985 HJ AK BAR ASSN SUNSET REVIEW FILE NO. 8

September 1979

Reader's Digest

FOOTBALL'S UNFOLDING TRAGEDY
PAGE 92

"WE ARE DITCHING!"
DRAMA IN REAL LIFE

HOW ARE YOU DOING AGAINST INFLATION?

Why Crooked Lawyers Go Free

By

James Nathan Miller

58th year. Over 30 million copies bought monthly in 17 languages

By James Nathan Miller

Why Crooked Lawyers Go Free

"A grievance system that moves in secret, then winds up disciplining a minuscule percent of those whose conduct is complained about, can be neither effective nor credible." Here's what must be done

If your lawyer mishandles your case, charges an exorbitant fee or steals your money, what can you do about it? Short of suing for malpractice, you must take your complaint to a grievance committee made up of other lawyers. What are your chances of getting a fair hearing? According to all available statistics, they are so slim that you would be wasting your time. For example:

- In Pennsylvania, of the 9971 complaints filed against lawyers from 1973 through 1978, only one percent—120—resulted in public punishment. The attitude of Pennsylvania grievance authorities is reflected in the form letter all complainants receive. It says that "nearly all lawyers are reputable and sincere"; that the complaint "may drastically affect the lawyer's ability to earn a living"; that he will "inevitably suffer from the accusation," even if he's innocent; and that complainants "should not expect to be given detailed reasons for the final disposition" of their charges.
- In New York City, of the 2721 complaints disposed of by the city bar's grievance committee in 1978, only 20 brought public punishment.
- In Texas, of the 8550 complaints filed against lawyers from 1975 through 1977, fewer than three percent resulted in any disciplinary action at all, and only one percent—77 cases—resulted in public punishment.

Figures like these are causing a growing demand that the bar's grievance-committee system of disciplining itself be abolished and handed over to outside regulators. Lawyers, however, insist this is unnecessary because they are now cleaning up the mess by themselves. Are they?

For the answer, it's first necessary to penetrate the almost total secrecy with which they've surrounded their peer-review work. Fortunately, during the 1970s the profession allowed the public to get two peeks behind this screen.

Silverman's Bomb. In 1975, a panel headed by Wall Street lawyer Leon Silverman investigated the workings of the grievance committee of the Association of the Bar of the City of New York. This committee, responsible for policing 35,000 New York City lawyers, has often been cited as one of the country's best peer-review groups. But Silverman's report landed on it like a bomb. Two of the report's findings:

Although almost all complaints handled came from clients, the committee showed a distinct tendency to take the word of a lawyer over that of a client, even when the lawyer's record contained a long list of previous complaints. The report cited case after case in which serious complaints—theft of client funds, neglect of client cases, excessive fees, incompetence, bribery—were dismissed without any investigation at all, or with merely a phone call to the accused lawyer to ask him whether the complaint was true. One typical case concerned a lawyer charged with falsifying documents, withholding client funds and lying about his fee. The lawyer had a long history of similar complaints, which had produced two official warnings and one formal charge of misconduct. Nevertheless, without even investigating the complaint, the committee dismissed it as a "fee dispute."

Secrecy was another problem. In New York (as in almost all states) it is illegal to give out any information about a complaint against a lawyer—even the fact that there *is* a complaint—unless the lawyer has been found guilty by the courts. This meant that almost everything the committee did was kept secret from the press, the public and the rest of the bar.

From 1974 to 1975, the committee received 2428 complaints. Of these, the public learned about only four: two that produced public suspensions and two that produced disbarments. About 2300 complaints were secretly dismissed, and about 100 resulted in secret reprimands.

"It is little wonder," concluded the Silverman report, "that some attorneys do not feel impelled to be responsible to the disciplinary system. A system that moves in secret, then winds up disciplining a minuscule percent of those whose conduct is complained about, can be neither effective nor credible."

Paper Tiger. Are things any better in the rest of the country? In 1970 the results of a three-year nationwide study of lawyer discipline were published by a special panel of the American Bar Association (ABA)

chaired by former Supreme Court Justice Tom C. Clark. Here is how the Clark report summed up its findings: "This committee must report the existence of a scandalous situation. With few exceptions, the prevailing attitude of lawyers toward disciplinary enforcement ranges from apathy to outright hostility."

Nationally, the Clark panel found, the grievance system was an impoverished antique, operated by volunteer lawyers in their spare time, usually without adequate clerical help or records, always in secret. Indeed, the panel singled out the New York committee—which at least kept records and had a paid staff—for special praise. One witness said that in small communities, where lawyers were all on a first-name basis, discipline was "virtually impossible."

Another witness called the discipline system a "paper tiger." Case after case was cited of misconduct that either went unpunished or produced a secret slap on the offender's wrist. Lawyers with long strings of complaints against them were repeatedly let off as "first offenders" simply because the committee had no record of the previous complaints. In some jurisdictions, even the rare lawyer who was disbarred was allowed more appeals than a man convicted of murder, and frequently the final disbarment was issued so quietly that the lawyer could stay in practice merely by moving to another jurisdiction. (The Clark panel found so many disbarred lawyers still practicing that it recommended establishment of a "national discipline data bank" to keep track of them.)

Whistling in the Dark. Of the 36 reforms recommended by the Clark panel, one in particular put the finger on the real reason for the system's near-total failure. It involved this question: Who is in the best position to blow the whistle on crooked lawyers?

"Lawyers and judges," concluded the Clark committee, "are far better equipped than laymen to recognize violations of professional standards. However, relatively few complaints are submitted to disciplinary agencies by members of the profession. This fact has been cited as a major problem by nearly every disciplinary agency in the United States."

One witness said lawyers contributed "about one percent" of the complaints his committee received. As for judges, the state chairman of another committee said he could count "on one hand" the complaints his group had received from the bench during an eight-year period.

Which brings us to the root of the matter. Almost all complaints against lawyers come from the group that's least likely to report serious offenses: clients. Their complaints most frequently involve fee disputes in minor cases (car accidents, divorces, etc.) that are handled by neighborhood practitioners. And, of course, clients never report lawyers who help them commit perjury, cheat on their income taxes, etc. So, by and large,

grievance committees don't hear of important violations of the law by big-time lawyers.

Clearly, the profession is not disciplining itself. Lawyers are leaving it to outsiders—non-professionals—to select their cases for them; in the process, they're catching only little fish. And they are letting even these small fish off either with no punishment or with a secret and toothless warning not to do it again.

In recent years, a long series of bribery, corruption, cover-up and misconduct scandals has spread to distinguished corporate lawyers and law firms all over the United States. None of these scandals came out of the grievance committees (they all originated in federal agencies, newspapers or criminal courts), and only a few of the most outrageous resulted in public discipline. For all these reasons, demands are growing to junk self-regulation as a total failure.

New Ball Game? But the profession insists this is unnecessary. Says John McNulty, a Minneapolis lawyer who heads the ABA's Committee on Professional Discipline, "It's a whole new ball game today. There's no comparison between what we have now and what we had when the Clark report came out."

What's the basis of this claim? Some of the more important Clark recommendations have been adopted by a few states. Five states, for instance, have relaxed secrecy requirements. Twenty states now allow laymen to sit on disciplinary boards. And in at least three-quarters of the states, more money is being spent for professional staffs and record-keeping.

But most jurisdictions have accomplished little else. For the past four years, the most extreme penalty, disbarment, has run at a steady rate of only about 175 a year (for the nation's 450,000 lawyers), and virtually every jurisdiction in the country has ignored what some observers see as the single most important reform suggested by the Clark panel: the imposition of discipline on lawyers and judges who observe misconduct by a lawyer but fail to report it.

For nearly a decade the ABA's official Code of Professional Responsibility has held that lawyers should be subject to discipline if they don't report misconduct by other lawyers. But when asked how many grievance boards had ever enforced the rule, McNulty said he didn't know of any.

How, then, can the grievance machinery be changed? The most obvious answer is to abolish the grievance-committee system and bring in outside regulators. But that probably would not solve the problem. Lawyers and judges are the only ones who really know what's happening inside their club, and their cooperation in exposing it is essential. How can they be forced to cooperate? A remarkable case now before the New York grievance committee may provide a solution.

A lawyer for a prominent firm was caught stealing the firm's money, but nobody reported him to the grievance committee. He was subsequently appointed to a high post in the city government. When Mayor Edward Koch learned of the man's crime, he took an unprecedented action. He thrust the city government into the grievance system as a third party, registering a complaint with the committee. The complaint was not against the lawyer himself, but against the senior partner of his firm, for failing to report the matter.

The case shows that, if the peers themselves won't put the finger on the rotten apples in their barrel, outsiders may be able to force them to do it. And the outsider can be *anyone* interested in cleaning up the profession, including government agencies, citizens' groups and even individuals.

Of course, the mere injection of outsiders won't do the trick by itself. It's also essential to speed up the profession's turtle-slow efforts to reform the grievance-hearing process. The three most urgently needed reforms are to wipe out unnecessary secrecy, put more laymen on the hearing panels and provide the system with enough money for professional investigating and prosecuting staffs.

There's nothing sacred about the legal profession's private system of justice. If lawyers don't try to make it work, there are others who can, and in all probability will.

REPRINTED FROM THE SEPTEMBER 1979 ISSUE OF READER'S DIGEST

NOTICE

On May 19, 1979, the President of the Alaska Bar Association appointed an Ad Hoc Committee to survey current practices of law in Alaska with respect to advertising, use of firm names, compliance with the Alaska Bar Rules and the Code of Professional Responsibility, and those current practices' effect on the Board of Governor's and Supreme Court's powers to discipline the practice of law in Alaska. This Committee consists of Robert Baker, John Bradbury, Keith Brown, David Bundy, Daniel Gerety, Robert Mahoney, Lester Miller, James Powell, Richard Thaler, and Eric Wohlforth. Fredrick H. Boness has since been appointed to the Committee.

