYER  
WILLIAM WAILAND  
STEVEN WEAVER  
STEPHAN WILLIAMS  
JULIE WILLOUGHBY

**ASSOCIATES - \$300 TO \$499**

COMBINED FEDERAL CAMPAIGN OF NORTH PUGET SOUND  
CSG, INC  
FRED MEYER COMMUNITY REWARDS  
SEAVER & WAGNER  
VALCARCE LAW OFFICE  
VERNON ADAMS  
ADRIENNE BACHMAN  
JAMES BALDWIN  
RALPH BEISTLINE  
VICTOR CARLSON  
BLAKE CHUPKA  
JAMES CLARK  
STEVE COLE  
JANE CONWAY

ERICK CORDERO  
KRISSELL CRANDALL  
BEVERLY CUTLER  
JODY DAVIS  
WILLIAM FULD  
JOSIE GARTON  
JOHN GOETZ  
MARY GRAMLING  
MARY GREENE  
JIM HOPPENWORTH  
PAULA JACOBSON  
JEANNE KENWORTHY  
RENEE MCFARLAND  
CHARLIE MUSCHANY  
DOUGLAS PERKINS  
JOHN RADER  
MICHAEL SHEPARD  
DEBORAH SMITH  
JOHN STARKEY  
KATHLEEN STRASBAUGH  
MARK TORGERSON  
HOWARD TRICKEY  
BRUCE TWOMLEY  
NANCY WATERMAN  
CAROLE WATERS  
GEOFFREY WILDRIDGE  
DAVYN WILLIAMS  
ETHAN WINDAHL  
LARRY ZERVOS

**COLLEAGUES - \$100 TO \$299**

COOK INLET HOUSING AUTHORITY  
KAWERAK  
WOELBER & PASSARD, LLC  
ERIC AARSETH  
LIAM ADAMS  
DOROTHEA AGUIERO  
DANIEL ALLAN  
GLEN ANDERSON  
JOHN ANGELL  
LISA ANN WEISSLER  
RUTH ANN JENNINGS  
CATHERINE ANN STEVENS  
HEATHER ARNETT  
TIMOTHY AYER  
WILLIAM B ROZELL  
DENNIS BAILEY  
BRUCE BALTAR  
THERESA BANNISTER  
LINDA BEECHER  
MAUREEN BENNER  
REBECCA BERNARD  
ALAN BERSIN  
MICHAEL BIDERMAN  
DANIEL BLAIR  
JOYANNE BLOOM  
JASON BOCKENSTEDT  
JULIA BOCKMON  
DARIO BORGHEGAN  
HEIDI BORSON  
HERB BRAUN  
R. BROCK SHAMBERG  
LEAH BROWN  
JAYMIE BURKHART  
STEPHEN BURSETH  
CLINTON CAMPION  
SHANE CAREW  
SUSAN CARNEY  
JACQUELINE CARR  
VICTORIA CASCIO  
JOHN CASHION  
RACHEL CELLA  
DANIEL CHEYETTE  
SUSAN CHURCHILL  
MATTHEW CLAMAN  
JOAN CLOVER  
CAMERON COMPTON  
WILLIAM COTTON  
ERIC CROFT  
TONI CROFT  
DALE CURDA  
HAROLD CURRAN  
DANIEL DALLE-MOLLE  
JAMES DAVIS

JOSHUA DECKER  
LISA DECORA  
ROBERT DOEHL  
KATHLEEN DOHERTY  
ERIN DOUGHERTY LYNCH  
CYNTHIA DRINKWATER  
ANDREW DUNMIRE  
RICHARD DUNMORE  
CHARLES EASAW  
SHANNON EDDY  
GEORGE EDWARDS  
JOSEPH EVANS  
DENNIS FENERTY  
MARISSA FLANNERY  
MARK FOSTER  
LAURA FOX  
A. FRED MILLER  
JILL FRIEDMAN  
STEPHANIE GALBRAITH MOORE  
DEIDRE GANOPOLE  
DARREL GARDNER  
GAYLE GARRIGUES  
ANN GIFFORD  
GRAHAM GLASS  
JAMES GLAZE  
DONNA GOLDSMITH  
RENE GONZALEZ  
ANITA GORDON  
SAM GOTTSSTEIN  
ERIK GRAFE  
W. GRANT CALLOW  
DEBORAH GREENBERG  
CLIFFORD GROH  
JOHN HAGEY  
LORI HAMBLIN  
HOLLY HANDLER  
MARK HANDLEY  
MICHAEL HANSON  
LEONE HATCH  
JOHN HAVELOCK  
ERIC HEDLAND  
DANIEL HEIKENS  
JOAN HEIKENS  
SHIANNE HENRY  
NACOLE HESLEP  
CAROLYN HEYMAN  
ELIZABETH HICKERSON  
LESLIE HIEBERT  
BARBARA HOOD  
MICHAEL HOSTINA  
KAY HOWARD  
KARLA HUNTINGTON  
ANN HUTCHINGS  
DOUGLAS IHLY  
BONNIE JACK  
LOREN JONES  
ERIC JORGENSEN  
BARBARA KARL  
GAVIN KENTCH  
CYNTHIA KLEPASKI  
TRISTAN KNUTSON-LOMBARDO  
KATHRYN KURTZ  
ROBERT LANDAU  
RUSSELL LEAVITT  
ELIZABETH LEDUC  
BETH LEIBOWITZ  
CAM LEONARD  
LYNDA LIMON  
GEOGIANNA LINCOLN  
BUCK LINDEKUGEL  
JAHNA LINDEMUTH  
THOMAS LINK  
LEONARD LINTON  
PAUL LISANKIE  
ANGELA LISTON  
JAMES LONGORIA  
WENDY LYFORD  
MARY LYNN MACSALKA  
MARGIE MACNEILLE  
REID MAGDANZ  
BARBARA MALCHICK  
DAVID MANNHEIMER  
WILLIAM MARTIN  
STACEY MARZ  
WALTER MASON

MARILYN MAY  
DONNA MCCREARY  
ROBERT MCCLAUGHLIN  
CHRIS MCNEIL  
AMY MEAD  
THOMAS MELANEY  
LOUIS MENENDEZ  
DOUGLAS MERTZ  
J. MICHAEL ROBBINS  
MARA MICHALETZ  
WILLIAM MILKS  
MARIANNE MILLS  
MICHELLE MINOR  
ANITA MINOR  
SARAH MONKTON  
LISA MORENO  
NIKOLE NELSON  
THOMAS O'CONNOR  
LAW OFFICE OF GAIL M. BALLOU  
DEBRA O'GARA  
SALOMEY OKAI  
DEBORAH O'REGAN  
BRADLEY OWENS  
JUDITH OWENS-MANLEY  
CHRISTINE PATE  
SHARI PAUL  
EMILY PHILBIN  
SUSAN PHILLIPS  
JANE PIERSON  
MARY PINKEL  
IAN RAFFERTY  
CHRISTINA REIGH  
AUDREY RENSCHEN  
F. RICHARD CURTNER  
MARK RINDNER  
CAREN ROBINSON  
CATHERINE ROGERS  
DAVID ROGERS  
ROBERT ROLAND  
HERB ROSS  
JEFFREY RUBIN  
JAN RUTHERDALE  
ERIC SANDERS  
WILLIAM SAUPE  
LAURY SCANDLING  
GORDON SCHAEDT  
DEMIAN SCHANE  
CAROL SCHATZ  
KRISTINE SCHMIDT  
ALAN SCHMITT  
DEBRA SCHNEBEL  
EVAN SCHULTZ  
HANNA SEBOLD  
JOHN SILKO  
NANCY SIMIEL  
STEVEN SKROCKI  
THOMAS SLAGLE  
DIANE SMITH  
MICHAEL SMITH  
MICHAEL STANLEY  
ANDREW STEINER  
TREVOR STEPHENS  
SCOTT STERLING  
NICOLE STUCKI  
JOHN SUDDOCK  
JOSEPH SULLIVAN  
SARALYN TABACHNICK  
SEN TAN  
GORDON TANS  
SYDNEY TARZWELL  
KELLY TAYLOR  
MARGARET THOMAS  
JINDY THOMAS  
J. TREVOR MCCABE  
RUTH TRONNES  
JULIA TUCKER  
VALERIE VAN BROCKLIN  
JENNIFER WAGNER  
TOM WAGNER  
LENORA WALKER  
DAVID WALSH  
HOLLY WELLS  
WILLIAM WICKS  
LARRY WOOD  
AMANDA WOODY

**JOANNE ZITO-BRAUSE**

**FRIENDS - UP TO \$99**  
AMAZONSMILE  
UNITED WAY OF SOUTHEAST ALASKA  
STEVE & PATTI BOWER  
JAMES ADAMS  
CHARLES AGERTER  
JOSHUA AHSOAK  
MARJORIE ALLARD  
JAELEEN ARAUJO  
BARBARA ARMSTRONG  
JEREMY BAKER  
DIANA BAKER  
KRIS BARNUM  
LAUREN BATEMAN  
RYAN BELL  
PHILLIP BENSON  
JOHN BERNITZ  
GREG BIDWELL  
MICHELLE BITTNER  
JONATHAN BLATTMACHR  
KEVIN BOOTS  
THOMAS BOX  
ROBERT BREDESEN  
SELETA BRIGHT  
CLAY BRONNEE  
WINSTON BURBANK  
JENNIFER BURKMIRE  
SAMUEL CASON  
HOLLY CHARI  
BRIAN CHOC  
RANDAL CHRISTIANSEN  
SANDRA CHRISTIANSEN  
BETH CLAYTON  
SUZANNE COLE  
CRAIG CONDIE  
DEVON CONROY  
AMY CONTINI  
DANIEL COONS  
JULIA COSTER  
ANDREW CROW  
JUDITH CROWELL  
RICHARD CURTIN  
W. DAVID WEED  
ZACHARY DAVIES  
TAMARA DE LUCIA  
GAIL DEKREON  
NICOLETTE DENT  
RACHEL DINARDO  
LINDA DIVERS  
JILL DOHERTY  
KEVIN DOUGHERTY  
FORREST DUNBAR  
JAY DURYCH  
DANIEL ELDRIDGE  
SAMUEL ENNIS  
WILLIAM ESTELLE  
SUSAN FALK  
KATHERINE FANG  
JOHN FECHTER  
DEBRA FITZGERALD  
LISA FITZPATRICK  
TODD FLYNN  
RICHARD FOLTA  
DEIRDRE FORD  
JONATHAN FORK  
DELIA FORTUNE  
PETER GAMACHE  
ROBERT GILLANDERS  
RAYMOND GILLESPIE  
JUSTIN GILLETTE  
STEVEN GRAY  
HAROLD GREEN  
NANCY GROSZEK  
ROBERT GUNTHER  
WINDY HANNAMAN  
CINDY HARRISON  
JOHN HARTLE  
AURORA HAUKE  
ANNE HELZER  
LEONARD HERZOG  
ALAN HIGBIE  
ERIN HOLLINGSWORTH  
SUSAN HOLLINGSWORTH  
DENNIS HOPEWELL  
MICHAEL HOROWITZ  
TERRY HORTON  
MARCIA HOWELL  
CHERYL HUMME  
ELAYNE HUNTER  
GRANT HUNTER  
SALVATORE IACOPELLI  
PATRICE ICARDI  
ROSANNE JACOBSEN  
MICHAEL JACOBSON  
KELLY JANTUNEN  
S. JAY SEYMOUR  
MAEVE KENDALL  
ELIZABETH KERTTULA  
KIRSTEN KINEGAK-FRIDAY  
ALEX KOPONEN  
ERIC KUEFFNER  
HANNAH LAIRD

JEFFREY LANDRY  
NANCYANN LEEDER  
NICHOLAS LEWIS  
KENNETH LEYBA  
BERNARD LINK  
HEATHER LLEWELLYN  
THOMAS LOHMAN  
ROY LONGACRE  
KATHERINE LYBRAND  
KRISTA MACIOLEK  
TRISTAN MAXWELL  
DAVID MCFADDEN  
MARGARET MCWILLIAMS  
DUANE MENTING  
JEFFREY MEYERS  
JOHN MILLER  
JEAN MISCHEL  
MICHAEL MITCHELL  
WINTER MONTGOMERY  
ANNA MORAN  
MARGARET MORAN  
JENNIE MORAWETZ  
MARK MORONES  
SARAH MOYER  
BENJAMIN MUSE  
THOMAS NAVE  
ANDREW NAYLOR  
GWEN NEAL  
MARGIE NELSON  
MATTHEW NEWMAN  
RUSSELL NOGG  
DAVID OBERG  
HEATHER O'BRIEN  
ROBERT OSBORNE  
THOMAS OWENS  
KELLY PARKER  
REBECCA PAULI  
DIANE PAYNE  
NATHANIEL PERRY  
EMILY PETERSON  
PEARL PICKETT  
JEFFREY PICKETT  
DIANNE PIERSON  
TASHA PORCELLO  
MATTHEW PRIEKSAT  
C. PRIEST  
ALYSON PYTTE  
AUSTIN QUINN-DAVIDSON  
PETER RAMGREN  
RETTA-RAE RANDALL  
JODY REAUSAW  
JERALD REICHLIN  
SUSAN RENTA  
JUDITH RENWICK  
LISA RICHARD  
BENJAMIN RINDNER  
AMANDA ROGERSON  
PEGGY ROSTON  
KEITH SAXE  
DANIEL SCHALLY  
JENNA SCHIFFELBEIN  
JENNIFER SCHORR  
KRISTA SCULLY  
JANE SEBENS  
PHILIP SHANAHAN  
WALTER SHARE  
ERIC SMITH  
JACK SMITH  
DAVID SMITH  
JODE SPARKS  
ROSE STANLEY  
JAMES STANLEY  
J. STEFAN OTTERSON  
SUSAN STEWART  
JANNA STEWART  
PAUL STOCKLER  
GINA TABACHKI  
GEOFFREY TAMPLIN  
KARLA TAYLOR-WELCH  
JOHN TICOTSKY  
JOHN TINDALL  
RICHARD TODD  
HEATHER TOOLE  
PATRICK TRAVERS  
ALMA UPICKSOUN  
CARINA URAIQAT  
JEFFREY VAN ABEL  
JOSEPH VAN DE MARK  
DAVID VOLUCK  
BRIAN WAID  
HERMAN WALKER  
WAYNE WATSON  
DANIEL WAYNE  
DAVID WEINGARTNER  
SAMANTHA WEINSTEIN  
MICHAEL WHITE  
MORGAN WHITE  
DANNA WHITE  
ROY WILLIAMS  
REGAN WILLIAMS  
KHALIAL WITHEIN  
JOHN WOLFE  
RICHARD WOLLENBERG  
JOHN WOOD  
MEG ZALETEL  
DAVID ZERBY

The Annual Campaign for Alaska Legal Services Corporation  
**Access to Justice for Alaskans in Need**  
Our 2017-2018 Robert Hickerson Partners in Justice Campaign started 10/1/17. If you would like to join your colleagues in supporting this worthwhile cause, please send your tax-deductible contribution by 1/31/18 to:  
**Alaska Legal Services Corporation**  
1016 W. 6th Ave., Ste. 200  
Anchorage, AK 99501

Online contributions can be made at [www.alsc-law.org](http://www.alsc-law.org)  
For more information or to request a pledge form, email us at [donor@alsc-law.org](mailto:donor@alsc-law.org).



