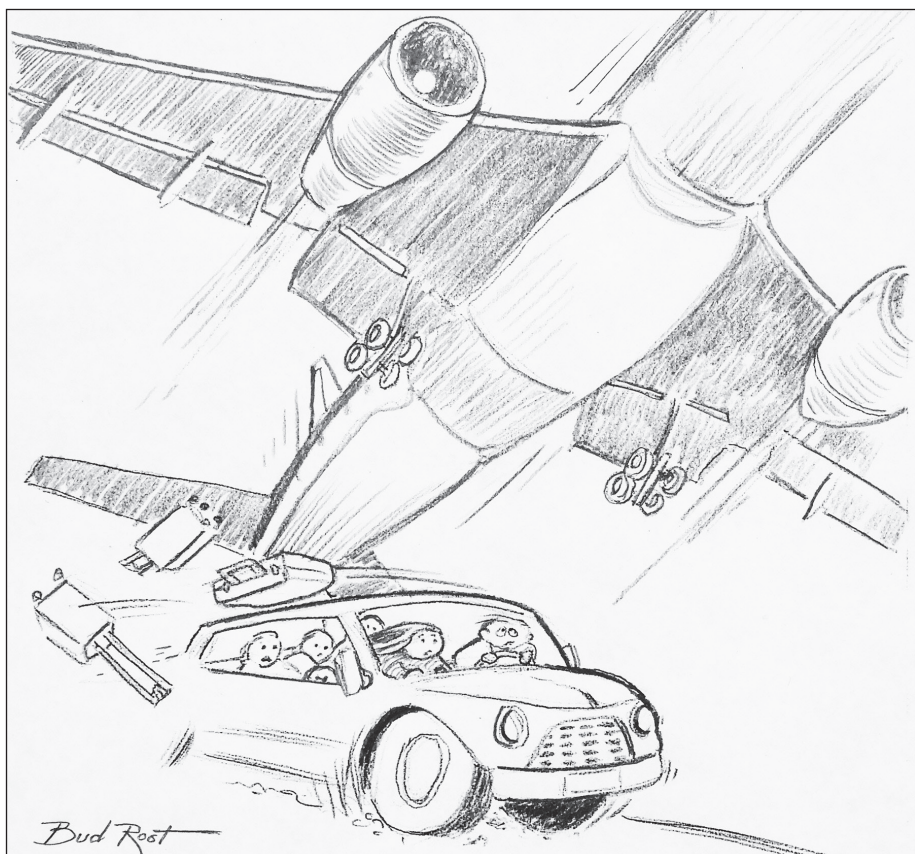


The Alaska BAR RAG



Dignitas, semper dignitas

VOLUME 47, NO. 4 October - December, 2023



Remembering a Christmas Past

By William R. Satterberg

The year was 2021. My daughter, Kathryn and her husband, Chris had been married for several years. They had two children, Jacob, age 12, and Daisy, age 3. At that age, Jacob was an exceptionally responsible tweenager, having done quite well both academically and in athletics. Jacob was well liked in school and had been targeted by a bunch of female classmates. Daisy was the classic 3 year old precocious diva. Chris was a warrant officer with the Army, launching interceptor missiles at rogue nations. Kathryn was a mother dealing with a soon to be teenager and a 3 year old diva, while juggling the myriad duties of a young wife and mother.

Since Chris hails from Arkansas, we made the decision to spend the 2021 Christmas holiday in Bay, Arkansas with his family. Bay is

ten miles from Jonesboro, Arkansas and in a dry county. Jonesboro is home of Arkansas State University and every box store and retail outlet you can think of. There are no liquor stores and no bars. Simply stated, Jonesboro was a shopper's nirvana for my wife and kids, but a living hell for college kids.

Our holiday flight to Arkansas was uneventful. Chris, Kathryn and family flew ahead. Like other mileage addicts, Brenda and I wanted to finalize our Alaska Airline mileage status. We traveled to Nashville, Tennessee and rented a car for a four and a half hour night drive to Arkansas, as opposed to a one hour drive from Memphis. I realized that drivers in the southeast portion of the country fancy themselves as Dukes of Hazzard NASCAR drivers. For four hours I was involved

Continued on page 10

Bar Members Gather for Their Annual Convention

By Danielle Bailey

More than 200 individuals attended the Alaska Bar Association's Annual Convention at the Westmark Fairbanks Hotel and Conference Center September 20-22, 2023. The 2023 convention highlighted many local issues which were in line with the 2023 theme: Alaska Focus. Member Driven.

Along with highlighting the local Bar members' expertise, this year's convention included a variety of sold out social events. The Opening Welcoming Reception at

Venue featured local artists like Linda Weis who created this year's convention art "Angle Rocks." Along with celebrating this year's award winners, attendees of the awards reception were able to rock out to the local Fairbanks band Petty Crimes. The Tanana Valley Bar Association also hosted hospitality suites for Bar members.

Local speakers and topics were varied. They included an update on the Indian Child Welfare Act and *Haaland v. Brackeen* by featured speaker Erin Dougherty Lynch and a panel on Embracing Cultural Differences and Working with Tribal Courts and Alaska Native Clients. Bar members also received updates on Alaska's marijuana and alcohol laws and about local, state and federal courts.

In addition to the local focus, the convention also highlighted national speakers. The return of Dean Erwin Chemerinsky and Professor Laurie Levenson who delivered their review of the latest U.S. and Alaska Supreme Court opinions continues to prove a success and remains a crowd-pleaser. Rumor has it that some convention attendees even spotted Retired Justice Daniel Winfree dancing along with Laurie Levenson during her musical interludes.

The convention included keynote performance "Makin' Cake" with Dasha Kelly Hamilton. Hamilton is a writer, performance artist, curator and facilitator. She is the 2020-2022 Poet Laureate for the State of Wisconsin as well as a National Rubinger Fellow and a National Laureate Fellow with the American Academy of Poets. Touring nationally, "Makin' Cake" is a spoken word performance that slices into American



Dean Erwin Chemerinsky and Professor Laurie Levenson field questions from the audience. Photo by Jaime Kuhl of Red Photography



Board of Governor award winners gather for a photograph. From left to right: Judge Niesje Steinkruger, Michael O'Brien, Danielle Ryman and Steven Reilly. Photo by Jaime Kuhl of Red Photography

history exploring race, culture and class. The show serves up an experience and a conversation about equity in America. Part history lesson, part social science revelation, "Makin' Cake" is a short story about America's sweet tooth and pathway to salvation. The Alaska Bar's performance included a special appearance by Justice Susan Carney as a guest baker.

While not directly affiliated with the event, at the conclusion of the convention on September 22, the Ta-

na Valley Bar Association hosted a living wake for Retired Judge Andrew J. Kleinfeld. In addition to Bar members, many of Kleinfeld's past clerks flew in to join in on the roast and toast to Kleinfeld.

The Board of Governors of the Alaska Bar Association have voted to move the convention from the fall to the spring. As a result, the next convention will take place in Anchorage in April 2025. See you there!

**More Convention Highlights
on pages 12, 13, 24**

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Bar President on Moving Forward and Adapting

By Jeffrey Robinson

Organizations, like individuals, are tasked with adapting to challenging circumstances, and either moving on with renewed vigor or remaining static. The past several years presented the Alaska Bar Association (and indeed, the profession) with numerous obstacles, no less among them than COVID-19. The pandemic created, for a time, economic and employment upheaval, and a myriad of other uncertainties. Having mostly come out the other side, the pandemic also demonstrated the capacity of human beings and organizations to adapt and succeed. Lawyers learned that we could still perform diligent work for our clients remotely through Zoom or Teams. Although there is no substitute for in person collaboration, lawyers were able to harness technology in a productive way to move our cases forward. Adaptability is instrumental to our profession.

For the past several years, I have had the opportunity to work with Bar leaders from Alaska and other states to discuss critical professional issues. Here are a few: engaging newer, younger lawyers to understand the value of participating in the Bar Association at a time when civic participation in organizations is generally declining; building pipelines to leadership and expanding access to justice; addressing the increasing use of Artificial Intel-

ligence in the practice of law; and considering the role the Bar Association should play, if any, in promoting democracy and the rule of law.

The Alaska Board of Governors routinely grapples with these important issues. As you may know, the Board consists of twelve total members: nine elected attorney members, and three non-attorney public members. One seat is currently vacant. Our public members are appointed by the governor and subject to legislative confirmation. The public members of the Board bring valued input and insight to the business of the Board. Without the participation of our public members, the Association would look much different than it does today. In this column, I would like to introduce Bill Granger, our longest-serving citizen member, and Jedediah Cox, who joined the Board in 2019.

Although Bill and Jed are the focus of this article, moving forward I hope to use this column to better acquaint our membership with other members of the Board and our Bar Staff, including our outstanding Executive Director Danielle Bailey. My aim in doing so is to convey to our membership that it should feel confident that the Association is be-



"Having mostly come out the other side, the pandemic also demonstrated the capacity of human beings and organizations to adapt and succeed."

ing professionally managed and takes seriously the mission it is charged with. We begin each Board meeting with a reflection of the purpose of the Alaska Bar: to regulate the practice of law; promote reform in the law and in judicial procedure; facilitate the administration of justice; encourage continuing legal education for the membership; and to increase the public service and efficiency of the Bar.

Bill Granger is a lifelong Alaskan who worked in the Alaska banking industry for the entirety of his professional life prior to retirement. Governor Knowles appointed Bill to the Board in 2001. Bill has served as the treasurer of the Board for the majority of his term of service, and as the Board's longest tenured member, Bill has provided a sense of continuity that has helped the Bar maintain its institutional history.

Due in large part to the work of Bill and others, the Association is presently standing on sound financial footing. The Association enjoys a comfortable current asset to debt ratio, liquidity and net worth. As you may have noticed, the Bar has not raised our membership dues for 12 years, and we hope to keep the rate steady for as long as we can.

Bill has shared that the biggest challenge the Association faces over the next decade is maintaining the quality of legal representation that our state has enjoyed for decades. Alaska is a desirable place to live and practice law, but we still need to replenish our ranks. Moreover, public confidence in our profession is always at risk. With that in mind, it is equally important that, as a Board of Governors, we develop sensible policies and communicate in a transparent manner with the public. The presence of citizen members like Bill on the Board, helps keep the lawyer members accountable to the clients and interests we serve.

Jed Cox has served on the Board since 2019, resides in Big Lake and works in the private sector. He holds a BS in Business Administration and an MBA. From 2008 to 2016, Jed lectured and taught in the Republic of Korea, China and Vietnam. He moved to Alaska permanently in 2017. As a public member, Jed has gained a deep appreciation for the immense amount of work lawyers and courts do in our State.

Looking forward, Jed perceives

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The Alaska BAR RAG

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EDITOR'S COLUMN

Alaska Bar Association Convention Report

By Ralph R. Beistline



"This year I was privileged to give the Federal Bar report to the convention and included a little Alaska Bar history."

I guess it is time for reflection as we leave one season and enter into the next. This fall season was especially busy for me and was highlighted by the Alaska Bar Convention held in Fairbanks. This year I was privileged to give the Federal Bar report to the convention and included a little Alaska Bar history. For my column this edition I have included below the most pertinent parts of that speech.

Good afternoon. On behalf of Chief Judge Sharon Gleason, who is currently traveling out of state, I am pleased to be able to deliver this report to the convention regarding the status of the United States District Court for the District of Alaska. Both Judge Gleason and I spent considerable time as state Superior Court judges before assuming the Federal bench, so we are well-aware of the incredible history and outstanding quality of the state court system in Alaska. In fact, when I was a state court judge, I used to say that ours was the Best Court System in the World- we even had a t-shirt and jacket with this logo.

Both the Alaska Court System and the United States District Court for the District of Alaska came to life about the same time in 1960, shortly after Alaska statehood. So, both

are relatively new. In the intervening, roughly 63 years, a lot has happened with both courts, although the Federal Court has undergone less personnel changes over the years. In fact, as of today, there have only been twelve United States District Court Judges in Alaska since statehood. I am number nine. Deceased are Judge Walter Hodge and Judge Raymond Plummer, who I never met,

and Judges James von der Heydt and James Fitzgerald, who I was fortunate enough to work with early in my judicial career. Retired are senior Judges Singleton and Sedwick who are no longer taking any cases. Active senior judges are Judge Holland, me and Judge Burgess, who are taking a reduced caseload. Judge Burgess is the most recent to take senior status and his position is still vacant.

It took over five years to fill my position when I took senior status, so it is difficult to say how long it will be to fill this position, although I understand that it is in the works. And then there is Judge Kleinfeld who served as a District Court Judge for five years before being elevated to the United States Court of Appeals for the Ninth Circuit in 1991 where he now serves as a senior judge along with Judge Morgan

Christen of Anchorage. The TVBA is having a semi-retirement party/living wake for Judge Kleinfeld beginning at 5:00 p.m. tomorrow at Bobby's in downtown Fairbanks. All are invited. Anyway, this currently leaves only two active District Judges for the District of Alaska, Judge Gleason and Judge Kindred. Judge Kindred, who took my slot, is our youngest District Court Judge and won't be eligible for senior status for over twenty years, so there is little danger of the court's extinction.

Now, in terms of the Court overall, we are well into our post pandemic recovery having returned to both criminal and civil trials and having generally been busy. However, I recognize that the term "busy" is relative. I recall that my previous legal assistant, Jan Short, who came with me from state court, used to say after an unusually busy day in federal court, "doesn't this just remind you of state court?" But I am not complaining. We have plenty to do and there is always something new and unexpected.

As far as the court itself, there is serious discussion underway to construct a new courthouse in Anchorage. A feasibility study is being conducted by GSA to select a preferred option for the project which could consist of either retrofitting or adding to the existing space, or constructing a new courthouse on the site of the current Social

Continued on page 3

Alaska Bar Association Convention Report

Continued from page 2

Security building between 8th and 9th Avenues, or an entirely new location. Anything is possible, but I am not holding my breath.

Anyway, I have been a member of the Alaska Bar Association for over 48 years, roughly 27 of those years in the state system and roughly 21 years with the feds, and it occurs to me that the two systems really have more in common than not, both seeking justice in as fair and expeditious way as possible. And, to my lawyer friends, let me just say that no one should be afraid to practice in Federal Court. We really are nicer than we look. I admit though that, as a lawyer, I was a little nervous myself on the few occasions that I ventured to Federal Court - but like everything else, with a little patience, you get used to it and it becomes fun. And there is a great opportunity for practitioners to do this now as the Federal Public Defender is actively recruiting new members, statewide, to become Criminal Justice Act (CJA) attorneys. It is a great opportunity to practice in federal court and have all the support you could want from the Federal Public Defenders Office. It pays well, pays timely, and is a great way to learn the trade and expand your practice.

And I should note that we do have a local Federal Bar Association that welcomes all comers, including CJA attorneys, and that meets regularly with the judges and administrators. In addition to an annual Conference, the Federal Bar Association sponsors various events of interest to the bar. Most recently we invited a senior attorney from the Bureau of Prisons to discuss prison policies and procedures. It was very well attended and enlightening to both the bar and the bench. So, while there are similarities between the two court systems, there are notable differences as well. One of the biggest differences I noticed upon moving from the state bench to the federal bench was criminal sentencing. Back when I arrived, more than 20 years ago, federal judges adhered strictly to the sentencing guidelines and frequently were required to impose mandatory minimum sentences while dealing with relatively high statutory sentencing ranges. This, coupled with the fact that there was no parole in the federal system, was quite a shock to offenders whose history had been in state court. Their eyes would pop-out at their first federal arraignment when the sentencing range for their crime was announced. Mine did too when I first got to federal court.

But this has now moderated con-

siderably since the Booker decision in 2005. Now the sentencing guidelines are just one factor to consider, and judges generally have far more discretion. And more change is in the works! Just a few weeks ago, the United States Sentencing Commission voted to allow retroactive sentence reductions which, if adopted by Congress, provides that currently incarcerated individuals could be eligible for reduced sentences effective February 1, 2024. The Sentencing Commission estimated that this could potentially impact nearly 20,000 currently incarcerated persons. So, the prisons are buzzing, and it looks like a lot more work coming down the chute.

As I was preparing my comments for today, now in the autumn of my career, I found my mind wandering down memory lane and thinking of Bar Conventions past. So, as my swan song, I will digress just briefly.