The Committee will receive written comments from members of the Bar and any other interested persons concerning the above matters. The Committee has established a deadline date of September 30, 1979, for receipt of such comments. The Committee desires to make its recommendations, if any, to the Board of Governors by October 15, 1979. Written comments may be submitted on or before September 30, 1979, to Dan Gerety, Chairman, Ad Hoc Committee, 1007 West Third Avenue, Anchorage, Alaska, 99501.

WORK ORDER REQUEST FORM

№ 7287

KEYWORDS: attorneys
bar associations

ASSIGNED TO Bradley

REQUEST FOR: BILL ☐ RESOLUTION ☐ RESEARCH XX ☐ OTHER ☐

SUBJECT Non-Integrated Bar Associations

REQUESTED FOR House Judiciary Committee BY Peggy Berck EXT. 3718

* DELIVER TO Berck for House Interim Judiciary Committee TAKEN BY Helton

INSTRUCTIONS, EXPLANATIONS Provide statutory reference for admission and disciplinary actions against attorneys in states with non-integrated bar associations.

OBTAIN

See Helton for further backup

SPECIAL DRAFTING INSTRUCTIONS ATTACHED ☐

AUTHORIZED TO CONFER WITH

RETURN

TO REQUESTER

APPROVED: BGB Director, Legal Services

Director, Research

REVIEWED

IN 6/1 DUE 9/30

TYPED - Draft DATE

Final DATE

PROOFED DELIVERED

SPECIAL INSTRUCTIONS TO TYPIST/PROOFREADER

DRAFT ☐ FINAL ☐

Non integrated BAR 51

STATES:

32

Arkansas
Colo
Conn
Del
Hawaii
Ill
Indiana
Iowa
Kansas
Vermont

Maine
Maryland
Mass.
Mich
Minn
N J
NY
Ohio
Penn
Tenn

20

31

STATE OF ALASKA
THE LEGISLATURE

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
907 465 3800

LEGISLATIVE AFFAIRS AGENCY

M E M O R A N D U M March 15, 1979

SUBJECT: Bar Association structure
[Work Order No. 6673]

TO: Representative Charles H. Parr

FROM: Richard A. Bradley, Legislative Counsel

Your work order request asked three questions:

(1) Which states do not have integrated bar associations.

(2) For those states, where does the disciplinary and admissions authority lie.

(3) What are the pros and cons of an integrated bar.

I requested answers to the first two questions from the Alaska Bar since there did not seem to be ready answer to them in Juneau. The executive director of the bar advises:

(1) The following states have an integrated bar: Alabama, Alaska, Arizona, California, Florida, Georgia, Idaho, Kentucky, Louisiana, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Mexico, North Carolina, North Dakota, Oklahoma, Oregon, Rhode Island, South Carolina, South Dakota, Texas, Utah, Virginia, Washington, West Virginia, Wisconsin, and Wyoming. The District of Columbia also has an integrated bar.

(2) The admission and discipline function are generally handled through the Supreme Court in states without an integrated bar. The Court typically establishes a board or commission for this purpose. In a few cases, discipline might be handled directly through an Attorney General's office. [He offered no citations to statutes or rules for this conclusion, but it is undoubtedly accurate].

Some clear regional patterns appear in this listing. Kansas and Colorado (and Hawaii) are the only states west of the Mississippi River that are not integrated. Arkansas and Tennessee are the only states of the Old South (the Confederacy) that are not integrated. No states of the Northwest Territory and only New Hampshire and Rhode Island in New England are integrated.

Having noted this phenomenon, I am somewhat reluctant to interpret it. But I would not be surprised if the integrated bar movement occurred after the development of relatively strong urban bar associations in the East and Midwest. Very likely these associations, which by definition are voluntary associations, may have addressed the professional needs of the bar in those areas. And the admission and discipline functions, which are relatively recent developments in American bar history, were then allowed to go to supreme courts. As you may know, the integrated bar in Alaska grew out of a perceived arbitrariness in discipline by the judiciary, and an almost undoubted arbitrariness in the admissions policy of the Attorney General.

As for your third question, the pros and cons of an integrated bar, the answers are more subjective, must necessarily be viewed as my own and derived from my experiences.*

(1) My view is that the organized (integrated) bar in Alaska is the most responsible and responsive professional regulatory board in Alaska. The other professions have not been as involved in progressive and responsible professional discipline; it is likely that no other profession in Alaska gives its examination for admission to the profession with the thoroughness and the sophistication that the Bar does. On the other hand, the fact of the rapidly increasing membership in the bar is perhaps the best indication that the examination is not utilized by the Board as a device for the exclusion of members -- practices other professions have been accused of.

---

* You should know that I have been somewhat active in bar activities and that I served one term on the Board of Governors of the Alaska Bar, from 1973 to 1976.

(2) Integrated bars and voluntary bars do not compare well. It is essentially meaningless to talk of discipline or admission responsibilities for voluntary bars; rather, an attorney in the state (who was admitted by the Supreme Court) will likely be admitted to membership in voluntary bars if he pays his dues. And, he can resign or fail to renew membership as he pleases.

Thus, voluntary bars are viewed as "social clubs." Since the organization will fail if no one joins it, it may be viewed as doing a better job for its members.

But the success of such organizations should not mask the fact that they have none of the difficult and unpleasant responsibilities of admissions and discipline. They may "expel" members but that fact does not deprive the expelled member of his status as an attorney. Thus, it is usually noted that errant attorneys do not join or belong to a voluntary association.

(3) The expense of discipline and admissions will fall directly on the taxpayer in a voluntary association state since this will be a state function. While the Alaska Bar receives some funds from the Court System for discipline (or has in the past few years), the larger burden falls on the bar member who now pays $170 for annual dues and $10 for an annual client security fund payment.

By comparison note that physicians pay, in effect, an annual fee of $50. AS 08.64.315(6). Their examination and admission processes are also either more perfunctory or the cost is absorbed by the state since those fees are lower than those imposed for lawyers. See AS 08.64.315.

(4) It is sometimes stated that the funds to support admissions and discipline of the Alaska Bar are not derived from tax revenue. In my view this statement is both true and false.

It is false mainly because the legislature (or the Court under the typical court integration of a bar) requires the payment of the dues for continued membership in the association and membership must be maintained in the association to practice law. The membership fee is accordingly clearly a tax or license fee levied under the police power.

It may be true because there is no reason to assume that a legislatively set annual fee for lawyers will exceed that for other professions. If that assumption is indulged and if the level of service is maintained, tax revenues will be required to support admissions and discipline if the fees are set, for example, at the level charged physicians.

(5) The letter of Ron Kull, executive director of the bar, on which I rely for a portion of this memorandum, is enclosed for your information.

If I can assist further, please advise.

RAB:nem

Enclosure

ALASKA BAR ASSOCIATION
P. O. BOX 279
ANCHORAGE, ALASKA 99510
AREA CODE 907/272-7469

RONALD L. KULL, EXECUTIVE DIRECTOR
WILLIAM GARRISON, BAR COUNSEL

March 2, 1979

Richard A. Bradley
Legislative Counsel
Legislative Affairs Agency
Pouch Y
Juneau, AK 99811

Dear Mr. Bradley:

I have your letter of February 28th concerning questions on bar organizations.

The following states have intergrated bars: Alabama, Alaska, Arizona, California, Florida, Georgia, Idaho, Kentucky, Louisiana, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Mexico, North Carolina, North Dakota, Oklahoma, Oregon, Rhode Island, South Carolina, South Dakota, Texas, Utah, Virginia, Washington, West Virginia, Wisconsin and Wyoming, as well as the District of Columbia.

In states not having integrated bars, admission and discipline functions generally are handled directly by the Supreme Court, through specific boards and commissions set up for this purpose. In a few cases, discipline is handled directly by the Attorney General's Office.

The third question in your letter obviously calls for some conclusions on my part which might or might not be self serving. During my career, I have worked for a voluntary bar association, in Kansas, and two integrated bars, here and in Idaho. In a voluntary bar situation you obviously have much more of a "social club" atmosphere. That is, a lawyer is free either to join or not to join. It naturally follows this must force the voluntary bar organization to do a better job for its members; otherwise, they will not pay their dues. On the other hand, in a voluntary bar state the discipline and admissions functions may or may not be effective. Again, the voluntary bar has no discipline authority other than to withhold membership. In my experience, it was the general rule that errant lawyers in a voluntary bar association state did not belong to the bar association in the first place, so the association literally had no disciplinary function other than a possible public centure. Naturally, the whole burden of expense on disciplinary and admissions enforcement in a voluntary bar state ordinarly will

fall directly on the tax payer since this must be a state function. In an integrated bar state, although we are to a degree subsidized for admission and discipline, still the bar spends roughly twice this amount on these functions and of course funds of the Alaska Bar Assocation are not derived from tax revenue. Also, in an integrated bar state, the bar does have much more control over the activities of lawyers admitted to practice in that particular state. The mandatory membership also provides a better revenue base for other eleomsynary activites such as delivery of legal services, professional and public education and other worthwhile functions.

While the answers to questions one and two posed in your letter are entirely factual you may take the third section as my own view entirely and not in any way a pronouncement by the Alaska Bar Association.

If I can be of further assistance to you please contact me.

Thank you for your interest.

Sincerely yours,

Ronald L. Kull
Executive Director

RLK/wj

FN 3 — The [illegible] deposits [illegible] were lower than the [illegible] year and also lower [illegible] Domin. [illegible] cause the Court System [illegible] paid the Bar Association by some $11,000 in 1978. It should be noted that the Court System has never audited the Bar Association relative to these expenses.

To: Charlie Parr, Chairman, and Members of the House Judiciary Committee
From: Margaret W. Berce, Staff
Date: September 13, 1979.
Subject: Integrated and Nonintegrated Bar Associations.

