

## **CURRICULUM VITAE OF KEVIN G. CLARKSON**

### ***PRACTICE AREAS***

State and Federal litigation at the administrative, pretrial, trial, and appellate levels regarding civil litigation, business and construction contract matters, negligence and personal injury, tort (personal injury and wrongful death), products liability, labor and employment, wrongful termination, civil rights, wage and hour, sexual discrimination and harassment, government regulation, constitutional issues, professional liability (attorney and accountant malpractice), and regulatory and contract issues.

### ***EDUCATION***

#### Law School:

Willamette University College of Law, Salem, Oregon  
J.D., cum laude, 1985  
Graduated in the top ten percent of class

#### Undergraduate:

Oregon State University, Corvallis, Oregon  
B.S., Political Science, with honors, 1981

### ***LEGAL EMPLOYMENT***

#### January 1995 to Present:

Brena, Bell, & Clarkson, P.C.  
810 N Street, Suite 100  
Anchorage, Alaska 99501  
(907) 258-2000

#### September 1985 to January 1995:

Perkins Coie  
Anchorage, Alaska, Office  
1029 West Third Avenue, Suite 300  
Anchorage, Alaska 99501  
(907)279-8561

Perkins Coie  
Seattle, Washington, Office  
1201 Third Avenue, 40th Floor  
Seattle, Washington 98101-3099  
(206)583-8888

## ***RECOGNITION***

Rated AV Preeminent by Martindale Hubbell—this is the highest possible rating in both legal ability and ethical standards, reflecting the confidential opinions of members of the Bar and Judiciary

Recognized and Admitted to Super Lawyers – Admitted September, 2014-17. No more than five percent of Alaska Lawyers are recognized as Super Lawyers.

## ***REPRESENTATIVE BAR DISCIPLINARY MATTERS***

*In re Ivy*, 374 P.3d 374 (Alaska 2016) (represented the Alaska Bar Association in a matter in which disbarment was determined to be appropriate sanction for an attorney who knowingly gave false testimony).

*In re Ivy*, 350 P.3d 758 (Alaska 2015) (represented the Alaska Bar Association in a matter determining which provisions of the ARPCs apply to an attorney who knowingly gives false testimony as a party and witness in a civil proceeding).

*In re Weidner* (represented the Alaska Bar Association in a matter related to enforcing ARPC provisions against an attorney who came to know that the testimony of his client was false after the testimony was submitted because the attorney failed to properly remonstrate with the client or to take reasonable and timely corrective action).

## ***REPRESENTATIVE GENERAL CIVIL LITIGATION CASES***

*NordAq Energy, Inc. v. Devine, Kidd, et. al.*: Representing oil and gas development company in complex litigation in the United States District Court for the District of Alaska against its former CEO and Chairman of the Board for misappropriating over \$6 million dollars, and defending the company and officers and directors from counterclaims and third-party claims brought by the former CEO and Chairman of the Board. The case remains pending.

*NordAq Energy, Inc. v. Knott*: Represented oil and gas development company in defending the company against complex multi-million-dollar contract claims asserted by a former investor/lender in Delaware state superior court. Successfully litigated and argued a motion to dismiss pursuant to *forum non conveniens* so that case was stayed in favor of Alaska litigation in the United States District Court for the District of Alaska. Claims settled favorably to client.

*John Paul DeJoria Family Trust v. NordAq Energy, Inc.*: Worked with local New York counsel to defend company against complex multi-million-dollar contract claims asserted by a former investor/lender in New York state superior court, subsequently removed to the United States District Court for the Southern District of New York. Case settled favorably to client.

*NordAq Energy, Inc. v. White*: Representing oil and gas development company in action in the United States District Court for the Western District of Texas against an individual for conversion of over \$1.25 million dollars from the company in cooperation with company's former CEO and used to purchase a home in Texas. Case remains pending.

*NordAq Energy, Inc. v. Kress*: Representing oil and gas development company in action in the Alabama state circuit court against an individual for conversion of over \$350,000 dollars from the company in cooperation with company's former CEO and used to purchase a home in Alabama. Case remains pending.

*M.G. v. Anchorage School District*: Representing Perkins School for the Blind, the oldest school for the blind, in the United States District Court for the District of Alaska as an intervenor into an Individuals-with-Disabilities-Education-Act case, and successfully pursued a motion to disqualify ASD's counsel, a national law firm that also represented Perkins in Massachusetts. Also defending Perkins' interests as related to the IDEA student. Case pending.