It was actually at a Fairbanks Bar Convention, decades ago, that I first saw a federal judge. It was Judge Holland who was speaking to the Bar Association at the annual Federal and State Court Update. He was as distinguished and professional then as he is now in his 39th year with the court. Since that time, I have attended Alaska Bar Conventions in Hawaii, Fairbanks, Anchorage, Juneau, Sitka, Ketchikan and Valdez. All were interesting, with noble goals, but with an ever-changing cast. One convention that was before my time, but that now is legendary, is the convention held in Nome, Alaska in 1969. According to those in attendance, the convention was held there after years of lobbying by one Fred Crane, Esq., who at the time was the District Attorney in Nome. However, Fred died shortly before the convention began and his body was stored in the Nome burial vault, as was customary, until burial in the spring. But, because of his premature demise, there was concern, among Fred's drinking buddies, about obtaining a quorum for the business meeting. To address the problem, and to honor Fred himself, Fred's frozen corpse, coffin and all, was recovered from the vault by the inebriated crew and placed at the Board of Trade Bar. A quorum thus obtained, permitted business to be dutifully conducted and toasts were shared. Some have suggested that the Alaska Bar has matured since then. I think so. Although the TVBA may match the Nome convention with its wake tomorrow. In any event, it is good to see that we didn't have to visit the morgue to obtain a quorum this year. One notable experience I had at a Bar Convention was at the 2007 Fairbanks

Bar Convention. I had been asked to moderate a panel of Appellate Court judges that included Chief Justice John Roberts of the United States Supreme Court, as well Justice Mathews, and Judges Kleinfeld and Coates. Judge Roberts had only been on the Supreme Court a short time but had committed to attend the convention before his appointment and kept the commitment despite everything else going on. Anyway, I ran into Justice Roberts in the elevator of this building. It was just him and I and a Marshal. I had never met Justice Roberts before but introduced myself and asked him if he would attend a Naturalization ceremony scheduled across the street later in the day. To my surprise he agreed. Shortly thereafter I found myself alone in my chambers with the Chief Justice of the United States Supreme Court and explaining what we were going to be doing with the sixteen or so new citizens. I then learned that, not only had Justice Roberts never conducted a Naturalization ceremony, but he had never attended one before. Trying to be courteous, I had my clerk bring in a chilled can of Coca Cola for the Justice which he enjoyed just before entering the courtroom. If you recall, shortly before all this happened, the United States Supreme Court had dealt with the constitutionality of the Pledge of Allegiance. Earlier the Court of Appeals for the Ninth Circuit had declared the Pledge of Allegiance unconstitutional because of the phrase "one nation under God," which decision was reversed by the Supreme Court in 2005. Anyway, as the Chief Justice and I got ready to enter the courtroom, I explained that one of the last things we would do with the new citizens was recite the Pledge of Allegiance. It would be emotional for them because it would be the first time they would do so as American citizens. Just as we were about to enter the courtroom the Justice tapped me on the shoulder and asked, with a smile, if the pledge was going to



Ralph Beistline holds the Coca Cola can he referenced in his speech at the Alaska Bar Association Convention. Photo by Diana Wildland.

be recited according to the Ninth Circuit's directive or the Supreme Court's. I told him that we would be going with the Supreme Court, and he was pleased. The Naturalization went well, and the unsuspecting new citizens were photographed shaking hands with the Chief Justice of the United States Supreme Court. Certainly, a unique experience for all involved. And I was left with something unique as well - this old, disintegrating can of Coca Cola - but with the Chief Justice's DNA. I will have to check with the Antiques Roadshow to determine the value of this incredible relic.

In conclusion, let me reaffirm my appreciation for all those involved with the justice delivery system in Alaska, be they state or federal. We are all part of a great team and have a lot to be grateful for and a lot to be proud of. And although the past has been exciting, the future has much to offer, albeit with its share of new challenges and a new cast of characters ready to shoulder the load. So, let me just close with the words from Joaquin Miller's poem Columbus and his advice when encountering the uncharted waters ahead and the storms of life. "Sail on, sail on, and on."

Thank you.

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

Moving Forward and Adapting

Continued from page 2

AI to be both the biggest challenge and opportunity facing the Alaska Bar. Jed has used AI to assist Alaskan communities in various professional projects. Jed is well situated to help the Bar navigate our understanding of AI and leverage its use in our day-to-day practice. This effort will help reduce the access to justice gap and eliminate cost inefficiencies that are ultimately borne by our clients. There is a long history of technology-driven changes that have furthered our profession. If we

ignore these advancements, we do so at our own peril.

The Board thanks our public members for their dedicated commitment to our Association.

Jeffrey Robinson is the president of the Alaska Bar Association. He was born and raised in Rhode Island. He has been a resident of Alaska for 16 years. Jeff graduated from Boston College and received his law degree from Notre Dame Law School. He is a shareholder in the Commercial Litigation Group of Lane Powell.

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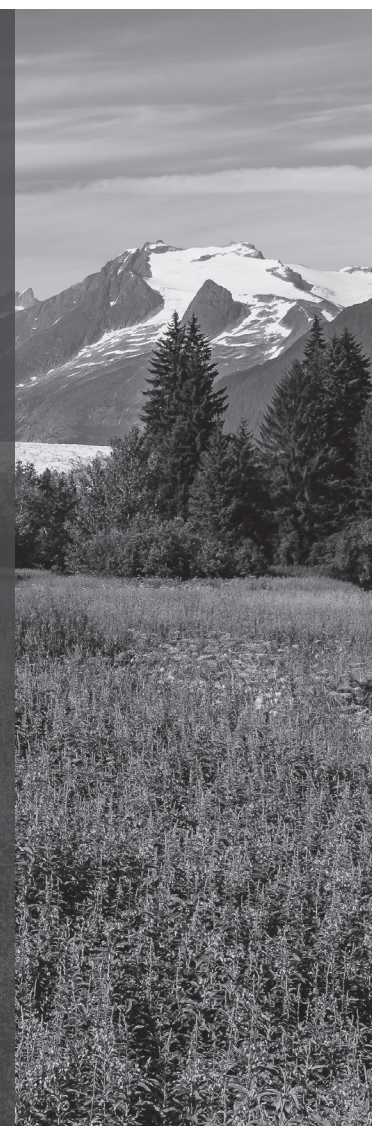
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ALASKA BAR ASSOCIATION



Succession Planning for a Smooth Transition

By the Alaska Bar Association
Ethics Committee

Imagine you're a client embroiled in messy litigation, an emotional divorce, a criminal case, a wrongful termination lawsuit – the biggest, ugliest legal problem of your life – and your lawyer is suddenly and permanently unavailable. Whether by illness, accident or disability, a number of Alaska lawyers unexpectedly and permanently leave the practice of law each year.

If the departing lawyer “had everything in her head,” the client will be in an untenable situation. This is particularly bad for the unfortunate client of a solo practitioner who has passed on, leaving no contingency plans in place and no other lawyers to step in and save the day. This also happens. It harms not only the affected clients, but it also hurts our profession.

It's not easy to contemplate one's own demise. Given the chance, most of us will cheerfully avoid any opportunity to do so. The Alaska Bar Association, however, recognizes that we are mortal and considers the inevitable even though we as individuals might prefer to avoid the topic.¹

The lawyer's duty of diligence to clients, Alaska Rules of Professional Conduct 1.3 provides in its commentary that:

To prevent neglect of client matters in the event of a sole practitioner's death or disability, the duty of diligence may require that each sole practitioner prepare a plan, in conformity with applicable rules, that designates another competent lawyer to review client files, notify each client of the lawyer's death or disability, and determine whether there is a need for immediate protective action. ARPC 1.3, Comment [5].

The sharp-eyed practitioner will quickly note that the comment says “may require” a contingency plan, not “shall prepare” a plan. This implies that taking care of your clients is an aspirational goal and not a mandatory duty.

Increasingly, other state bar associations and court rules are requiring solo and small firm practitioners to have plans in place to handle transitions to new counsel resulting from the lawyer's death or disability. Malpractice carriers are taking note of whether a lawyer

has a succession plan when making coverage decisions and setting premiums. Regardless of the permissive wording of ARPC 1.3 Comment 5, Alaska lawyers owe our clients the fiduciary duties of diligence, loyalty and competence. As much as we hate to think about it, these duties include anticipating events or circumstances that may adversely affect representation, including death, disability or other unexpected exits from the practice of law.

So, what to do? The Alaska comment to ARPC 1.3 sets out a simple formula for the solo or small firm practitioner: (1) prepare a succession plan that (2) designates “another competent lawyer” who will (3) “review client files, notify each client of the lawyer's death or disability and determine whether there is a need for immediate protective action.” In addition, pursuant to ARPC 1.15 and 1.16, that designated lawyer must be able to access emails, electronic documents and the IOLTA account. This aspect is particularly important as files and records are increasingly electronic. The location of electronic records and the information needed to gain access to those records (passwords, usernames, email addresses, etc.) is absolutely critical for the designated lawyer to undertake those tasks.

The lawyer chosen should agree to take on the task, the designation should be in writing easily located in the event it is needed and the designation should be updated if the designated successor for any reason is no longer in a position to take on these duties. The lawyer should regularly review and update their instructions to the designated lawyer with particular attention to making sure the designated lawyer will have access to electronic records, storage facilities and other locations where client records may be found. These steps are the minimum that every solo and small firm practitioner should aim to accomplish, as a matter of good business practice and diligence, regardless of whether the current rule absolutely requires them.

For the lawyer who dies without a succession plan, Alaska Bar Rule 31 allows Bar Counsel to petition the Superior Court to appoint a trustee counsel to exercise “all the powers of a personal representative of a deceased attorney under the laws of the State of Alaska insofar as the unavailable attorney's practice is concerned,” and wind up the

lawyer's practice. For the unavailable lawyer's family and clients, this means having a new lawyer, who they may not know at all, asking questions and being involved in their affairs, making an already difficult situation worse. Moreover, the process for finding a lawyer willing and ready to serve as trustee counsel can delay the important tasks needed to protect the interests of the unavailable lawyer's clients. Bar Counsel often relies upon the kindness and willingness of lawyers to step into this role on short notice. This is not always realistic, especially when the prospective trustee counsel may have no connection to the unavailable lawyer. Offering to serve as trustee counsel is a service to the Bar, your fellow bar members, and most importantly, the clients who are suddenly left without the lawyer they have relied upon for their important matters. When the opportunity arises, we encourage you to consider serving as trustee counsel.

Switching lawyers is never easy. It's all the more difficult when the former counsel is not available to assist in the transition. Those brave souls who have served as the trustee counsel for a solo practitioner who had made no plans whatsoever for the sudden and permanent end to their practice will attest that it is hugely difficult for a new lawyer to come in cold in these situations. Whether the successor is an appointed trustee counsel or a volunteer designated successor counsel, a clearly defined succession plan, including updated information on location and access to client records, is an infinite help – not just for the successor counsel, but for the clients, the court system and all others concerned.

Happily, there are many helpful resources readily available to assist in developing a succession plan, and there's no need to reinvent the wheel. Most of the advice given for succession planning is simply good practice for all lawyers, but it takes on additional importance in this context.

To begin, ALPS has information available online: <https://www.alpsinsurance.com/resources/succession-planning>.

See also the ABA: https://www.americanbar.org/groups/professional_responsibility/resources/lawyersintransition/successionplanning/

In addition, most state bars

have information on their websites. See New Mexico State Bar Succession Planning Checklist: https://www.sbnm.org/Portals/NMBAR/PDP2_02_Succession%20Planning%20Checklist.pdf

See also, The State Bar of Arizona Succession Planning Handbook: <https://www.azbar.org/for-lawyers/practice-tools-management/succession-planning/>

In sum, while nothing can keep the Grim Reaper from a lawyer's door forever, with a succession plan in place the lawyer can at least hope to be fondly remembered by clients, family and colleagues – rather than as the source of legal chaos for their clients and the successor lawyer.

Some Common Tips for Succession Planning:

- Have a written agreement with an attorney willing to step in as successor counsel if you become unavailable to practice law.
- Develop a good office procedure manual and keep it current and accessible.
- Maintain an up-to-date client list, with written attorney contracts and current contact information.
- Have a good calendaring system and make sure all your deadlines are in it.
- Keep your client files in good order.
- Make sure that your practice's electronic records, including client records, trust account records and bank accounts can be accessed by your successor.
- Inform your office staff, partners and family members about your succession plan, and introduce them to your successor counsel.

Footnote

¹As Alaska becomes older as a State, inevitably, these issues will continue to become more prevalent within the Bar. Lawyers are reminded to review Ethics Opinion 2022-1 “A Lawyer's Duty with Respect to Potentially Impaired Members of the Bar” if they notice fellow members struggling.

This is an educational and informative article from the Ethics Committee to members of the Bar. This is not a formal Ethics Opinion and has not been approved by the Board of Governors. The Ethics Committee would like to thank long-time committee member Marc June. He helped write the foundation for this article back in 2015. Mr. June stepped down from the Ethics Committee recently and his contributions will be missed.

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President of the Federal Bar Association, Alaska Chapter Sarah Schirack, with Gupta and Tucker.



US Attorney for the District of Alaska, Lane Tucker, leads the discussion with U.S. Associate Attorney General, Vanita Gupta. Photos submitted by Sarah Schirack.

U.S. Associate Attorney General Visits Alaska

On October 19, 2023, U.S. Associate Attorney General Vanita Gupta met with a packed room of approximately 70 members of the Alaska Bar Association and Federal Bar Association. ASG Gupta is the 19th United States Associate Attorney General and serves as the third-ranking official at the Department of Justice. The conversation was led by ASG

Gupta and US Attorney for the District of Alaska, Lane Tucker. Gupta covered her civil rights background, emphasized the importance of people holding the government accountable and how people can bring to bear the kind of change they want to see.

Is Making a Referral Risky?

By Mark Bassingthwaighte

Referrals of all types are commonplace in the practice of law. They are often made after work is declined. Staff may pass a name along in response to a cold call or to a client who needs a service that your firm doesn't provide. Referrals can occur during dinner conversations, at social events, via email or text or after a presentation given to the general public. Names may be passed along to family members, friends, colleagues and especially clients. After all, what firm doesn't want to make sure their clients are well taken care of! If done judiciously, referrals can even be a useful tool in growing a practice.

Too often, referrals are made to a variety of professionals without any thought about the potential malpractice exposure. Is such casualness justifiable? Unfortunately, the answer is occasionally no. While I will readily admit that the risk is quite low, this doesn't mean the risk can be dismissed out of hand.

One reason why is the "hunt for a deep pocket" concern. Suppose you make a specific referral and the person the referral is given to relies on your "advice" to work with whoever it was you referred them to. This person is then harmed in some fashion due to the negligent acts of the person you referred them to, and it turns out that professional is uninsured. It happens, and when it does, a hunt for a deep pocket might mean that a negligent referral claim is about to land in your lap.

Still have doubts? Then consider this. Thinking just about our own profession, I can assure you that a significant number of attorneys actively practicing here in the US are indeed uninsured. Some attorneys don't believe that malpractice insurance is necessary. They prefer to protect their assets in other ways. Others simply can't afford the premium payment, particularly during economic hard times. I have even had a few attorneys tell me that they believe having malpractice coverage simply invites claims. As they see it, if they have no insurance no one will bother suing them.

A more serious concern is when an attorney accepts a referral fee. This is a concern because such fees

are too easily viewed by a client as payment for your legal advice to have the client work with the other attorney. Clients need to be made aware of fee splits, so acceptance of such a fee can come with liability for the other attorney's missteps, particularly if the misstep is a blown statute of limitations date and the other attorney is uninsured. To avoid this risk, never ask for a referral fee and if one is offered, it's best to decline or suggest that the referral fee be refunded to the client.

That said, if your practice is to accept referral fees, proceed fully aware of the risk involved and act accordingly. Be up front with the client about the arrangement because when you share fees, you share liability. Think about Rule 1.5 of the Model Rules of Professional Conduct. It states that a division of a fee can only occur if the division is in proportion to the services performed and the client agrees in writing. In addition, the fee must be reasonable, and each attorney will assume joint responsibility for the representation. This rule requires that a referring attorney who will be accepting a referral fee inform the client of the presence of the referral fee and obtain written consent to the fee division. Given all this, at a minimum, it would seem prudent to stay in contact with the other attorney in order to monitor critical dates and see that work is completed on time.

Prior to ever making a referral where a referral fee is expected, consider making certain that the attorney you are referring to has malpractice insurance in place and that the limits are adequate for the size of the matter being referred. Do not accept verbal verification of coverage. There are attorneys who will say they are insured in order to obtain the business. Ask the other attorney for a copy of her declaration page to her malpractice policy prior to ever making this kind of referral. Some attorneys rationalize this concern away by thinking this isn't necessary because the folks they refer to are all highly competent professionals. In response, know that competent professionals can and sometimes do make mistakes or miss critical deadlines.

Occasionally an attorney who has recently been disbarred will

seek to refer clients and request a referral fee. If the referral happened to be made while this attorney was in good standing with the bar, payment of the referral fee would be acceptable. However, if this attorney is seeking to make the referral and asking for a fee after being disbarred, the payment of a referral fee would be prohibited under Model Rule 5.4(a) which prohibits the sharing of fees with a non-attorney.

Acceptance of a referral fee is not the only method of creating a liability from a referral. Referrals to specific individuals or a referral made with a promise such as "Ms. Jones is the finest (CPA, financial planner, personal injury plaintiff attorney, whatever the case may be) in the area and always gets great results" can also create liability. Another way to avoid exposure for a negligent referral claim is to always provide a minimum of two to three names and make no promises. Of course, suggesting the individual contact a referral service, such as a state or local bar association, would be another way to go.

Be extremely cautious when making a referral to an officemate in an office-sharing situation. By their very nature office sharing arrangements create added liability for everyone in the space. Internal referrals just increase the risk. It's important to give at least two to three names, one of which can be an officemate. Be certain to disclose that one of the names provided is an officemate, make no promises about that person and be certain that the individual receiving the referral understands that the officemate is completely independent from you. Never refer someone to an officemate who is uninsured or underinsured. This risk simply isn't worth it.