I. Introduction.

Mechanisms for regulating the legal profession vary from state to state. Thirty states, including the State of Alaska, and the District of Columbia have established integrated bar associations to fulfill certain of these regulatory responsibilities. In order to practice law in an integrated bar state, one must be a member of the bar association. This mandatory membership requirement vests an integrated bar association with certain admission, licensing, and disciplinary functions. The twenty remaining states have nonintegrated bar associations. In these states membership in the state bar association is voluntary and such associations serve primarily as social clubs. In nonintegrated states, the regulation of the legal profession is generally the responsibility of the Supreme Court. The Court typically [illegible] these concerns. In a few nonintegrated states the attorney general's office is responsible for the disciplinary matters.

II. The Alaska Bar Association

The integrated status of the Alaska Bar Association was established in 1955 through the legislative enactment of the Alaska Integrated Bar Act.[1] Prior to the integration of the Alaska Bar Association, the judiciary was vested with the disciplinary function, while the Attorney General was responsible for the admissions function. The Integrated Bar Act was introduced by Representative Kalamarides as a result of numerous complaints arising out of the then existing disciplinary and admissions practices. In 1955 the territorial Congress, considering that such matters could be better handled by the lawyers themselves, established an integrated Bar in Alaska.

Pursuant to Alaska statute, the Alaska Bar Association is governed by a → Board of Governors. The Board of Governors serve without salary and are elected by the membership at large.

(nine member)

FN[1] See AS 08.08.010, et. seq..

As statute requires the Board of Governors to be elected from the membership there are no laypersons on the board.
Rules concerning admission, discipline, and definition of the practice of law must be embodied in the Alaska Bar Rules. Although the Board of Governors is empowered to approve and recommend Alaska Bar Rules, the Alaska Supreme Court is vested with the authority to promulgate these rules. The Board of Governors may adopt bylaws and regulations consistent with the the Alaska Bar Rules, however, such bylaws and regulations are specifically exempt from the requirements of the Administrative Procedure Act.

See back of page

Apparently as a result of the statutory exemption from the requirements of the Administrative Procedure Act, a Superior Court in Anchorage has held that the Alaska Bar Association is not subject to the public meeting law. Currently this matter is on appeal before the Alaska Supreme Court.

The scheme for adopting Bar Rules and bylaws and regulations consistent with those Bar Rules reflects the roles of the Alaska Bar Association and the Supreme Court in regulating the legal profession. In essence the Supreme Court has the ultimate rule making

See back of page

authority in admissions, licensing, and discipline. The Board of Governors conducts adjudicatory hearings, but is primarily relegated to recommending appropriate action to the Supreme Court

fn. 2 To date no rule has been developed which would defeat the practice of law.

III. Should the Integrated Status of the Alaska Bar Association Be Continued.

During the 1980 legislative session, the House Judiciary Committee is scheduled to conduct a sunset review of the Alaska Bar Association. Pursuant to the sunset statute, this Committee is required to submit to the Speaker of the House a report specifying its findings and recommendations as to the continuance or termination of the Association. This report must be submitted no later than the 60th day of the legislative session. As a result of these responsibilities, preliminary consideration should be given to the advantages and disadvantages of both integrated and non-integrated bar systems.

A. Cost factor

The primary disadvantage of the nonintegrated bar system is that it requires the establishment of a state bureaucracy to provide for the admission, licensing and disciplining of those qualified to practice law in the state. The increased taxpayer costs resulting from such a bureaucracy must be carefully analyzed.

Other professions regulated by state agencies are subject to nominal annual license fees. The example of physicians is subject to a $50 fee, while lawyers, $150. The extent to which these nominal fees defray the costs of regulation is significant. If taxpayers support most of the costs of regulating all professions but law, the legal profession, without justification, thus discriminates. Furthermore, should it be determined that it is more expensive to regulate lawyers, than doctors, the burden on the taxpayer can be reduced by increasing the license fee for lawyers.

Costs resulting from the admission function of the Alaska Bar Association are absorbed by current application fees. Individuals seeking admission to the Bar are required to pay $5.00 for the application form and a $250 examination fee. Since application fees [illegible] to absorb admission costs, no additional financial burden falls on the [illegible].

Furthermore, it should be noted that the Alaska Bar Association is not completely independent of state financial resources. For many years the Alaska Bar Association was [illegible] office space, use of equipment and [illegible] provided by the court system. [illegible] years ago, [illegible] the Bar Association was required to vacate those offices, moving expenses were provided by the [illegible]. [illegible] office space for the Bar Association is being subsidized by the [illegible] at the rate of $[illegible] per annum.

Additionally, for the past several years [illegible] have been provided to defray the [illegible] expenses in disciplinary proceedings. In 1978 the Bar Association received $[illegible] [illegible] $[illegible] and the [illegible] [illegible] [illegible] [illegible] the Association [illegible] disciplinary

proceedings.

Obviously, a more detailed cost assessment is needed to determine the weight of this objection to the non-integrated bar septum. However, it appears that the existing state financial support combined with fixing appropriate license fee & reimbursement fees may eliminate the bar pending objection.

The source of this ~~inherent~~ power is never defined beyond the recitation that it is an exercise of the Supreme Court's inherent power and jurisdiction over attorneys as officers of the court.

B. Legislative Intent

The Alaska Supreme Court contends that it has the inherent power to admit, discipline, and disbar attorneys. Under this theory it can be said the Alaska Supreme Court has permitted the delegation of [illegible] to the Alaska Legislature. Shortly after the enactment of the Alaska Constitution, the Supreme Court held that the act did not detract from its inherent powers to govern the practice of law in Alaska, but the Act [illegible] the judicial machinery. In upholding the validity of the Act, the Court cited various provisions deferring to the inherent authority for support. It cited: that decisions of the Board of Governors are merely recommendations; that the records of such decisions before the Supreme Court are not [illegible] of that only final orders of the Supreme Court work disbarment or reinstatement.

In the subsequent decision, the Alaska Supreme Court [illegible] one section of the Act which attempted to mandate [illegible] as unconstitutional [illegible] inherent powers. Additionally

Although the Alaska legislature is empowered under the Alaska Constitution to prescribe the jurisdiction of the courts and to change the Rules of Court, such arguments most likely would not be persuasive in view of the Supreme Court's adament posture on this issue. The supreme Court has stated that the power of the courts to discipline attorneys has long been recognized and cannot be defeated by the legislative branch of government.

The supreme Court's position has prompted the Alaska Bar Association to contend that it is not a state agency. This contention has been used in two different lawsuits [illegible] against the Association. One suit [illegible] that the Bar Association [illegible] violated [illegible] the public meeting law. The lower court found the [illegible] Bar Association [illegible] the [illegible] the Alaska Supreme Court. The other suit arose out of [illegible] by the [illegible] pertaining to the [illegible] of resolving citizen complaints against lawyers and the propriety of [illegible] and fringe benefits for the Bar Council. The [illegible] refused to submit to the official jurisdiction of the [illegible] [illegible] resulted [illegible] before [illegible].

[illegible]

[illegible] for [illegible]

(over)

~~of the Association since its current responsibilities and may well lead to serious difficulties for the Association's current.~~

or de-integrate

The Supreme Court's exclusive jurisdiction over Alaskan attorneys impacts the policy considerations before this Committee. If the Committee determines to sunset the Alaska Bar Association, without establishing any statutory mechanisms for admitting, licensing and disciplining attorneys, the Supreme Court would continue to bear the responsibilities for these regulations. Termination of the Alaska Bar Association would not deregulate attorneys. On the other hand, should the Committee determine to sunset or de-integrate the Alaska Bar Association and established statutory mechanisms for regulating attorneys deference must be made to the Supreme Court's authority. Even should these statutory mechanisms not invade the Supreme Court's jurisdiction, nothing but good faith would require the Supreme Court to abide by them. It was in just such a context that 20 years ago the Supreme Court upheld the validity of the Integrated Bar Act and still abides by much of that act today.

BOARD OF GOVERNORS

ALASKA BAR ASSOCIATION

P. O. BOX 279
ANCHORAGE, ALASKA 99510
AREA CODE 907/272-7469

WILLIAM GARRISON, BAR COUNSEL

+ 250.00 Application fee

July 31, 1979

Dear Ms. Berck

I received your inquiry about the practice of law in Alaska and regret that I am unable to answer it personally. We received a large volume of inquiries on the subject, and due to our small staff, it becomes necessary to resort to this reply which I hope both anticipates and answers most of your questions.

The requirements and procedures for admission to practice in Alaska and membership in the Alaska Bar Association are set out in Part 1 of the Alaska Bar Rules. A copy of that Part of the Rules is enclosed. There is no requirement for registration at the time of law school enrollment. Admission is by examination only, although certain qulified applicants may be eligable for the attorney's exam which is the Multi-state section of the general examination. You are referred to the Rule for further information about educational qualifications and other requirements. Application forms, which should be filed at least 90 days prior to an exam, may be obtained by writing this office and enclosing $5.00.

Bar examinations are given twice a year in the major cities in Alaska beginning on the last Tuesday in February and the last Tuesday in July of each year. The general exam is 2 1/2 days in length and is composed of both essay and objective questions. The MBE exam is given as one day of the general exam. The following statistical information from recent exams may be of interest:

Exam	# of Applicants	# of Passing Applicants	% of Applicants Passing
Feb. '78	100	65	65.0
July '77	124	95	78.7
Feb. '77	108	83	76.85
July '76	97	77	79.38
Feb. '76	96	73	76.04
July '75	82	57	69.5
Feb. '75	69	55	79.7
July '74	83	69	83
Feb. '74	44	40	90
July '73	52	37	71
Feb. '73	43	29	67
July '72	56	38	67.9
Feb. '72	39	31	79.5
July '78	125	91	72.08

PREPARING FOR THE EXAMINATION: At this time there is only one Bar Review Course offered in Alaska. This course meets in classroom sessions in Anchorage, and is available by cassette tapes elsewhere. It consists of outlines and taped lectures from the BAR/BRI Bar Review Course, Los Angeles, California, and outlines and live lectures on Alaska Law by local attorneys. For further information contact:

Alaska Bar Review/B.A.R. Inc.
Attn: Kenneth P. Jacobus
509 West Third Ave.
Anchorage, Ak. 99501
(907) 274-7522

(Information concerning bar review courses is furnished solely for the benefit of applicants. The Alaska Bar Association neither sponsors nor endorses any review courses and it has no control over their subject matter or the location where the courses are offered.)