*Blake/Scalf v. Classic Alaska d/b/a Big Ray's*: Defending retailer in the United States District Court for the District of Alaska against overtime claims under the FLSA/AWHA brought by two former management-level employees. Won summary judgment against one plaintiff. Case set for trial against second plaintiff in July 2019.

*Scalf v. Classic Alaska d/b/a Big Ray's*: Defending retailer before the Alaska Supreme Court on a certified question regarding the proper burden of proof for establishing an exemption from the AWHA's overtime provisions. Case pending.

*Stryken v. Cook Inlet Energy, LLC*: Defended oil producer in complex multi-million-dollar contract litigation arising out of the acquisition of oil and gas exploration and production assets in Cook Inlet, Alaska. Case settled at no cost to client.

*Cook Inlet Energy, LLC v. Cudd Pressure Control, Inc.*: Representing Cook Inlet oil and gas producer in complex multi-million-dollar contract litigation against contractor for defective work and payment for services. Case pending.

*Sandstrom v. Olgoonik Development, LLC*: Represented former Chief Executive Officer in action against former employer for unpaid productivity bonus, contractual severance, or liquidated damages and statutory penalties. Case settled favorably to client for \$250,000.

*Cordova Electric Association v. Mowat Construction Co.*: Represented electric association in complex construction litigation against general contractor related to the construction of a hydro-electric dam on Fourth of July Creek, near Cordova, Alaska. General Contractor asserted claims in excess of \$45 million. Case successfully settled in favor of client for less than ten percent of potential liability, \$4,250,000. Named Client's Choice, Construction Lawyer of the Year for Alaska.

*Carmony v. Matanuska Electric Association*: Defended electric cooperative in complex contract dispute with former general manager. Case settled favorably to MEA (25 percent of liability exposure).

*Tesoro Alaska Co. v. Unocal*: Represented oil refiner in multi-million dollar oil sale contract dispute against oil producer. Partially favorable judgment entered on summary judgment in superior court. Complete victory for client in the Alaska Supreme Court, case remanded for entry of judgment in favor of client.

*Carter v. Evergreen Helicopters, Inc.*: Represented estate of deceased paramedic killed in helicopter crash near Whittier, Alaska, in wrongful-death claim against helicopter operator. Case settled successfully for the estate for \$700,000.

*Rogers v. Tesoro Alaska Co.*: Defended refinery owner from wrongful-death claim brought by estate of asphalt truck driver injured in fall from top of tanker trailer while loading asphalt at refiner's facility. Successfully pursued claims for fault allocation, indemnity and additional insured protection against other individuals and entities, including emergency room physicians, trucking company, asphalt purchaser, and tanker manufacturer. Case settled prior to trial with client contributing nothing toward the substantial settlement paid to the estate and also with the client receiving partial defense-cost reimbursement.

*McCaughey v. Tesoro Alaska Co.*: Defended refinery owner from personal injury claim brought by injured contract worker. Successfully asserted defense for refinery owner based upon extended worker's compensation immunity. Defended refinery owner and in cooperation with the State of Alaska, the constitutionality of the Alaska Statute that extends worker's compensation immunity to project owners in situations where worker's compensation coverage has been provided to the injured worker by his direct employer. Prevailed on summary judgment.

*Cone v. OookichistaDrilling Services, Inc./Anadarko*: Defended oil drilling company from personal-injury claim brought by injured roustabout. Indemnity issues, as well as personal injury claim. Personal-injury and indemnity claims settled favorably to client after substantial pretrial discovery and pretrial preparation.

*Cupples v. Cupples*: Multi-million dollar real estate business dissolution. Successfully represented client in litigation and mediation to obtain re-distribution of assets in dissolution.

*Celebrity Jewelers v. Panoff Publishing, Diamonds International of Alaska, Ltd.*: Defended worldwide retailer of fine jewelry in complex multi-party federal litigation against antitrust, racketeering, and commercial tort claims. Litigation resulted in favorable settlement to client.

*Diamonds International of Alaska, Ltd. v. Southeast Remodel, Inc.*: Represented retailer of fine jewelry in pursuing claims against general contractor for faulty construction of retail store in Juneau, Alaska. Also defended retailer against various breach-of-contract claims, as well as fraud and misrepresentation claims brought by contractor. Litigation resulted in favorable settlement for client.