Since 1998, Mark Bassingthwaighte, has been a risk manager with ALPS, the nation's largest direct writer of professional liability insurance for lawyers. In his tenure with the company, he has conducted more than 1200 law firm risk management assessment visits, presented numerous continuing legal education seminars throughout the United States, and written extensively on risk management, ethics, and technology. Bassingthwaighte is a member of the State Bar of Montana as well as the American Bar Association where he currently sits on the ABA Center for Professional Responsibility's Conference Planning Committee. He received his J.D. from Drake University Law School. He can be reached at mbass@alpsnet.com.

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Alaska Bar Association Board President, Diana Wildland, addresses the room at the wake. Photo by Roseann Simko Wall.



Ken Jacobus, Andrew Kleinfeld and Ralph Beistline pose with Kleinfeld's wake portrait. Photo by Roseann Simko Wall.

Living Wake Held for Fairbanks Judge Kleinfeld

By Ralph R. Beistline

On the afternoon of September 22, 2023, hours after the completion of the Alaska Bar Convention in Fairbanks, a living wake was held for Senior United States Circuit Court Judge Andrew Kleinfeld at Bobby's Restaurant and Bar in downtown Fairbanks. It was attended by friends, family, former law clerks, as well as an occasional passer-by. The focus of the celebration, Judge Kleinfeld, was center stage and frequently vocalized his opinions as to any subject raised by his admirers, as he is often wont to do.

The wake in question, the brain-child of anonymous past Tanana Valley Bar Association (TVBA) presidents as well as others, and orchestrated by many, was emceed by attorney Rosie Wall, and included comments from many, including former law clerk United States Senator Dan Sullivan. Unique to the TVBA and conducted every 17 years or so, the event proved to be very upbeat, informative, enjoyable,

and highlighted the admiration and fondness the local Bar Association, as well friends and employees, have for Judge Kleinfeld. This is the second living wake the TVBA has held.

Judge Kleinfeld was in good form throughout and was heard to say afterwards that "one thing about dying with cancer, as opposed to say, syphilis, is there is nothing embarrassing about it."

The following is a reprint of the speech that I gave at the wake.

Good evening. On behalf of the United States Federal Court for the District of Alaska, and I guess just about everybody else, I am pleased to say a few words about Judge Andrew Kleinfeld who we honor tonight.

Judge Kleinfeld, with his wife Judy, arrived in Alaska in 1969, fresh out of law school, to serve as a law clerk for Justice Jay Rabinowitz and with the hopes of maybe one day becoming a United States Senator. Modest expectations. He went on to practice law here, and to serve as a part-time federal magistrate judge, a United States District Court judge, and ultimately, since 1991,

to serve on the Ninth Circuit Court of Appeals. In the process, Judge Kleinfeld raised his family here, became a mainstay of the Tanana Valley Bar Association, and was a pillar of the community, all in collaboration with his wife, Judy, who was a well-respected university professor, critical thinker and author. The two of them certainly made Fairbanks a better place.

My first recollection of Andy came when I was a new state law clerk myself and he, along with several others, was trying a criminal case before Judge Hepp. I think it was the last case Judge Hepp ever tried. It was a complex trial arising out of some arrests made during a pot-fueled concert and riot of sorts at the Tanana Valley Fair. Andy represented one of the Defendants in the case and remained cool as a cucumber throughout. Later, I got to know Andy further through his law practice and his service as President of the Tanana Valley Bar Association and on the Board of Governors of the Alaska Bar Association. He was president of the Alaska Bar Association in 1982. So, the young lawyer was busy, and he was unique to say the least. Most people who go from a clerkship directly to their own practice have a hard time of it, but for Andy it seemed natural. He certainly had a very successful and lucrative practice. And he understood the value of time. I recall on one occasion walking down Cushman Street and seeing Andy across the street. I had a question for him about a case we were involved in, so I flagged him down and told him I had a question about one of our cases. Before he would answer though he pulled out a pocket notebook, noted the time and case, and then answered the question. He wasn't going to let the billing opportunity pass. And he always seemed to have plenty of clients, because he also understood the value of their time and their resources as well. He was known as a very fair biller and extremely competent and professional attorney. Perhaps that's why he always seemed to have plenty of clients. And all this despite his frequent and unapologetic association with the Tanana Valley Bar Association. Andy is perhaps the most dedicated and loyal member of this association ever! He seldom misses a meeting and always has something to contribute which also required a sense of humor.

But Andy's success as a lawyer



and stalwart member of the legal community was only the beginning. In 1986 he was appointed to the Federal bench after barely missing out on an appointment to the Alaska's Supreme Court. In 1986 President Regan appointed Andy to a seat on the United States District Court for the District of Alaska, the first Fairbanksan to obtain this position. Then, five years later, President George H.W. Bush appointed Andy to a seat on the United States Court of Appeals for the Ninth Circuit, again the first from Fairbanks. Andy excelled on the Circuit Court of Appeals where he served full-time until assuming active senior status on June 12, 2010, his birthday. Andy's judicial career has been storied for he loved the work and cherished the opportunity to serve.

The one thing that Judge Kleinfeld was noted for among his Ninth Circuit colleagues was his love for Alaska and his dedication to Fairbanks. There came a point where, due to his seniority, some began to realize that Andy could become the Chief Judge of the entire Ninth Circuit. While they were not concerned about his qualifications, they were concerned that if he did so, he would move the headquarters of the court from San Francisco to Fairbanks. That would have been fun.

Well, I could go on forever about Andy and his assimilation in the Fairbanks community, but I found an interview that Andy gave almost exactly twenty years ago that was printed in the Alaska Bar Rag which says it all. Andy was asked what he did for enjoyment and/or relaxation in his spare time, and are there any special obligations accompanying the distinction of being the northernmost Federal Appellate Court Judge in the United States? Here, in pertinent part, was his answer.

If you drive north of Fairbanks

A Poem from Judge Kleinfeld's Departing Law Clerk

By Quinton Weinstein

A year in Alaska, they told me
It will be different
Like nothing you've ever seen before
They said the days will be long until there isn't sun at all
They said the cold will be biting, not like anything in the Lower 48
They said the mosquitos will come out in droves, chasing you in the summer
like a horde of locusts descending on crops

And all that was true

The days were long until there were barely days
The cold was harsh, unlike anything I had ever known
And the mosquitos were absolutely awful
Nothing poetic here. They're just awful

But they also told me that a year in Alaska, it would be different
That I would learn so much in a once in a lifetime job
That I would get to do unique things that I'd never done before
That I would get to see beautiful places unlike anywhere else

And all that was true too

There were cases like those I had read about
Great company at the Tanana Valley Bar Association
I saw moose and foxes and elk and a bear
I did yoga with reindeer and explored an ice cave
Drove by emerald lakes and ocean bays and boreal forests and more
A year in Alaska was different, they told me
It will be the experience of a lifetime

And that, too, was true

Continued on page 7

Living Wake

Continued from page 6

for a half hour, you are in some of the most beautiful wilderness on the planet. I enjoy that a lot, as well as puttering around, photography and teaching myself new things...I especially enjoy having lunch every Friday with our local bar association, as I have for the last 34 years (20 years ago). I enjoy sitting in my chair in my log house in the hills, reading, listening to music and looking out my window at the woods, the valley, the Alaska Range and Mount McKinley a couple of hundred miles away. As for my obligations, I feel a special obligation to release my staff from work and encourage them to walk outside and see the North American championship dog mushing race that starts right outside my chambers.

So, that is Andy. Somewhere along the line, he became a true Alaskan, a Sourdough.

I can't remember the year that Andy was President of the Tanana Valley Bar Association, but it must have been in the mid to late 70s. In any event I was new to the organization and on one occasion was asked to take the minutes. When I mentioned that I missed part of the meeting, I was advised that accuracy didn't matter so I came up with something creative, a poem entitled *Ode to a Chena Burger*. We met at the Chena View Hotel, now the Bridgewater, on 1st Avenue, and the most frequently ordered item was the Chena Burger. Andy was president of the association and many of the old-timers attended regularly. So, I wrote a poem and recited it at the next meeting. As a result, I was made permanent secretary. This ultimately led me to the presidency of this esteemed organization. Andy liked the poem even though it didn't paint him in the best light. Oftentimes since, Andy has indicated that it was this poem, and this poem alone, that led to my judicial appointments. Which is probably the only explanation that makes sense. And Andy should know because he swore me in as a United States District Court judge in 2001. Anyway, Jon Link, a lawyer at the time, who later became a Superior Court Judge in Kenai, was also featured in the poem. In fact, I was asked by Judge Link's wife, Millie, to recite it at his funeral. So, I drove to Kenai and did so. It is only appropriate, therefore, that I share it at a Wake. Here goes.

Attached herewith is the **Ode to a Cheana Burger**. This poem won the Alaska Bar Rag's Best Fast Food Poetry Award in 2000. This, perhaps, reflects a little of what the TVBA was like in Andy's heyday as an attorney. He accepted us though and we quickly accepted him.

When I think of Andy's 54 plus years in Fairbanks, I am reminded of another poem whose author is unknown. It simply says that some people come into our lives and quickly go, others stay for a while and leave footprints on our soul, and we are never the same. Certainly, Andy and Judy fall into this category.

Andy came to us as an east coast dude. He is now an Alaskan pioneer. For this we are grateful. Thank you, Judge Kleinfeld.

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

Ode to a Chena Burger

A bunch of attorneys were whooping it up at
The Chena View Saloon.
The waitress was there, with messed up hair,
But the tables were set by noon.
When out from the street, where it was 40 below,
And into the din and the glare,
There stumbled some attorneys, fresh from the bar,
There was Madson, Noonan, and Blair.
They looked like men with their feet in the grave,
And were covered all over with louse,
But they found their chairs, and the meeting began,
After Madson toasted the house.
With faces, most hair, and dreary stares,
Like a dog whose day is done,
They ordered their CHENA BURGERS, one by one,
Knowing they'd soon have the runs.
There are men that somehow just grip your eyes,
And hold them hard like a spell,
But the men that were here were not like these,
Although they carried an awful smell!
Then the president stood, (**Kleinfeld**), like we hoped he could,
And he called for his meat and his brew,
But no one heard, the strange man's word,
Till he slammed his fist in my stew.
Then his eyes went rubbering around the room
And he seemed in kind of a blur,
But the minutes were read, and they cleared his head,
And he realized where we were.
Then the hungry bunch received their lunch.
And tried to stuff it down,
But it fought like a dog and wouldn't unclog,
And lifted some right off the ground.

Then the heartburn came, like a burning flame,
And it seemed that it wouldn't pass,
But sure enough, before too long,
It was followed by some gas.
Then all of a sudden, the stomach howls
Became so loud that you scarce could hear,
And you thought that your stomach had been looted clean,
Of all that it once held dear.
That someone had sat on the food that you ate,
That your tongue had been covered with lye,
That your guts were gone, and the best for you,
Was to crawl away and die.
"Twas the crowning cry of a stomach's despair,
And it thrilled you to the pink.
"I guess I'll have a second one,"
Said attorney Jonathan Link.
Then Savell slurped, and someone burped,
And the business at hand was completed.
There was more that took place, but of questionable taste,
And mentioned thereof is deleted.
Then as quick as it began, the meeting did end,
And the attendance began to erode,
And a crowd did appear, and started to cheer,
As the attorneys rushed to the commode.
Well, these are the simple facts of the case,
And I guess I ought to know.
They say the attorneys were crazed with hootch,
And I am not denying it so.
I'm not as wise as the lawyer guys,
But strictly between us two,
The CHENA BURGERS that they loved so much,
Sawdust, manure, and glue.

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Inferencing and Focusing in Psychological Reports and Expert Testimony

By Daniel B. Lord

Testimony from an expert in psychology is not without pitfalls. This is especially apparent when the testimony comes to conclusions based on instruments such as structured interviews and standardized tests administered, scored and interpreted by the psychologist, as well as a review of collateral information. Still, these pitfalls can be easily unnoticed by attorneys and the courts.

The following briefly describes two of them, and these are (1) the direction of the inference being made from a psychological assessment, and (2) focusing on one diagnosis or problem to the exclusion of exploring related others.

It should be emphasized at the outset that applied psychologists – such as clinical, counseling and school psychologists – have for many decades been following a scientist-practitioner model in education and training. This model implies operating in an evidence-based framework, in which there is an expectation that the practitioner will be familiar with the assessment instrument being used; that is, there will be knowledge of a given instrument's psychometric properties, its standardization and norms, aspects of reliability and validity, and its utility and accuracy. Similarly, in arriving at a given diagnosis, the psychologist will have knowledge of its criteria, as well as any differential diagnoses that might be triggered, all in accordance with empirical research on the problem.

Let's address the first pitfall. Suppose a psychologist provides an expert report on whether a person fits the personality profile of someone who engages in domestic violence. The psychologist then testifies that the person does fit the profile, and that the results of an interview, and more particularly, of personality tests and other inventories as interpreted by the psychologist, support this opinion.

However critical information is absent. Does this psychologist mean that the psychological test results support a conclusion that the person likely engaged in domestic violence or that there is a substantial risk that the person will engage in domestic violence in the future or both? What is being inferred?

An article published in the early 1980s identified this inferencing problem, in the context of medical diagnosis of breast cancer, in terms of retrospective versus predictive accuracy. As explained by the author:

There are really two types of accuracy for any test designed to determine whether or not a specific disease is present. The *retrospective accuracy* concerns $P(\text{pos} | \text{ca})$ and $P(\text{neg} | \text{no ca})$. (The abbreviation "no ca" refers to the event the patient does not have cancer. This can occur because she either has a benign disease or she has no disease at all.). This accuracy, the one usually referred to in the literature on mammography, is determined by looking back at the X-ray diagnosis after the true (histological) diagnosis is known. Let us use *predictive accuracy* to describe the $P(\text{ca} | \text{pos})$ and $P(\text{benign} | \text{neg})$, the accuracy important to the clinician who has an X-ray report of an as yet undiagnosed patient and wants to predict that patient's disease state.

David M. Eddy, *Probabilistic reasoning in clinical medicine: Problems and opportunities*, in *Judgment Under Uncertainty: Heuristics and Biases* (Daniel Kahneman, Paul Slovic, & Amos Tversky, eds.), 255 (1982). The distinction underscores the caution not to equate predictive accuracy of a positive report for a condition with retrospective accuracy of the report -- (that is, $P(\text{ca} | \text{pos}) = P(\text{pos} | \text{ca})$). *Id.*

Translating this to psychological assessment, *retrospective accuracy* "looks to the likelihood that those who fall into a particular group scored positively on a test," while *predictive accuracy* "addresses those who score positive on a test will fall into a specific group." Kaplan Consulting and Counseling, *Insights . . . on Psychological Testing*, Vol. 1, No. 2 (Fall 2005), 1 (available online). As further explained by a renowned clinical and forensic psychologist, predictive accuracy begins with the test, and asks, what is the likelihood that a person with positive scores on a measure for PTSD (post-traumatic stress disorder) is, for example, a rape victim? Retrospective accuracy starts with the condition and asks, what is the likelihood that a rape victim will have a positive score on the measure? Kenneth S. Pope, *Fallacies and Pitfalls in Psychology: 10 Fallacies in Psychological Assessment*, available at <https://kspeope.com/fallacies/assessment.php>.

When there is a confusion in the direction of the inference there is ef-

fectively a switching of probabilities akin to the logical mistake of affirming the consequent. In other words, "Persons with condition X are overwhelmingly likely to have specific test results. Person Y has these specific test results. Therefore: Person Y is overwhelmingly likely to have condition X." *Id.* The fact that rape victims likely score positive for PTSD does not mean that positive scores on the measure indicate a likelihood of being a rape victim.

Related to the need for the direction of the inference from psychological testing, and to avoid falling into a logical fallacy, is ascertaining the "likelihood" or probability in the prediction of risk. Psychologist on cross-examination will testify as to predictive accuracy in terms of a degree or level of risk, in that even though scores on standardized measures show a strong probability that the person could engage in domestic violence in the future, there is also the probability that the person may not, and attorneys may argue, and a court find, that this is significant. Clarification is needed from the psychologist as the test results could indicate a very high level of risk; in contrast, the qualifying statement was meant to be conditional to convey that there is a comparatively slim or very low level of risk, and thus, not so noteworthy as imagined.

The second pitfall is ethical, calling to mind the phenomenon of confirmation bias. Applied psychologists, especially those operating in a forensic capacity, are bound by the American Psychological Association's Ethical Principles of Psychologists and Code of Conduct, available at <https://www.apa.org/ethics/code>, and the Specialty Guidelines for Forensic Psychologists issued by the APA's Committee for Ethical Guidelines for Forensic Psychologists, available at <https://www.apa.org/practice/guidelines/forensic-psychology>. They make it clear that in assessing the presence or absence of a psychological condition, the examiner has an obligation to seek information and look at the problem from different perspectives.

This requirement is made explicit in 9.01 of the Specialty Guidelines for Forensic Psychologists. That guideline reads as follows:

Forensic practitioners strive to utilize appropriate methods and procedures in their work. When performing examinations, treatment, consultation, educational activities or scholarly investigations, forensic psychologists seek to maintain integrity by examining the issue or problem at hand from all reasonable perspectives and seek information that will differentially test plausible rival hypotheses.

Within a clinical context, this underscores that the psychologist should aim to conduct a differential diagnosis.