Attendees at the conference join CIP Director Bob Polley in a moment of levity at the end of the event.

## State, Sitka tribe join on court improvement for children

By Judge David Avraham Voluck

The State of Alaska Court Improvement Project (CIP) and the Sitka Tribal Court Improvement Project (TCIP) joined forces to present portions of the Alaska Child in Need of Aid (CINA) curriculum in Sitka Sept. 13-15, 2017.

Approximately 60 participants attended, “Forging Relationships to Improve Child Welfare Outcomes for Children and Families in Southeast Alaska” hosted by the tribe’s Department of Social Services. The gather-

ing imparted best practices to state court judges, tribal court judges, attorneys general, public defenders, child welfare attorneys, Guardians Ad Litem, as well as state and tribal child protection workers throughout Southeast Alaska.

Distinguished faculty included: Professor Diane Benson, University of Alaska Fairbanks, Alaska Native Studies/Cross Cultural Communication); Professor Delores Subia Bigfoot, PhD, director, Indian Country Child Trauma Center; Amalia Monreal, LCSW, and Raymond Daw, LCSW, Native Behavioral Health Clinicians, and Diane Paine (Director, Justice for Native Children.

The Sitka training is another meaningful step forward for the growing relationship between the State of Alaska and Alaska Native tribal governments, joining efforts for the betterment of Alaska’s families.

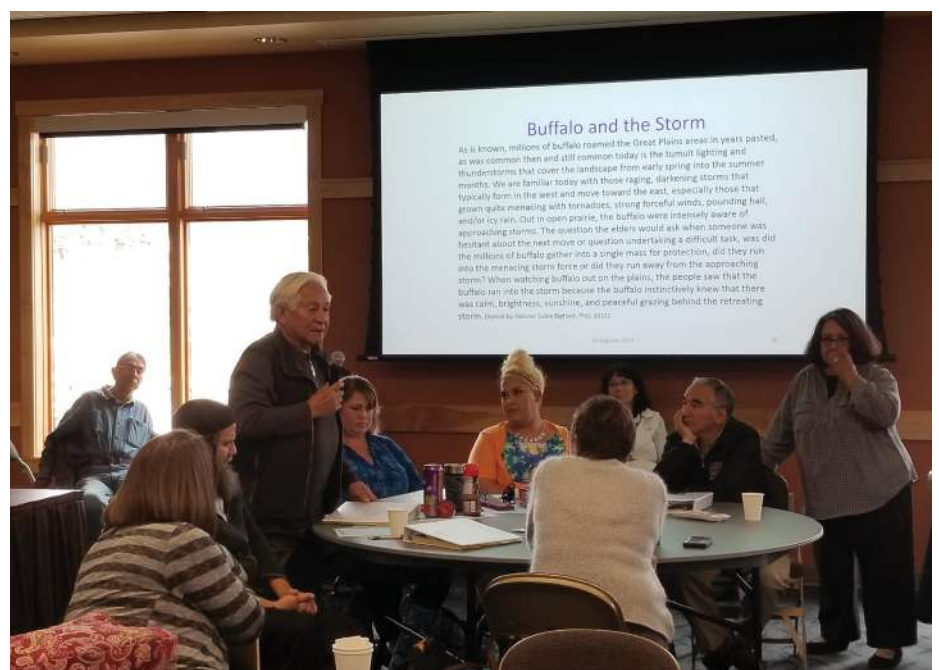
David Kelley with the federal grantor for CIP programs, the Administration for Children and Families, described the Sitka Joint Project as “national leadership” in the field. In addition to the presentation of the Alaska CINA Curricu-

lum, was the gathering of a critical portion of the region’s child welfare community under one roof. While the participant list and job descriptions were varied, participants com-

municated a commonality of mind: improving how we take care of our children, especially when touched by the child protection system.



Juneau Superior Court Judge Louis Menendez and Sitka Tribal Court Judge David Avraham Voluck share a laugh.



Sitka Tribal Court Chief Judge Peter Esquiro and Dr. Delores Subia Bigfoot address the a gathering.

**FOR LEASE**—in the Heart of Midtown

3230 “C” Street • 5,858 rsf 1st Floor  
Available December 15

**PINNACLE PROPERTIES**  
Call Charlene Howe at 223-7853



Sitka Kiksadi Clan welcomes home clan grand-daughter Professor Diane Benson and robes her for dancing during the Conference Dinner. Also pictured are from right to left: Louise Brady, Sitka Tribe; Diane Payne, Justice for Native Children; Dorothy Gordon; Eunice James, Central Council of Tlingit and Haida Indian Tribes of Alaska.



Students joined some of the members for a group portrait.

## Nearly 80 students attend Color of Justice program

The Alaska Court System and the Anchorage School District hosted the 2017 Color of Justice program Oct. 5-6, 2017. Color of Justice is a law-related education program founded by the National Association of Women Judges (NAWJ) designed to promote diversity in the legal profession and judiciary by encouraging diverse youth to consider careers as lawyers and judges.

Nearly 80 students from high schools across Anchorage participated in two days of workshops and other activities presented by representatives from Gonzaga University School of Law, Seattle University School of Law, University of Washington School of Law and the University of Alaska Anchorage Justice Center. The program is also supported by the Alaska Bar Association, the Alaska Federation of Natives, Alaska Native Justice Center, Council on Legal Education Opportunity, Law School Admission Council, and the Northwest Indian Bar Association. The two-day program took place at Bartlett High School and the Boney Courthouse in the Supreme Court Courtroom and trial courtrooms.

Color of Justice sessions included “MentorJet: A Speed Mentoring Experience” (where students met with diverse lawyers, judges and justices,

including professors from participating law schools, and representatives from Native Corporations), “Constitutional Cranium” (a quiz show on Alaska constitutional knowledge), a “You be the Judge” session, and multiple mock trials. New to Color of Justice this year was a session on social media and the law taught by a member of the court system’s access to justice technology team.

Magistrate Judges, District Court Judges, Superior Court Judges and two Supreme Court Justices volunteered their time as mentors for the MentorJet program, and as judges in the mock trials. Countless court system and school district administrators and staff also volunteered their time to prepare, bus and chaperone students and to create all the materials for the program, and prepare the various venues. Attorneys from the Attorney General’s office, the District Attorneys’ office, the Public Defender Agency, the Office of Public Advocacy, the Alaska Bar Association’s Law-Related Education Committee, and Anchorage Youth Court volunteered by mentoring students and serving as their coaches during the mock trials and Constitutional Cranium.

# ALASKA BAR ASSOCIATION

# ANNUAL CONVENTION

MAY 9-11, 2018 • ANCHORAGE, AK

THURSDAY DINNER  
MUSIC BY: **ilikero**bots



80s music

KEYNOTE SPEAKER  
**SCOTT TUROW**,  
Writer and Attorney





**SPEAKERS INCLUDE:**

- Dean Erwin Chemerinsky and Professor Laurie Levenson, U.S. Supreme Court Opinions Update
- David Mann, Winning With Words: Building the Story with Persuasive Power
- Andrew Fastow, Rules Versus Principles
- Dan Negroni, Bridging the Gap: Connecting Generations in the Practice of Law
- Roy Ginsburg, Exit Strategies for Retiring Lawyers
- Piper Kerman, Orange is the New Black



**OPENING RECEPTION AT THE ANCHORAGE MUSEUM, WED., MAY 9**  
*with music by Melissa Bledsoe*

**Registration coming soon at [www.AlaskaBar.org/2018Convention](http://www.AlaskaBar.org/2018Convention)**



Mentor volunteers attending the Color of Justice program include: Back Row L-R: Miguel Willis, Professor Christian Halliburton, Peter Boskofsky, Judge Herman Walker, Professor Terry Price. Front row: L-R: Judge Pamela Washington, Sarah Park, Kirsten Kinogak-Friday, Magistrate Judge Una Gandhir, Justice Susan Carney, Judge Kari McCrea.



## Color of Justice explained at Anchorage Civics Fair

Anchorage District Court Judge Jo-Ann Chung provides an overview of Alaska's Merit-Based Selection and Retention system and information about the Color of Justice Program at the Civics Fair at the Loussac Library in September. The Civics Fair was a component of the Municipality of Anchorage's Welcoming Anchorage Project. [goo.gl/8c3GAN](http://goo.gl/8c3GAN)

## NEWS FROM THE BAR

ALASKA BAR ASSOCIATION  
ETHIC OPINION NO. 2017-2

### Attorney's Ability to Contact Government Official Who Is a Represented Party to Discuss Settlement or Other Policy Related to the Litigation

#### ISSUE PRESENTED

Is it ever ethically permissible for an attorney in a suit against a governmental body to contact a government decision-maker directly, even though that person is a represented party in the litigation?

#### SHORT ANSWER

The policy behind the rule barring contact with a represented party sometimes conflicts with the right of an individual or organization to use counsel to petition the government, a right that is not lost merely because litigation is ongoing. To answer the ethics question posed, the Committee must balance these two competing interests.

In conformity with the majority of jurisdictions that have considered this question, the Committee concludes that an attorney ethically may contact a represented decision-maker on behalf of a client in order to discuss a matter of government policy related to the lawsuit – such as conditions for settling the suit – but the attorney must give reasonable advance written notice of the substance of the intended communication to the attorney representing the government official in the pending litigation. Further, the attorney's communication may not seek facts for use in the litigation and must be limited to matters of government policy on which the attorney reasonably believes the official has the authority to take or recommend action.

This conclusion conflicts with statements contained in Ethics Opinion 71-1 and with the conclusion reached in Ethics Opinion 94-1. For the reasons discussed below, the inconsistent statements and conclusions in those earlier opinions are disavowed and superseded by the analysis in this opinion.

#### STATEMENT OF FACTS

In the situation presented to the Committee, Attorney represents a nonprofit organization that has sued the State of Alaska, alleging that the State enacted an unconstitutional law. The caption of the suit names as defendants the State of Alaska generally and, in her official capacity, the Commissioner of the Department that implements the challenged law. The State formally is represented in the litigation by the Attorney General; two Assistant Attorneys

General entered their appearances and have been responsible for the in-court activities related to the litigation.

*Continued on page 17*



## Color of Justice 2017

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

Anchorage, Alaska October 5-6, 2017

### THANK YOU!

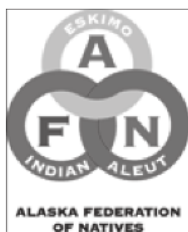
Chip Abolafia, Anchorage School District  
Sarith Anjilvel, District Attorney's Office  
ASD Social Studies Department Chairs  
Bartlett High School Staff  
John Bernitz, Public Defender Agency  
Peter Boskofsky, Afognak Native Corporation/Alutiiq, LLC  
Justice Joel Bolger, Alaska Supreme Court  
Ron Brown, Anchorage School District  
Justice Susan Carney, Alaska Supreme Court  
Judge Jo-Ann Chung, Anchorage District Court  
Cynthia Franklin, Attorney General's Office  
Stephanie Galbraith Moore, Attorney General's Office  
Magistrate Judge Una Gandhir  
Michael Graham, Anchorage School District  
Derek Hagler, Anchorage School District  
Prof. Christian Halliburton, Seattle University School of Law

Judge Patrick Hanley, Anchorage District Court  
Marnie Hartill, Anchorage School District  
Cheryl Jones, Alaska Court System  
Kathy Keck, Alaska Court System  
Kirsten Kinogak-Friday, Calista Corporation  
Rebecca Koford, Anchorage Youth Court  
David Landry  
Cynthia Lee, Alaska Court System  
Susan Lee, Gonzaga University School of Law  
Alyssa Logan, Anchorage School District  
Judge Kari McCrea, Anchorage District Court  
Shannon Methe, Anchorage School District  
Margaret Newman, Alaska Court System  
Stephanie Nichols, GCI  
Allison O'Leary, District Attorney's Office  
Sarah Park, District Attorney's Office  
Prof. Deborah Periman, University of Alaska Anchorage Justice Center

Prof. Terry Price, University of Washington School of Law  
Sean Prince, Anchorage School District  
Mara Rabinowitz, Alaska Court System  
John Roberson, Office of Public Advocacy  
Lesa Robertson, Alaska Court System  
Lynn Roering, Anchorage School District  
Dan Rhoten, Alaska Court System  
Jacqueline Shepherd, Alaska Court System  
Danika Swanson, Public Defender Agency  
Michael Thompson, Anchorage School District  
Taylor Thompson, Alaska Court System  
Judge Herman Walker, Anchorage Superior Court  
Robert Wegner, Anchorage School District  
Denise Wike, Anchorage Youth Court  
Leandra Wilden, Anchorage School District  
Miguel Willis, Access to Justice Tech Fellows Program  
Adolf Zeman, Landye, Bennett, Blumstein

#### NAWJ-Alaska COJ Committee:

Judge Pamela Washington, *Chair*,  
Judge Stephanie Joannides (Ret.), *Founding Chair*  
Judge Beverly Cutler (Ret.), *Founding Member*





## NEWS FROM THE BAR

Continued from page 16

Attorney's client prevailed in the litigation in the superior court, and Attorney would like to contact the Commissioner directly to attempt to persuade her to not to appeal the superior court's decision. Attorney believes that the personal approach could be more effective than discussing the issue with the Assistant AGs and asking them to relay the message to the Commissioner as their client.