There are no law schools in Alaska. Our members are graduates of at least 104 different law schools located throughout the United States. The largest group of lawyers in the State are graduates of the University of Washington and the second largest group are Harvard graduates.

There are about 982 active members in our Association, most of whom are engaged in some form of legal work. Approximately 2/3 of the attorneys are located in Anchorage. Most of the others are located in the population centers of Juneau, Fairbanks, and Ketchikan, with a few in Palmer, Nome, Kenai, Kodiak, Soldotna, Bethel and Valdez.

We do not operate a formal placement service and, therefore, I cannot be of much assistance to you in locating employment. We do maintain a file of resumes which we make available to prospective employers who inquire. The Attorney General, Public Defender, Alaska Legal Services Corporation, and the Federal agencies are the larger government employers. The names and addresses of private firms may be obtained from Martindale-Hubbell. Presently, as in the past, if one is seriously seeking employment here, it is advisable to come to Alaska to locate a job.

From past experience I know that many of you have inquired about the demand for attorneys in the State. Unfortunately, I have no way of evaluating this situation nor do I know of any source from which you may obtain answers. Perhaps you can best provide your own answer to this question by comparing the attorney population with the overall population figures estimated to be as follows as of March 29, 1975:

Statewide:	404,503
Juneau & vicinity:	17,356
Ketchikan:	11,052
Anchorage & vicinity:	175,697
Fairbanks & vicinity:	50,029

I hope that I have provided most of the information which you have requested.

Very truly yours,

Ronald L. Kull
Executive Director

Enc: Part 1, Alaska Bar Rules
Rev. 8,7

ALASKA BAR ASSOCIATION

ADMISSION RULES

Application forms for Admission to the Alaska Bar Association may be obtained by forwarding a certified check or money order in the amount of $5.00 to:

Executive Director
Alaska Bar Association
P. O. Box 279
Anchorage, Alaska 99510

Completed applications should be mailed to:

Alaska Bar Association
P. O. Box 279
Anchorage, Alaska 99510

PART I ADMISSIONS

RULE 1: BOARD OF GOVERNORS: GENERAL POWERS RELATING TO ADMISSIONS

Section 1. As used in Rules 1-8

(a) "Attorney applicant" means a person who has complied with the eligibility requirements of Rule 2, Section 2;

(b) "Bar examination" means the general or attorney's examinations which shall be offered to applicants for admission to the practice of law in Alaska;

(c) "Board" means the Board of Governors of the Alaska Bar Association;

(d) "Committee" means the Committee of Law Examiners appointed by the Board;

(e) "Executive Director" means the Executive Director of the Alaska Bar Association;

(f) "General applicant" means a person who has complied with the eligibility requirements of Rule 2, Section 1 (a) through (f);

(g) "President" means the President of the Alaska Bar Association.

Section 2. Only those persons who fulfill all requirements for admission as provided by these rules shall be admitted to the practice of law in the State of Alaska and shall be members of the Alaska Bar Association.

Section 3 The Board shall examine or provide by contract or otherwise for the examination of all applicants for admission to the practice of law and shall determine or approve the time, place, scope, form and content of all bar examinations. Bar examinations may, in whole or in part, be prepared, administered and graded by or in cooperation with other states or the National Conference of Bar Examiners consistent with standards fixed or approved by the Board acting with the advice of the Committee of Law Examiners. No contract or cooperative agreement for the preparation, administration or grading of a bar examination shall operate to divest the Board of its authority (1) to cause the Committee to review any examination, and (2) independently to determine the eligibility of an applicant to be admitted to the practice of law. The Board or any member thereof may require an applicant to appear before the Board, a committee or a master appointed by the President for such purpose, at such times and places as may be required, for oral examination and to furnish any such supplemental information or evidence in such form as may be required.

Section 4. The President shall appoint a Committee of Law Examiners composed of nine members of the Alaska Bar Association. Members of the Committee shall serve for three years and until their successors are appointed, except that an initial appointment of three members shall be for one year, and an initial appointment of three other members shall be for two years so as to effectuate staggered terms of office. Any person who has served on the Committee within the previous three years may serve as an alternate member of the Committee in the event that one or more of the regular members is unable to participate in a portion of the grading process. The Chairman of the Committee shall designate such alternate member or members to serve.

Section 5. The Committee shall prepare and grade, or administer the bar examination. The Committee shall advise the Board concerning the preparation, grading or administration of bar examinations as from time to time directed by the Board. The Board shall furnish to the Committee clerical and other assistance as may be deemed necessary by the Board.

Section 6. A majority of the members of the Committee shall constitute a quorum for the transaction of business relating to admissions. Five members of the Board shall constitute a quorum for such business.

Section 7. Any member of the Board, upon application by the Executive Director or by a master appointed by the President, shall have the power to issue subpoenas for the attendance of witnesses, or for the production of documentary evidence before the Board or before anyone authorized to act in its behalf.

Section 8. A member of the Board or anyone authorized to act in its behalf shall have power to administer oaths and affirmations and to take testimony concerning the admission of an applicant or administration of this Rule.

Section 9. Any person subpoenaed by the Board or its designee to appear or produce writings who refuses to appear, give testimony, or produce the matter subpoenaed is in contempt of the Board. A member of the Board may report a contempt of the Board to the Superior Court for the Judicial District in which the proceeding is being conducted. The refusal or neglect of an applicant to respond to a subpoena or subpoena duces tecum shall constitute cause for abatement of further proceedings and dismissal of the application by order of the Board and costs may be assessed in the case of the applicant's contempt.

Section 10. On verified petition of the Executive Director or of an applicant, any member of the Board may order that the testimony of a material witness residing inside or outside the state be taken by deposition in the manner prescribed by law for depositions in civil actions. The petition shall set out (1) the name and address of the witness whose testimony is desired; (2) a showing of the materiality of his testimony; (3) a showing that the witness will be unable or cannot be compelled to attend; and (4) a request for an order requiring the witness to appear and testify before an officer named in the petition for that purpose. If the witness resides outside the state and if a member of the Board orders the taking of his testimony by deposition, the member of the Board shall obtain an order of court to that effect by filing a petition for the taking of the deposition in the superior court. The proceedings on this order shall be in accordance with provisions governing the taking of a deposition in the superior court in a civil action.

RULE 2: ELIGIBILITY FOR ADMISSION

Section 1. Every applicant for admission to the practice of law shall:

(a) File an application in form prescribed by the Board and produce and file the evidence and documents prescribed by the Board in proof of eligibility for admission;

(b) Be a graduate of a law school which was accredited or approved by the Council of Legal Education of the American Bar Association or the Association of American Law Schools when the applicant entered or graduated or submit proof that the law course required for graduation from such a law school will be completed and that a degree will be received as a matter of course before the date of examination. Graduates of law schools in which the principles of English Common Law are taught but which are located outside the United States and beyond the jurisdiction of the American Bar Association and the Association of American Law Schools, may qualify for admission upon proof that the foreign law school from which they graduated meets the American Bar Association Council of Legal Education Standards for approval;

(c) Have attained the age of 19 years;

(d) Be of good moral character;

(e) Be a citizen of the United States, or a resident alien who intends to become a citizen of the United States;

(f) Be and remain a bona fide resident of the State of Alaska for a period beginning at least 30 days prior to the first day upon which the bar examination is to be given and continuing through the date upon which the Board certifies the applicant for admission to the Alaska Bar Association;

(g) Pass the bar examination prescribed by the Board pursuant to Rule 4 hereof.

Section 2. An applicant who meets the requirements (a) through (f) of Section 1 of this Rule and

(a) Has passed a written examination required by another state, territory or the District of Columbia for admission to the practice of law, and

(b) Has engaged as a licensed attorney in the active practice of law in one or more states, territories or the District of Columbia for five of the seven years immediately preceding the date of his first or subsequent applications for admission to the practice of law, may, on the date of filing the application request examination as an attorney applicant. An applicant qualified for examination as an attorney applicant shall be required to pass the attorney bar examination prescribed by the Board.

RULE

Secti
by th
the B
shall
be ab
reque
rules

Secti
shall
latest
be ef

Sect
atto
prac
appe
perr
serv

RU

Sec
elig
Bo
As
the
he
thi
Th
fe
is

S
p
el
a
a
e
F
s
i
t
(

Section 3. An applicant who meets the requirements of (a) and (c) through (g) of Section 1 of this Rule may qualify for admission if an application is filed on or before June 8, 1977 and the applicant:

(a) [illegible]mitted to practice and is [illegible]ttorney in good standing [illegible]he bar of another state;

(b) Graduated from law school after June 8, 1975 and was not eligible to apply for admission to practice in Alaska prior to that date;

(c) Enrolled in law school prior to June 8, 1973 with the intent to apply for admission to practice law in Alaska and in reliance on the Alaska Admission Rules in effect prior to the approval of this Rule.

RULE 3: APPLICATIONS

Section 1. An application form shall be provided by the Board upon request and upon payment of such fees as the Board shall deem appropriate. The time, date, place or places of each bar examination shall be announced by the Board no fewer than 120 days prior to the first day of such bar examination and prompt notice thereof shall be provided all applicants and persons who have been provided applications following the date of the last preceding bar examination. Application forms provided by the Board shall be transmitted with a copy of the Alaska Bar Rules governing admission to the practice of law. The Board may provide such other matter as it may deem pertinent.