The examples of propensity for domestic violence or being a rape victim appear inapplicable here, as they do not involve a specific psychiatric diagnosis, unless a pertinent personality disorder is examined. There are other situations where this issue is compelling. For instance, in "cases involving allegations of FDBP" (factitious disorder by proxy), "it appears that insufficient attention has been paid to alternative explanations for the perceived problem. In particular, little weight appears to have been given to the DSM-IV – now American Psychiatric Association, Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition (DSM-V) – diagnostic criterion which states the fabrication of symptoms must be intentional." Eric G. Mart, *Problems with the diagnosis of factitious disorder by proxy*, *American Journal of Forensic Psychology*, 17, 69-82, 77 (1999).

It should also be emphasized that failure to follow this ethical guideline by not exploring alternative explanations for a psychological condition or the problem at issue, is far from uncommon. In one study, "failure to consider alternative hypotheses" was found in 30 percent of a national sample of forensic psychological reports. Thomas Grisso, *Guidance for improving forensic reports: A review of common errors*. *Journal of Forensic Psychology*, 2, 102-135, 110 (2010). This deficiency was not necessarily due to a paucity of information in the reports that might preclude the consideration of alternatives.

In conclusion, psychological reports and testimony from experts in psychology should be subject to scrutiny. Confusing retrospective accuracy with predictive accuracy, and not exploring alternative explanations for a particular diagnosis or problem, are not the only pitfalls that may arise when relying on a psychological expert. At times, the weighty testimony of psychological evaluators, even when apparently supported by test results, might not really tell us much at all.

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




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Exploring Delaware Tax Trap Clauses for Estate Planning

By Steve O'Hara

Part III of a series

This is the third installment in a four-part series on clauses relating to the tax planning potential of the so-called Delaware Tax Trap. A full presentation of this discussion can be found in my blog post at www.oharatax.lawyer titled Delaware Tax Trap Clauses.

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

First, a quick review: The Delaware Tax Trap is about imputed, not actual, ownership. The trap can impute ownership of property to you for federal gift tax, estate tax and GST tax purposes. The elements of the trap are (1) someone has given you a non-general power of appointment known as the First Power; (2) you exercise the First Power by creating one or more new powers of appointment; and (3) the applicable state law permits the new power of appointment to be validly exercised without reference to the date of the creation of the First Power. IRC Sec. 2041(a)(3) and 2514(d) and *see, e.g.*, AS 34.27.051(b).

Our hypothetical for these purposes involves Jane A. Client, a United States citizen domiciled in Alaska. She was a widow with two children, Joseph and Charles, and several grandchildren from both her sons. Joseph is domiciled in Alaska and is self-supporting with no creditor issues. Charles regularly has creditors pursuing him. He has trouble with the law and is in and out of jail and marriages. He is domiciled in the U.S., outside of Alaska, and the state where he is domiciled has a significant death tax.

Client died December 31, 1999. As of her death, she funded two trusts for each of her children, namely: the Joe 1999 Trust – GST Exempt, the Joe 1999 Trust – Non-Exempt, the Chuck 1999 Trust – GST Exempt, and the Chuck 1999 Trust – Non-Exempt. As their names suggest, the GST Exempt Trusts have zero inclusion ratios under the GST tax system, while the Non-Exempt trusts have 100% exposure to the GST tax. *See* IRC Sec. 2641(a)(2) and 2642(a)(1) and (2) and (c). Client's governing document is a revocable trust that became irrevocable at her death.

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

Charles has not undertaken any estate planning. By contrast, Joseph has an estate plan, including a Will. He has identified creditor protection for his children as an important objective; they are a family of medical professionals who regularly pilot their own small aircraft throughout Alaska. From a tax perspective, Joseph has identified an undivided 70% interest in the property of the Joe 1999 Trust – Non-Exempt as the optimum share he wants included in his gross estate for federal estate tax purposes.

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

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

As illustrated in the previous issue of this column, and as fully presented in my blog post at www.oharatax.lawyer titled Delaware Tax Trap Clauses, Joseph's Will is the instrument through which he attempts to accomplish the foregoing estate planning objectives as relates to his non-general powers of appointment. For illustration and discussion purposes only, the hold-back trusts administered under paragraph F referenced in the immediately preceding issue of this column (and fully presented in my blog) might include a non-general testamentary power, such as illustrated in the following hypothetical clause:

3. Upon the death of the individual for whom the trust is named before distribution of the entire balance of the trust:

(a) Such part or all of the principal of the trust as then constituted shall be distributed to any one or more members of a class consisting of descendants of Jane A. Client, either living at the death of the individual for whom the trust is named or thereafter born, as the individual for whom the trust is named may appoint by Will specifically referring to this power of appointment;



"The Delaware Tax Trap is about imputed, not actual, ownership."

provided, however, and notwithstanding any other provision of this instrument:

(i) This power shall not be exercisable in favor of such individual, his or her estate, or the creditors of either; and

(ii) This power shall not be exercisable in a manner that may postpone or suspend the vesting, absolute ownership, or power of alienation of an interest in property for a period beyond December 31, 2089.

Thus, I intend that each applicable trust will not violate any "perpetuities period" limitation suggested by Treasury Regulation Section 26.2601-1(b)(1)(v)(B) or otherwise applicable, and I direct that this instrument shall be construed in accordance with this intent; and

(b) The principal of the trust as then constituted not effectively appointed by the individual for whom the trust is named shall be allocated or distributed to the then living descendants of the individual for whom the trust is named, *per stirpes*, or if none, to the then living descendants of Jane A. Client, *per stirpes*, or if none, to the estate of the last to die of Jane A. Client's descendants; provided, however, and notwithstanding any other provision of this instrument:

(i) The Trustee shall retain property otherwise distributable un-

der this clause (b) to an individual. The Trustee shall hold such property in a separate trust named for the individual, subject to the directions for maintaining GST Exempt and non-Exempt principal in separate, but related, trusts, as provided elsewhere in this instrument. Each such trust named for an individual shall be administered as provided in paragraph F of this Article;

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

(iii) Upon termination of a trust pursuant to subclause (ii) of this clause (b), any balance of retained principal in such trust shall be distributed to the individual for whom the trust is named.

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

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

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Remembering a Christmas Past

Continued from page 1

in a perpetual road race. At first I drove with trepidation, but eventually, I, too, became competent at the pit maneuver, exhibited genuine road rage, and occasionally flashed one finger salutes. During the trip, I also became intimately familiar with Cracker Barrel restaurants and tried my best to learn how to talk like a hillbilly.

For the family holiday, Chris' mother Pam bought matching outfits from Target for us all to wear on Christmas Day. The outfits were obnoxious red and black checkered pajamas with a garish Christmas theme. Despite some polite protests, Pam insisted that we were all to be color coordinated when we arrived at her house that morning. I felt like Ralphie in "A Christmas Story." Regardless, Brenda and I dutifully drove to Pam's house on Christmas morning, festooned in our dreadful Christmas regalia. We were the Griswolds personified.

While in Bay, we saw devastation from a massive tornado that had struck the area only two weeks earlier. The tornado had set down in a larger town called Trumann, five miles away from Bay. The extent of the damage was staggering. I learned to appreciate how deadly tornadoes can be and the damage and tragedy they can bring in seconds. After breakfast, but before opening gifts, Brenda and I took our family on a drive through the area to understand just how blessed we were. Oftentimes during Christmas, we drive through local neighborhoods which are less fortunate than ours to gain perspective. This was the same for Trumann, Arkansas. Fortunately, no one had died in Trumann. Other towns were not so lucky.

Following our tour of Trumann, we returned to Pam's house for the traditional Christmas gift opening. Like every year prior, I received my usual surprise Christmas stocking fillers consisting of the bruised apples and wrinkled Mandarin oranges. But I also got some other swell

gifts, like a Grinch shirt. Best of all, we watched the joy on Daisy's face as she eagerly tore open her gifts. Each present was the "best one ever." In less than an hour, the living room was converted from a peaceful retreat into a ravaged war zone, littered with boxes, wrapping paper and toys. We then adjourned for the obligatory turkey dinner.

True to southern hospitality, Chris' mother and her husband, Aubrey were excellent cooks. They put Cracker Barrel to shame. As my stomach swelled, I began to appreciate the southern cooking everyone talks about. I made a vow that I would have to return to the area. True, I may have to ride on a cargo freighter, but it would be worth the trip. After dinner, everyone found a place to nap while intermittently watching football games.

Following an uneventful Boxing Day on December 26th, Brenda and I left that evening for Nashville. Our scheduled return flight was scheduled for early on December 27th. Once again, it was a classic NASCAR race between Jonesboro and Nashville. In retrospect, the trip would have been easier had I remembered to turn on the headlights on my rental car. Rental cars these days all have automatic headlights, don't they? I eventually learned that I was mistaken when I kept getting flashed by oncoming motorists, reminiscent of my earlier trip to Jonesboro. By then, I had traveled half-way between Jonesboro and Nashville. Fortunately, because there were so many cars on the road, I simply used their headlights to see and did not notice any profound difference.

After being misdirected by our car computer twice, we checked into a chain hotel in Nashville to prepare for the next day and our flight home. That is when the real excitement started.

On the return trip, Chris, Kathryn and the two grandchildren were



"For the family holiday, Chris' mother Pam bought matching outfits from Target for us all to wear on Christmas Day."

scheduled to fly from Memphis to Dallas to Seattle and then on to Fairbanks. They were expected to arrive in Fairbanks, Alaska during the early morning of Tuesday, December 28th, approximately one hour before our own scheduled flight's arrival on a different Alaska Airlines flight. Our Nashville to Seattle flight was scheduled to arrive at the same time that the kids' flight

would be leaving the gate in Seattle for Fairbanks. We planned to connect in Fairbanks and go home from there. The plan was to celebrate Jacob's thirteenth birthday on December 30th.

Unfortunately, the weather gods would not allow our plans to succeed. After Brenda and I checked our bags in Nashville, we were advised that Alaska Airlines had already canceled our flight from Seattle to Fairbanks. Something about unspecified crew issues. This was perplexing, since the automated text message from Alaska Airlines said that the cancellation was due to weather issues. I spoke to a supervising agent who again confirmed that the cancellation was due to crew issues, not weather. Whether those crew issues pertained to Covid, a strike or simply a Christmas hangover was never disclosed. Brenda and I were told that we would have to spend the night in Seattle. Worse yet, our half-dozen large bags would only be checked to Seattle. They would have to be reclaimed and rechecked the following day.

During the flight to Seattle, I followed the progress of our journey on the company's flight tracking app. In time, I realized that we were actually ahead of schedule. We would be landing in Seattle almost forty minutes before the scheduled departure of our kids' flight. We were also arriving at the same north terminal and only three gates away. With any luck, we would be able to be on the same flight.

While taxiing to the gate, I called the Alaska Airlines reservations. I learned that I would have to physically go to the gate to be reticketed. During the trip from Nashville to Seattle, I had also been in constant text communication with Amy, my then associate, who was acting as a travel agent trying to book us on the kids' flight. To my relief, Amy was successful in finding us an alternate flight to Anchorage as well as a hotel room at SeaTac Airport and a car rental in the event that Brenda and I still did have to stay overnight.

When we arrived in Seattle, I raced to the gate, pulled out my coveted Gold 75K MVP card and was actually able to get Brenda and myself on our kid's flight. Confident that we were on our way home, I canceled both the hotel and car rentals without forfeiting the hotel guarantee. Another plus, or so I thought at the time. In retrospect, canceling was a big mistake. Unbeknownst to me, trouble was brewing. We sat on the jet for approximately an hour and a half waiting for our bags to be loaded. When the bags were loaded and we taxied out. More delays occurred as we waited in a long line of aircraft for deicing.

Deicing completed, I was relieved when we finally began taxiing to the end of the runway for takeoff.

My relief was short-lived. With the end of the runway literally in sight, the aircraft made an abrupt U-turn. We were returning to the terminal. We had a problem. It was likely either a crew or mechanical issue. In short order, the pilot announced that he was canceling the flight. The crew had timed-out. A collective groan, plus some creative Christmas profanity, rumbled through the passenger compartment. So much for Yuletide joy. Wisely, the pilots stayed locked in their cockpit until after the plane had emptied at the gate.

Upon deplaning at 2 a.m., we entered the main terminal to find a line of people at the ticket counter stretched over two hundred yards. Three flustered ticket agents were valiantly working to reticket passengers on the next available flights and to find available lodging in a town invaded by thousands of stranded holiday travelers. We were told that our baggage was in the bag well, along with likely thousands of other unclaimed bags. We could pick the bags up or not. We elected to leave the bags. The bags would be Alaska Airlines' problem. Our Apple tag tracking devices could babysit. After an hour, we were able to locate an Avis nine passenger SUV for a car rental and two Courtyard by Marriott hotel rooms at \$130 a night located only thirty miles from the airport in Kirkland, Washington.

Seattle and Fairbanks were experiencing a major snow storm system. Due to a passenger backlog, we were not scheduled to depart Seattle until January 1, 2022. Given lemons, we made a large batch of lemonade. Jacob and Daisy celebrated Jacob's thirteenth birthday twice in Bellevue at a Dave & Buster's arcade. Brenda happily got to do more shopping. I got to play taxi driver on slippery Seattle streets, proving that I truly was an Alaskan driver who could handle the snow. On January 1, 2022, we finally arrived in Fairbanks, having missed a catastrophic, roof collapsing snowstorm.

In the end, our family had an exciting trip. A thirteenth birthday and a Christmas to be remembered and talked about for years. "Life is about making memories" one of my friends often reminds me when I say I have work to do. Lasting memories were made. Recognizing the damage done by the tornadoes, COVID-19 and the thousands of people who were affected far more than us by flight cancellations, we were quite thankful that our trip turned out as well as it did. In every cloud there is a silver lining. As my dear old Dad used to say, "There is nothing so good it couldn't get better and there is nothing so bad it couldn't be worse." And there is another statement I remember from years ago that I put in my high school yearbook, "Life is a comedy to those who think and a tragedy to those who feel." I thought the trip was hilarious. I don't know if everyone else felt that way.

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

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Alaska Law Review Visits Anchorage

For a week in October, eight Alaska Law Review student-editors traveled to Anchorage from Duke Law School. Every semester, our editors visit Anchorage, Juneau or Fairbanks to scout new authors, develop note topics and learn about Alaska legal issues.

Our schedule in Anchorage was jammed-packed. We darted across town to meet with attorneys practicing across the private, government and non-profit sector. We heard a broad range of perspectives on the pressing issues the Alaskan legal community faces. Two highlights included meeting many of the Alaska Supreme Court Justices and Court of Appeals Judges and attending a Federal Bar Association lunch with U.S. Department of Justice officials. We also had the privilege to attend the Alaska Federation of Natives Convention, where we spoke with Alaskans from across the state and listened to delegates debate subsistence resolutions.

At every stop during our trip, from the attorneys who graciously opened their homes to strangers to the various organizations we visited, we were met with a kindness and generosity that puts North Carolina's southern hospitality to shame. We are very grateful to all the attorneys who took time to meet with us and to our hosts. In particular, we would like to thank Danielle Bailey for helping us organize this trip and Professor Ryan Fortson for his assistance brainstorming our Alaska Law Review Symposium topic for next year.

Around every roadway curve, Alaska greeted us with stunning natural beauty. Every moment we were not in meetings, we were exploring Alaska's great outdoors. In one week, we were able to travel from Reed Lakes in Hatcher Pass to Exit Glacier in Kenai Fjords National Park, with stops in Chugach State Park and Girdwood along the way.

The Alaska Law Review is always looking for new authors and new scholarship. If you are interested in contributing a comment or article, learning about how we can support you through the publication process, or informing us of an important legal issue you want us to discuss, please reach out to us at alr@law.duke.edu.

The Alaska Law Review is a student-run academic journal published at Duke Law School since 1984. We are currently soliciting content for our Spring 2024 issue. We accept submissions and ideas of all kinds. In particular, we are seeking short book reviews, practice-oriented pieces and comments. These pieces can range anywhere from five to thirty pages. Writers interested in co-authoring with an Alaska Law Review student, scholars and practitioners are also welcome. Our aim is to feature a diverse range of scholarship in each issue. Please do not hesitate to reach out to us at alr@duke.law.edu with any ideas, questions or even just to say hello.



Alaska Law Review students take a tour of the Alaska Supreme Court. Photo Credit: Scott Anderson and Meredith Montgomery.



Alaska Law Review students took a walk along the shore at Point Woronzof Park after meeting with Alaska Supreme Court Justices. Photo Credit: Scott Anderson.

Alaska Law Review Author Preview: Meet Joe Perry

Joe Perry was born and raised in southeastern Wisconsin, spending much of his childhood exploring the rolling hills of the Kettle Moraine and the state's many idyllic lakes. Joe graduated from the University of Wisconsin-Madison in 2019, with a degree in neurobiology, along with minors in global health and African studies. From there, he studied Public Health Policy and Management at Emory University, earning his Masters in Public Health in 2021, focusing on economic analysis of initiatives expanding access to healthcare. Currently, Joe is in his third year at Duke University School of Law, and the Year-in-Review editor of the Alaska Law Review. Recently, Joe met with numerous members of the Alaska Bar Association as part of ALR's twice-annual visit. He is thrilled to contribute to scholarship on uniquely Alaskan legal issues.