Attorney wants to know if he may contact the Commissioner directly, as an exercise of his client's constitutional right to petition the government, or whether Rule of Professional Conduct 4.2 bars such direct contact absent consent by the Commissioner's litigation counsel.

For purposes of the analysis that follows, it does not matter if the Commissioner has final authority to settle the case and to choose not to appeal, or only the authority to recommend such action to another government official, such as the State Attorney General.

## ANALYSIS

Alaska Professional Conduct Rule 4.2 states in full:

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

The commentary to this rule reiterates that the rule does not prohibit a communication that is authorized by law. It states particularly that

"Communications authorized by law may include communications by a lawyer on behalf of a client who is exercising a constitutional or other legal right to communicate with the government."<sup>1</sup>

Rule 4.2 ensures that attorneys respect the choice of individuals and organizations that have chosen to be represented by counsel about a particular matter. The communication at issue here – the proposed contact with the Commissioner about the litigation – falls squarely within the prohibition of the rule, unless the communication is "authorized by law," as that term is used in the rule and the commentary.<sup>2</sup>

The American Bar Association's Standing Committee on Ethics and Professional Responsibility addressed the exact issue presented here in its Formal Opinion 97-408.<sup>3</sup> The ABA Ethics Opinion recognizes and discusses the competing interests, on the one hand, of protecting a party who has chosen to be represented by counsel from being contacted directly by an opposing attorney and, on the other hand, of allowing a lawyer to assist a client in exercising her constitutional right to petition the government. The ABA Ethics Opinion concludes that the proper balance is to allow direct contact under certain limited conditions:

Balancing the interests served by the no-contact rule against the constitutionally-based policy favoring citizen access to government decision makers, the Committee concludes that [Model] Rule 4.2<sup>4</sup> does not prohibit a lawyer representing a private party in a controversy with the government from communicating directly with governmental officials who have authority to take or recommend action in the matter, provided the communication is solely for the purpose of addressing a policy issue, including settling the controversy. To give effect to the purposes of Rule 4.2 even in this situation, however, the Committee concludes that the lawyer must afford government counsel reasonable advance notice of an intent to communicate, in order to afford an opportunity for the officials to obtain advice of counsel before entertaining the communication.<sup>5</sup>

The ABA Ethics Opinion notes that government officials represented in litigation by counsel clearly are covered by Rule 4.2's ban on contacting a represented party, but the ABA Ethics Committee reasoned that strict application of a no-contact rule would frustrate an individual's right to petition the government through her chosen counsel.<sup>6</sup> Discussing these two competing principles, and quoting from a New York City Bar Opinion, the ABA Ethics Opinion observes:

[G]overnment lawyers should not be able to block all access to government officials to the point of interfering with the right to petition for redress, but neither should attorneys for private parties be allowed to approach uncounselled public officials who may not know exactly what cases are pending against them, the status of those cases, the consequences of those cases, or the consequences their statements may have in those cases.<sup>7</sup>

At the time the ABA Ethics Opinion was drafted, the commentary to Model Rule 4.2 stated in pertinent part: "Communications authorized by law include, for example, the right of a party to a controversy with a government to speak with government officials about the matter."<sup>8</sup> This sentence is ambiguous with respect to whether the drafters intended only to recognize the personal right of a client to petition the government or whether instead the drafters intended to ensure that a party could petition the government through counsel.<sup>9</sup> The ABA Ethics Opinion interpreted the "right of a party" to speak to the government's decision-maker to encompass the right of the party to communicate with the government decision-maker through counsel, "else there would be no reason to deal with the issue in the context of a rule that applies only to lawyers."<sup>10</sup>

Subsequent to the issuance of ABA Ethics Opinion 97-408, the commentary to Model Rule 4.2 was revised to acknowledge more explicitly that a client has a right to petition the government *through counsel*.<sup>11</sup> The 2002 revision deleted the sentence quoted above (which refers expressly only to "the right of a party"), and added the following sentence: "Communications authorized by law may include communications *by a lawyer* on behalf of a client who is exercising a constitutional or other legal right to communicate

with the government."<sup>12</sup>

As noted earlier, the ABA Ethics Opinion imposes two conditions on a lawyer's right to speak to a represented government official on behalf of a client:

First, "the government official to be contacted must have authority to take or recommend action in the controversy, and the sole purpose of the communication must be to address a policy issue, including settling the controversy."<sup>13</sup> Thus, using a communication with the government official to seek discovery in the absence of government counsel is forbidden.

Second, the lawyer for the private party "must always give government counsel advance notice that [he or she] intends to communicate with officials of the agency to afford such officials an opportunity to discuss with government counsel the advisability of entertaining the communication."<sup>14</sup> Under the ABA Ethics Committee's approach, this condition applies whether the lawyer intends oral or written communication with the government official.<sup>15</sup>

The ABA Ethics Opinion notes accurately that its conclusions generally conform with a majority of then-recent ethics opinions from other bar associations.<sup>16</sup> The Opinion observes that some jurisdictions go further and, by rule, authorize a lawyer in litigation to communicate directly with any government official without notice to or consent from opposing counsel, either in all situations<sup>17</sup> or when the attorney is communicating with an official who has the authority to redress a grievance of the attorney's client.<sup>18</sup>

This Committee's research has located other recent opinions that have taken the same general approach as the ABA Ethics Opinion, sometimes relying on a state comment that clearly authorizes a communication with a government official.<sup>19</sup> The Committee has located no recent ethics opinion that forbids communications by a lawyer in the circumstances and with the conditions approved by the ABA Ethics Opinion. Legal scholars also have expressed the view that a lawyer should be authorized to speak directly to a represented government official when the purpose of the communication is to discuss a matter of policy, such as settling a case, and there is no attempt to obtain facts or admissions outside of the ordinary discovery process.<sup>20</sup>

This Committee is persuaded that Alaska Professional Conduct Rule 4.2 and its commentary should be interpreted in the way the ABA Ethics Committee interpreted Model Rule 4.2: to strike a balance between protecting government officials against direct communications from opposing counsel and protecting individuals' rights to petition the government.<sup>21</sup>

The Committee believes that an absolute ban on direct communications with government officials represented in litigation goes too far as a matter of policy because it infringes on the right to petition the government through counsel, and such a view disregards the clear language of the commentary to Rule 4.2.

On the other hand, the Committee also believes that the cautions ex-

Continued on page 18

## The Perfect Downtown Location no matter what size space you need

Just steps from great restaurants, the coastal trail,  
health clubs and the courthouse

**Penthouse Suite** - 8,000+ rsf on the 7th floor. Sweeping views of Cook Inlet and Denali

**1100 to 8200 rsf** - on the 3rd & 4th floors. West-facing windows offer outstanding views of Cook Inlet and Susitna

**Executive, Part-Time & Virtual Offices** - on the 2nd floor, Pacific Office Center offers a professional work environment with access to receptionist, meeting rooms, office equipment and as many other services as you need. Support available for all building tenants as well.

### Carr Gottstein Building

310 K Street

For leasing information contact:

Bob Martin

Denali Commercial

(907) 564-2424

BobMartin@DenaliCommercial.com

Pacific Office Center contact:

Trecina Parker

(907)264-6600 POCTrecina@gci.net



Continued from page 17

pressed in ABA Ethics Opinion 97-408 and by commentators are justified. Many government officials are inexperienced in litigation, they may not be fully informed about the facts of the litigation, and they may not fully understand the implications of discussing a matter directly with opposing counsel, rather than through their own attorney. Relaxing the no-contact rule too greatly could allow lawyers to take advantage of government officials who are willing to talk with them.

A good balance is reached by ABA Ethics Opinion 97-408, under which the lawyer who intends to contact a government official represented in litigation first must advise opposing counsel of the substance of the intended communication and must limit the communication to matters of policy. The requirement of reasonable advance written notice of the intended communication ensures that the government's litigation attorney has the opportunity to advise the government official about whether to schedule a meeting or to read and respond to a letter from the opposing attorney; at the same time, the rule ensures that a government attorney cannot block the government official from making his or her own decision about receiving a direct communication from opposing counsel on a matter of policy related to the ongoing litigation. The restrictions also ensure that the non-government attorney does not use the informal communication as a substitute for formal discovery; gathering facts or admissions is forbidden.<sup>22</sup>

Although the Committee is persuaded by the policy and reasoning of the middle-ground approach reflected in ABA Ethics Opinion 97-408, the Committee does not write on a clean slate in 2017. Before ABA Ethics Opinion 97-408 was issued, this Committee adopted an opinion embracing a stricter rule. In Ethics Opinion 94-1, the Committee was asked whether it is ethically permissible for an attorney who represents a party in litigation against a government agency to make a presentation to the managing board of the agency in order to set forth the client's settlement position, without having first received consent from the agency's litigation attorney. The Committee concluded that such a presentation would violate Rule 4.2.<sup>23</sup> The Committee was influenced by the commentary of that time, which matched the commentary to Model Rule 4.2 at the time.<sup>24</sup> Unlike the ABA Ethics Committee, this Committee interpreted the commentary narrowly, reading it to allow a party – but not a lawyer for a party – to petition the government during litigation.<sup>25</sup> However, the Committee also concluded that, if a government official involved in litigation requested the attorney for the opposing party to make a presentation on the matter being litigated, then the attorney ethically could attend a meeting and speak with the official so long as the attorney gave advance notice of the invitation to the government official's counsel and provided a copy of any material the attorney planned to present to the official.<sup>26</sup>

The Committee now finds several bases for rejecting the narrow conclusion of Ethics Opinion 94-1. First, the Committee in 1994 did not have the benefit of the analysis in ABA Ethics Opinion 97-408, which, as discussed earlier, authorized counsel to petition the government on behalf of a client in litigation even in the face of the then-ambiguous commentary, if two important restrictions are observed. This Committee in 1994 allowed communications with similar restrictions if the invitation to communicate was initiated by a government official, but the Committee did not adopt a comparable middle ground, such as the ABA Ethics Opinion adopted, when the attorney and her client wished to initiate the direct communication.<sup>27</sup>

Second, and more important, the commentary to Rule 4.2 has changed since Ethics Opinion 94-1 was adopted. The current Alaska commentary tracks the revised commentary to Model Rule 4.2 and now unambiguously refers to the client's right to petition the government through counsel.

Third, with the benefit of hindsight, the Committee finds that Ethics Opinion 94-1 has some shortcomings that should limit its applicability. That opinion cites *Walters v. National Association of Radiation Services*<sup>28</sup> as support for the conclusion that the right to petition the government does not include the right to petition through counsel.<sup>29</sup> However, *Walters* holds only that a federal statute violated neither the due process clause nor an individual's right to access the courts when it limited to \$10 the fee that could be paid to a lawyer representing a client in proceedings before an agency.<sup>30</sup> The case is not persuasive precedent for restricting the right of clients in litigation to use their counsel to petition the government to settle a case, after the clients engaged counsel to represent them in litigation against the government.

Despite these criticisms, the Committee respects, agrees with, and reaffirms much that is stated in Ethics Opinion 94-1 about the values expressed by Rule 4.2 and the importance of abiding strictly by the Rule when an attorney wishes to obtain information from a government official with managerial responsibility regarding the facts at issue in pending litigation.

However, the Committee now formally disavows the conclusion of Ethics Opinion 94-1 and substitutes the conclusion of ABA Ethics Opinion 97-408: an attorney for a party in litigation against a governmental body may contact a represented government official to discuss policy related to the litigation, including whether to settle the case or to pursue an appeal, provided the attorney first gives reasonable advance written notice of the substance of the intended communication to the government official's litigation counsel and limits the communication to policy matters.

Inconsistent language in Ethics Opinion 71-1 also must be considered. That opinion reflects this Committee's first attempt to address the question of which government officials are "parties" in a suit between citizens and a governmental body. To a large extent, it is the predecessor of Ethics Opinion 2011-2, which discusses how to determine which employees have managerial responsibility; those conclusions in Ethics Opinion 71-1 are not implicated by the analysis in this opinion.<sup>31</sup> However, Ethics Opinion 71-1 also contains some very broad language about communications regarding litigation with the government officials who are the decision-makers regarding that litigation.<sup>32</sup> That language is inconsistent with the conclusions of this opinion, and, to that limited extent only, Ethics Opinion 71-1 also must be disavowed and its analysis superseded by this opinion.

To answer squarely the question presented at the outset, the Committee

concludes that, provided Attorney first gives reasonable advance written notice of the substance of the intended communication to the Assistant Attorney Generals who are handling the litigation, Attorney then may write to the Commissioner personally, or call the Commissioner's office to attempt to make an appointment to speak in person about policy, so that Attorney then can convey directly the reasons the client believes the State should not appeal the adverse judgment. To be "reasonable," the advance written notice typically will identify the specific government official to be contacted, the date of the proposed contact, and the substance of the intended communication, and it will be sent far enough in advance of the proposed contact that the government attorney has the opportunity to give advice to the official on how to respond to the contact.

The Committee notes that, in the situation presented, the person to whom counsel wishes to speak – the Commissioner – has "managerial responsibility on behalf of the organization" and has the authority, on her own or in conjunction with others, to take or to recommend the action that Attorney requests for settling or concluding the case.<sup>33</sup> Further, because the superior court litigation has concluded, there is little risk that the communication could be used for improper fact-finding. Thus, Attorney would be representing his client in exercising the client's right to petition the government, and, because the communication is "authorized by law," the communication would not violate Rule 4.2. Attorney must, however, restrict his communications to policy matters – i.e., those that fairly fit within the constitutional right to petition the government; he may not use the conversation to gather facts, and he must abide by all other ethics rules, including the prohibition on false and misleading statements.<sup>34</sup>

Approved by the Alaska Bar Association Ethics Committee on April 6, 2017.

Adopted by the Board of Governors on September 7, 2017.

<sup>1</sup> Alaska Professional Conduct Rule 4.2, Commentary Para. 5 (as adopted in 2009).

<sup>2</sup> Two exceptions to the no-contact rule do not apply to the facts at issue here, though they may apply in other circumstances.