Section 2. Any person seeking admission to the practice of law shall file with the Executive Director at the office of the Alaska Bar Association an application, in duplicate, in the form provided by the Board. The application shall be made under oath and contain such information relating to the applicant's age, residence, addresses, citizenship, occupations, general education, legal education, moral character and other matters as may be required by the Board. Any notice required or permitted to be given an applicant under these rules, if not personally delivered shall be delivered to the mailing address declared on the application unless notice in writing is actually received by the Board declaring a different mailing address. Any notice concerning the eligibility of the applicant sent by certified mail to the last mailing address so provided shall be deemed sufficient under these rules. Every applicant shall submit two 2-inch by 3-inch photographs of himself showing a front view of his head and shoulders. The application shall be deemed filed only upon receipt of a substantially completed form with payment of all required fees. Applications received without payment of all fees or which are not substantially complete shall be promptly returned to the applicant with a notice stating the reasons for rejection and requiring payment of such additional fees as may be fixed by the Board as a condition of reapplication.

Section 3. An application shall be filed not later than May 1 for the July bar examination and not later than December 1 for the February bar examination. In the event that an application is filed late an additional late filing fee of $25 shall be paid if filed not later than fourteen days after the last day for filing a timely application, and a late filing fee of $100 shall be paid if filed thereafter; provided, however, no application shall be accepted for late filing unless such application is filed at the office of the Alaska Bar Association not later than June 15 for the July bar examination and January 15 for the February bar examination. An untimely application shall be considered an application for the next following examination unless withdrawn by the applicant.

Section 4. The application fee shall be in an amount fixed by the Board from time to time. Fees shall be paid at the time an application is filed.

Section 5. If an applicant fails to meet the requirements of Rule 2, or to take a bar examination, no refund shall be made unless the application shall be withdrawn within 10 days following notice of its receipt by the Board in which event the application fee, less a reasonable cancellation fee, shall be refunded.

Section 6. An applicant who has failed to pass a bar examination required by Rule 2 may reapply for admission to take a subsequent bar examination.

Reapplication shall be made by:

(a) Sending written notice of intention to reapply to the Board within 60 days following notice of failure. Such notice shall include a description of the applicant's interim employment and any other circumstances affecting the applicant's suitability for admission to the practice of law in Alaska;

(b) Providing such additional information as may be required by the Board.

Applicants for reexamination shall be required to pay such additional examination and application fees as may be fixed by the Board. An applicant who does not comply with this Section must reapply pursuant to Sections 1 through 5 of this Rule.

Section 7. An applicant who has failed to pass three bar examinations may be examined only by leave of the Board. Leave shall be granted only if the Board finds that there has been a substantial change in circumstances affecting the applicant's ability to pass the bar examination. The burden of establishing a substantial change in circumstances shall be upon the applicant.

RULE 4: EXAMINATIONS

Section 1. An applicant shall be allowed to take the bar examination once his application is approved by the Board. Every applicant shall be notified no fewer than ten days in advance of the bar examination whether his application has been approved and shall be provided an examination permit which shall state whether the examinee is an attorney applicant or a general applicant. The examination permit shall be presented to the examination proctor on the first day of the examination.

is approved by the Board, submit to a bar examination. The bar examination shall be given not less than once every twelve months; shall be written; and shall be conducted in the manner and at the time and place established by the Board. The Board may direct that the bar examination be administered to applicants with physical handicaps in a fair and reasonable manner other than the manner by which it is administered to other applicants. An applicant with a physical handicap who desires the bar examination to be administered to him in a manner other than that by which it is administered to other applicants shall so petition the Board at the time of filing his application. Approval of an application and subsequent bar examination shall not operate to foreclose a subsequent determination by the Board that the applicant is unfit or ineligible for certification to the Supreme Court for admission to the practice of law.

Section 3. The Committee shall, as soon as practicable after the bar examination, certify to the Board its written report of bar examination. Except to the extent that such material or information is unavailable to the Committee under the rules or policies of the National Conference of Bar Examiners, the Committee shall submit to the Board a copy of the bar examination questions, the grader's analysis thereof, a representative sampling of passing and failing answers to the bar examination, and a written report stating the total number of applicants examined, the number passing and the number failing the bar examination, the average performance of each as designated by the code number of each the maximum possible point value of each bar examination part or section and other information the Committee or the Board may deem relevant.

Section 4. The Board shall determine the qualifications of each applicant upon the basis of the report of examination, the recommendations of the Executive Director, and such other matter it may consider pertinent under these rules. The Board shall certify to the Supreme Court the results of the bar examination and its recommendations as to those applicants who are determined qualified for admission to the practice of law and who have complied with the provisions of Rule 6. Notice of the Board's determination shall be provided in writing to each applicant. Notice to an applicant determined not qualified shall state the reason for such determination.

Section 5. If written request is made of the Board within one month following notice of failure to pass a bar examination and except to the extent that such material or information is unavailable under the rules or policies of the National Conference of Bar Examiners, an applicant who takes and fails to pass the bar examination has the right to inspect his examination books, the grades assigned thereto, and a

representative sampling of passing and failing answers to the bar examination at the office of the Alaska Bar Association, or at such other place and at such time or times as the Board may designate. An applicant who passes the bar examination is not entitled to inspect any examination books or discover the grades assigned thereto.

Section 6. The passing grade of the bar examination shall be seventy percent of the highest possible grade. A scaled score, as determined by the National Conference of Bar Examiners, of 135 on the Multi-State Bar Examination shall be the equivalent of seventy percent of the highest possible grade on that portion of the examination.

Section 7. An applicant who has taken the Multi-State Bar Examination within one year prior to the bar examination as part of an examination required by a state, territory or the District of Columbia for admission to the practice of law may elect to be excused from the Multi-State Bar Examination administered in Alaska and to have his most recent Multi-State Bar Examination scaled score substituted therefor, provided that the results of such examination are certified directly to the Alaska Bar Association by the administering state, territory or District of Columbia. The election must be made in writing and delivered in person or by prepaid mail to the Office of the Alaska Bar Association, 360 K Street, Rm.240, Anchorage. If delivered in person, the written election must be delivered by 3:00 p.m. on the Friday immediately prior to the examination; if mailed, it must be postmarked by 5:00 p.m. on the Thursday immediately prior to the examination.

Section 8. All examination books and answers, including those designated by the Committee as comprising a representative sampling of passing and failing answers to the bar examination, may be destroyed one year following the last date an applicant has been notified of his failure; except that no examination book and answers shall be destroyed until one year following the final disposition of any proceeding to which they may be relevant.

RULE 5: NOTICE

Section 1. Notice of any final adverse determination by the Board, a master or a committee appointed by the Board shall be given to an applicant. Such notice shall be sufficiently specific to allow the applicant to be able to prepare a response, petition for review, or request for hearing as may be permitted under these rules.

Section 2. Only written notice given by the Board shall be effective. Notice by certified mail to the latest address on file with the Executive Director shall be effective.

Section 3. An applicant may be represented by an attorney in all proceedings for admission to the practice of law. Such attorney shall file a written appearance with the Board and notices required or permitted to be given the applicant shall thereafter be served upon his attorney.

RULE 6: CERTIFICATE OF ADMISSION: MEMBERSHIP REGISTRATION AND FEES

Section 1. An applicant receiving notice that his eligibility to practice law has been determined by the Board shall within ninety days file an Alaska Bar Association registration card in the form provided by the Board. The applicant shall certify under oath that he has been a resident of Alaska continuously for thirty days immediately prior to the bar examination. The applicant shall pay prorated active membership fees for the balance of the calendar year in which he is admitted computed from the date of payment.

Section 2. An applicant who fails to comply with the provisions of Section 1 of this Rule shall not be eligible for certification to the Supreme Court for admission and shall be deemed to have abandoned his application. For good cause shown the Board may excuse untimely compliance with Section 1 of this Rule.

Section 3. Upon receiving certification of the eligibility of an applicant the Supreme Court may enter an order admitting the applicant as an attorney at law in all the courts of the state and to membership in the Alaska Bar Association. Each applicant ordered admitted to the practice of law shall take the following oath before the Supreme Court or a justice thereof:

I do affirm:

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

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

I will not counsel or maintain any proceeding which shall appear to me to be taken in bad faith, or any defense except such as I believe to be honestly debatable under the law of the land;

I will employ for the purpose of maintaining the causes confided to me such means only as are consistent with truth and honor, and will

never seek to mislead the judge or jury by an artifice or false statement of fact or law;

I will maintain the confidence and preserve inviolate the secrets of my client and will accept no compensation in connection with his business except from his or with his knowledge or approval;

I will be candid, fair, and courteous before the court and with other attorneys, and advance no fact prejudicial to the honor or reputation of a party or witness, unless required by the justice of the cause with which I am charged;

I will strive to uphold the honor and to maintain the dignity of the profession and to improve not only the law but the administration of justice.

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

RULE 7: REVIEW

Section 1. An applicant who has been denied an examination permit or who has been denied certification to the Supreme Court for admission to practice shall have the right within thirty days after notice of such denial to file with the Board a written verified statement of appeal. Failure timely to file an appeal statement shall constitute waiver of appeal rights. In his statement, an applicant shall state all grounds upon which he intends to rely and may:

(a) object to the form of notice from which such appeal is taken on the ground that it is so indefinite or uncertain that he cannot reasonably prepare his statement;

(b) present new matter on which he relies to establish his eligibility for admission to practice.

An applicant who is denied an examination permit or who is denied certification shall allege facts which, if true, would establish an abuse of discretion or improper conduct on the part of the Board, the Executive Director, the Committee or a master. If the allegations in the verified statement are found to be sufficient by the Board, a hearing shall be granted.

Section 2. In any appeal the applicant shall have the burden of proving the material facts upon which he relies.

Section 3. A master appointed by the President from among the active membership of the association shall preside at all hearings convened under this rule. The master shall hear the evidence without the Board unless the President shall order the hearing in the presence of the Board. No fewer than twenty days before the hearing the applicant shall be given notice of the date of the hearing, the identity of the master, and whether the hearing is to be before the master alone, or before the Board with the master. All notices shall be given by the Executive Director as required by the master or the President.

Section 4. When the Board hears the case with the master, the master shall preside and rule on the admission of evidence. The hearing shall be administered as directed by the Board.