Joe Perry

"In the Dark: *State v. Alaska Legislative Council* and Public-School Funding in the Face of the Dedicated Funds Clause" is Joe's forthcoming piece in ALR. In the note, he investigates the impact of the Alaska Supreme Court's recent decision on Dedicated Funds Clause jurisprudence, along with its inevitable effect on public school funding in the state. He was inspired to write this note by his passion for public education and deep interest in state constitutional issues.



SPRING 2024



Call for Submissions

The *Alaska Law Review* is requesting articles for its Spring 2024 issue.

We welcome book reviews (5 to 10 pages), practicums and practitioner comments (10 to 30 pages), academic articles (30 to 50 pages), and more! If you have an idea, please reach out.

Submissions for the Spring 2024 issue are **due by January 1, 2024.**

For any additional questions, please feel free to reach out to alr@law.duke.edu or contact us on our social media:

-  <https://www.facebook.com/AlaskaLawReview/>
-  [@LawAlaska](https://twitter.com/LawAlaska)

For more information, please visit the *Alaska Law Review* articles submissions page at <https://alr.law.duke.edu/current-issue/submissions/>

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ALASKA BAR ASSOCIATION BOARD OF GOVERNOR AWARDS

DISTINGUISHED SERVICE AWARD Retired Judge Niesje Steinkruger

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

Originally from Nebraska, Judge Niesje Steinkruger came to Alaska in 1976. She is a retired Superior Court Judge for the Fourth Judicial District in Fairbanks, Alaska. Prior to becoming a judge, Niesje was in private practice, was Assistant Public Defender (1984-87) and Assistant Attorney General for the State of Alaska (1979-84). Her service as a judge was remarkable. She served on the CINA Court Improvement Committee, Family Law Self Help Advisory Committee, Family Rules Committee, Rabinowitz Courthouse Facility Advisory Committee, Personnel Position Advisory Committee, Therapeutic Courts Advisory Committee and as a presiding judge.

What is even more remarkable is Steinkruger's service to the Bar since her "retirement." She is a former Board of Governor of the Alaska Bar Association and is a longtime member of the Historians Committee. Her dedication to the Bar and passion for preserving its history goes well beyond most members. She has been a volunteer for the Morningside Project, researching the legal aspects of the history of Alaska mental health issues and sanity hearings. She helped develop the Judges of Alaska Project Jukebox, and has participated in oral history interviews in the Alaska Mental Health Trust History Project Jukebox and the Judges of Alaska Project Jukebox. She has advocated on behalf of Alaska's Judicial Retention system and has served as a mentor judge. Judge Steinkruger continues to be an active supporter of young attorneys, potential judicial officers and the overall health of the profession.



Niesje Steinkruger

ROBERT K. HICKERSON AWARD Danielle Ryman

The Robert K. Hickerson 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.

Throughout her career, Danielle Ryman has been an outstanding champion of pro bono services for Alaskans. She serves at the forefront of advocacy for vulnerable children. She has made pro bono practice a top priority, dedicating hundreds of hours to ensuring access to justice for low-income individuals, especially women and children.

In 2013, Ryman received the Alaska Attorney General's Pro Bono Service Award for her work with survivors of domestic violence. In one case with the Alaska Network on Domestic Violence and Sexual Assault (ANDVSA), Danielle represented a client seeking custody of her four children. In another representative matter, Danielle helped a mother secure safety for her child. She was also part of a team that represented the parents of a child with severe autism in holding the Anchorage School District accountable for failing to provide the child with a public education. After a lengthy appeal process, they prevailed in the U.S. District Court for the District of Alaska and in a collateral order appeal before the U.S. Court of Appeals for the Ninth Circuit that challenged a "stay put" order allowing the child to continue to receive necessary educational services during the litigation.

In May 2022, Ryman joined A Better Childhood, the Northern Justice Project and the Disability Law Center in filing a class action lawsuit against the Alaska Department of Health and Social Services and the Office of Children's Services for violations of the rights of the children they represent. As a colleague of Ryman's stated, this is "another example of Danielle's unwavering commitment to pro bono service and her outstanding leadership and dedication to helping children and survivors of domestic violence."



Danielle Ryman

PROFESSIONALISM AWARD Michael O'Brien

The Professionalism Award recognizes an attorney who exemplifies the attributes of the true professional, whose conduct is always consistent with the highest standards of practice and who displays appropriate courtesy and respect for clients and other attorneys.

Michael O'Brien is a partner at Davis Wright Tremaine. He has worked in a variety of roles in Fairbanks: public defender, associate general counsel at the University, at Perkins Coie and recently, at Davis Wright Tremaine. He is an experienced litigator who also provides organizational and employment advice. One Fairbanks lawyer stated when describing O'Brien that "he is calm, courteous and prepared. He is pleasant and very supportive of underserved communities. He is not pretentious and in many ways is the typical Fairbanks practitioner: loves the outdoors and has a sense of humor. I do not think it is an exaggeration to say he is well regarded here as an attorney and human being."

O'Brien brings the same level of professionalism in his commitment to his communities. He has served on the school board and as president of Nordic Ski Club of Fairbanks. O'Brien has a long standing commitment to pro bono legal assistance and was the 2014 recipient of the Brian Timbers Pro Bono Award. He has a long track record of representing domestic violence victims, especially those whose citizenship, sexual orientation or income make them particularly prone to exploitation or abuse.



Michael O'Brien

LAYPERSON SERVICE AWARD Steven Reilly

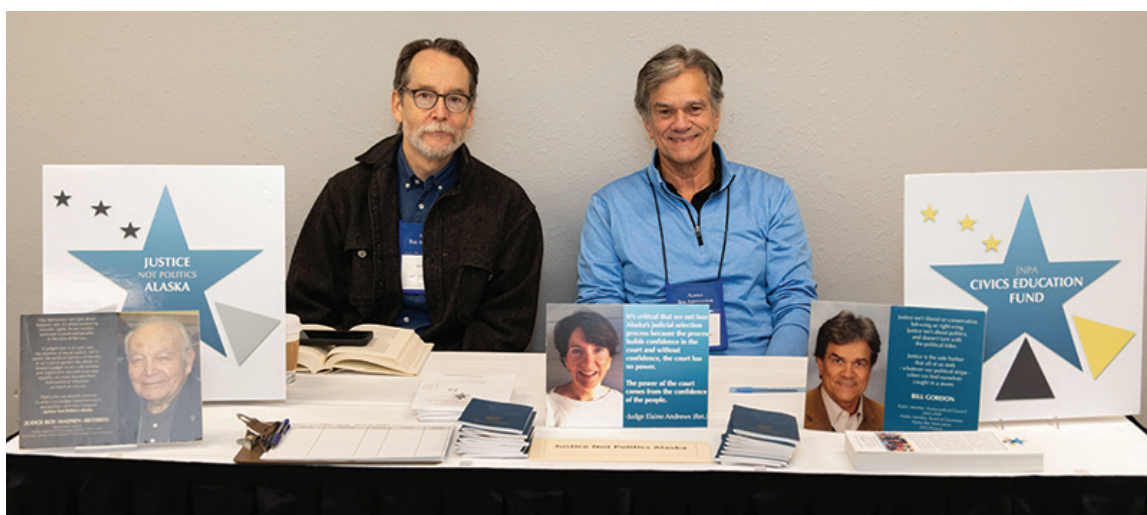
The Layperson Service Award is given to a non-lawyer who has provided outstanding service to the Alaska Bar Association.

Steven Reilly served on the Discipline Committee for eight years from 2014-2022. After terming out and waiting a year to become eligible again, he applied and was appointed for another four year term in 2023. For a time, he was the only non-attorney member of the judicial district.

During one of Reilly's hearing committee assignments, a four day hearing was held at the Fairbanks courthouse in 2019. Approximately 10 witnesses testified, including testimony from an expert forensic accountant and eight lawyers. The panel members were each provided several binders of material from which approximately 50 exhibits were admitted. The hearing involved three generations of testimony, included events going back to the mid-1980s and covered two trials on related matters in the Superior Court as well as an appeal. Bar staff noted in their dealings with Reilly that he "was attentive throughout the hearing. He asked pertinent questions. He was an active participant when the panel discussed evidentiary rulings and the like. Mr. Reilly was a good panel member who approached his task seriously and who took the time to work through a case with a more-than 30 year history."



Steven Reilly



David Landry and Bill Gordon at their Justice Not Politics table in the exhibitor hall. Photo by Jaime Kuhl of Red Photography



Live band Petty Crimes helped set the mood for the Awards Reception. Photo by Jaime Kuhl of Red Photography

LEGAL VOLUNTEERS HONORED FOR PRO BONO EFFORTS

Each year Alaska’s pro bono service providers select the recipients of the annual Bryan P. Timbers Pro Bono Awards. 2023 marked the 34th anniversary of this award and recognition of excellence in our community’s access to justice efforts. This year’s award recipients are Michael Mitchell (private practitioner), Andrea Hattan (public sector), and Stoel Rives LLP (Lifetime Achievement firm).

BRYAN P. TIMBERS PRO BONO LAW FIRM LIFETIME ACHIEVEMENT AWARD Stoel Rives, LLP

Stoel Rives, LLP has been in existence for 44 years and, after establishing an Anchorage office, 15 of those have been devoted to bettering the lives of Alaskans through pro bono services. The firm has been generous in both time and money to ensure that the critical legal needs of vulnerable Alaskans are met.

What does bridging the justice gap look like at Stoel Rives? In the year since being the 2022 firm pro bono award recipient, Stoel attorneys have assisted a 15 year old girl from Colombia obtain her permanent residency through a yearlong process. They filed a lawsuit on behalf of a nonprofit that was swindled out of tens of thousands of dollars by an Outside service provider who reneged on contractual promises that is ongoing with an anticipated trial in December. Attorneys are helping Alaskans navigate appeals for SNAP benefits and assisted a suicide prevention charity with their Alaska registration. The team continues to provide assistance on individual pro bono cases on behalf of Alaska’s legal services providers.



Kevin Cuddy of Stoel Rives and Justice Carney

BRYAN P. TIMBERS PRO BONO PUBLIC SECTOR AWARD Andrea Hattan

Fairbanks raised Andrea Hattan began volunteering for ANDVSA upon returning to Alaska after 10 years outside the state. She currently works in Juneau at the NOAA Office of General Counsel. She previously worked in Anchorage for the U.S. Department of Justice as a federal prosecutor.

In 2020 she attended an ANDVSA CLE, and soon thereafter volunteered for her first ANDVSA Legal Hotline shift. While she had no previous experience in family law, Andrea says the CLE gave her the confidence to volunteer for the hotline and to join ANDVSA Legal Program Director Christine Pate as co-counsel on a divorce and custody trial. Andrea donated approximately 100 hours to that 2020 case.

Since then, Andrea volunteered to staff the ANDVSA Legal Hotline a total of 14 times, helped draft a section of the ANDVSA Volunteer Family Law Manual, and is currently assisting a pro se ANDVSA client.

Andrea says she is moved to volunteer by a desire and sense of responsibility to better our state. Unfortunately, Alaska has some of the highest rates of domestic violence and sexual assault in the nation. Andrea says that she sees it as a privilege to use her legal education to help Alaskans who are in dangerous situations on their journey to a brighter, safer future.



Justice Carney and Andrea Hattan

BRYAN P. TIMBERS PRO BONO PRIVATE PRACTITIONER AWARD Michael Mitchell



Michael Mitchell

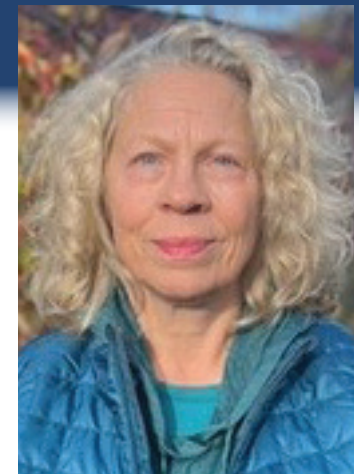
Michael Mitchell practices under the Emeritus Rule. This is a Bar rule that allows members with either a retired or inactive status to practice law for the sole purpose of doing pro bono work for one or more of the approved legal services providers. Nominated by Alaska Institute for Justice, Michael stated that “Working on this asylum case has been one of the most gratifying experiences of my career.” His client entered the southern border of the United States in 2016 at 17 years old, having traveled alone from Central America through Mexico to escape gender-based assault. She was placed in a children’s detention facility and eventually was released to a relative in rural Alaska. Michael has worked with the client since 2017 when they submitted her asylum application. In the time since, she has graduated high school, attended college, and found employment where she worked and studied her way up from minimum wage jobs to become a medical assistant serving rural Alaska.

ALASKA BAR FOUNDATION JAY RABINOWITZ PUBLIC SERVICE AWARD RETIRED JUDGE STEPHANIE RHOADES

The Jay Rabinowitz Public Service Award is given out each year by the Board of Trustees of the Alaska Bar Foundation. The award is given to a well-deserving individual whose life work has demonstrated a commitment to public service in the State of Alaska.

This year’s award is presented to retired Judge Stephanie Rhoades. Rhoades served as District Court Judge for 25 years. During her time on the bench she developed one of the first mental health courts in the nation (the Coordinated Resources Project, 1998). She organized and led many legal and service professionals to build community partnerships. She was a nationally recognized expert in the development of therapeutic courts and regularly mentored other court systems who were just establishing their own programs. In retirement Judge Rhoades did not stop. You can find her working as the Lead Food Coordinator for Project Homeless Connect, Anchorage Community Health Center and founder of ONE2ONE which mentors young women re-entering the community from prison. She is passionate and committed to create legal, social and health equities for those who experience complex and marginalizing societal disparities.

As one nominator commented, “Stephanie has spent her entire legal career creating systems to help vulnerable Alaskans navigate thorny, frightening and confusing barriers to productive, healthy lives. This is exactly the kind of vision and spirit that Justice Rabinowitz encouraged and cherished.”



Stephanie Rhoades

Bar People

Jackson Morawski joins Landye Bennett Blumstein LLP

Landye Bennett Blumstein LLP is pleased to announce that Jackson Morawski has joined the firm as an associate attorney.

Prior to joining LBB, Jackson clerked for the Honorable Rachel Ahrens of the Alaska Superior Court at Valdez, and the Honorable Bride Seifert of the Alaska Superior Court at Homer.

Jackson earned his juris doctor and business law certificate from the University of California, Berkeley School of Law in 2022. During law school he worked at a major telecommunications company where he focused on real estate transactions. He also interned at the San Francisco District Attorney's Office where he assisted with the prosecution of serious felonies.

Jackson earned a bachelor's degree in Asian studies from the University of Oregon in 2015 and was a member of Phi Beta Kappa. He is licensed to practice law in Alaska and Oregon.

Landye Bennett Blumstein is an Anchorage-based firm providing legal services to clients throughout the Pacific Northwest, including private and public corporations, Alaska Native corporations, tribes, municipalities, real estate developers, nonprofit organizations and individuals.



Jackson Morawski

Danna Nicholas appointed to San Diego County Superior Court

California Governor Gavin Newsom announced that West High School graduate, Danna Nicholas, of San Diego County, has been appointed to serve as a judge in the San Diego County Superior Court. Nicholas has served as Lead Deputy City Attorney in the General Litigation Section of the San Diego City Attorney's Office since 2017 and has served as a Deputy City Attorney there since 2004. She served as an Assistant Public Defender at the Alaska Public Defender Agency from 2000 to 2002. Nicholas earned a juris doctor degree from the California Western School of Law. She fills the vacancy created by the elevation of Judge Julia K. Keley to the Court of Appeal.



Danna Nicholas

Darrel Gardner elected to the Federal Bar Association Board of Directors

The Federal Bar Association is pleased to announce Darrel J. Gardner of the U.S. District Courts was elected to the FBA Board of Directors. The Board of Directors functions as the governing body of the Association and conducts all activities necessary to accomplish the objectives of the Association. Gardner began his term on October 1, 2023 and will serve in the position for two years.

Gardner was born in the Territory of Alaska shortly before statehood. With more than 40 years of experience as an attorney, Gardner's primary practice has been the defense of serious felony criminal cases in both state and federal court in Alaska. He served as both a state and federal public defender, as well as having his own private law office. In early 2020, Gardner became the first Criminal Justice Act Supervising Attorney for the Eastern District of Washington. Gardner is also a former Board of Governor member for the Alaska Bar Association and served as president of the Alaska Bar in 2017-2018. He currently chairs the Alaska Bar Association's Scholarship Committee.



Darrel Gardner

Julia D. Moudy joins Dillon & Findley, P.C.

Julia D. Moudy brings nearly 30 years of experience to Dillon & Findley. Julia joins the firm's litigation and trial team, with an emphasis on medical malpractice and criminal defense. As a Public Defender for nearly 27 years, she has tried over 100 cases to a jury.

Raised in Talkeetna, Alaska, Julia went to Gonzaga Law School, where she successfully argued a *habeas* petition before the Ninth Circuit Court of Appeals. While most of her career has been spent trying cases, she has also appeared before the Alaska Court of Appeals and the Alaska Supreme Court, writing, arguing and winning several precedent-setting appeals and fighting to ensure the rights of Alaska's citizens are protected. Julia received the Champion of Liberty award from the Alaska Association of Criminal Defense Lawyers and was named Litigator of the Year by her colleagues at the Public Defender Agency. Julia's practice areas, experience and expertise include criminal and complex civil litigation.