First, Rule 4.2 allows communications concerning matters outside the pending litigation. Paragraph 4 of the commentary to the rule gives the example that a lawyer representing a party engaged in a suit against the government is not prohibited from contacting a nonlawyer representative of the government on a wholly different matter. See also Ethics Opinion 2006-1 (further discussing how the no-contact rule does not apply to communications with government officials unrelated to the matter in which the attorney represents himself or a client in a suit where the government is a represented party). That exception does not apply here, because Attorney wants to contact the Commissioner *about the litigation* in which Attorney represents one party and the Commissioner is a representative of the opposing party.

Second, in a suit against the government, Rule 4.2 allows contacting a government employee with knowledge relevant to a lawsuit, so long as the employee is a potential witness but not a representative of the government in that lawsuit. Paragraph 6 of the commentary explains that, in the case of a represented organization, the rule "prohibits communications by a lawyer concerning the matter with persons having managerial responsibility on behalf of an organization." Ethics Opinion 2011-2 at 1 interprets "managerial responsibility" to mean that the person has "sufficient authority to speak on behalf of the organization and thus legally bind the organization." See also Ethics Opinions 71-1 and 84-1 (both discussing how to determine which employees have managerial responsibility). The exception does not apply here, because the Commissioner is a person with managerial responsibility on behalf of the State. That is, the Commissioner personally has the authority to speak on behalf of the Department and to take actions that bind the Department.

<sup>3</sup> See American Bar Association Standing Committee on Ethics and Professional Responsibility, Formal Opinion 97-408, *Communication with Government Agency Represented by Counsel* (Aug. 2, 1997) [hereinafter "ABA Ethics Opinion"].

<sup>4</sup> Model Rule 4.2, discussed in ABA Ethics Opinion 97-408, is identical to Alaska's Professional Conduct Rule 4.2.

<sup>5</sup> ABA Ethics Opinion 97-408 at 2.

<sup>6</sup> See *id.* at 4-5.

<sup>7</sup> *Id.* at 6-7, quoting from Association of the Bar of the City of New York, Committee on Professional Ethics Opinion 1991-4 (quotation marks and punctuation alterations omitted).

<sup>8</sup> American Bar Association Center for Professional Responsibility, *A LEGISLATIVE HISTORY: THE DEVELOPMENT OF THE MODEL RULES OF PROFESSIONAL CONDUCT, 1982-2005* at 534 (2006) (emphasis added).

<sup>9</sup> See ABA Ethics Opinion 97-408 at 6 n.10 (discussing the language then in the commentary to Model Rule 4.2).

<sup>10</sup> *Id.*

<sup>11</sup> See A LEGISLATIVE HISTORY: THE DEVELOPMENT OF THE MODEL RULES OF PROFESSIONAL CONDUCT, 1982-2005 at 539, 541.

<sup>12</sup> *Id.* at 539 (emphasis added).

<sup>13</sup> ABA Ethics Opinion 97-408 at 7 (footnote omitted).

<sup>14</sup> *Id.* at 7-8.

<sup>15</sup> See *id.* at 8 (specifying that, if the lawyer intends to send a written communication, the lawyer must give government counsel a copy of the written material at a time and in a fashion that will afford counsel a reasonable opportunity to advise her client whether to receive the communication from the lawyer for the other side).

<sup>16</sup> See *id.* at 5 n.7; see, e.g., Association of the Bar of the City of New York, Committee on Professional Ethics Opinion 1991-4; N.C. State Bar Ass'n, Ethics Comm. Op. 202 (1995); Utah State Bar, Ethics Comm. Op. 115 (1993) & Op. 115R (1994).

<sup>17</sup> See ABA Ethics Opinion 97-408 at 5 n.8, citing the predecessor to Cal. Rule of Prof. Conduct 2-100(C)(1) (which, like California's current rule, provides that the general no-contact rule does not apply to communications with a public official, board, committee, or body).

<sup>18</sup> See *id.*, citing District of Columbia Rule of Prof. Conduct 4.2(d).

<sup>19</sup> See, e.g., Alabama State Bar, Formal Ethics Op. 2003-03 (Sept. 18, 2003); District of Columbia Bar Ass'n, Ethics Op. 340 (May 2007); N.C. State Bar Ass'n, 2005 Formal Ethics Op. 5 (July 21, 2006).

<sup>20</sup> See, e.g., RESTATEMENT (THIRD) OF THE LAW GOVERNING LAWYERS § 101A (allowing contact with a represented government official "with respect to an issue of general policy"); Geoffrey C. Hazard & Dana Remus Irwin, *Toward a Revised 4.2 No-Contact Rule*, 60 HASTINGS L.J. 797, 818-22 (2009).

<sup>21</sup> Even without this opinion, an attorney in litigation against the government clearly may ask the government's litigation counsel to ask his client, the government official, for an opportunity to meet to discuss settlement or other policy related to the litigation; ordinarily, such a request should be conveyed to the client. An attorney must relay a specific settlement proposal. See Alaska Professional Conduct Rules 1.2(a), 1.4(a) & (b), and accompanying comments.

<sup>22</sup> This opinion, authorizing limited contact with a representative of the opposing party in litigation, does not authorize ex parte contact with an adjudicator, even in an administrative proceeding where the same person, such as a Commissioner, is both the adjudicator and a person with managerial responsibility for the state agency that is a party in the proceeding.

<sup>23</sup> See Ethics Opinion 94-1 at 1.

<sup>24</sup> That is, the Alaska commentary to Rule 4.2 in 1994 contained the sentence "Communications authorized by law include, for example, the right of a party to a controversy with a government to speak with government officials about the matter," and not the substitute sentence adopted in 2002:

Continued on page 19

## Board considers new oath of admission language

Alaska lawyers are required to take an oath prior to being admitted to the Bar. The oath is set out in Bar Rule 5 and has not changed for years. Although the current oath reads well enough, it is clumsy and tedious to recite. Proposals for simplifying and “modernizing” the oath have circulated for some time. The Board of Governors has agreed that the proposed new oath of office, an amendment to Bar Rule 5, is simpler to recite and understand and contains the same substantive re-

quirements as the old oath. Contact Deborah O’Regan at the Alaska Bar Association with any comments to the proposed changes.

***Additions underscored,  
deletions have strikethroughs***  
**DRAFT**  
**IN THE SUPREME COURT OF  
THE STATE OF ALASKA**  
**ORDER NO.**

Amending Alaska Bar Rule 5 to provide a plain English Oath.

### IT IS ORDERED:

Alaska Bar Rule 5, Section 3 is amended as follows:

**Rule 5. Requirements for Admission to the Practice of Law.**

**Section 3.** Upon receiving certification of the eligibility of an applicant, any state or federal judicial officer may enter an order admitting the applicant as an attorney at law in all the courts of the state and to membership in the Alaska Bar Association. Each applicant ordered admitted to the practice of law shall take the following oath before any state or federal judicial officer:

I do swear or affirm:

I will support the Constitution of the United States and the Constitution of the State of Alaska;

~~I will adhere to the Rules of Professional Conduct in my dealings with clients, judicial officers, attorneys, and all other persons;~~

~~I will maintain the respect due to courts of justice and judicial officers;~~

I will always be truthful and honorable in my practice of law;

~~I will not aid anyone in formulating or pursuing claims or defenses that are asserted in bad faith or are unfounded in fact or law counsel or maintain any proceedings that I believe are taken in bad faith or any defense that I do not believe is honestly debatable under the law of the land;~~

~~I will be truthful and honorable~~

~~in the causes entrusted to me, and will never seek to mislead the a judge, a or-jury or another attorney by false statement or trickery by an artifice or false statement of fact or law;~~

~~I will maintain the confidences and preserve inviolate the secrets of my client, and will not accept compensation in connection with my client’s business except from my client or with my client’s knowledge or approval;~~

~~I will be candid, fair, and courteous before the to courts, and with other attorneys, parties, and witnesses and will advance no fact prejudicial to the honor or reputation of a party or witness unless I am required to do so in order to obtain justice for my client;~~

~~I will uphold not attack the honor or reputation of any person unless I am required to do so in order to obtain justice for my client, and maintain the dignity of the profession, and will strive to improve both the law and the administration of justice.~~

Except as authorized or required by the Rules of Professional Conduct, I will preserve the secrets of my clients, and I will not engage in conduct that might impair my loyalty to a client;

I will uphold the honor and dignity of the legal profession;

And I will strive to improve both the law and the administration of justice.

A certificate of admission shall thereupon be issued to the applicant by the clerk of the court.

## Board drafts guidelines for informal ethics for Bar counsel

***DRAFT: Additions underscored,  
deletions have strikethroughs***  
**IN THE SUPREME COURT OF  
THE STATE OF ALASKA**  
**ORDER NO.**

Adding Alaska Bar Rule 36.1 to provide for informal ethics guidance by bar counsel.

### IT IS ORDERED:

Alaska Bar Rule 36.1 is added as follows:

**Rule 36.1 Informal Ethics Guidance By Bar Counsel**

(a) **Informal Guidance.** At the request of a member of the Alaska bar, Bar Counsel or Bar Counsel’s designee may provide informal ethics guidance about active or pending issues pertaining to the requesting attorney’s own conduct based on the facts provided.

(b) **Protection.** Bar Counsel shall not be compelled to testify, via subpoena or otherwise, in any judicial or adjudicative proceeding, except on behalf of a respondent in a disciplinary proceeding of the Alaska Bar Association, regarding any informal guidance provided to that attorney. Except as provided herein, Bar Counsel shall not be subject to subpoena or otherwise compelled to testify as an expert witness regarding legal ethics or the practice of law. In a disciplinary proceeding, testimony of Bar Counsel shall be limited to the substance of any communications by and between Bar Counsel and the inquiring attorney, where such communi-

cations are an issue in the proceeding.

(c) **Confidentiality.** All communications between Bar Counsel and any attorney requesting guidance will be considered an inquiry to secure advice regarding compliance with the Rules of Professional Conduct under ARPC 1.6(b)(4), and shall be confidential. Bar Counsel shall not disclose the content of any such discussion without the express written consent of the attorney to whom Bar Counsel provided the guidance. No attorney shall withhold consent if the attorney is claiming, in the course of a disciplinary investigation or hearing, that the attorney relied on the guidance of Bar Counsel.

(d) **Use of Informal Guidance in Collateral Litigation.** Informal guidance of Bar Counsel is advisory only. It expresses the judgment of Bar Counsel based on the facts provided, and is not binding on the Court, Disciplinary Board, Board of Governors, Ethics Committee or any judicial or administrative tribunal. Except as provided herein in connection with disciplinary proceedings, guidance of Bar Counsel shall not be used, admitted, introduced, argued or cited in any litigation or before any judicial or administrative tribunal for the purpose of seeking disqualification of a lawyer or law firm. However it may be used to show good faith or reasonable diligence as a defense or mitigation in any subsequent disciplinary action involving the same facts.

### Continued from page 18

“Communications authorized by law may include communications by a lawyer on behalf of a client who is exercising a constitutional or other legal right to communicate with the government.” (Emphases added.) See Ethics Opinion 94-1 at 2.

25 See Ethics Opinion 94-1 at 2-5.

26 See *id.* at 6.

27 The RESTATEMENT (THIRD) OF THE LAW GOVERNING LAWYERS § 101A, cmt. b, cites Alaska’s Ethics Opinion 94-1 as an outlier for taking the position “that the general anti-contact rule applies to all dealings with an employee of a represented government agency.”

28 473 U.S. 305 (1985).

29 See Ethics Opinion 94-1 at 4.

30 See 473 U.S. at 320-35.

31 See Ethics Opinion 71-1 at 1-4.

32 See, *e.g.*, *id.* at 3, 4 (final sentence of opinion).

33 To be very clear, this opinion does not intend to suggest that the Commissioner is necessarily the only person with “managerial responsibility” for the State in the hypothetical example. Attorneys must review the opinions cited in footnote 2 above to determine for a particular case who qualifies as a representative of the governmental party in litigation.

34 See Professional Conduct Rule 8.4(c).

## Alaska Bar Association Board of Governors Action Items October 26 & 27, 2017

- Approved the results of the July 2017 bar exam and recommended 31 people for admission; recommended the admission of five reciprocity applicants and six applicants by UBE score transfer.
- Approved a request for special testing accommodations for the Feb. 2018 bar exam.
- Approved Bar Rule 43 waivers (ALSC) for R. Christopher Knowles, Kelsey Eggert and Katherine Chung.
- Heard a report about the resolution of a bar exam appeal and tabled further discussion until the January meeting.
- Adopted the 2018 budget as amended.
- Voted to accept a stipulation for a six month suspension and payment of \$1,000 in costs.
- Voted to accept a stipulation for a six month suspension, payment of \$1,000 in costs, and to complete six hours of CLE in law office management and three hours of ethics CLE.
- Voted to formalize a relationship with Frampton & Opinsky for the purpose of finding office space options.
- Approved the minutes of the September 7, 2017 board meeting.
- Approved the Lawyers’ Fund for Client Protection panel recommendation for reimbursement of \$2,500 in 2017L001.
- Voted to give the cost award of \$2,500 to Special Bar Counsel.
- Voted to adopt the Findings, Conclusions and Recommendation of the Area Hearing Committee to recommend the reinstatement of Henry Graper III.
- Voted to approve a law student scholarship program as presented by the subcommittee.
- Voted to publish proposed Bar Rule 36.1 regarding Informal Ethics Guidance by Bar Counsel.
- Voted to publish a proposed amendment to Bar Rule 5, putting the Attorney’s Oath in “plain English.”

# Bar board outlines guidance for ethics queries

For many years, Bar Counsel has answered inquiries from members of the Bar who have ethics questions. The practice is well established, is constantly used by members of the Alaska Bar, and is considered by many to be one of the most valuable services provided by the Bar. Bar Counsel or designee answers about 900 informal requests for guidance per year, and the advice provided tends to head off many problems that might otherwise turn into discipline matters. Surprisingly, there is no Bar Rule that specifically authorizes Bar Counsel to dispense informal ethics guidance, or that outlines the way such guidance can be used. The draft rule, approved for comment by the Board of Governors at its October meeting, outlines the nature of the informal guidance available from Bar Counsel and makes explicit that the guidance provided is not binding on courts or other tribunals when ethics issues are raised in a more formal setting. It also makes clear that consultation with Bar Counsel is confidential and can be used only for limited purposes.