*Danner v. Lakeview Professional Building Owners Ass'n.*: Defended landowner against claims for proscriptive or implied easement across commercial property. Litigation resulted in summary judgment and attorney's fee award in favor of client.

*Blomfield v. Blomfield, et al.*, Case No. 3AN-00-5331 Civil: Represented majority limited liability company member in litigation related to the dissolution and liquidation of \$30 million

commercial real estate business. Litigation resulted in favorable settlement to majority member involving the purchase of the business.

*Grant v. Lakewood Homeowners Ass'n*: Defended Homeowners' Association from contract and negligence claims related to maintenance and repair of the structures of multiple townhouses in an Anchorage townhouse development. Conducted bench trial, which resulted in directed verdict and attorney's fee award for Homeowners' Association.

*Corporation of the President of the Church of Jesus Christ of Latter-Day Saints v. Frederic Doe*, Case No. A99-518 Civil (JKS): Represented church corporation as local counsel in Alaska United States District Court, in cooperation with church general counsel, in pursuing declaratory-judgment claims against tort claimants who threatened multi-million-dollar claims against church and church corporations. Assisted general counsel in successful motion work designed to maintain action in Alaska. Case settled by church general counsel satisfactorily to client after successful motion work.

*Aurora Power Resources, Inc. v. Shell Western E & P*: Represented purchaser of natural gas in misrepresentation claim against gas producer regarding potential excess severance tax and royalty liability to the State of Alaska. Litigation resulted in favorable settlement for client.

*Kake Tribal Corp. v. Sealaska Corp.*: Represented Alaska Native Village Corporation in action to rescind and/or reform multi-million-dollar timber sale transactions and to recover damages for misrepresentation and fraud against Alaska Native Regional Corporation. Multiple-year litigation resulted in favorable settlement for Village Corporation.

*Kake Tribal Corp. v. Chestnut*: Represented Alaska Native Village Corporation in professional liability action (professional negligence, breach of fiduciary duty, fiduciary fraud) against the Village Corporation's former attorneys. Settlement favorable to Village Corporation prior to trial.

*Sea Lion Corporation v. Attorneys Liability Protection Society*: Represented Alaska Native Village Corporation in action against professional liability insurer for fraudulent transfer and rescission of former attorney's E&O coverage in the face of pending malpractice claim. Multiple-year litigation resulted in favorable settlement for the Village Corporation after successful ruling on summary judgment.

*Sea Lion Corporation v. Ronald E. Cummings*: Represented Alaska Native Corporation in professional liability action (professional negligence, breach of fiduciary duty, fiduciary fraud) against the corporation's former attorneys. Multiple-year litigation resulted in favorable settlements with two attorney defendants. Conducted jury trial, which resulted in a verdict favorable to the Village Corporation against the remaining attorney (including award of punitive damages), which was affirmed on appeal. *Cummings v. Sea Lion Corp.*, 924 P.2d 1011 (Alaska 1996).

*Hawaiian Airlines, Inc. v. Archer*: Represented commercial airline in a RICO action against the former owners and operators of Travel Center, Inc. (largest travel agency in Alaska). Multiple-year litigation resulted in favorable consent judgments for the airline entered in the United States District Court for the District of Alaska.

*Inland Helicopters v. Air Cruisers Co.:* Defended contribution claim against the manufacturer of emergency “floats” installed on Aerospatiale AStar 350 Helicopter, which crashed into Anita Bay near Wrangell, Alaska. Litigation resulted in summary judgment for float manufacturer granted by the Superior Court for the State of Alaska, Third Judicial District at Anchorage.

*Kaktovik Inupiat Corp. v. State of Alaska:* Represented Alaska Native Village Corporation in appeal of unfavorable Department of Revenue of tax determination regarding oil revenues. Appeal to State Superior Court resulted in decision favorable to Village Corporation and reversal of decision by DOR hearing officer.

*Air Logistics of Alaska, Inc. v. Sea Lion Corporation:* Represented Alaska air transporter in collection action against limited partnership and limited partner for the collection of unpaid contract debt. Multiple-year litigation resulted in summary judgment favorable to air transporter (affirmed on appeal by the Alaska Supreme Court, *Sea Lion Corp. v. Air Logistics of Alaska, Inc.*, 787 P.2d 109 (Alaska 1990)).