Section 5. A Board member or a master appointed under this rule shall disqualify himself and withdraw from any case in which he cannot accord a fair and impartial hearing. The applicant may request the disqualification of the master or of a Board member by filing an affidavit within ten days following the first notice of the hearing. The affidavit shall state with particularity why a fair and impartial hearing cannot be accorded by the person sought to be disqualified.

Where the request concerns a Board member the issue shall be determined by the master. Notice of the determination shall be given applicant no fewer than 10 days before commencement of the hearing and such notice shall include the name of a new master if one is appointed. The time for notice fixed by Section 3 and by this Section shall not apply to notice concerning a master appointed to replace a disqualified master.

Section 6. The hearing shall be electronically recorded with facilities provided by the Alaska Court System. Deposition testimony may be received as provided in the Alaska Rules of Civil Procedure. The record may be destroyed two years following the last date upon which administrative appeal rights may be available under the provisions of this rule.

Section 7. The applicant shall have the right to call and examine witnesses, to introduce exhibits, to cross-examine opposing witnesses on any matter relevant to the issues, even if not covered in direct examination, to impeach any witness regardless of which party called him, and to rebut the evidence against him. The applicant may be called and examined as if under cross-examination whether or not he testifies on his own behalf. The hearing need not be conducted according to technical rules relating to evidence and witnesses. Hearsay evidence may be used for the purpose of supplementing or explaining other evidence but shall not be sufficient standing alone to support a finding unless it would be admissable over objection in civil actions. The rules of privilege shall be effective to the extent that they are required by civil rules to be recognized. Irrelevant and unduly repetitious evidence shall be excluded. The sworn testimony of a witness subpoenaed under these rules shall be deemed testimony received in a judicial proceeding. In any action for defamation arising out of such sworn testimony the witness shall be entitled to the defense of privilege to the same extent available to witnesses in judicial proceedings within the State of Alaska.

Section 8. The master shall prepare in writing a proposed decision supported by findings of fact and conclusions of law.

Section 9. In cases in which a majority of the Board was not present during the evidentiary hearing, the master shall file the proposed decision with the Board and cause the entire record to be certified to the Board for decision. Copies of the proposed decision shall be served by the master on the applicant or his attorney of record and on the Executive Director. Within twenty days after service of the proposed decision, the applicant and the Executive Director may file exceptions and briefs and, upon request, may appear and present oral argument to the Board. Copies of exceptions and briefs, when filed, shall be served on the applicant or the Executive Director, as the case may be.

Section 10. The transcript of testimony and exhibits, together with all papers and requests filed in the proceeding, shall constitute the exclusive record for decision by the Board and, upon payment of costs, shall be made available to the applicant.

Section 11. The Board may adopt the proposed findings, conclusions and decision of the master in whole or in part, or reject it in its entirety and adopt its own findings of fact and conclusions of law and decision.

Section 12. The findings of fact, conclusions of law and decision of the Board shall be conclusive as to the matter alleged in applicant's statement of appeal unless an appeal to the Supreme Court shall be filed within thirty days following service upon applicant of the findings of fact, conclusions of law and decision in the manner provided by these rules.

RULE 8: SUPREME COURT REVIEW

Section 1. An Appeal to the Supreme Court may be filed by an applicant from a decision of the Board entered as provided in Section 12 of Rule 7.

Section 2. To the extent practicable the procedure governing an appeal by an applicant for admission to the practice of law from a decision of the Board of Governors shall be governed by the rules of practice in civil matters set forth in Part IV, ALASKA SUPREME COURT RULES.

ALASKA BAR RAG

June 1979

Origins of the Alaska Bar Association

By Russ Arnett

The Alaska Bar Act was passed by the 1955 Legislature to a large extent because of two Anchorage disciplinary cases and some bar exam problems.

Herald Stringer was a lawyer and the Third Division's most powerful Republican at the time of the death of District Judge **Anthony J. Dimond** in 1953. **Herald** backed the appointment of **J.L. McCarrey Jr.** as his successor and told some of the Anchorage Bar they were going to get him whether they liked it or not. He was right. Not long afterward he found himself before Judge McCarrey on a disciplinary matter. Judge McCarrey disqualified himself and sent the case to Fairbanks. The Fairbanks judge sent the case back to Anchorage. Assistant United States Attorney **Jim Fitzgerald** prosecuted the case, and Judge McCarrey suspended Herald. In the Ninth Circuit "Stringer, represented by many attorneys **(Grigsby, Kay, Davis, Butcher)**, vehemently complained of a procedure in which he acquiesced. In our judgment, once having disqualified himself for the cause, on his own motion, it was incurable error for the district judge to resume full control and try the case."

Bailey Bell was handcuffed in his office in the Central Building by a Deputy Marshal because of a disciplinary charge against him and marched across the street to the Federal Building. A Fairbanks judge who was new to Alaska and had spent most of his time in Fairbanks tried the case. He held that the prevailing ethical standards in Anchorage were so abysmal that it would be unfair to punish only Bailey. We now realized something had to be done, if only to quit referring Anchorage grievances to Fairbanks judges.

Three of the five unsuccessful candidates for the 1952 bar exam filed *In re Fink, Hermann and Arnett*, alleging that questions were given to some candidates before the exam and that secrecy system of grading was violated by at least one examiner. Judge **Folta** held that "If a member violates his oath, it is doubtful whether any system could be devised that would assure secrecy in the particular here under discussion. The remedy indicated is the administrative one of removal, rather than invalidation of the examination by judicial process." He also held that there was no showing of "a scheme or conspiracy, participated in by the remaining board members, or some of them, to flunk the patitioners." The smart flunkee instead of litigating went to work for the Attorney General, who ran the exam, and his score improved from the mid 60's in the 1952 exam to the mid 90's in the 1953 exam.

Others complained the bar examiners did not expeditously grade the annual exams because they took five months one year and eleven months another year to grade about twenty papers.

The 1955 Legislature had a good number of able lawyers. Lead by Representative **Kalamarides**, they answered the question of whether the lawyers themselves could do a better job on admissions and discipline with "Why not?" They passed the Bar Act.

The first convention of the Alaska Bar Association soon followed in Ketchikan. **Earl Cooper** asked the Convention how Arnett's wife could possibly be in Anchorage when he had seen a woman in his room only the night before. Ah, to return to those golden days of the bar!

ALASKA BAR RAG

Letters to the Editor

June 1979

Dear Editors:

In the April issue I noted that the Alaska State Bar may soon receive a legislative audit (page 1, column 4).

This brings me to call your attention to the decision of the Supreme Court of the State of Washington in *Graham V. Washington State Bar Association*, (1976) 86 Wn. 2d 624, 548 P.2d 310. In that case the Supreme Court of this state held that the Bar Association was an agency of the Supreme Court and not subject to audit by the State Auditor. I had something to do with that case.

As one of the organizers of the Washington State Bar in 1933, I, with the other members of the first Board of Governors, retained outside auditors from the beginning and published the audit. The practice was continued throughout the years. This was probably a factor that may have assisted in getting the right decision two years ago. It was a power play by the state auditor, whose additional audit would have been a waste of the state's money.

On page 3, column 2, I note that the Board of Governors has extended until June 15 the by-law amendment made without notice in January, requiring non-resident members to maintain an office in Alaska, and evidently trying to apply it retroactively, even to lawyers who had already paid their dues for 1979. I have not to this date seen a copy of the amended by-law, or what the two conditions are. I have been a member of the Alaska Bar since territorial days. The new rule doesn't bother me personally because my partners and I always associate a lawyer actually resident in Alaska. I would think that would be sufficient in any case.

Alfred J. Schweppe
Seattle

NOTICE

Dear Member:

For the past several years, your Bar Association has sponsored a $20,000 Group Life Insurance Plan for members. Earlier this year, the insurance carrier announced a substantial increase in rates due to unfavorable experience.

Your Board, through an Anchorage Broker, contacted several other insurance carriers; after studying the alternatives, Great West Life Assurance Company was selected

The plan adopted is improved in several ways; the basic coverage is now $50,000, premiums are based on the current age of participants, and an optional $50,000 of life insurance is available. The base amount is guaranteed issue while the optional coverage is subject to a health questionnaire.

Quarterly premiums for the base amount of $50,000 will be as follows:

Under age 30	$ 22.50
Age 30 - 39	30.00
Age 40 - 44	45.00
Age 45 - 49	75.00
Age 50 - 54	120.00
Age 55 - 59	202.00
Age 60 - 64	285.00
Age 65 - 69	405.00

(COVERAGE TERMINATES AT AGE 70)

Under our current program, $20,000 of coverage costs $51.60 per quarter. The new plan results in costs directly related to the individual participants age rather than an average rate based on average age. This should provide a greater incentive for younger members to participate thus keeping our plan viable and healthy.

In our next mailing we will include enrollment cards and separate rate information on the optional coverage.

Sincerely,

ALASKA BAR ASSOCIATION

Donna C. Willard
President

THE REVISED ALASKA CRIMINAL CODE

November 16-17	Fairbanks	Travelers Inn
November 29-30	Anchorage	Anchorage Westward Hilton
December 7-8	Juneau	Juneau Hilton

Sponsored by

THE CONTINUING LEGAL EDUCATION COMMI[illegible]

Alaska Bar Association

SCOPE AND PURPOSE

On January 1, 1980, the revised Alaska Criminal Code becomes effective. The revised code dramatically and comprehensively alters the substantive aspects of Title 11 and adopts a new sentencing scheme in Title 12. Among other important features of the revised code, all crimes with the exception of murder and kidnapping are classified based on seriousness as Class A,B, or C felonies, or Class A or B misdemeanors. The revised code provides for uniform penalty provisions. This 1-1/2 day seminar presents an overview of the Revised Criminal Code, including comparisons with the present code, approximately one month before the effective date of the Revised Criminal Code provisions.