After the comment period the Board of Governors will determine whether to amend, accept, or reject the proposed amendment to the Bar Rules. The Supreme Court will ultimately decide whether to adopt. Comments or concerns should be addressed to Deborah O'Regan, Executive Director, Alaska Bar Association.

**Additions underscored, deletions have strikethroughs**  
**DRAFT**  
**IN THE SUPREME COURT OF THE STATE OF ALASKA**  
**ORDER NO.**

Amending Alaska Bar Rule 5 to provide a plain English Oath.

## IT IS ORDERED:

Alaska Bar Rule 5, Section 3 is amended as follows:

### Rule 5. Requirements for Admission to the Practice of Law.

**Section 3.** Upon receiving certification of the eligibility of an applicant, any state or federal judicial officer may enter an order admitting the applicant as an attorney at law in all the courts of the state and to membership in the Alaska Bar Association. Each applicant ordered admitted to the practice of law shall take the following oath before any state or federal judicial officer:

I do swear or affirm:

I will support the Constitution of the United States and the Constitution of the State of Alaska;

I will adhere to the Rules of Professional Conduct in my dealings with clients, judicial officers, attorneys, and all other persons;

I will maintain the respect due to courts of justice and judicial officers;

I will always be truthful and honorable in my practice of law;

I will not aid anyone in formulating or pursuing claims or defenses that are asserted in bad faith or are unfounded in fact or law counsel or maintain any proceedings that I believe are taken in bad faith or any defense that I do

~~not believe is honestly debatable under the law of the land;~~

~~I will be truthful and honorable in the causes entrusted to me, and will never seek to mislead the a judge, a jury or another attorney by false statement or trickery by an artifice or false statement of fact or law;~~

~~I will maintain the confidences and preserve inviolate the secrets of my client, and will not accept compensation in connection with my client's business except from my client or with my client's knowledge or approval;~~

~~I will be candid, fair, and courteous before the to courts, and with other attorneys, parties, and witnesses and will advance no fact prejudicial to the honor or reputation of a party or witness unless I am required to do so in order to obtain justice for my client;~~

I will uphold not attack the honor or reputation of any person unless I am required to do so in order to obtain justice for my client, and maintain the dignity of the profession, and will strive to improve both the law and the administration of justice.

Except as authorized or required by the Rules of Professional Conduct, I will preserve the secrets of my clients, and I will not engage in conduct that might impair my loyalty to a client;

I will uphold the honor and dignity of the legal profession;

And I will strive to improve both the law and the administration of justice.

A certificate of admission shall thereupon be issued to the applicant by the clerk of the court.



## Samantha Slanders

### Advice from the Heart

#### Dear Samantha,

I live in Alaska but I am considering moving because I suffer from seasonal affective disorder. It starts on June 22 each year, when we begin the slide from light into the darkness of mid-winter. By Halloween, I am spending more time standing in front of the widescreen TV display at Fred Meyers than in my own home. I have a running tab at the You Will Think You Are in Maui tanning salon and a bank of happy lights in every room of the house. Should I spend my PFD on a flight to Fiji or double up on happy lights?

**Sadly Yours,  
Eagle River Ron**

#### Dear Ron,

The lawyers who represent this publication insist that I not answer your question because I am not a medical professional and therefore not qualified to "legally" dispense medical advice. They were not persuaded by the fact that I played Doctor Who in my high school production of Dalek Go Home. However, I can give travel advice. If you choose a trip over treatment, I'd suggest two months in an Arizona trailer park rather than a four-day package trip to Fiji. They cost about the same but the trailer park would give you more days in the sun.

#### Dear Samantha,

I am married to the hardest man in the world to gift. Every November I pore over online catalogues and go mall diving to find him the perfect present. Every Christmas morning he slowly unwraps his gift, preserving the paper so it can be reused. This way he insures that the morning won't be a total waste. He smiles weakly as he lifts up my present and says "Oh, how thoughtful." The man has no hobbies, hates sports, digital devices, and

even books. Samantha, help me save Christmas.

**Signed,  
Desperately Seeking Solace**

#### Dear Desperate,

If your man has ego problems, consider a *Family Tree DNA* kit to help him establish kinship with someone famous. You might also try *Name a Star After Yourself Inc.* or *Name a New Bacteria Strain After Yourself Inc.* If he has even a modicum of social conscience, consider buying him an about-to-disappear island from a Fiji-based NGO. The sale proceeds will go to help victims of global warming. If he is a stinker, give him a week's supply of Costco brand boxers and Tee shirts. Cotton is the new coal.

**Samantha**

#### Dear Samantha,

Lately, I've been on a losing streak in court. Just last week a Valdez jury rejected my client's claim for damages against a Cadillac Escalade driver who had rear-ended her while she waited to pick up her kindergartener from school. The defendant was swiping left on the Tinder profile of a working mom when he plowed into my client. My law partner suggests that if I want to start winning I should replace my old tweed sport coat with something that demands more respect. Should I splurge?

**— Hapless in Haines**

#### Dear Hapless,

Thank you for this question. As one who reads old copies of *Men's Health* and *GQ* while visiting my family practitioner, I consider myself somewhat of an expert on dressing for success. If you are looking for sympathy from the jury, try wearing a thrift store two-piece in a color that shows family man stains like baby vomit. For projecting confidence and power, nothing beats a Brook Brothers' navy blue three piece.

**— Samantha**



The Alaska Bar Association is proud to offer Casemaker's suite of premium services at no additional cost to our members.

Now, Alaska Bar Association members have access to not only Casemaker's broad and comprehensive libraries which cover all 50 states and Federal level materials - but members also have access to a suite of tools that make research faster and easier.

## CaseCheck+

A negative citator system that lets you know instantly if the case you're reading is still good law. CaseCheck+ returns treatments instantly as you research. Link to negative treatments and quickly review the citation history for both state and federal cases.

## CiteCheck by Casemaker

Upload a brief or pleading and within 90 seconds Casemaker will provide a report stating whether your case citations continue to be good law.

## CasemakerDigest™

Daily summary of appellate decisions for all state and all federal circuits, categorized by subject. Casemaker Digest will email or send you an RSS feed of the latest cases in your selected jurisdictions and subject areas of interest.

To learn more about Casemaker and the tools available to you as a Alaska Bar Association member, call Customer Support at 877.659.0801

To access Casemaker from our website go to [www.alaskabar.org](http://www.alaskabar.org) and click on the Casemaker logo in the upper right hand corner. Sign in using your member portal username and password. If you don't remember your username and password contact the Bar office at 272-7469 or [info@alaskabar.org](mailto:info@alaskabar.org).

**Casemaker**  
THE LEADER IN LEGAL RESEARCH™  
[www.casemakerlegal.com](http://www.casemakerlegal.com)



Federal Chief Magistrate Judge Deborah Smith presents a Pro Bono Project certificate of appreciation to Sarah Langberg.

## 2018 Bar dues breakdown dollars per active member at \$660 dues

Discipline.....	277
Administration.....	182
CLE.....	63
Pro Bono.....	36
Fee Arbitration.....	25
BOG.....	21
MCLE.....	12
Lawyer Referral.....	11
LFCP.....	10
Casemaker.....	7
Bar Rag.....	7
Sections.....	3
Web Page.....	2
Committees.....	2
MLK Day.....	1
New Lawyer Travel.....	1
<b>Total</b> .....	<b>660</b>



## 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: walshlawak@gmail.com, 269-5100

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.



Have a Safe and Happy  
*Holiday  
Season!*



## 2018 Alaska Bar Association Budget

### REVENUE

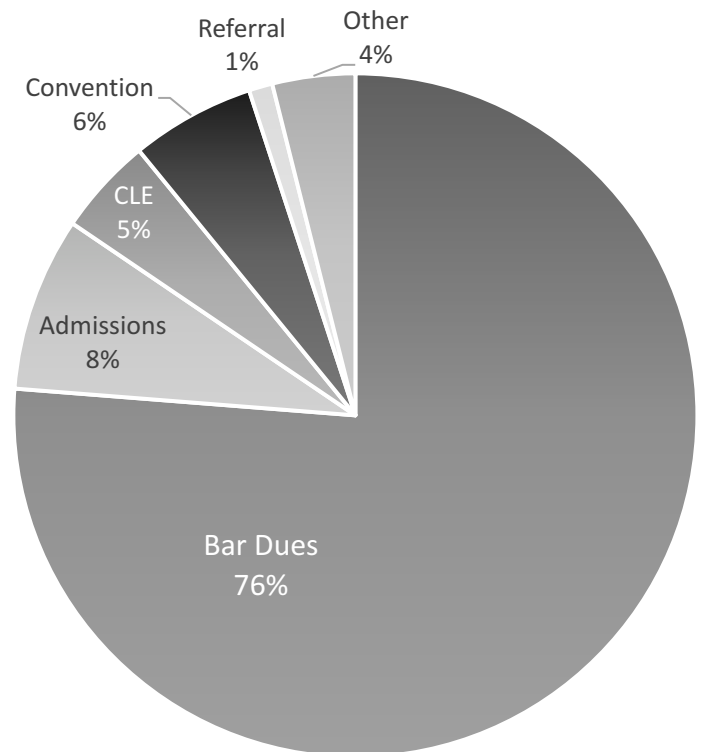
AdmissionFees-Bar Exams.....	72,700
AdmissionFees-MotionAdmit.....	48,000
AdmissionFees-Exam Soft.....	9,000
AdmissionFees-UBE.....	14,400
AdmissionFees-Rule 81s.....	84,500
CLE Seminars.....	127,945
Accreditation Fees.....	4,383
Lawyer Referral Fees.....	31,048
Alaska Bar Rag - Ads, Subs.....	11,419
Annual Convention.....	162,914
Substantive Law Sections.....	27,305
AccountingSvc Foundation.....	9,456
Membership Dues.....	2,090,185
Dues Installment Fees.....	9,625
Penalties on Late Dues.....	16,350
Disc Fee & Cost Awards.....	0
Labels & Copying.....	1,113
Investment Interest.....	54,744
Miscellaneous Income.....	200
<b>SUBTOTAL REVENUE.....</b>	<b>\$2,775,286</b>

### EXPENSE

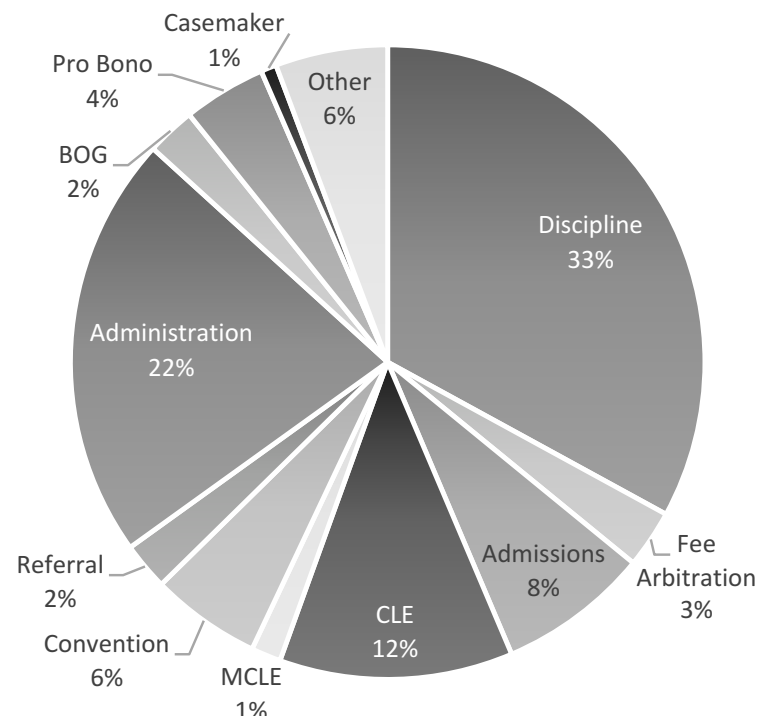
BOG Travel.....	57,203
Committee Travel.....	1,000
Staff Travel.....	37,419
New Lawyer Travel.....	3,000
CLE Seminars.....	92,234
Free Ethics Course.....	4,640
Alaska Bar Rag.....	33,848
Bar Exam.....	48,973
Other Direct Expenses.....	79,097
Annual Convention.....	159,248
Substantive Law Sections.....	5,709
AccountingSvc Foundation.....	9,456
MLK Day.....	5,000
Casemaker.....	24,384
Committees.....	8,229
Internet/Web Page.....	6,424
Credit Card Fees.....	59,954
Miscellaneous.....	5,060
Staff Salaries.....	1,102,553
Staff Payroll Taxes.....	91,602
Staff 401k Plan.....	53,788
Staff Insurance.....	515,810
Postage/Freight.....	16,637
Supplies.....	12,198
Telephone.....	122
Copying.....	3,965
Office Rent.....	166,246
Depreciation/Amortization.....	72,140
Leased Equipment.....	31,582
Equipment Maintenance.....	56,216
Property/GLA/WC Insurance.....	32,205
Programming/Database Maint.....	31,243
Temp Support Staff/Recruitment.....	11,022
<b>SUBTOTAL EXPENSE.....</b>	<b>\$2,838,206</b>

**NET GAIN/LOSS.....** **\$(62,920)**

### Revenue



### Expense



## Board awards nominations sought

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

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

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

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

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



Nora Guinn



Robert K. Hickerson

## ATTORNEY DISCIPLINE

# Supreme Court disbars attorney Bryon Collins

### Alaska Bar Association

The Alaska Supreme Court on Aug. 11, 2017, disbarred Anchorage lawyer Bryon E. Collins for misappropriation, neglect, unauthorized practice, and other misconduct. The Court also clarified that when a suspension or disbarment order includes a money award against the lawyer, the Bar Association can enforce the order as a formal judgment.

The Bar Association charged Collins with misconduct in three cases. In the first case, Collins represented a plaintiff under a contingent fee agreement. The court awarded the client \$41,000 and the defendant conveyed that sum to Collins. Collins failed to deliver the client's share and failed to respond to the Bar's demands for an accounting. The Bar asked the Supreme Court to put him on interim suspension pending the conclusion of formal disciplinary proceedings. The Court granted the request.

In the second case, Collins represented a client who had a claim under a contract. Collins failed to take action, failed to respond to the client's requests for information, failed to refund or account for unearned fees, and failed to respond to the client's grievance and the Bar's discovery requests.