Julia Moudy

Sarah Kathryn Bryan joins Shortell Law LLC

Sarah Kathryn Bryan is an associate attorney at Shortell Law LLC. Ms. Bryan handles cases in family law, business, employment and general civil litigation. After receiving her juris doctor degree from Seattle University School of Law, Ms. Bryan served as a judicial law clerk in Alaska's Superior Court, then prosecuted domestic violence offenses on behalf of the Municipality of Anchorage.

Ms. Bryan has served on the Board of Abused Women's Aid in Crisis (AWAIC) since March of 2022, and contracts with the Alaska Network on Domestic Violence and Sexual Assault to provide civil representation to survivors of domestic violence. She is currently a member of the Alaska Bar Association's Bankruptcy Law, Business Law and Family Law Sections.



Sarah Kathryn Bryan

Nick Bajwa joins Dillon & Findley, P.C.

Nick Bajwa joins Dillon & Findley as Of Counsel to handle complex commercial transactions and civil litigation. He has over 15 years of experience working for and on behalf of corporate clients with a presence in Alaska, including ConocoPhillips and JL Properties.

Nick graduated from the University of Minnesota Law School and has called Alaska home for over 15 years. His clients range from large corporations to small local businesses and individuals. Nick's practice is focused primarily on transaction real estate, including acquisitions and divestitures, development, land assemblage, financing, construction, commercial leasing, taxation, surface use and damage claims. He also has significant experience in property tax matters, with a practice that includes litigation and administrative appeals. Nick also serves as general counsel for several small businesses and advises them on corporate governance, employment disputes, contract formation, implementation and disputes.



Nick Bajwa


Brittany Goodnight joins Dillon & Findley, P.C.

Brittany Goodnight joins Dillon & Findley as a part of the firm's litigation and trial team, with an emphasis on medical malpractice. She brings 10 years of experience trying civil and criminal cases in various Alaska courts. Brittany was born and raised in Chugiak, Alaska and attended UCLA School of Law. While in law school at UCLA, she specialized in public interest law and was an editor of the UCLA Law Review.

Brittany was a law clerk for Deputy Presiding Judge Philip R. Volland and worked for the Public Defender Agency doing both criminal and civil trial work and litigation for eight years. Most recently, she was an Associate Attorney General in the Torts Section of the State of Alaska Department of Law working on complex civil litigation and wrongful death cases.



Brittany Goodnight



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Protecting Subsistence Lands While Boosting the Bottom Line

By *Tim Troll*

Alaska Native corporations wishing to protect some of their settlement land for subsistence use should be aware of a significant federal tax benefit available to them. With help from Alaska's Congressional Delegation, a provision was added to the *America Gives More Act* in 2015. A new Section C was added to the Internal Revenue Code § 170(b)(2) to permit Native corporations to recapture the full value of conservation easements placed on ANCSA lands through a Federal income tax charitable deduction.

The significance of this enhanced tax deduction for Alaska Native corporations cannot be overstated. Before 2015, if an Alaska Native corporation had donated a conservation easement on its land, its deduction would have been limited to 10% of its taxable income in the year of the donation with the carry forward for any unused portion of the value of the conservation easement deduction limited to five years. Now, the

deduction can be used against 100% of taxable income. If the corporation cannot use the full value of the conservation easement deduction in the year of donation, it can carry forward and apply the unused portion of that deduction to its taxable income for up to 15 years.

The value of a conservation easement to an ANCSA corporation can go beyond pure financial gain. While ANCSA was motivated in part to protect the subsistence use of traditional lands, the Act fell short of providing a legal mechanism for doing so within the structure of a for-profit corporation. That shortcoming was probably of little concern when ANCSA passed in 1971. Most of the shareholders of the newly formed corporations still lived in villages and relied on the subsistence provided by their traditional lands.

The changing demographics of ANCSA corporations now pose a greater potential risk to the preservation of traditional lands. By virtue of the distribution of the original shares through gift or probate, or by

the creation of new shares for Alaska Natives born after December 18, 1971, many ANCSA corporations now find many of their shareholders no longer live in ancestral villages. Some shareholders no longer need their ANCSA lands to provide the subsistence resources required for survival. As such, shareholders still living on traditional lands may lose the voting power to protect the traditional lands from shareholders who may wish to sell, lease or develop those lands to generate income for the corporation. Some shareholders have already lost access to traditional lands.

In an article published in the December 2022 edition of the *Alaska Law Review*, my co-author Konrad Liegel and I discuss why an Alaska Native corporation might want to take advantage of this enhanced federal tax incentive for conservation easement donations. We also discuss how to satisfy the requirements of Alaska's Conservation Easement Statute and the relevant provisions of the Internal Revenue Code. [Troll, T. & Liegel, K. Protecting Subsistence Lands While Boosting the Bottom Line: The Enhanced Federal Tax Incentive Available to Alaska Native Corporations for Donations of Conservation Easements. 39 Alaska Law Review 233-278 \(2022\).](#)

Conservation easements generally sever the development rights from the land to protect its conser-

vation values, but the ownership of the land remains the same. A conservation easement is often held by a non-profit corporation like a land trust, or by the state, local or federal government agency. While a conservation easement transaction may result in protecting traditional lands for subsistence use, there remains a degree of discomfort when the easement results in removing a measure of indigenous ownership over settlement lands. We argue in the article that this discomfort could be eased by having the local federally recognized tribe or a non-profit corporate affiliate of the tribe hold the conservation easement.

When crafted to protect subsistence and cultural values, conservation easements can help resolve the tension in an Alaska Native Corporation felt between the moral obligation to protect settlement land and the cold, legal obligation to treat the land like any other corporate asset. The federal tax incentive for a conservation easement donation on ANCSA lands can boost the corporate bottom line to the benefit of all shareholders while protecting land needed for subsistence for other shareholders.

Tim Troll is a retired member of the Alaska Bar, a former ANCSA village corporation CEO and currently the Executive Director of the Bristol Bay Heritage Land Trust, an organization he helped found in 2000.

Alaska Native Law Conference Convenes

By *Kara Bridge*

The 39th Annual Alaska Native Law Conference met on Thursday, November 9, 2023. Due to a heavy snowstorm, over 50 bar members convened virtually. The event featured a distinguished lineup of expert speakers from Alaska and

across the nation. The speakers provided valuable insights into Alaska Native legal matters and updates on issues impacting Alaska Native entities. The conference was co-sponsored by the Alaska Native Law Section, reinforcing its commitment to advancing legal advocacy within the Alaska Native community.



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Happy Holidays from the Lawyers' Assistance Committee

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Lawyers' Assistance Committee
Alaska Bar Association

In Memoriam

Michael M. Holmes — 1934-2022

By Eric Kueffner

Michael M. Holmes was born in Seattle, Washington in 1934. He went to Seattle Preparatory School, graduated from the University of Washington in 1956, and then entered law school there. He graduated from law school in 1959. After law school, he went to Juneau and worked in the attorney general's office, rising to serve as Deputy Attorney General under Warren Colver.

When Walter Hickel was elected, Donald Burr became Attorney General. Mike learned that he was no longer the Deputy AG when he heard the news on the radio. At least, that is what he told me many years later when I was his law partner at Faulkner, Banfield, Doogan & Holmes. Mike joined the firm after leaving the AG's office. He continued in private practice, first in Alaska, and then, beginning in 1998 in Seattle with Holmes, Weddle & Barcott. He passed away in October 2022. He served on the Alaska Judicial Council for nearly seven years.

I first met Mike when I interviewed with Faulkner, Banfield, Doogan & Holmes in 1984. He wasn't exactly scary, but as befitted a man whose name was on the door and on the letterhead, he was imposing, formal and not as chummy as the rest of the lawyers. A man of

few words, he did not say much in that initial interview. Neither did I, and that seemed to satisfy us both. I was hired as an associate in June 1984. I soon found out that despite his great personal dignity, Mike Holmes had a droll and dry wit.

In the years that followed, I was lucky enough to work with Mike on a number of cases and I learned a great deal from him. While taciturn, his comments were pithy and well-chosen. I remember in particular an occasion when he forwarded me a letter that had been sent to one of our clients. There was no cover note on the document, but at the bottom, he had written three letters in his unique handwriting: S.T.B. I went to his office to ask him about this, and had to confess that I did not know what those three letters meant or what he wanted me to do. He looked up slyly and said: "Sue the Bastards!" Which, of course, we subsequently did.

I'm not suggesting that Mike was unnecessarily litigious. He would go to trial if necessary, but if a reasonable settlement could be reached, he would take it. Late one Sunday afternoon we were sitting with our clients, doing final preparations for a three week trial that was to begin the next day. We had spent months preparing and were surrounded by the usual stack of depositions, bind-

ers, discovery, motions and other evidence of lawyer wrangling. The phone rang and it was the attorney for our opponents. Mike put him on speaker phone. "We were just wondering what you guys were doing," said the voice on the phone. Mike replied "Just getting ready for trial. How about you? How's it going?" We all knew right then that this case was going to settle. Mike's soft answer turned away any wrath that might have remained between the parties.

Mike was a good mentor, but he was not a micromanager. He wanted his associates to figure out how to proceed on their own. I worked with him on an arbitration hearing before a three-arbitrator panel that went on for several weeks. I had prepared or deposed most of the witnesses, and so I was the one who questioned them at the hearing. Mike sat next to me and kept a close watch on what was happening. Whenever I got a slight kick under the table, that meant it was time to object. When you got a kick from Mike Holmes, you had better come up with some grounds for an objection, even if you had previously thought the line of questioning from the other side was perfectly reasonable. The lessons from Mike taught me more than I ever learned in a formal class.

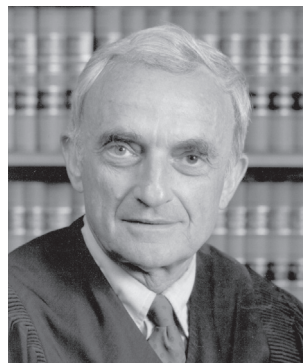
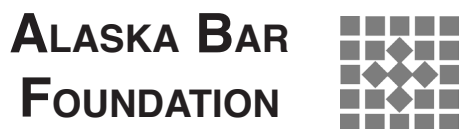


Michael M. Holmes

Faulkner, Banfield, Doogan & Holmes was a pretty informal place – it was an Alaska law firm. Mike Holmes brought just the right amount of gravitas to what was, after all, a serious enterprise. I do not recall him ever joining in the ping pong games that we played in the back room after 5:00. I also expect he did not touch the foosball table that was later set up in the library. He tolerated the nonsense, and the example of his dignity and probity kept us all grounded. He will be missed.

Call for nominations for the 2024 Jay Rabinowitz Public Service Award

The Board of Trustees of the Alaska Bar Foundation is accepting nominations for the 2024 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

Nominations for the award are presently being solicited. Nomination forms are available from the Alaska Bar Association, 840 K Street, Suite 100, Anchorage, AK 99501 or at www.alaskabar.org.

Completed nominations must be returned to the office of the Alaska Bar Association by March 1, 2024.



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Wednesday, December 6 | Advanced Fastcase: Legal Research for the Alaska Bar Association
12:00 - 1:00 p.m. | Zoom | 1.0 General CLE Credit

Friday, December 15 | Tech Tock, Tech Tock – It's Time for an Ethics Lesson on the Latest Tech
9:00 a.m. - 12:15 p.m. | Webinar | 3.0 Ethics Credits

2024

Thursday, January 18 | FOIA
TIME TBD | Webinar | TBD General Credits

Thursday, January 25 | Set Your Mind to Success: 10 Essential Ways of Thinking to Catapult Your Career and Well-being
12:00 - 1:00 p.m. | Webinar | 1.5 General CLE Credits

Tuesday, February 13 | IOLTA/Trust Accounts
9:00 a.m. - 12:00 p.m. | Marriott Anchorage & Webcast | TBD General/Ethics Credits

DO YOU KNOW SOMEONE WHO NEEDS HELP?



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

Contact the Alaska Bar Association or one of the following coordinators when you learn of a tragedy occurring to someone in your local legal community:
Fairbanks: Aimee Oravec, aoravec@doyonutilities.com
Mat-Su: Greg Parvin, gparvinlaw.com
Anchorage: Stephanie Joannides, joannidesdisputeresolution@gmail.com

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

In Memoriam

Richard Siangco, Magistrate, dies in August

By Larry Weeks

Retired Magistrate Richard (Rick) Siangco of Juneau, Alaska died there on August 22, 2023. Rick was born May 3, 1939 on Moloka'i Island in Hawaii. He joined the Army National Guard while in high school on Maui. Rick graduated in 1957 and then entered the US Air Force.

Rick was working in Seattle when he got a job offer with Alaska Communications System (ACS). In those days, ACS was the long distance telephone company in Alaska. His first day in Juneau he went down to the City Cafe on South Franklin Street for breakfast. It was a place that some might call a greasy spoon. He sat at the counter and started talking to an older gentleman next to him. When he finished and started to pay, the waiter said that the bill had been paid by the man he had been talking to. When asked who it was, the waiter said, "That was Bill Egan, the governor of Alaska."

After four days, ACS was concerned that Rick hadn't shown up for work. They called around and when they found him, he told them that he had driven up the North Douglas Highway. There were so many fish jumping that he couldn't resist fishing for a while before starting his

new job. Rick learned to spearfish as a child in Hawaii and continued to fish all his life. He gave salmon, halibut and crab to friends, neighbors and relatives until he was in his 80s.

Rick was first hired by the Alaska Court System as a bodyguard for then Chief Justice George Boney. He was appointed magistrate and state coroner/public administrator in July 1971. Two months later he handled the Alaska Airlines disaster on September 4, 1971 when an Alaska Airlines 747 jet crashed into a mountainside and all 111 people onboard perished. He presided over jury trials in Juneau and other court cases in Haines, Hoonah, Yakutat and Petersburg. Rick retired in 1986.

Always active in the community, Rick founded the Glacier Valley Judo Club. For several years this was the largest judo club in the United States. With his fifth degree black belt in 1982, the Alaska legislature honored him as the highest ranking judoka in the state. Rick taught judo to the boys and girls of the area without pay four nights a week, three hours per evening for 17 years.

Rick saved the lives of two men whose boat overturned in extreme weather during the 1997 salmon derby. For that deed he received the

21st Alaska Heroic Medal awarded since statehood.

After retiring from the Alaska Court System, Rick went on a Hawaiian vacation and, while there, was hired as the Special Needs Supervising Counselor for all the schools in Moloka'i. He was the high school's mock trial court and faculty advisor to the Leo Club. He served as Moloka'i Lions Club president. After he returned to Alaska, he was hired as a National Park Ranger for Glacier Bay National Park.

Alaska's First District lawyers remember Magistrate Siangco as even-handed. He was always aware of what was going on around him and able to deal with a gamut of District Court business with a sureness that many law trained judicial officers couldn't manage. He treated everyone with respect, from unrepresented defendants to out-of-town big firm lawyers and earned great respect in return.

Many good Siangco stories abound. There was the story about the defense attorney who started edging away from his client when he realized the client was about to pull a large knife that resembled a small sword. Rick was able to calmly deal with the impending crisis before the court security officer standing beside the defendant was aware that

there was a problem. There was the story of the former police officer who came into the chambers smelling of alcohol and using loud profanity. He was told never to do it again or he would be thrown out the window. He never did it again. Rick was proud that, long before DNA, all remains of the fatalities were identified from the 1971 plane crash. Additionally, he had prevented a widow of a diplomat passenger from going to the mountain crash site because he believed she was going to commit harikari there. He received appreciation from the federal authorities for his work after the crash.

Rick co-authored the book, "The Magistrate", with his niece, Deborah Gomez. It was published in May, 2016. It is Rick's autobiography and includes great stories of his life as a "family man, fisherman and friend".

He was preceded in death by his parents and eight of his siblings. He is survived by his wife Delma, son Ed and granddaughter Dayna of Maui, daughter Lisa Snider (Frank), grandchildren Jeffery, Jacob and Tori of Russellville, Arkansas, sister Rita Diorec (Jose) of Honolulu, Hawaii and numerous nephews and nieces in Alaska, Arizona, Canada, and across the lower 48 states and Hawaii.

His word was gold.