FACULTY

William Bryson, Esq.
Barry Stern, Esq.
Bruce Bookman, Esq.
Brian Shortell, Esq.
Daniel W. Hickey, Esq.
Peter Michaski, Esq.
The Honorable Beverly Cutler

COURSE CREDIT

This course has been approved by the Alaska Bar Association for 8 hours of credit toward continuing legal education.

PROGRAM SCHEDULE

First Morning:

Registrant check-in and distribution of materials

Introductory remarks

Overview of the Criminal Code, including general principles of liability and culpability

Coffee break

Sentencing

Panel Discussion and questions

Luncheon

First Afternoon:

Justification - Panel discussion

Offenses against persons

Coffee break

Offenses against property

Question and Answer session

Second Morning:

Offenses against public administration

Prostitution and gambling, weapons and offenses

Second morning cont'd.

Coffee break

Offenses against public order

Offenses against family

Question and answer panel

REGISTRATION INFORMATION

TUITION: Tuition for this course is $75.00. This entitles each registrant to admission, coffee breaks, and all written materials. The cost for materials only is $30.00.

ADVANCE REGISTRATION: Due to substantially increased enrollments in all CLE courses, advance registration is strongly recommended. Door registrations on the day of the program can be accepted only if space is available.

PAYMENT: If more than one person wishes to register, payment may be included in a separate check; however, a separate registration form should be included for each registrant. Payment for other seminars should be handled by separate check.

REFUNDS: The registration fee for this seminar will be refunded, less $2.00 for handling, for any cancellation received at least 2 full business days before the date of the presentation in question.

TAX DEDUCTIBLE: Tuition, travel, hotel and living expenses incurred in attending the Continuing Legal Education course are deductible if they maintain or improve professional skills, Treas. Reg. Section 1.162.5.

WHO MAY ENROLL: Enrollment is open to all members of the Bar and the Judiciary. Law students and persons currently employed as legal assistants may enroll on a space available basis.

MATERIALS: Each participant will receive a comprehensive manual on the Revised Criminal Code as well as outlines prepared to supplement the presentations.

TAPE RECORDINGS: Tape recording of CLE seminars by members of the Alaska Bar Association for future reference and use in the practice of law is permitted. Attorney wishing to record a particular seminar should inform the CLE Staff in advance. Tape recording for any other purpose, commercial or otherwise, is prohibited.

REGISTRATION FORM

- -

Please Detach and Mail

MAIL TO: CLE REVISED CRIMINAL CODE
Alaska Bar Association
P.O. Box 279
Anchorage, Ak. 99510

Make check payable to
Alaska Bar Association

Enclosed is my check for_____covering my registration/materials for the REVISED CRIMINAL CODE seminar at:

(___) November 16-17 at Travelers Inn in Fairbanks

(___) November 29=30 at Anchorage Westward Hilton in Anchorage

(___) December 7-8 at Juneau Hilton in Juneau

NAME_____

ADDRESS_____

CITY_____STATE_____

OFFICE PHONE_____ZIP_____

AGENDA

Board of Governors

ALASKA BAR ASSOCIATION
360 K Street, Room 105
Anchorage, Alaska 9950[illegible]

September 6, 7, 8, & 9, 1979

THRUSDAY
September 6, 1979

9:00 A.M.	(1) Roll call and Opening Remarks by President Willard
9:15 A.M.	(2) Executive Director Applicants
12:00 NOON	LUNCH
1:00 P.M.	Discussion of Alaska Bar Insurance - Walt Baldwin & Jon Link
1:30 P.M.	(3) Admission Appeals & Discipline (a) Revised report form - Garrison (b) Arbitration between Attorneys (c) Applicant #4090 (7/79) (d) Applicant #4088 (2/79) (e) Applicant #4069 (2/79) (f) Applicant #4046 (2/79) (g) Multi-State/Shelley (h) Foreign Law School Graduation
4:30 P.M.	(4) CLE Committee Report - Hartig
	(5) Report on Committee Chairmen's Handbook - Hartig
6:00 P.M.	ADJOURNMENT

FRIDAY
September 7, 1979

9:00 A.M.	(6) Approval of Minutes of June, July and August
9:30 A.M.	(7) Regulatory Investigation
11:00 A.M.	(8) Policy Manual Ratification
12:00 NOON	LUNCH
1:00 P.M.	(9) Legislative Study Committee/Judicial Council - Rubenstein
2:30 P.M.	(10) Bar Poll Procedures
3:00 P.M.	(11) Workmens' Compensation Manual - Bill Erwin & Joe Kalamarides
3:30 P.M.	(12) Proposed Handbook on Childrens' Law - Bonnie Lembo
4:00 P.M.	(13) Membership Status Changes & ALSC Waivers
4:30 P.M.	(14) Financial Report (a) Client Security Fund Interest (b) Character Investigation (c) Signatory Resolution
5:00 P.M.	ADJOURNMENT

SATURDAY
September 8, 1979

9:00 A.M. (15) Statutes, By-Laws & Rules David Bundy
- (a) For Final Adoption
  - (1) Bar Rule 1,Section 4
  - (2) Bar Rule 2
  - (3) Bar Rule 3
  - (4) Bar Rule 6, §1
  - (5) Bar Rule 13 & 15
  - (6) Bar Rule 14(f)
  - (7) Bar Rule 37
  - (8) Bar Rule 48
  - (9) Adjunct Membership By-Laws
- (b) For Consideration
  - (1) Amendments to Rule 16
  - (2) Proposed amendments to Rule 5,6,7,7.1 and 8
  - (3) Trust Fund Audit Rule
  - (4) Bar Foundation By-Laws
  - (5) Solicitation Rule
  - (6) Comparision of Model Rules of Discipline and Alaska Discipline Rules
  - (7) Comparison of ABA Code of Professional Responsibility and Alaska Code of Professional Responsibility
  - (8) Advertising Regulations
  - (9) Law School Accreditation
  - (10) Graduation Certificates

12:00 NOON LUNCH

1:00 P.M. (16) Ethics Opinions

2:00 P.M. (17) Pro Bono Activity Poll - Ron Baird

2:30 P.M. (18) Client Security Fund Appointments
Disciplinary Hearing Committee Appointment - Second & Fourth Judicial Districts

3:00 P.M. (19) Report from Special Committee on Criminal Conflict Appointments

3:30 P.M. (20) Third Judicial District Affidavits

4:00 P.M. (21) Havelock Proposals

5:00 P.M. (22) Associate Committee Membership - Stephen Conn
Goals and Purposes of the Paralegal Committee

5:30 P.M. (23) Judicial Fees and Federal Court Problems

6:00 P.M. ADJOURNMENT

SUNDAY
September 9, 1979

9:00 A.M. (24) Alaska Bar Examination
- (a) Prolonged Inactive Status
- (b) California Policy

9:30 A.M. (25) Public Law Review

10:00 A.M. (26) Retainer Series Personal Legal Defender - Paul Jones

10:30 A.M. (27) Alaska Bar Lobbyist

11:00 A.M. (28) Discussion of Prepaid Legal

11:30 A.M. (29) Board Meeting Schedules

12:00 NOON LUNCH

SUNDAY
September 9, 1979 CONT'D

1:00 P.M.	(30)	Specialization
2:00 P.M.	(31)	Report on American Bar Association Meeting Report on Ninth Circuit Judicial Conference Report on ALSC Meeting Report on Supreme Court Meeting
3:00 P.M.	(32)	Approval of 1982 CLE Meeting Agreement
3:30 P.M.	(33)	Old and New Business
4.00 P.M.		ADJOURNMENT

Sec. 08.04.660. Ownership of accountant's working papers. Statements, records, schedules, working papers, and memoranda made by a certified public accountant, public accountant, or registered foreign accountant incident to or in the course of professional service to a client, except reports submitted to a client, are the property of the accountant, in the absence of an express agreement between the accountant and the client to the contrary. No statement, record, schedule, working paper, or memorandum may be sold, transferred, or bequeathed to a person other than a partner of the accountant without the consent of the client or his personal representative or assignee. (§ 20 ch 187 SLA 1960)

Sec. 08.04.670. Construction. If any provision of this chapter or the application of any provision to any person or to any circumstances is invalid, the remainder shall not be affected. (§ 22 ch 187 SLA 1960)

Article 7. General Provisions.

Section
680. Definitions
690. Short title

Sec. 08.04.680. Definitions. As used in this chapter

(1) "board" means the Alaska State Board of Public Accountancy;

(2) "certificate" means certificate as a certified public accountant;

(3) "license" means license as a public accountant. (§ 21 ch 187 SLA 1960)

Sec. 08.04.690. Short title. This chapter may be cited as the Accountancy Act. (§ 1 ch 167 SLA 1960; am § 5 ch 127 SLA 1974; am § 26 ch 147 SLA 1976)

Effect of amendments. — The 1974 amendment deleted "of 1960" from the end of the section.

The 1976 amendment reenacted this section as amended in 1974 without change.

Legislative committee report. — For report on ch. 127, SLA 1974 (SCSHB 817 am S), see 1974 House Journal, p. 657.

Chapter 08. Alaska Integrated Bar Act.

Article
1. The Alaska Bar Association (§§ 08.08.010 — 08.08.020)
2. The Board of Governors and Officers (§§ 08.08.030 — 08.08.120)
3. Admission to Alaska Bar (§§ 08.08.130 — 08.08.207)
4. Unlawful Acts (§§ 08.08.210 — 08.08.240)
5. General Provisions (§§ 08.08.245 — 08.08.250)

Article 1. The Alaska Bar Association.