After the Supreme Court put Collins on interim suspension, he continued to provide legal services to an Anchorage business. He prepared court pleadings, a settlement offer, and other legal documents while suspended. The business's records showed payments to Collins for client meetings and other legal services. He failed to respond to the Bar's inquiries and discovery requests.

A disciplinary hearing committee and the Disciplinary Board found that Collins violated Alaska Rule of Professional Conduct 1.15 (forbidding misappropriation and failure to account for client funds), ARPC 8.4(b) (forbidding criminal conduct that adversely reflects on a lawyer's honesty, trustworthiness and fitness to practice), and ARPC 8.4(c) (forbidding conduct involving dishonesty, fraud, deceit, or misrepresentation). The hearing committee and Board also found violations of ARPC 1.3 and 1.4 (forbidding neglect and failure to communicate with a client). Finally, the committee and Board found that Collins violated ARPCs 3.4(c) and 5.5(a) and Alaska Bar Rule 15(a)(6) (forbidding the practice of law while suspended under a Supreme Court order).

The client in the first case made a claim with the Bar Association Lawyers' Fund for Client Protection. The client protection fund can reimburse clients for losses caused by a lawyer's dishonesty. Here, the client stated a claim for the share of the court award that Collins owed him—\$30,000. The Board of Governors approved the claim. Under the Bar Rules, the Bar is entitled to recover that sum from Collins. The Bar asked the Supreme Court to clarify that a money award against a lawyer disciplined by the Court is an enforceable final judgment that need not be reduced to a separate trial court judgment before the Bar can execute on it. The Court's order disbaring Collins specified that when a discipline order includes financial obligations the Court will issue a separate formal money judgment that can be enforced by the Bar.

## Disciplinary board publicly reprimands Phillip P. Weidner

The Disciplinary Board of the Alaska Bar Association ordered that attorney Phillip P. Weidner be publicly reprimanded by order dated Sept. 8, 2017.

The Board determined that Mr. Weidner violated ARPC 3.3(a)(1) by knowingly failing to take reasonable and timely action to correct a false statement of material fact that he had made to the Superior Court, after he came to know that his statement was false. The Board also determined that Mr. Weidner violated ARPC 3.3(a)(3) by knowingly failing to take reasonable and timely remedial measures regarding the affidavit of his client, Deborah Ivy, which contained materially false statements, that Mr. Weidner had filed in court.

Ms. Ivy, an attorney who has now been disbarred, knowingly and intentionally testified falsely under oath in the affidavit by untruthfully accusing her brother, Dr. David D. Kyzer, an opposing party in litigation, of having sexually assaulted her in open court prior to a court hearing. At one point, Mr. Weidner contacted the District Attorney and asked about having Dr.

Kyzer criminally prosecuted for sexual assault. The courtroom security camera captured the events in the courtroom on video, and the video was then viewed by and provided to Mr. Weidner. The video proved that Ms. Ivy's claims were, in the words of the Alaska Supreme Court, "patently false."

Although Mr. Weidner spoke to Ms. Ivy about the affidavit after he received the video tape, and told her that "others" were claiming that her affidavit was less than accurate, he never properly remonstrated with Ivy or took corrective action regarding his earlier statement to the court or Ivy's false affidavit. Specifically, Mr. Weidner did not confront Ivy with the falsity of her affidavit, seek her cooperation in correcting or withdrawing the false affidavit, or inform her that his duty of candor required him to take reasonable and timely remedial action regarding his statement and the affidavit. After Mr. Weidner viewed the videotape, he failed to take remedial action to withdraw, correct, or acquiesce in the striking of the affidavit pursuant to a motion that Dr. Kyzer had filed.

## PAUL COSSMAN

### Freelance "Contract" Lawyer

*Over 30 years of trial and appellate experience in all types of cases, from personal injury to commercial, from intake through appeal, for both plaintiffs and defendants.*

Available for all types of work including:

- Research/Writing
- Motions
- Discovery
- Depositions
- Trial Assistance
- Case Analysis/Planning
- Arbitration panels
- Appeals

(907) 602-7984

[paulcossman@hotmail.com](mailto:paulcossman@hotmail.com)

*Based in Anchorage, but in-state/out-of-state travel welcome.  
Resume, recommendations, and writing samples upon request.*

# Attorney for domestic violence cases wins pro bono award

By Siraj Ahmed Sindhu

Anchorage attorney and former Alaska Bar Vice President Allison Mendel received the 2017 Attorney General's Award for Pro Bono Service Oct. 4, from Deputy Attorney General Ed Sniffen. This award is given every October to recognize a member of the bar who has excelled at providing volunteer services to survivors of domestic violence and sexual assault.

Since 2000, Mendel has worked on 13 volunteer cases through the Alaska Legal Services Corporation (ALSC) and the Alaska Network on Domestic Violence and Sexual Assault (ANDVSA); her firm has worked on a total of 45 cases in that time. Mendel has been doing volunteer work with survivors of domestic violence and sexual assault for about three decades, and has long been a stellar promoter of LGBT rights. She was formerly co-chair of the National Lesbian and Gay Law Association (now the National LGBT Bar Association), spearheaded the campaign against the Defense of Marriage Amendment (DOMA) in Alaska, and was part of the legal team that gave same-sex couples the right to marry in the state.

Attorney General Jahna Lindemuth praised Mendel's work in helping survivors. "Allison Mendel's long history of public service, both as an attorney for Alaska Legal Services and while in private practice, reflects her belief that Alaskans have a responsibility to work together to address challenges that domestic

violence presents in our communities, and her understanding of the role attorneys can play in addressing those challenges," said Attorney General Lindemuth. "We know that providing legal services to victims of domestic violence and sexual assault is the most effective means of ending violence in their lives. Volunteers like Allison Mendel play a critical role in helping survivors escape the cycle of violence, and I commend her on her service."

Mendel recently sat for an interview about her career as an attorney and LGBT rights promoter, her volunteer work, and the importance of legal support for survivors of domestic violence.

**SAS:** How did you get involved with pro bono work on domestic violence?

**AM:** I worked for Alaska Legal Services for a few years before I started my own practice in 1987. Family law and domestic violence cases were much of my job at Alaska Legal Services, so taking on volunteer cases was a natural continuation of that work. Also, some personal friends of mine worked at ANDVSA, and they roped me into it.

**SAS:** Do you have any especially memorable cases?

**AM:** One memorable case involved a member of a small Russian community in Alaska. Because of the language barrier, the case required interpreters. This was during the early days of telephonic interpretation. It took a long time to address that client's problems, not only because of the language barrier and technical challenges,

but also because the whole community and family were resistant. It was difficult for her to ask for and get help, even when it was available.

**SAS:** What do you find fulfilling about pro bono work with domestic violence victims?

**AM:** Victims are helped greatly by having legal representation. Whether they are educated about protective orders makes a huge difference in terms of their experience with the legal system. As you know, the civil domestic relations legal system doesn't serve the poor. It is an inaccessible and inefficient system. Getting a lawyer is prohibitively expensive, and most people don't know their options and rights. Offering free legal help can be a huge service to those who can't afford a lawyer. At the same time, pro bono work isn't the only answer. Primary prevention is. You wouldn't address highway safety by getting volunteers to arrest speeders, but that logic is the primary way we've addressed domestic violence.

**SAS:** So would you say that a cultural shift in the way we perceive domestic violence is necessary?

**AM:** Absolutely. Pro bono work is a drop in the bucket. It can't help everyone. There aren't nearly enough pro bono hours to support everyone who needs legal representation. But within the legal profession, too, change is necessary. Some attorneys don't take domestic vio-



Allison Mendel

lence seriously as a legal issue. Some think domestic violence clients don't take their cases seriously because they drop their cases halfway or don't show up for hearings. But those issues are related to the special difficulties of being a victim of DV.

**SAS:** What would you say to another attorney thinking about doing domestic violence pro bono work?

**AM:** I would say go for it. The ANDVSA can set you up with mentor attorneys, so not knowing what you're doing is not an excuse. There are people there to help you find your way. And your presence will completely change the experience of the client. Having a lawyer show up in court changes the dynamic of the courtroom and is extremely valuable for the client. And it's very satisfying for the attorney. I would also say: be prepared for dealing with the difficulties of the work. Don't blame the client or yourself.

Anyone interested in donating legal help to domestic violence survivors, please contact Christine Pate at the Alaska Network on Domestic Violence and Sexual Assault, 907-747-2673, cpate@andvsa.org or Laura Goss at the Alaska Legal Services Corporation, 907-272-9431, lgoss@alsc-law.org.

The past four winners of the Pro Bono Award (most recent first) are: Jon Katcher, Danielle Ryman, Allen Bailey and John Hoag.

# Room for nursing mothers available in Nesbett Courthouse

From the Alaska Court System

A lactation room is now available for nursing mothers in the Nesbett Courthouse in Anchorage. The designated room is in the secure area on the third floor of the courthouse. The room is equipped with a comfortable chair, several electrical outlets, donated artwork, a donated refrigerator and a sink. The room is available for court system employees as well as jurors, attorneys and others participating in court proceedings. While there is no reservation required to use the room, there is an "in use" sign on the door.

Anchorage Superior Court Judge Dani Crosby and Third Judicial District Area Court Administrator Carol McAllen worked together to create the lactation room after they heard of jurors, attorneys and employees struggling to find private, safe, comfortable and convenient spaces to pump.

Judge Crosby said she is proud that the Alaska Court System was



A sign on the door marks the new courthouse lactation room.

able to offer the space for nursing mothers: "Judges and court staff created the room so that women involved in the justice system whether they are judges, court staff, jurors, or attorneys, can more easily balance work, civic, and family obligations. We heard stories of women having to pump in cramped bathroom stalls in the courthouses or in their cars in the cold weather, and we knew we could do better. Creating the lactation room was a team effort by many staff in the court system who saw a need and created a workable solution at little cost."



Furnishings help accommodate visiting mothers.

The spoken word vanishes; the written record remains.

Check out "Making the Record" at:  
[www.alaskashorthandreporters.org](http://www.alaskashorthandreporters.org)

Sponsored by the  
**ALASKA SHORTHAND REPORTERS ASSOCIATION**

**SPACE AVAILABLE**

As a result of recent personnel moves, Delaney Wiles has four offices available for appropriate office-sharing arrangement. Use of Conference Room included. Possible cost-sharing arrangement with Receptionist, Office Manager and Bookkeeping services also available.

1007 West Third Avenue, Suite 400  
 has an excellent location and view. Price negotiable.  
**Contact Jennifer Ginzinger if interested.**  
 (907) 279-3581 or [jeg\(a\)delaneywiles.com](mailto:jeg(a)delaneywiles.com).

# U.S. Attorney for the District of Alaska sworn in

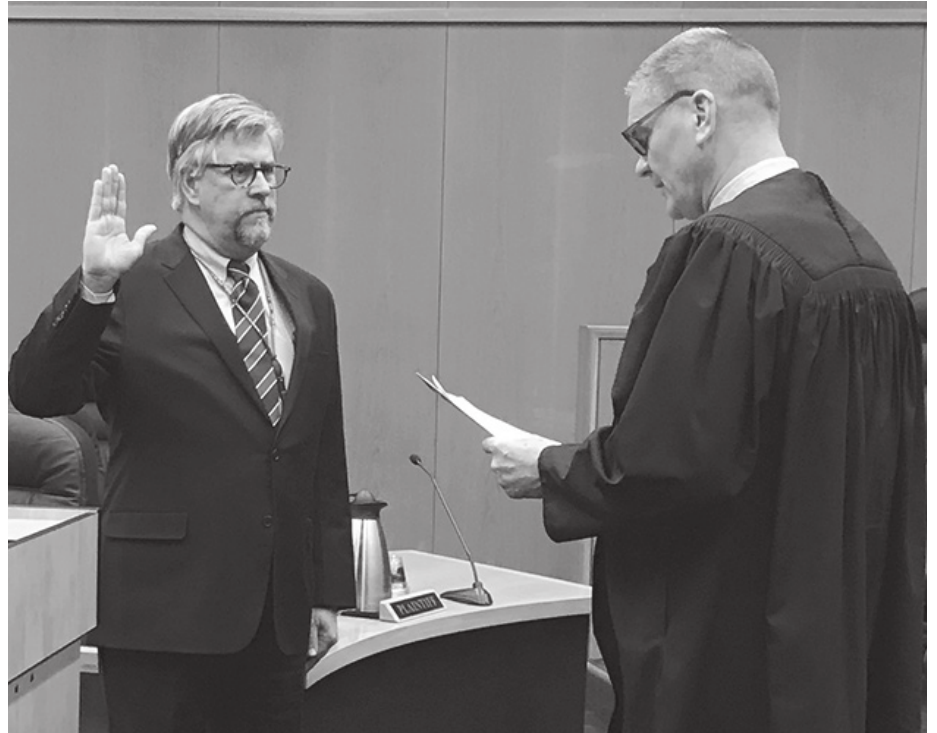
## From the U.S. Attorney General's office

Bryan Schroder has taken the oath of office to become the United States Attorney for the District of Alaska. Schroder was nominated by President Donald Trump on July 21, 2017, and confirmed by the U.S. Senate on Nov. 9, 2017. He took the oath of office from Chief U.S. District Judge Timothy M. Burgess Nov. 23, 2017.

"I'm honored to have been selected as U.S. Attorney for the District of Alaska," Schroder said. "Every day, the staff of the U.S. Attorney's Office works diligently to protect the people of this state, and the resources of the United States. I am proud

to have been their colleague for the past 12 years, and am excited to continue working with them as we move forward. I also look forward to continuing the essential working relationships with our federal, state, and local law enforcement partners. Finally, I want to thank my family and friends. I would not be here today without their support."

As U.S. Attorney, Mr. Schroder is the top-ranking federal law enforcement official in the State of Alaska. He oversees a staff of 49 employees, including 24 attorneys and 25 non-attorney support personnel. The office is responsible for prosecuting federal crimes in the district, including crimes related to terrorism, public corruption, child exploi-



Chief U.S. Judge Timothy M. Burgess administers the oath of office to Bryan Schroder.

tation, firearms and narcotics. The office also defends the United States in civil cases and collects debts owed to the United States.