### ***REPRESENTATIVE EMPLOYMENT CASES***

*Townsend v. Diamonds International of Alaska, Ltd. and Gad:* Represented corporate employer, corporation owner, and corporate officer in Alaska Superior Court, First Judicial District at Ketchikan, in lawsuit filed by two former female employees, including local manager. The employees’ claims included constructive wrongful discharge, breach of the duty of good faith and fair dealing, intentional/negligent infliction of emotional distress, and a request for punitive damages. Successfully conducted jury trial, which resulted in defense verdicts for employer, owner and officer.

*Dayhoff v. Temsco Helicopters, Inc.:* Extensive litigation regarding Alaska wage and hour laws. Case involved two separate appeals to the Alaska Supreme Court, and was successfully settled favorably to clients prior to trial. The opinions are published at *Dayhoff v. Temsco Helicopters, Inc.*, 772 P.2d 1085 (Alaska 1989); *Dayhoff v. Temsco Helicopters, Inc.*, 848 P.2d 1367 (Alaska 1993).

### ***REPRESENTATIVE CONSTITUTIONAL LITIGATION CASES***

*Thompson et. al. v. Hebdon et. al.:* Representing putative campaign contributors in the Ninth Circuit regarding a civil rights action challenging the constitutionality of certain of Alaska’s laws establishing campaign contribution limitations. Case was unsuccessful in the United States District Court, but the appeal is pending in the Ninth Circuit.

*Keller v. French:* Represented Alaska legislators in prosecuting a claim under the “Fair and Just Treatment” Clause of art. I, § 7 of the Alaska Constitution in the context of the Alaska Legislative Council’s so-called “Troopergate” investigation of Governor Sarah Palin, then the Republican Vice Presidential Candidate. Lead Counsel with Co-Counsel Kelly Shackelford and Hiram Sasser of Liberty Institute. This was a case of first impression in Alaska and involved TRO proceedings before the superior court and then an emergency appeal to the Alaska Supreme Court. Case reported at *Keller v. French*, 205 P.3d 299 (Alaska 2009).

*Planned Parenthood v. State of Alaska*: Represented sponsors of Ballot Measure 2, Parental Notice for Minor Abortion Act, in cross-appeals to the Alaska Supreme Court. Co-counseled with State of Alaska Attorney General's Office in defending the law from equal protection and privacy challenges. Conducted trial and defended appeal to Alaska Supreme Court, presenting oral argument. Case reported at *Planned Parenthood v. State*, 375 P.2d 1122 (Alaska 2016).

*Planned Parenthood v. State of Alaska*: Represented sponsors of Ballot Measure 2, Parental Notice for Minor Abortion Act, as successful intervenors in constitutional challenge brought against the law. Co-trial counsel with State of Alaska Attorney General's Office, Assistant Attorney General John Treptow. Three-week bench trial completed March 2, 2012, after which the vast majority of the statute was upheld.

*Planned Parenthood v. Campbell*: Represented sponsors of Ballot Measure No. 2, Parental Notice for Minor Abortion Act, in constitution challenge to measure. Coordinated and conducted successful defense of Ballot Measure with State Attorney General's Office in superior court and the State Supreme Court. Presented written and oral argument in favor of the Measure and received favorable rulings from both superior court and Supreme Court.

*ACLU v. State*: Represented various private religious organizations as intervenors in defending Alaska Statutes granting property tax exemptions to private religious schools for the housing provided to educators. Prevailed on summary judgment.

*Planned Parenthood v. State of Alaska*: Assisted the Alaska Legislature in drafting Alaska's parental-consent statute. Initially represented amicus, Concerned Alaska Parents, in cooperation with the State of Alaska, Department of Law in defending the statute. Argued, on invitation from Attorney General, in Superior and Supreme Courts in 1997 and 1999. Reversal and remand obtained in Supreme Court for evidentiary hearing that was held January 2003. *State v. Planned Parenthood*, 35 P.3d 30 (Alaska 2001). Represented the State of Alaska as co-counsel at bench trial and in post-trial briefing, working in cooperation with Harry Davis and James P. Doogan of the Department of Law, lead counsel of record for State in the appeal to the Alaska Supreme Court. Case reported at *State v. Planned Parenthood*, 171 P.3d 577 (Alaska 2007).