2024 Alaska Bar Association Budget

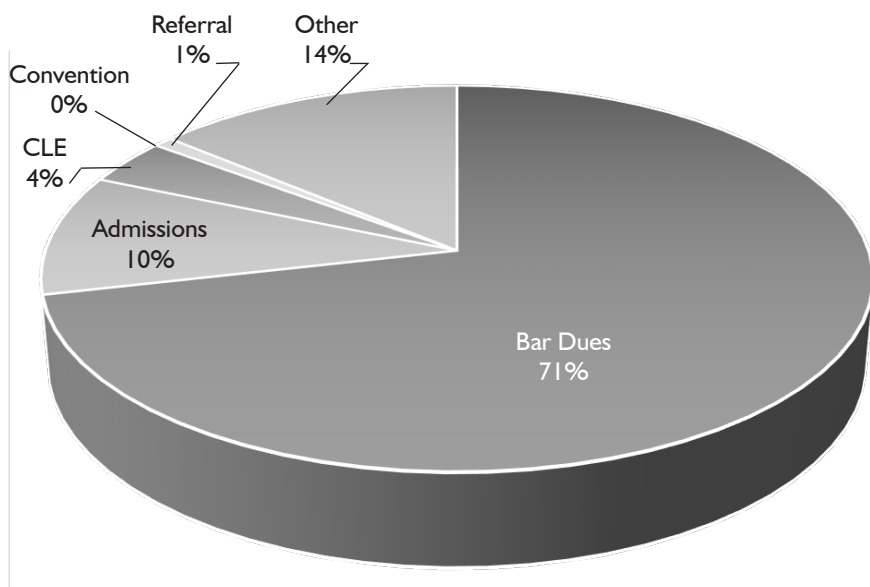
REVENUE

AdmissionFees-Bar Exams	74,860
AdmissionFees-MotionAdmit	57,000
AdmissionFees-Exam Soft	11,650
AdmissionFees-UBE	47,000
AdmissionFees-Rule 81s	117,000
CLE Seminars	84,574
CLE Health Plan Rebate	31,806
Accreditation Fees.....	1,400
Lawyer Referral Fees.....	25,895
Alaska Bar Rag - Ads,Subs	17,000
Annual Convention.....	0
Substantive Law Sections	25,895
AccountingSvc Foundation	11,432
Membership Dues	2,147,255
Dues Installment Fees	4,950
Penalties on Late Dues	10,060
840 K Street Rental Income.....	275,242
Disc Fee & Cost Awards	0
Labels & Copying.....	500
Investment Interest	83,093
Miscellaneous Income	3,296
SUBTOTAL REVENUE.....	3,029,908

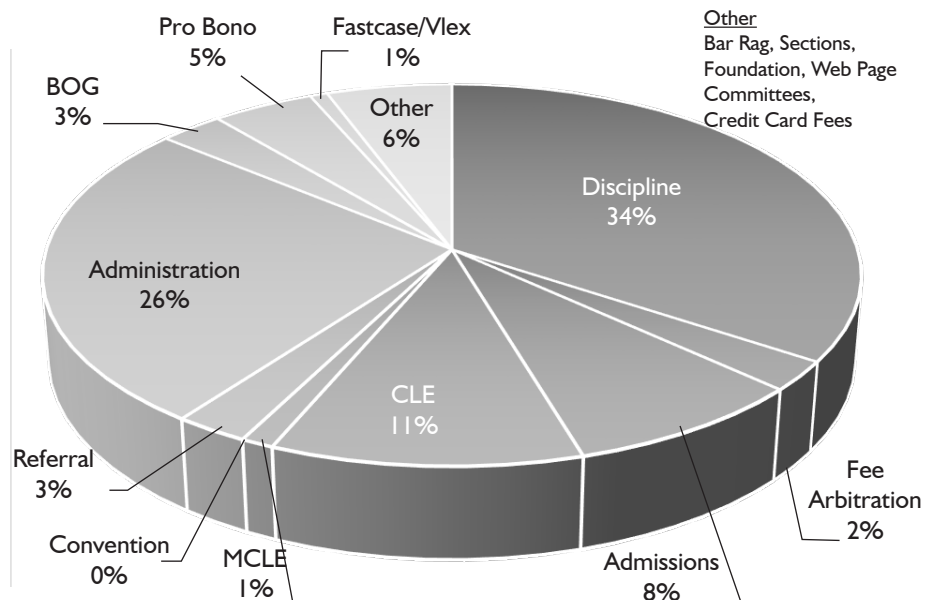
EXPENSE

BOG Travel.....	70,781	Succession Planning	30,000
Admissions Committee Travel.....	1,000	Miscellaneous	11,415
Staff Travel	42,710	Staff Salaries.....	1,347,737
CLE Seminars	69,575	Staff Payroll Taxes.....	111,875
Free Ethics Course.....	350	Staff 401k Plan	65,174
Alaska Bar Rag	39,709	Staff Insurance	455,320
Bar Exam	57,457	Postage/Freight.....	13,622
Other Direct Expenses.....	72,231	Supplies.....	16,048
Annual Convention.....	0	Telephone	333
840 K Street Expenses	222,307	Copying	4,426
AccountingSvc Foundation	11,432	Office Rent	112,818
MLK Day	4,000	Depreciation/Amortization.....	86,600
Fastcase/Vlex.....	24,852	Leased Equipment	29,546
Committees.....	4,313	Equipment Maintenance.....	94,382
Duke/Alaska Law Review	0	Property/GLA/WC Insurance	26,335
Miscellaneous Litigation.....	0	Programming/Database Maint	39,343
Marketing/Communications	13,845	Temp Support Staff/Recruitment	10,400
Lobbyist.....	0	SUBTOTAL EXPENSE	3,157,984
Credit Card Fees.....	68,047	NET GAIN/LOSS	(128,076)

Revenue



Expense



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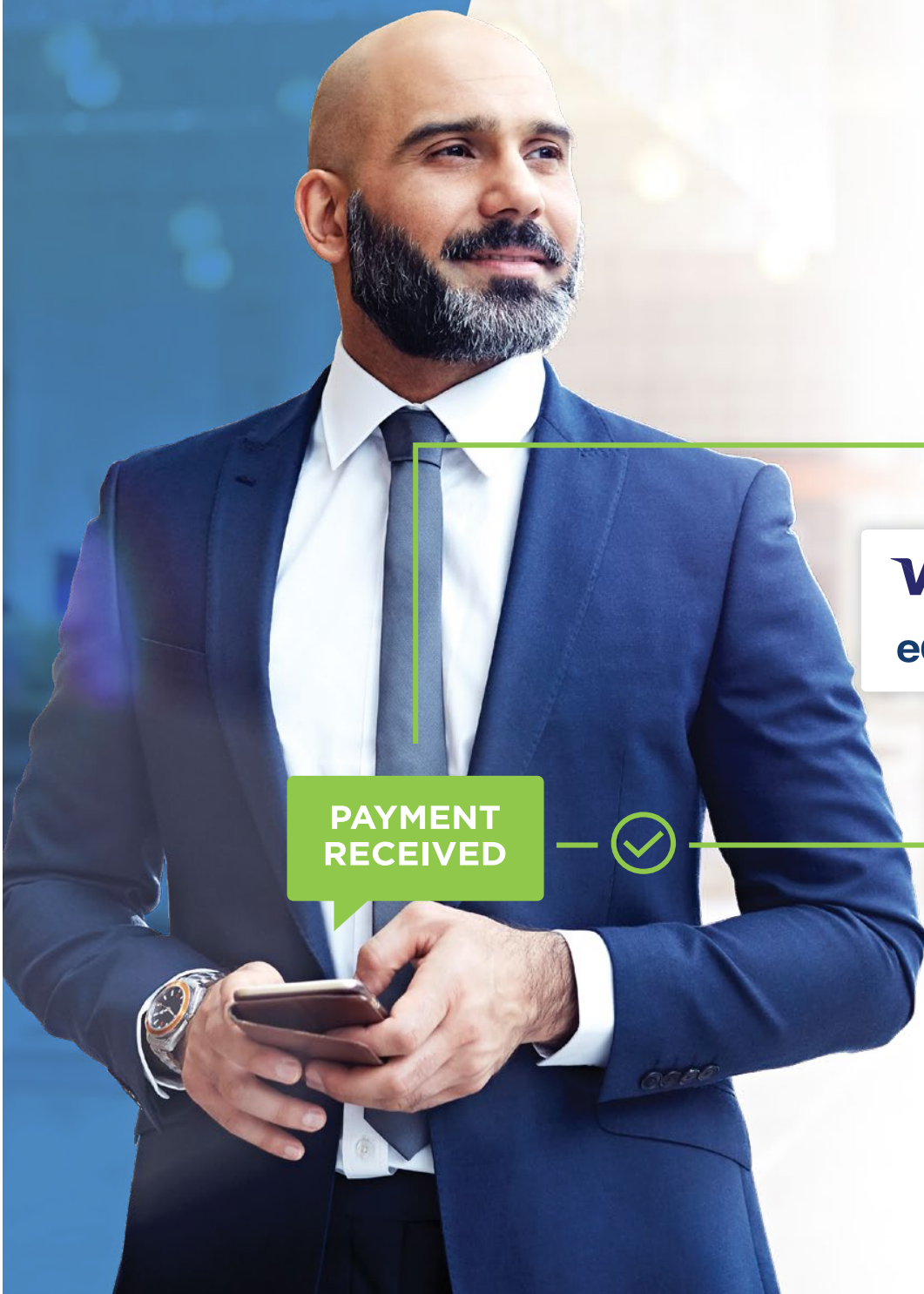
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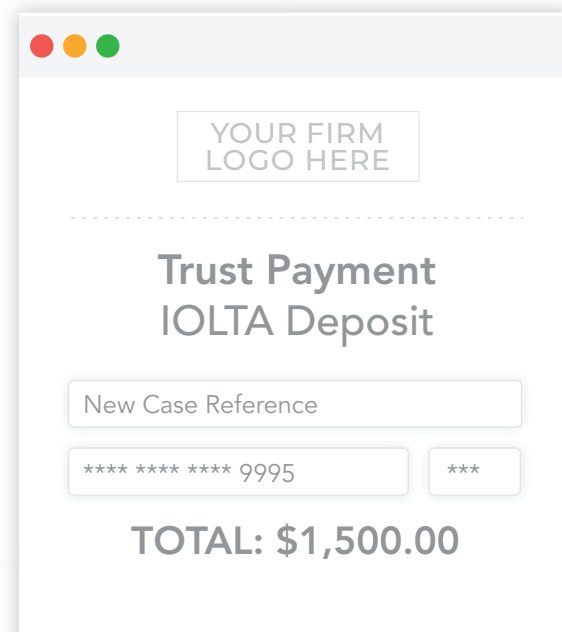
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A Tribute to Leroy Barker

By Barbara Hood

Members of Alaska's legal community lost one of the foremost keepers of our history with the recent passing of long-time Bar Historians Chair Leroy Barker. He was 89 years old. For those of us who love to reflect on the stories of the past and the ways they shape the challenges of today, Leroy was a touchstone – someone who lent his infectious enthusiasm for all things history to whatever topics and ideas we might come up with. It was always a delight to pick up the phone and be greeted with “Hey, it’s me – Leroy!” because we knew something enjoyable was in store.

Leroy was born in Los Angeles in 1934 and raised in California. After earning a B.S. in business administration from the University of Southern California in 1956, he served in the U.S. Navy for two years, then attended law school at the University of California Berkeley, where he graduated in 1961. Determined to “do something interesting,” he contacted the Attorney

worked on appeals at night. We didn’t have...the appellate section or civil section...I’m not sure how good we were, but we were enthusiastic.”

After the 1964 earthquake, Leroy and his wife Suzanne returned to California with their two young children, where Leroy worked for seven years as a prosecutor. By the early 1970s the family had returned to Alaska, where he began a career in private practice that would last for three decades. Over the years, Leroy generously gave his time to the legal community, including service as a member of the Bar’s Board of Governors; as a Fellow and State Chair of the American College of Trial Lawyers; as Trustee of the Alaska Bar Foundation, including a term as president; and as a member of the Joint State-Federal Courts Gender Equality Task Force.

It was Leroy’s passion for history that led to what he considered his most important contributions. Beginning around 1992, he served for 18 years as president of the Bar Historians Committee, during which time he championed several

the Board of Governors at the committee’s request. The oral history project is an ongoing effort to collect and preserve recorded interviews of long-standing members of the legal community. Leroy helped to make great progress on this project and it is now digitized and part of the permanent oral history collection at the University of Alaska Fairbanks.

The annual Bar Historians Luncheon also began under Leroy’s watch, and he hosted the event for many years. In 2002, the founding luncheon honored the surviving delegates and staff of Alaska’s Constitutional Convention and drew over 150 people. Guests included Convention Secretary Tom Stewart, Chief Clerk Katie Hurley and delegates Seaborn Buckalew, Jack Coghill, Vic Fischer, Maynard Londborg and George Sundborg. In 2003, the lun-



Leroy Barker, 1934-2023.

in, his first comment was “Wow! Look at all these machines!” This was a heartwarming reminder of our generational difference. However it was his presence as an elder statesman of the Bar, taking time from his day to stand sentinel over a pile of photos and clippings so they wouldn’t be lost or damaged, that confirmed to me what a special man he was. It wasn’t surprising to me to later learn that Leroy is the only member of the Alaska Bar Association to ever receive both the Professionalism Award, which he was giv-



Bar Historians Luncheon, 2005: “A Judiciary for Alaska.” Back Row, L-R: Justice Warren Matthews, Katie Hurley, Judge Thomas Stewart (Ret.), Leroy Barker. Front Row, L-R: Judge Seaborn Buckalew (Ret.), Jack Coghill, Vic Fischer and George Sundborg.



Bar Historians Luncheon, 2003: Early years of the Alaska Court System. L-R: Judge Russell Holland, Jerry Kurtz, Leroy Barker, Judge James von der Heydt, Judge James Fitzgerald and Robert Ely.

General’s office in the new state of Alaska and was interviewed by A.G. Ralph Moody, and was hired on the spot. “I didn’t realize how desperate they were for attorneys,” he later observed, describing his early colleagues as “a bunch of young kids.” In those days assistant attorney generals were generalists. “You did civil work, criminal work and all your appeals,” Leroy explained, “so you tried cases in the daytime and

lasting initiatives to preserve and celebrate the history of Alaska’s bar and bench. His tenure witnessed the founding of the Joint Alaska Bench-Bar Archives, which began in his garage and now live at the State Law Library in the Boney Courthouse. The annual Nora Guinn Award recognizes Alaskans who make significant contributions to rural justice in honor of one of Alaska’s earliest women judges and was approved by

cheon honored the early judges and clerks of the Alaska Court System, including Judge Russell Holland, Jerry Kurtz, Judge James von der Heydt, Judge James Fitzgerald and Robert Ely. A simple glance at the photos shows the importance of honoring those who shaped our history when we can: most of those pictured are no longer with us. Luncheons in the years that followed would feature the Judiciary Article of Alaska’s Constitution (2005), the history of privacy in Alaska (2007), the era of Judge James Wickersham (2008), the 50th Anniversary of Statehood (2009) and the history of the Anchorage Association of Women Lawyers (2010). It’s a testament to Leroy’s vision and tenacity that today, after 21 years, the luncheon continues to highlight the people and events of our past.

en in 1990, and the Distinguished Service Award, which he received in 2009 for his service to the Bar Historians.

After Leroy retired, he and Suzanne left Alaska in 2010 to settle in Portland. He remained an active member of the Bar Historians Committee for the rest of his life and continued his love for Alaska’s legal history. When I visited in 2014 with our mutual friend, the late historian Beverly Beeton, Leroy made sure we attended a historical event at Portland’s Pioneer Courthouse, where he already seemed to know everyone. Leroy made friends quickly and easily when history was involved. As Alaskan lawyers who value history, we’re fortunate that for so many years he was such a good friend to all of us.

Thank you, Leroy. We love you and we miss you.

Barbara Hood is a retired attorney who worked at Alaska Legal Services Corporation, the Attorney General’s Office, and the Alaska Court System during her 30-year career. She is currently a small businesswoman in Anchorage.



Leroy Barker celebrates the Bar’s Distinguished Service Award with family and friends, 2009.

Photos by Barbara Hood



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 ALSC in the last year, including those that donated to the Robert Hickerson Partners in Justice Campaign.

We are especially grateful to our 2022-2023 campaign committee: John Bioff, Nicole Borromeo, Chief Justice Walter (Bud) Carpeneti, Charles Cole, Andrew Harrington, Carolyn Heyman, Elizabeth LeDuc, and James Torgerson.



July 1, 2022 to June 30, 2023

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The Annual Campaign for Alaska Legal Services Corporation

Our 2023-2024 Robert Hickerson Partners in Justice Campaign started 10/1/2023. If you would like to join your colleagues in supporting civil legal services to low-income Alaskans, please send your tax-deductible contribution to:

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NEWS FROM THE BAR

ALASKA BAR ASSOCIATION ETHICS OPINION 2023-2

Modification of Alaska Bar Association Ethics Opinion 85-5

Whereas, the Committee was asked by Bar Counsel to review Alaska Ethics Opinion 85-5 regarding the requirement that credit card charges for attorneys fees and costs may only be made by contemporaneous agreement of a client;

Whereas, the Committee was advised of the concerns of an attorney who requested examination of Alaska Ethics Opinion 85-5 because of its prohibition on pre-authorizing payments with a credit card as part of an engagement agreement with a client;

Whereas, the Committee discussed that the pre-authorization of credit card payments may be no riskier than the practice of withdrawing funds from trust when a monthly invoice is sent to a client;

Whereas, the Committee discussed the challenges of drafting a new ethics opinion that provides guidance on a broad range of payment methods that have developed since 1985;

Whereas, the Committee decided the topic of addressing current and emerging payment methods was too broad and would take too long to

resolve the current concerns of lawyers regarding the prohibition on pre-authorization of credit card payments;

Whereas, the Committee determined to address only the narrow issue of the prohibition of pre-authorization of credit card payments in Alaska Ethics Opinion 85-5; and

Whereas, the Committee voted to withdraw the portion of Alaska Ethics Opinion 85-5 that begins near the bottom of page 3, through the end.

As a result, Ethics Opinion 85-5 is modified as follows: The second sentence of the second paragraph on page 1 of that opinion and the portion of the opinion beginning on page 3, at the header: "Generally, Credit Card Charges May be Made Only by Contemporaneous Agreement," are hereby withdrawn. The remainder of Ethics Opinion 85-5 remains valid. Approved by the Alaska Bar Association Ethics Committee on May 12, 2023 and September 19, 2023.