Schroder is also one of the nine U.S. Attorneys recently selected by Attorney General Jeff Sessions as a member of the Attorney General's Advisory Committee (AGAC). AGAC represents the U.S. Attorneys and provides advice and counsel to the Attorney General on matters of policy, procedure and management impacting the Offices of the U.S. Attorneys.

Prior to becoming U.S. Attorney, Schroder served as the Acting U.S.

Attorney for the District of Alaska, and previously served as the First Assistant U.S. Attorney and Chief of the Criminal Division. He has served in the U.S. Attorney's Office for more than 12 years, prosecuting a variety of cases including violent crimes, drug distribution, gun crimes, fraud, tax evasion, environmental crimes, and fisheries and wildlife offenses. Schroder is a retired captain in the U.S. Coast Guard, having served for 24 years. He graduated from the U.S. Coast Guard Academy in 1981 and the University of Washington School of Law in 1991.

Happy holidays from the Lawyers' Assistance Committee

## A few holiday tips from the Lawyers' Assistance Committee

- Have a strategy for not drinking at parties
- If you do drink, call a cab
- If you're feeling lost or depressed, reach out

*We take calls over the holidays; you are not alone!*

## Substance Abuse Help

We will

- Provide advice and support;
- Discuss treatment options, if appropriate; and
- Protect the confidentiality of your communications.

In fact, you need not even identify yourself when you call. Contact any member of the Lawyers Assistance Committee for confidential, one-on-one help with any substance use or abuse problem. We will not identify the caller, or the person about whom the caller has concerns, to anyone else.

### Anchorage

Gayle Brown  
306-3527

Michaela Kelley  
Canterbury  
276-8185

Shannon Eddy  
360-7801

Serena Green  
777-7258

Megyn A. Greider  
269-5540

David S. Houston  
278-1015

Mike Lindeman  
760-831-8291

Suzanne Lombardi  
770-6600

Michael Stephan  
McLaughlin  
793-2200

R. Collin Middleton  
222-0506

Jennifer Owens  
271-6518

John E. Reese  
345-0625

Joan Wilson  
269-3039

### Palmer

Brooke Alowa  
269-5100

### Fairbanks

Greggory M. Olson  
451-5970

Valerie Therrien  
388-0272

### Juneau

Yvette Soutiere  
465-8237

### Kenai

Liz Leduc  
283-3129

### Arizona

Jeffrey A. Gould  
520-808-4435



Lawyers' Assistance Committee  
Alaska Bar Association

## The State of Alaska's Legislative Branch is recruiting a Victims' Rights Advocate for the Office of Victims' Rights.

The Advocate's primary responsibility is to perform all tasks that direct, manage and support victims and their rights in accordance with its statutory duties (AS 24.65.100). The position is located in Anchorage and is compensated on the State of Alaska Exempt salary schedule at a range 26 step A (\$8,305.00 per month). The successful candidate will need to be licensed to practice law in the State of Alaska, at least 21 years of age, have significant experience in criminal law, and must have been actively practicing law sometime within the last three years. In addition the successful candidate MUST be a resident of the State of Alaska for the last three consecutive years (since March 1, 2015).

Applications must be submitted through the Workplace Alaska recruitment system no later than 5 p.m. Tuesday, February 20, 2018. For more information regarding this recruitment visit Workplace Alaska at: <https://www.governmentjobs.com/careers/alaska>

The Alaska State Legislature does not discriminate on the basis of race, color, national origin, sex, age, religion, or disability. Persons with disabilities who require special accommodations please contact the Legislative Affairs Personnel Office at 907 465-3854. Please allow sufficient notice for the Agency to accommodate your needs prior to the closing date.





# Law practice is a business, too, so show me the money

By Nelson Page

The practice of law is as much a business as a profession. We expect to get paid for the work that we do. But even this aspect of law practice is regulated by ethical rules and restrictions. This article discusses how to bill your clients and collect your fees while staying within ethical boundaries.

**The Written Fee Agreement.** Alaska Rule of Professional Conduct 1.5(b) requires a written agreement for any engagement that is likely to exceed \$1,000 or involves a contingent fee. The scope of the representation and the manner in which costs and fees will be calculated must be set out. If the lawyer does not have malpractice insurance the client needs to be informed. In a litigation case the agreement must spell out that the client may be liable for the opposing party's fees and costs if the case is lost. This is the bare minimum for any written fee agreement. Nothing else is required by the rule, but it is good practice to lay out in the fee agreement any number of other provisions that define the scope of your rights and responsibilities.

A fee agreement is a contract between the lawyer and the client, and should be treated as such. A good fee agreement will describe in some detail the nature and type of costs that will be charged.

It will discuss what happens to the client's materials at the end of the engagement. How will advances be handled and when will they be billed and when are payments delinquent? What happens if additional funds are required from the client, and what happens if the additional funds are not paid? Will interest be charged on any unpaid balance, and how will the charges be calculated? What method of communication with the client will be used and how frequently will reports be made on the progress of the work? All of these and more can be covered in the fee agreement. Doing so will avoid misunderstandings both during and after the engagement. Matters as basic as defining who the client is may be appropriately included in a fee agreement, and may be necessary in cases where, for example, more than one family member is involved in the case, or more than one plaintiff or defendant is being represented jointly.

**Types of Fee Arrangements:** The traditional ways of measuring the value of legal services include the hourly rate, a set fee, a contingent fee, or a retainer. Fees and costs paid in advance are not earned until the work has actually been done. This means that the advance must be placed in a trust account: it is the client's money until the fee has been earned.<sup>1</sup> An advance is different from a retainer. The former is money to secure payment, and typically is paid out to the lawyer as the work is performed. A re-

tainer is a payment that is made to reserve the lawyer's time for a specified period. A retainer is considered earned at the time the lawyer agrees to be "on call" and can be deposited immediately in the lawyer's business account.<sup>2</sup>

All other things being equal, a "set fee" or "flat fee" is earned when the work has been performed.<sup>3</sup> Accordingly, flat fees should be initially deposited in the trust account unless a different agreement is reached with the client.<sup>4</sup> However, there are certain circumstances where a flat fee can be considered earned upon receipt. These are set out in Ethics Opinion 2012-2. If you take a flat fee, these issues need to be discussed with the client. For example, some clients with recurring litigation needs have suggested fee arrangements where the lawyer takes on a number of cases for the same flat fee. The fee remains the same regardless of how much or how little work is performed. This arrangement is permissible if all parties agree. It is important to note that the duty of diligence and com-

petence remains unchanged. The lawyer has the same ethical duties to the client regardless whether the case is profitable or a financial disaster.<sup>5</sup>

A lawyer can agree to be paid in something other than cash. This can include payment in shares of stock, transfer of assets such as real estate, or payment in goods or services. If the lawyer decides to accept goods, services, or other non-traditional means of payment other ethics provisions may come into play. Payment in the form of real property, for example, might be considered entering into a business arrangement with the client and be subject to the provisions of ARPC 1.8(a). The parties will also have to come to a reasonable agreement on how the value of the nontraditional payment is to be calculated.

Since all fees must be "reasonable" it is fundamentally misleading and unethical to suggest that a fee is "nonrefundable."<sup>6</sup> This is a clear and hard rule. It surprises me to see lawyers still asserting that they do not have to return a fee that hasn't otherwise been earned. I have also seen several instances in which the lawyer calls an advance payment a "retainer," or "minimum fee" which is then paid immediately to the lawyer, bypassing the lawyer's trust account. The theory appears to be that accepting the client's case has immediately limited the lawyer's ability to do other work. Although this is a legitimate consideration when deciding whether a fee is reasonable,<sup>7</sup> I would encourage lawyers not to be too aggressive about using this argument to immediately pocket their fee. Under this theory every engagement could be considered a "retainer agreement" since, by definition, doing work for one client has an impact on how much time



Nelson Page

the lawyer has available to give to other clients. A true "retainer" is payment made to secure the lawyer's availability over a specified period of time, whether or not the lawyer's services are actually used.<sup>8</sup> If there is any question, put the money in trust: The cost of trying to be clever about this is likely to be high.

## What is a "Reasonable Fee?"

There is an infinite number of circumstances that may bear on whether a fee is reasonable. A list of factors to be considered is set out in ARPC 1.5. But there are several scenarios that come up on a regular basis. First, ARPC 1.16(d) specifies that "upon termination of representation" the lawyer must refund any advance payment that has not been earned or incurred. The client is in control of whether to continue to employ the lawyer. Thus, if the client fires the lawyer for any reason this provision applies. It is unethical to attempt to apply a "penalty" or additional fee when the lawyer gets fired. It is also unethical to charge a premium for exceptional results unless this has been agreed to in advance. If, for example, a lawsuit is dismissed immediately the defense lawyer who is working on an hourly basis does not get to enhance the fee. Conversely, the contingent-fee lawyer who gets an unexpected large settlement early on in the case may have to explain why a large fee for almost no work is "reasonable," especially if the risk of losing was relatively low.

**Method of Payment:** Interest on an unpaid balance is allowed, but only if this is spelled out in the fee agreement. Any interest must be reasonable and comply with applicable law.<sup>9</sup> An attorney can accept payment by credit card if the client agrees. All terms and conditions of credit card use must be explained and agreed to by the client. Care must be taken to ensure that the client's confidences are not endangered by the use of a credit card. The concern here is that descriptions of the nature and purpose for a charge may reveal to the credit card company and others too much about what work is being done. Periodic charges against the credit card to pay an undisputed unpaid balance over time are permitted but only if the client agrees.<sup>10</sup> It is also permissible to charge a "processing fee," or to pass on such fees or surcharges from the credit card company so long as the charge is reasonable and the client consents after full disclosure.<sup>11</sup>

**Collecting the Unpaid Fee:** Lawyers have limited options if the client doesn't pay. None of the options are very good. The unpaid lawyer can generally withdraw, but all of the requirements of ARPC 1.16 must be met, which means the lawyer must take all reasonable steps to protect the client's interests and must return all unearned advances

for costs and fees.<sup>12</sup>

AS 34.35.430 gives an attorney a lien to secure payment. The lien applies to, among other things, the client's papers in possession of the attorney. Notwithstanding this statute, withholding the client's file until payment is made is almost always a very bad idea. The lawyer's interest in getting paid is subordinate to the rights of the client.<sup>13</sup> The Supreme Court has made it clear that threats of economic duress may not be used to prevent a client from exercising the right to terminate the attorney-client relationship.<sup>14</sup> All ethics considerations aside, withholding a client's file for nonpayment is a very good way to get sued for malpractice.

Instead, the attorney has the option of suggesting fee arbitration under the provisions of Bar Rule 34. However, the choice to use fee arbitration is the client's. If the client does not agree the lawyer's only recourse is generally to file a collection suit. This is another very good way to get sued for malpractice.

Lawyers can ethically refer an unpaid fee to a collection agency.<sup>15</sup> However, they may not report the client to a credit bureau.<sup>16</sup> The collection agency pursues the claim for fees based on the legal rights of the lawyer, and subject to all the legal defenses the client may have. But reporting the client to a credit bureau does nothing to actually collect an unpaid fee. All it does is impair the client's credit status, and may involve an unauthorized disclosure of a client confidence. For similar reasons it is unethical to record an attorney's lien under AS 34.35.430 against a client's real property.<sup>17</sup> Most of us are not in the profession for the money. But we can't continue to practice without it. Paying attention to the money details is both good business and good ethics.

**Conclusion:** "If you wrote something for which someone sent you a cheque, if you cashed the cheque and it didn't bounce, and if you then paid the light bill with the money, I consider you talented." — Stephen King

*Nelson Page is the Bar counsel at the Alaska Bar Association, formerly of Burr, Pease and Kurtz and former Alaska Bar president.*

<sup>1</sup> Alaska Ethics Opinion 2012-2  
<sup>2</sup> Id.  
<sup>3</sup> Id.  
<sup>4</sup> Id.  
<sup>5</sup> See Alaska Rule of Professional Conduct 1.2; (Duty to act diligently on behalf of client).  
<sup>6</sup> Alaska Ethics Opinion 2009-1 (modifying Alaska Ethics Opinion 87-1)  
<sup>7</sup> See ARPC 1.5(a)  
<sup>8</sup> See Alaska Ethics Opinion 2012-2  
<sup>9</sup> Alaska Ethics Opinion 79-1; Alaska Ethics Opinion 85-5  
<sup>10</sup> Alaska Ethics Opinion 85-5  
<sup>11</sup> Alaska Ethics Opinion 2014-1  
<sup>12</sup> Alaska Ethics Opinion 2012-2  
<sup>13</sup> Alaska Ethics Opinion 95-6; Alaska Ethics Opinion 2003-3  
<sup>14</sup> Miller v. Paul, 615 P.2d 615 (Alaska 1980) Alaska Ethics Opinion 83-2.  
<sup>15</sup> See Alaska Ethics Opinion 2000-3  
<sup>16</sup> Alaska Ethics Opinion 86-3.  
<sup>17</sup> Alaska Ethics Opinion 2012-1

**Lawyers have limited options if the client doesn't pay. None of the options are very good.**

# Tips to control your doctor and hospital bills

By Cliff Groh

You have a good chance to hold down your medical bills through preparation, research, negotiation, and keeping a good attitude. Let's walk through some recommendations by category.

As you go through this advice, remember that you need to help yourself first by taking care of yourself. As one Alaska physician observed, the most cost-effective way to interact with the health care system is not to need it.

## Choosing where you get your medical care

Before you choose your primary care provider (physician, nurse practitioner, or physician's assistant), imaging facility or specialists, you should make sure that you choose within your insurance-preferred provider network if possible. If you are being referred for testing or consultation, you can make sure that you ask your referring provider to choose among your in-network providers one that the primary care provider thinks would provide high-quality care.

If you need blood work, your clinic can manage the most common blood tests. Specialty blood work can be done at local medical laboratory testing facilities. Shop around, as there are wide variations in price.

Get the "right level of care." If you have a life-threatening emergency, you should go to the emergency room. If you do not, go to a walk-in clinic or urgent care facility if you can't get to your regular primary care provider. Several groups of primary care providers in Anchorage have clinics operating after regular business hours, and many are in network with insurance providers. In most instances, the most expensive place that you can receive care is in the ER.