*ACLU v. State*: Represented amici curiae, Catholic University of America and The Marriage Law Project, in helping to defend the State of Alaska's employment benefits program that provided benefits to spouses of state employees who are married consistent with the Alaska Marriage Amendment, art. I, § 25. Following the Alaska Supreme Court decision, represented and counseled the Alaska Legislature regarding the drafting and legal implications of an amendment to the Alaska Constitution to preserve marriage benefits to married couples. Continue to counsel the Alaska Legislature leadership regarding separation of powers issues and possible legislative responses to the court's orders directing the State to implement same-sex benefits by January 1, 2007.

*Li, et. al. v. State of Oregon*: Represented Intervenor, Defense of Marriage Coalition, as counsel of record in litigation in Multnomah County Circuit Court and the Oregon Supreme Court (Case No. S51612) regarding various "same-sex marriage" constitutional issues. Case reported at *Li v. State*, 338 Or. 376, 110 P.3d 91 (2005).

*Bess v. Ulmer/Dodd v. Ulmer/Alaska Legislature v. Ulmer*: Assisted the Alaska Legislature in drafting the Alaska Marriage Amendment and arranged expert testimony before the Senate Judiciary Committee regarding the Marriage Amendment. Represented the Alaska Legislature defending the Alaska Marriage Amendment from legal challenges attempting to remove the measure from the ballot. Successfully defended the Marriage Amendment in both State superior court and through appeal in the Alaska Supreme Court. Case reported at *Bess v. Ulmer*, 985 P.2d 979 (Alaska 1999).

*Planned Parenthood v. State of Alaska/Alaska Legislature*: Represented the Alaska Legislature in litigation related to the Legislature's exclusive appropriation power. Presented written and oral argument in the Alaska Supreme Court in defense of the Legislature's exclusive appropriation power. Case Reported at *State v. Planned Parenthood*, 28 P.3d 904 (Alaska 2001).

*Thomas v. Anchorage Equal Rights Comm'n*: *Thomas v. Anchorage Equal Rights Comm'n*, 165 F.3d 692 (9th Cir. 1999) *rev'd standing ripeness* 220 F.3d 1134 (9th Cir. 2000) (en banc).

### **SPECIALIZED LEGAL TRAINING AND SPEAKING**

September, 2006	Alaska Bar Association, Continuing Legal Education Program speaker regarding "Alaska Constitutional Law" – Alaska Equal Protection Law
1997-2005:	Alliance Defense Fund, National Litigation Academies, speaker, teacher, and attendee regarding various constitutional litigation issues
Summer, 2004:	American Bar Association, National Convention, Speaker and Debater regarding constitutional issues related to "same-sex marriage" Atlanta, Georgia
Spring 1996, 1997, 1998, 1999:	Washington State Labor & Employment Law Conference, Seattle, Washington.
September, 1997:	Speaker, Alliance Defense Fund Summit, Washington, D.C., "Why an Organized Defense of Religious Liberty Is Necessary."

### **ADMITTED TO PRACTICE**

United States Supreme Court  
United States Court of Appeals for the Ninth Circuit  
United States Court of Appeals for the Fourth Circuit  
United States Court of Appeals for the Seventh Circuit  
United States District Court for the District of Alaska  
United States District Court for the District of North Dakota  
Alaska Supreme, Superior, and District Courts



### ***ALASKA BAR ASSOCIATION COMMITTEES***

Area Disciplinary Division Member, Third Judicial District (multiple terms, current member)

Fee Arbitration Committee (current member)

Civil Pattern Jury Instruction Committee Member (one term ending 2002)

### ***LAW SCHOOL HONORS AND PUBLICATIONS***

Dean's List: Spring 1983; Fall 1984; Spring 1984; graduated cum laude

Member: Order of the Barristers (selected for oral advocacy skills)

Moot Court: Winner first-year oral argument, Spring 1993; Co-winner, Willamette National Moot Court, Fall 1983 and 1984; Represented Willamette at the Regional National Moot Court Competition, 1983 and 1984.

Law Review: Staff member, 1983-84; Associate Editor, 1984-85

Publications: *A Reaffirmation of State Sovereign Immunity, Penhurst State School & Hospital v. Halderman*, 20 Willamette L. Rev. 823 (Fall 1984).

*Retaining Flexibility in an Effective Estate Plan*, 21 Willamette L. Rev. 813 (Fall 1985).