Adopted by the Board of Governors on September 20, 2023.

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Ethics Opinion No. 85-5

(modified by Ethics Opinion 2023-2 – deletions indicated below)

Payment of Attorney Fees by Credit Card; Interest on Overdue Accounts.

The Committee has received a request for an opinion regarding the propriety of allowing clients the voluntary option of paying attorneys fees and costs through the use of their individual credit cards. The request also asks for an opinion regarding specific methods of charging past due balances.

The Committee concludes that the use of credit cards is permissible, provided that any plan is formulated and administered within the framework of all applicable laws and ethical considerations. ~~Past due balances may be charged against the clients credit card only upon current consent of the client at the time the charge is made, and cannot be done automatically pursuant to an agreement executed prior to the time the charges and expenses were incurred.~~ Interest may be charged on overdue accounts.

The Use of Credit Cards is Permissible

In the 1960s and 1970s, the propriety of the use of credit cards for the payment for legal services and expenses was a matter of great controversy. By the mid and late 1970s, however, the use of credit cards for the payment for legal services and costs was generally accepted as being permitted under

the ABA Code of Professional Responsibility, if specified guidelines were followed.

American Bar Association Formal Opinion 338 (November 16, 1974) approved the use of credit cards for the payment of legal expenses and services under the provisions of the ABA Code of Professional Responsibility. Numerous states issued similar opinions, some states adopting the guidelines of ABA Formal Opinion 338, and other states imposing their own or additional guidelines. [See ABA/BNA *Lawyers Manual on Professional Conduct* 41:602 (1984)]

Some states have expressed concern with the terms of the agreement between the attorney and the credit card issuer. Kansas has disapproved a credit card program with a buy-back provision under which the attorney must agree to buy back any drafts from the bank over which the cardholder disputes the performance or quality of service, since that type of plan may place the attorney in a position where the full discharge of the duty to the client would be impaired. (Maru, *Digest of Bar Association Ethics Opinions*, 8463, Kansas Bar Association Opinion 45, May 17, 1970) Maine has stated that any credit card arrangement must be on a recourse basis, and the client must be so advised. (Maru, 11206, Maine State Bar Association Opinion 49, March 1, 1977) Massachusetts has stated that any assignment of the obligation to the bank by the attorney must be without recourse. (Maru, 8648, Massachusetts Bar

Association Opinion 74-1, February 9, 1974) Oklahoma has also stated that the credit card issuer can have no recourse against the attorney. (Maru, 9375, Oklahoma Bar Association Opinion 268, December 14, 1972) New Hampshire has stated that the issuer must waive all holder-in-due-course defenses, and the attorney must reserve the right to decide whether or not to sue on a disputed or unpaid obligation. (Maru, 8792, New Hampshire Bar Association, 1975) New York has also stated that the issuer must waive all holder-in-due-course defenses. (Maru, 9122, New York State Bar Association Opinion 362, October 25, 1974)

Some opinions have stated that it is improper to use credit cards for certain purposes. Maine prohibits the use of credit cards to advance funds for the payment of fines and judgments. (Maru, 11206, Maine State Bar Association Opinion 49, March 1, 1977) The Chicago Bar Association has stated that it is improper to accept credit cards in certain situations, such as divorce and bankruptcy proceedings. (Maru, 11051, Chicago Bar Association Opinion 79-4, 1979) Montana has stated that fees for bankruptcy matters may not be financed with credit cards. (Maru, 11980, State Bar of Montana Opinion 3, 1976) Ohio has stated that credit cards may not be used in bankruptcy, criminal, or domestic cases. (Maru, 9678, Ohio State Bar Association Opinion 29, February 1975) Oklahoma has stated that a contingent fee cannot be financed by a credit card. (Maru, 9375, Oklahoma Bar Association Opinion 268, December 14, 1972)

Summaries of the State Ethics Opinions regarding use of credit cards are collected in ABA/BNA *Lawyers Manual on Professional Conduct* (1984), beginning at 41:602. Some of these opinions express considerations other than those referred to above. Some of the considerations expressed relate to attorney advertising, which has been substantially affected by

developments in the law subsequent to the issuance of the opinions.

In Alaska, credit cards may be used for the payment for legal services and costs, subject to the following conditions:

(1) The client must be fully advised, in advance, of all terms and conditions under which a charge is to be made.

(2) Charges made pursuant to a credit card plan shall be only for services actually rendered or cash actually paid on behalf of a client. (ABA Opinion 338, November 16, 1974)

(3) In participating in a credit card program, the attorney shall scrupulously observe the obligation to preserve the confidences and secrets of the client. (ABA Formal Opinion 338, November 16, 1974)

(4) Any credit card plan shall not adversely affect the clients right to fee arbitration pursuant to Alaska Bar Rules 34 through 42; shall not adversely affect any other right or remedy available to the client under any law or principle of legal ethics; nor may it adversely affect any duty of the attorney to the client relating to payment in the event of a fee dispute or regarding the use or application of disputed funds or other property.

(5) The credit card plan must be formulated and administered within the framework of all applicable laws and ethical considerations.

There are certain situations in which it would be improper to accept a credit card. Other states have recognized bankruptcy, domestic relations and criminal proceedings as examples of these areas. At this point, however, the Committee will not broadly prohibit the acceptance of credit cards in cases involving specific areas of substantive law. This question will be left open for later opinions upon more particular facts, if it becomes necessary. At this point, the Committee will do no more than point out that there are problems involving the rights of

Continued on page 23

Board of Governors Action Items

September 20, 2023

- Approved May and June 2023 minutes.
- Approved 12 reciprocity applicants and 15 UBE score transfer applicants for admission.
- Adopted recommendations of character and fitness subcommittee and denied an applicant admission on character and fitness grounds.
- Appointed members to Alaska Legal Services Corporation (ALSC) Board of Directors: Myra Munson to the regular seat in the 1st JD; Andrew Dunmire to the alternate seat in the 1st JD; Karen Lambert to the regular seat in the 3rd JD (Kenai/Kodiak); and Liz Pederson to the regular seat in the 4th JD.
- Appointed Harrison Kerth as the ABA Young Lawyer Delegate.
- Proposed slate of Board of Governor officers: president-elect Rebecca Patterson; vice president Ben Hofmeister; secretary Aimee Oravec; treasurer Bill Granger.
- Approved the formation of a new section: Nonprofit Legal Provider/Access to Justice.
- Voted to have 5% of the Bar Health Plan rebate funds held in trust by the Alaska Bar Foundation be distributed to the Alaska Bar Association's Continuing Legal Education Budget.
- Adopted the Resolution of the Board of Governors of the Alaska Bar Association Regarding Code of Judicial Ethics for the United States Supreme Court.
- Voted to publish two Bylaw proposals regarding Board and of-

ficer terms for member comment in the *Bar Rag*.

- Voted to submit Bar Rule 65 and 66 amendments to the Supreme Court that would increase the mandatory continuing legal education (MCLE) requirement to 12 MCLEs.
- Voted to deny motion to stay of an appeal from the lawyers' assistance committee.
- Voted to adopt ethics opinion 2023-2.

October 26, 2023

- Approved September 2023 minutes.
- Approved four reciprocity applicants and three UBE score transfer applicants for admission.
- Approved the results of the July 2023 bar exam.
- Approved the 2024 budget.
- Voted to publish for member comment in the *Bar Rag* a Bar Rule proposal which would create a practice waiver for out-of-state attorneys to engage in pro bono practice if supervised by a qualified legal service provider.
- Voted to deny reconsideration of motion to stay in Lawyers' Assistance Committee Appeal. Voted to approve the recommendations of the Lawyers' Assistance Committee.
- Voted to remand denial of an applicant's admission on character and fitness grounds back to character and fitness subcommittee.
- Appointed a subcommittee of Granger, Lee and Ostrovsky to evaluate Bar fees and 401K plan.

Board Proposes Bylaw Amendment to Officer Terms

At their May meeting, the Board voted to move the convention and annual business meeting from the fall to the spring. As a result of the change, the Board is proposing to amend the terms of the board members and officers in the bylaws as noted below. These changes would return the bylaw terms to what they were prior to moving to a fall convention and annual business meeting schedule. The next Alaska Bar convention is scheduled for April 2025. Please send comments to Executive Director Danielle Bailey at bailey@alaskabar.org by January 10, 2024.

ARTICLE IV. BOARD OF GOVERNORS

Section 3. Term of Office and Succession.

Elected members of the Board members shall take office at the close of the annual business meeting of the Association held immediately following their election. The term of office is three years, serve three-year terms, beginning on November 1 and ending on October 31. The terms of appointed members shall be as provided by the Act. Governors may succeed themselves in office.

ARTICLE VI. OFFICERS; STAFF

Section 1. Officers.

The officers of the Association are a President, President-Elect, Vice President, Secretary and Treasurer. The President-Elect, Vice President, Secretary and Treasurer shall be elected from among the members of the Board by a majority vote of the active members of the Alaska Bar in attendance at the Association's annual business meeting. Nothing in this Article prohibits an appointed non-attorney governor from being elected an officer of the Association. Newly elected officers of the Association shall take office at the close of the annual business meeting at which they have been elected and shall serve until the close of the next annual business meeting, serve one-year terms, beginning on November 1 and ending on October 31.

Continued from page 22

others, including the issuer, which might exist when a credit card is accepted in a bankruptcy, domestic relations, or criminal case. Attorneys should be particularly careful in accepting credit cards in these types of cases, to ensure that all ethical principles and requirements of law are followed.

Interest May be Charged on Overdue Accounts

A necessary corollary to the use of credit cards is the charging of interest on delinquent accounts.

Attorneys may charge interest on any delinquent account, regardless of whether or not a credit card is involved. The client must be advised that the attorney intends to

charge interest, and the client must agree to the payment of interest on accounts that are delinquent for more than a stated period of time. The client must be fully advised as to the rate of interest, and other terms that may be applicable. The interest charged must not exceed the rate, or be in other violation, of any applicable law or regulation.

Generally, Credit Card Charges May be Made Only by Contemporaneous Agreement

The Committee has been requested to opine as to the following:

(1) The propriety of charging against the client's credit card account those attorney's fees and costs which have remained past due

for a specified period of time when done in conjunction with a provision in a written retainer agreement by which the client has agreed that any fees or costs which remain past due for a length of time *without dispute* shall be deemed reasonable and necessary, both in terms of the quality and quantity of work, and that such undisputed fees and costs which have remained past due for the specified length of time could be charged against the client's credit card account; and

(2) The propriety of automatically charging against the client's credit card account any fees or costs which remain past due beyond a specified period of time when there is a provision authorizing same in the written retainer agreement. Unlike the situation in paragraph 1 above, the retainer agreement would contain no provision as to the client's implied consent as to the quality and quantity of the services.

With respect to proposal (1), it is not appropriate for an agreement to provide that any costs or fees, which are incurred in the future, and which remain past due for a length of time without dispute shall be deemed reasonable and necessary, both in terms of the quality and quantity of the work. The client cannot know with certainty, at the time of signing a retainer agreement, that the services to be performed in the future will be reasonable and necessary, both in terms of quality and quantity. That decision can be made by the client only after the work in question has been performed.

Additionally, with respect to both proposal (1) and (2), the Committee envisions serious problems in a contractual provision authorizing credit card charges based on future non-action by the client, such as failure to object. It is very possible that a client may not object to a bill, simply because the client has not

received it, or for some other valid reason. An automatic credit card charge in such a case, where the client in fact would have objected to the charge, could result in an ethical violation. Additionally, a charge on the client's credit card, unanticipated by the client, particularly in a large amount, could create undue or unwarranted financial hardship or embarrassment to the client in the use of the credit card to deal with third parties.

Accordingly, credit card charges for work performed and expenses incurred in the future cannot be authorized by non-action of the client. Pursuant to this opinion and ABA Formal Opinion 338 (November 16, 1974), charges to the credit card may be made only for services actually rendered or cash actually paid on behalf of a client. The credit card charge may be made only if the client actually consents to the charge, with full knowledge of all the relevant facts and circumstances, at the time the charge is made. In addition to consenting to a single charge, a client may also give a current consent to a program of periodic payments, such as to the payment of an undisputed \$500.00 charge by a credit card charge of \$100.00 per month for the next five months. Any consent given by the client may be withdrawn, and further charges to the credit card may not be made, in the event of a bona fide fee dispute.

Accordingly, the procedures set forth in paragraphs (1) and (2) above are disapproved.

Adopted by the Alaska Bar Association Ethics Committee on August 19, 1985.

Approved by the Board of Governors on August 23, 1985.

Board Proposes Bar Rule Allowing Out of State

Attorneys to Provide Pro Bono Legal Services in Alaska

At its meeting on October 26, 2023, the Board of Governors voted to publish the below rule for member comment which was proposed by the Pro Bono Service Committee (PBSC). The rule proposal would allow attorneys licensed in other states to provide pro bono legal services in Alaska. The proposed rule would (1) authorize attorneys licensed in other jurisdictions to practice in Alaska, but limit that practice to pro bono service; (2) ensure quality service because it would only authorize active attorneys in good standing without discipline history, and attorneys would be supervised by qualified legal service providers authorized by the Board of Governors; and (3) protect the public by requiring attorneys to have malpractice coverage, abide by the Alaska Rules of Professional Conduct, and be subject to discipline in Alaska. Please send comments to Executive Director Danielle Bailey at bailey@alaskabar.org by January 10, 2024.

Rule 43.6. Waiver to Engage in Pro Bono Practice as an Out-of-State Attorney Supervised by a Qualified Legal Service Provider.

Section 1. Eligibility. An attorney who is not licensed to practice law in Alaska, but who is admitted and active in another state or the District of Columbia, may provide pro bono legal services, subject to the following conditions:

1. The attorney provides free civil legal services in Alaska under the supervision of a qualified legal services provider as defined in this rule;

2. The attorney is in good standing in all jurisdictions where the attorney has ever been licensed and has no record of public discipline for professional misconduct in any jurisdiction where the attorney has ever been licensed;

3. The attorney agrees to abide by the Alaska Rules of Professional Conduct and submit to the disciplinary jurisdiction of the Alaska Supreme Court and the Alaska Bar Association;

4. The attorney's legal services in Alaska are covered by malpractice insurance, whether provided by the attorney or the qualified legal services provider.

Section 2. Application. The attorney and qualified legal services provider will submit an application to provide legal services under this rule on a form approved by the Board of Governors. The attorney will also submit certificates of good standing for all jurisdictions where the attorney is admitted.

The qualified legal services provider will notify the bar when it is no longer supervising the attorney.

Section 3. Bar Dues and Continuing Legal Education Exemption. Attorneys certified to practice under the rule are exempt from bar dues and mandatory continuing legal education requirements.

Section 4. Definitions.

A "qualified legal service provider" is a not-for-profit organization that regularly provides legal services to persons of limited means and is approved by the Board of Governors. An organization approved as a qualified legal service provider under Rule 43.2 prior to the adoption of this rule is automatically approved as a qualified legal service provider for this rule. An organization seeking approval from the Board to use out-of-state pro bono attorneys will file a petition with the Board of Governors certifying that it is a not-for-profit organization and explaining with specificity:

- the structure of the organization and whether it accepts funds from its clients;
- the major sources of funds used by the organization;
- the criteria used to determine eligibility for legal services provided by the organization;
- the types of legal and nonlegal services provided by the organization;
- the training and supervision the organization provides for volunteer attorneys;
- the names of all members of the Alaska Bar Association who are employed by the organization and who regularly perform legal work for the organization; and
- the extent of malpractice insurance that may cover an out-of-state pro bono attorney or that it will require an out-of-state pro bono attorney to carry.

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New attorneys raise their right hands as they take the Oath of Attorney at the Boney Courthouse in Anchorage, AK on November 14, 2023.

New Lawyers Take the Oath of Attorney

By Jane Lovelace

The Alaska Court System and the Alaska Bar Association hosted a swearing-in ceremony for 16 new members of the Alaska Bar Association on November 14, 2023 in the Supreme Court Courtroom of the Boney Courthouse in Anchorage,

AK. Justice Dario Borghesan presided over the swearing-in. Family, friends and colleagues appeared in person or viewed the live stream of the event through the court system's website. The Oath of Attorney was administered by Meredith Montgomery, clerk of the Appellate Court.

New Lawyers sworn-in included:

- | | | |
|-------------------|----------------------|--------------------------------------------------------|
| Geoffrey Bacon* | Dustin Elsberry* | Kieran O'Neil* |
| Brittany Bidwell | Tyler Jones | Elisha Ononye* |
| McKinley Brock* | Susan Koller Nieves* | |
| Jessica Burton | Sarah Leflar | <i>*Denotes United States District Court Admission</i> |
| Elizabeth Curtis* | Alexander Lowe | |
| Chrissie Davidson | Sierra Minder | |
| Lucy Delves | Brian Nelson | |

Bar Members Gather for Their Annual Convention

Photos by Jaime Kuhl of Red Photography



Convention attendees listen to the Supreme Court Update by Dean Erwin Chemerinsky.



Bar President Diana Wildland introduces a speaker.



Dasha Kelley Hamilton addresses the convention.



Guest baker for the "Makin' Cake" presentation, Justice Susan Carney, preps one of the baking pans.



Professor Laurie Levenson dances to one of her musical themed interludes.