## At the clinic, primary care provider's office, or the emergency room

Come prepared to describe your complaint in detail to the doctor, nurse, nurse practitioner or physician's assistant. If your problem has been evaluated before, know what tests have been done—and it is even better to keep records. This allows the provider to have the best information and avoids the problem

of providers ordering up a bunch of tests to determine what you could have told them.

**Ask questions.** Listen carefully to the answers. **Take notes.** (You could also audio record the discussion on a smartphone.) If you don't know what is happening, you can't make an informed decision.

If you think you need help, get a trusted and tough-minded relative or friend to assist you as your patient advocate. This person can be your second set of eyes and ears, although if you can you should be speaking more than the patient advocate. Unless there is a language barrier, health care providers prefer that you describe your symptom in your own words.

Sample questions include: Why is this procedure being ordered? Why do you think I need this test that you recommend? What about this medication that you want to prescribe? What are the alternatives? Steel yourself with these truths: **Medical providers expect questions, and you have the right to say "No."** And never assume that all the medical personnel have all the relevant information. If you have an insurer, get pre-approval from that insurer for procedures.

It is OK to ask a provider "How will the results of this test change the way that my condition is managed?" Sometimes providers reflexively order tests. Making sure that tests are truly necessary based on evidence-based guidelines will reduce your overall costs. Make sure as well that the tests are performed at facilities that are in your network.

## Medications

Make sure that you ask about "generics" and medications that are offered at relatively low prices on your insurance "formulary" (an official list giving details of medicines that may be prescribed). This information is readily available on many physicians' electronic medical record systems. You can also check your insurer's formulary to find what drugs in the same class are preferred. Check the \$4.00 medication lists offered by most chain pharmacies and big box stores before filling prescriptions.

There are two free applications (<https://www.blinkhealth.com/> and <https://www.goodrx.com/>) which can be downloaded for a comparison of medication charges at local pharmacies.

## If you get admitted to the hospital

If you are going to be admitted to the hospital, get your health insurer to pre-approve that admission.

As Dr. Elisabeth Rosenthal notes in her book "An American Sickness," you should be clear on the status of your stay. Ask whether you are on "observation status" or are instead being admitted into the hospital, because the answer might well have a big impact on your finances. Although they are still in hospital beds, patients on observation status will be considered outpatients and be on the hook for outpatient co-payments (the dollar amount associated with a type of care) and deductibles (the amount that you



Cliff Groh

pay out of pocket before your insurance starts to pay), which are generally far higher than those for an inpatient stay. (And unless you get a terrific justification of why you need a private room, turn down that honor unless you want to risk a much higher bill.)

Ask for an estimate of how many days you will spend in the hospital (but be prepared to get the answer "You will be in the hospital for only as long as it takes for me to discharge you safely"). If you are worried about your ability to pay, ask to speak to one of the hospital's financial counselors.

At least one of the documents you will be asked to sign upon admission to the hospital will cover your willingness to accept financial responsibility for charges not covered by your insurer. Dr. Rosenthal recommends that before you sign such a document, you write in "as long as the providers are in my insurance network" (that is, under contact with your insurance provider). Dr. Rosenthal also passes on the advice that you insert on every chart you see the words "Consent is limited to in-network care only and excludes out-of-network care." Dr. Rosenthal suggests that such an annotation will at the very least give you a basis for contesting charges later.

Identify and document every person who appears at your bedside, and identify and document every test, procedure, and medication you are given. (Make your requests for this information with a smile, as this will reduce the defensiveness that might otherwise arise.) **Get a patient advocate to do this if you are unable.** Try to take your own home medications at the hospital if you can. Refuse unnecessary equipment. Talk to the doctors, nurses and aides who come into your room; key times include the morning (when doctors usually make their rounds) and during nursing shift changes.

## After you are discharged from the hospital

Review the billing statements from all sources. Get itemized bills so that you check the costs of each medication, lab test and procedure. Keep track of any claims and payouts by insurers. Be prepared to dispute charges, and do so on a timely basis. Keep careful notes documenting the date, time, person contacted and content of communication. Work to decipher the codes on the bills. Don't be afraid to call to figure out what a bill and a code mean. "It is your right as a patient and health consumer to know what you are paying for," as health care specialist attorney David J. Holt told Mikey Box of time.com. Ask for discounts and write-offs, and you might find that an in-person visit to the office of the provider might yield the best results. Work hard to avoid taking out a loan to pay your medical bills, whether that loan comes from the financial institution or from your provider. If necessary, go higher up the chain of command for an answer or a justification of the charge. Finally, be prepared to complain to state or federal regulatory agencies if you can't get relief otherwise.

## If you have been told you need a big-ticket procedure

Non-emergency surgeries performed in Alaska are both costly and some of the biggest reasons our state's health care costs are higher than those of any other state. This is particularly true for procedures done by specialist practitioners such as orthopedic surgeons, cardiac surgeons and neurosurgeons.

Be skeptical if you are told that you need something new, fancy and expensive. The most cutting-edge procedure or technology is not necessarily the best course for you, and a doctor's high fees are no guarantee of quality. For example, if your knee or shoulder is hurting, that pain might go away if you started swimming and/or had some physical therapy, and you might not need that MRI test or surgery that a surgeon advised. Don't pressure doctors to give you the most high-dollar or invasive treatment you have ever heard of, and don't let them pressure you either. A second opinion is critical, particularly if the first specialist you see recommends an expensive procedure or treatment. As one hospital executive says, don't be a victim.

It is often helpful to ask your primary care provider "If your mom was going to have this surgery done, where would you send her?"

If you do decide you need big-ticket surgery, research your options. Websites such as [www.fairhealth-consumer.org](http://www.fairhealth-consumer.org) can give estimates of what various procedures should cost in locations around the country, and they can give you the CPT code as well for the procedure. In general, it is better to go on the Internet after you have a diagnosis as opposed to trying to diagnose your problem on the Internet yourself.

The next step is to negotiate. Be assertive. Get price comparisons, either in the office or by telephoning. Announce that you are investigating several providers for options and that you seek the most favorable prices. More than one Alaska doctor has expressed amazement that patients appear afraid to question doctors about recommended work and request discounts the way that those patients would if the recommendations came from an automobile dealership or an auto body shop. As another Alaska doctor said, "Providers know that health care costs in this state are high and most/many are willing to help you determine the most cost-effective and safe options if you just ask."

A representative from Angie's List told time.com that a prospective patient should get the quote in writing with a signature, name and title along with the price quoted. Additionally, that observer — Cheryl Reed — recommended that "When getting prices, be sure you cover all fees associated with your procedure, rather than just the surgical costs—e.g. anesthesiologist, radiologist, laboratory costs, etc."

One tip: Be wary of a surgeon whose office puts you on the surgical schedule as soon as you call the office for an appointment.

If you decide that your best option is for a surgery outside of Alaska, be aware that you might have difficulty securing follow-up care from an Alaska surgeon upon

Continued on page 27



Forensic Document Examiner

- Qualified as an expert witness in State & Federal Courts.
- 25 years experience.
- Trained (and retired from), the Eugene Police Department.
- Certified by the American Board of Forensic Document Examiners.
- Fully equipped laboratory.

James A. Green  
Eugene, OR  
888-485-0832  
[www.documentexaminer.info](http://www.documentexaminer.info)

HI-TECH IN THE LAW OFFICE

# There's more to photographic perception than meets the eye

Continued from page 1

tive roughly equivalent to about a 50mm to 85mm lens on a full-frame 35mm camera, the standard reference. A magnification equivalent to 28 mm or shorter has a wide angle effect emphasizing the foreground, making nearby objects seem relatively larger than they would otherwise appear, while a magnification equivalent to 100mm or longer tends to have a telephoto effect that emphasizes the background, making the background appear larger than would be perceived by the unaided eye.

The brain tends to correct for physically differing color balance and brightness of atypical situa-

## Tips to control your doctor, hospital bills

Continued from page 26

your return to the state. One Alaska physician recommends that anyone considering going outside the state for surgery to remain at that location long enough to be reasonably certain that complications have not arisen.

### Before you need the medical care

The easiest advice is both the most boring and the most important. A high percentage of your lifetime medical costs is likely to be determined by your nutrition and your lifestyle, so start by taking care of yourself before you are told to strip down and get in a gown. Eat healthy food, exercise regularly, quit smoking, limit your alcohol intake and establish visits with a primary care provider. Know important facts like your blood pressure. Make a list of the medications you take and keep it in your wallet or purse or on your smartphone. Know who your primary care provider is and what specialists you see. And to help your family, you should go to the next level and prepare an advance health care directive/living will to lay down your wishes for your care when you can't do the speaking yourself. Share that directive with your family and your medical care providers — and you could also suggest to relatives that they also prepare such a document for themselves.

Cliff Groh prepared this document following conversations with more than a dozen Alaska medical providers and others knowledgeable about the provision of health care in Alaska. Particular thanks go to Theresa Philbrick, RN; the book *An American Sickness: How Healthcare Became Big Business and How You Can Take it Back* by Elisabeth Rosenthal, and the article by Mikey Box entitled "7 Smart Ways to Negotiate Your Medical Bills." The above is not intended as legal advice, even though Groh is a lawyer as well as a writer and the Chair of Alaska Common Ground. Alaska Common Ground is holding a series of events on Alaska's high health care costs that runs from November 2017 through January 2018, and details can be found at [www.akcommonground.org](http://www.akcommonground.org) on the Internet.

tions while digital sensors, when not used with auto white balance, show actual physical color differences all too well. As a result, the human eye/brain combination is more susceptible to perceiving physically false colors and to overcorrecting unbalanced lighting to appear normally lighted. For example, an indoor area lighted by older fluorescent lamps appears generally white to the human eye yet would be recorded by a camera, accurately so, as having a strong greenish color cast.

Similarly, the eye tends to scan the entire visual field up to 30 times per second and combines those images into a composite image with apparently greater depth of sharp focus than is optically possible with a single image. The focus-bracketing/multiple image compositing feature of high-end modern cameras, such as the Olympus E-M1 Mark II, are only now catching up. A good online resource that illustrates the physical differences between how and what the human eye sees and physical reality can be found at [goo.gl/ZHZees](http://goo.gl/ZHZees).

Copy short URL

This is a short article that visually illustrates several important



Joe Kashi

differences and how the brain combines multiple images to produce a composite mental image.

The principal differences between how an eye/brain and a lens/camera perceive a scene are:

- Color balance and false color
- Perspective and magnification
- Dynamic range (difference between darkest area and brightest area where detail is perceived)

Our brains tend to complete perceived patterns, even when part is out of the frame and "missing." Gestalt perception psychology provides classic, repeatable examples of the brain "filling in" something that we believe should be there but is missing from the image.

How does our brain organize its perception of visual imagery?

- Apparent grouping of similar things
- Tendency toward visual "simplicity"
- Apparent Proximity
- Apparent smooth continuity of straight and curved lines
- Visual closure of incomplete



shapes like spheres and rectangles

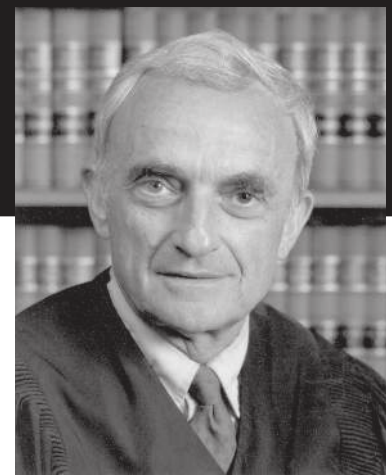
- Apparent commonalities

A useful introduction to generally accepted Gestalt Psychology principles of eye-brain visual perceptual issues can be found at: [goo.gl/xpibzE](http://goo.gl/xpibzE).

Soldotna attorney Joe Kashi received his BS and MS degrees from MIT in 1973 and his JD from Georgetown law school in 1976. Since 1990, he has written and presented extensively throughout the US and Canada on a variety of topics pertaining to legal technology and served on the steering committees responsible for the ABA's annual TechShow and Canada's Pacific Legal Technology Conference. While at MIT, he "casually" studied photography with famed American fine art photographer Minor White. Since 2007, he has exhibited his photography widely in a variety of statewide juried exhibits and university gallery solo exhibits.

## Call for nominations for the 2018 Jay Rabinowitz Public Service Award

The Board of Trustees of the Alaska Bar Foundation is accepting nominations for the 2018 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.



Jay Rabinowitz

### ALASKA BAR FOUNDATION



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](http://www.alaskabar.org).

Completed nominations must be returned to the office of the Alaska Bar Association by March 1, 2018. The award will be presented at the 2018 Annual Convention of the Alaska Bar Association.



SENIOR JUDGE ELAINE ANDREWS  
2017 Recipient



JAMES E. TORGERSON  
2016 Recipient



SENIOR JUDGE MICHAEL I. JEFFERY  
2015 Recipient



JANET McCABE  
2014 Recipient



KATIE HURLEY  
2013 Recipient



TREVOR STORRS  
2012 Recipient



JUDGE MARY E. GREENE  
2011 Recipient



BARBARA J. HOOD  
2010 Recipient



ANDY HARRINGTON  
2009 Recipient



JUDGE SEABORN J. BUCKALEW, JR.  
2008 Recipient



BRUCE BOTELHO  
2007 Recipient



LANIE FLEISCHER  
2006 Recipient



JUDGE THOMAS B. STEWART  
2005 Recipient



ART PETERSON  
2004 Recipient



MARK REGAN  
2003 Recipient



# WIN YOUR TRIAL



- The Trial Lawyer's College Presents -

## OPENING STATEMENT SEMINAR

Gerry Spence, founder of the Trial Lawyer's College says, "If we are to be successful in presenting our case, we must not only discover its story; we must become good storytellers. Every trial, every argument for justice, is a story."

Join us for a very special "Constellation Regional" held at the Alyeska Resort near Anchorage, Alaska. Limited to 30 students with a 5:1 student to faculty ratio, this seminar includes a full day of psychodrama and a day and a half of trial skill work. No lectures -- you'll be up and on your feet working to perfect your Opening Statement for the entire weekend.

*"My involvement in TLC is the most important professional development in my career. My only regret is not having become involved sooner."*

- Trial Lawyer's College Attendee



JAN 19<sup>TH</sup>-21<sup>ST</sup> 2018



ANCHORAGE, AK  
ALYESKA RESORT

**REGISTER @**  
TRIALLAWYERSCOLLEGE.ORG