Section
10. Creation of Alaska Bar Association
20. Members

Sec. 08.08
created an
Association,
Bar shall ha
purpose of c
Bar, enter in
and persona

The Alaska
be complied wi
(1957).
Applied in Ir
Orders No. 64,
No. 255 (File N
Quoted in In
Ct. Op. No. 10
1261 (1974).
Am. Jur., AL
5 Am. Ju ., Att
249 to 301.
Court's pov
investigation o

Sec. 08.08
in the state
inactive mer
considered t
(b) A pers
14, 1976, is
a member or
1955; am §

Cross refere
take the bar ex
Effect of
amendment de
this section as
subsection, su
member" for "
record is eligib
the first sente
sentence. The
subsection (b).
Editor's no
findings, see §

A

Section
30. Governanc
40. Board of
50. Election o
60. Election o
70. Vacancies
80. Powers of

Sec. 08.08.010. Creation of Alaska Bar Association. There is created an instrumentality of the state known as the Alaska Bar Association, referred to in this chapter as the Alaska Bar. The Alaska Bar shall have a common seal, may sue and be sued, and may, for the purpose of carrying into effect and promoting the objects of the Alaska Bar, enter into contracts and acquire, hold, encumber and dispose of real and personal property. (§ 2 ch 196 SLA 1955)

The Alaska Bar Act is valid and must be complied with. In re Paul, 17 Alaska 360 (1957).

Applied in In re Alaska Supreme Court Orders No. 64, 68, 69, 70 & 71, Sup. Ct. Op. No. 255 (File No. 532), 395 P.2d 853 (1964).

Quoted in In re Petition of Moody, Sup. Ct. Op. No. 1065 (File No. 2035), 524 P.2d 1261 (1974).

Am. Jur., ALR and C.J.S. references. — 5 Am. Jur., Attorneys at Law, §§ 1 to 28, 249 to 301.

Court's power to conduct general investigation of practices of members of bar without charges against particular members, 60 ALR 860.

Court's power to promulgate rules providing for integration of state bar, 114 ALR 163; 151 ALR 617.

Compulsory membership in state bar, 114 ALR 165; 151 ALR 619.

Requiring license fees from members of the state bar, 114 ALR 165; 151 ALR 619.

Legislature's power respecting admission to bar, 144 ALR 150.

7 C.J.S., Attorney and Client §§ 4 to 6, 11.

Sec. 08.08.020. Members. (a) Every person licensed to practice law in the state shall become a member in the Alaska Bar. All active and inactive members in good standing as of September 14, 1976 shall be considered to be members.

(b) A person licensed to practice law in the state who, on September 14, 1976, is not enrolled on the membership rolls, shall be reinstated as a member only in accordance with the Alaska Bar Rules. (§ 4 ch 196 SLA 1955; am § 2 ch 181 SLA 1976)

Cross reference. — As to eligibility to take the bar examination, see AS 08.08.205.

Effect of amendment. — The 1976 amendment designated the provisions of this section as subsection (a), and in that subsection, substituted "shall become a member" for "except a judge of a court of record is eligible for active membership" in the first sentence and added the second sentence. The amendment also added subsection (b).

Editor's note. — As to legislative findings, see § 1, ch. 181, SLA 1976 in the Temporary and Special Acts of 1976 in Binder 9.

Section 14, ch. 181, SLA 1976, provides: "The legislature declares that this Act is passed pursuant to art. IV, secs. 1 and 15, Constitution of the State of Alaska, which empower the legislature to prescribe the jurisdiction of the courts, and to change the Rules of Court, and pursuant to the legislature's inherent power."

Quoted in In re Petition of Moody, Sup. Ct. Op. No. 1065 (File No. 2035), 524 P.2d 1261 (1974).

Article 2. The Board of Governors and Officers.

Sec. 08.08.030. Governance of the Alaska Bar. The Alaska Bar is governed by the Board of Governors of the Alaska Bar. The board has the powers and duties conferred by this chapter and by the Alaska Bar Rules. Members of the board shall receive no salary. (§ 6 ch 196 SLA 1955; am § 3 ch 181 SLA 1976)

Effect of amendment. — The 1976 amendment added "and by the Alaska Bar Rules" to the end of the second sentence.

Editor's note. — As to legislative findings, see § 1, ch. 181, SLA 1976 in the Temporary and Special Acts of 1976 in Binder 9.

Section 14, ch. 181, SLA 1976, provides: "The legislature declares that this Act is passed pursuant to art. IV, secs. 1 and 15, Constitution of the State of Alaska, which empower the legislature to prescribe the jurisdiction of the courts, and to change the Rules of Court, and pursuant to the legislature's inherent power."

Sec. 08.08.040. Board of Governors of the Alaska Bar. (a) There is hereby constituted a Board of Governors of the Alaska Bar to be elected under bylaws and regulations promulgated by the board.

(b) The board consists of nine active members elected by the active members of the Alaska Bar. (§ 5 ch 196 SLA 1955; am § 1 ch 178 SLA 1960; am § 4 ch 181 SLA 1976)

Effect of amendment. — The 1976 amendment substituted "bylaws and regulations" for "rules" in subsection (a) and deleted "practicing" preceding "members elected" and "from the four judicial districts" following "Alaska Bar" in subsection (b).

Editor's note. — As to legislative findings, see § 1, ch. 181, SLA 1976 in the Temporary and Special Acts of 1976 in Binder 9.

Section 14, ch. 181, SLA 1976, provides: "The legislature declares that this Act is passed pursuant to art. IV, secs. 1 and 15, Constitution of the State of Alaska, which empower the legislature to prescribe the jurisdiction of the courts, and to change the Rules of Court, and pursuant to the legislature's inherent power."

Sec. 08.08.050. Election of the board. (a) Two members of the board shall be elected by and from among the members of the association resident in the first judicial district; four members of the board shall be elected by and from among the members of the association resident in the third judicial district; two members by and from among the members of the association resident in the combined area of the second and fourth judicial districts; and one member at large from the entire state.

(b) Members of the Board of Governors shall hold office for three years and until their successors are elected and qualified.

(c) Three board members shall be elected annually, on the following triennial rotation.

(1) in the first year, one member at large and two members from the third judicial district;

(2) in the second year, one member from the combined area of the second and fourth judicial districts, one member from the third judicial district, and one member from the first judicial district; and

(3) in the third year, one member from the first judicial district, one member from the combined area of the second and fourth judicial districts, and one member from the third judicial district. (§ 5 ch 196 SLA 1955; am § 1 ch 178 SLA 1960; am §§ 1, 2 ch 9 SLA 1971)

Editor's note. — Section 3, ch. 9, SLA 1971, provides: "The triennial rotation described in sec. 2 of this Act shall begin in 1971, which is the 'first year' as the term is used in sec. 2 of this Act [AS 08.08.050(c)]. The present members of the board shall continue to be members until their successors assume office."

Sec. 08.08.060. Election of officers. The active members of the Alaska Bar who are in actual attendance at the association's annual convention shall elect by a majority vote during the convention the association's officers from the membership of the Board of Governors. (§ 5 ch 196 SLA 1955; am § 1 ch 178 SLA 1960)

Sec. 08.08.070. Vacancies on the board. Vacancies in board membership shall be filled by appointment by the remaining board members until the next annual election. (§ 5 ch 196 SLA 1955; am § 1 ch 178 SLA 1960)

Sec. 08.08.080. Powers of board. (a) Except as may be otherwise provided in the Alaska Bar Rules, the board may adopt reasonable provisions

(1) concerning membership and the classification of membership in the Alaska Bar;

(2) providing for employees of the Alaska Bar, the time. place and method of their selection, and their respective powers, duties, terms of office, and compensation;

(3) concerning annual and special meetings;

(4) concerning the collection, deposit, and disbursement of membership and admission fees, penalties, and all other funds;

(5) providing for the organization and government of local subdivisons of the Alaska Bar;

(6) providing for all other matters affecting in any way the organization and functioning of the Alaska Bar.

(b) The board may

(1) approve and recommend to the state supreme court additional rules for promulgation by the court including rules concerning admission and discipline and defining the practice of law;

(2) adopt reasonable bylaws and regulations consistent with the Alaska Bar Rules;

(3) sue in the name of the Alaska Bar in a court of competent jurisdiction to enjoin a person from doing an act constituting a violation of this chapter;

(4) fix the annual membership fee for active and inactive members. (§ 7 ch 196 SLA 1955; am §§ 2, 3 ch 178 SLA 1960; am § 5 ch 181 SLA 1976)

Cross reference. — See Alaska Bar Rules adopted by the Alaska supreme court.

Effect of amendment. — The 1976 amendment rewrote this section.

Editor's note. — As to legislative findings, see § 1, ch. 181, SLA 1976 in the Temporary and Special Acts of 1976 in Binder 6.

Section 14, ch. 181, SLA 1976, provides: "The legislature declares that this Act is passed pursuant to art. IV, secs. 1 and 15, Constitution of the State of Alaska, which empower the legislature to prescribe the jurisdiction of the courts, and to change the Rules of Court, and pursuant to the legislature's inherent power."

The Board of Governors has not defined the term "practice of law" by rule or otherwise. In re Babcock, Sup. Ct. Op. No. 178 (File No. 408), 387 P.2d 694 (1963), decided prior to the 1976 amendment to this section.

For case construing board's power to define the practice of law prior to the 1976 amendment of this section, see In re Petition of Moody, Sup. Ct. Op. No. 1065 (File No. 2035), 524 P.2d 1261 (1974).

The association can classify its membership in terms of occupational criteria and apply those criteria to persons who have sought and gained membership in the association. For at that point the association does have authority to affect the member himself, not the government by whom he is employed. In re Petition of Moody, Sup. Ct. Op. No. 1065 (File No. 2035), 524 P.2d 1261 (1974), decided prior to the 1976 amendment of this section.

A superior court law clerk should be regarded as practicing law for the purposes of membership classification. In re Petition of Moody, Sup. Ct. Op. No. 1065 (File No. 2035), 524 P.2d 1261 (1974), decided prior to the 1976 amendment of this section.

Quoted in In re Houston, Sup. Ct. Op. No. 129 (File No. 325), 378 P.2d 644 (1963).

Sec. 08.08.085. Annual report to legislature. The Board of Governors shall report annually to the legislature on all matters concerning admissions, discipline of members, and disbarment proceedings, except for those matters defined as confidential by court rule. (§ 6 ch 181 SLA 1976)

Editor's note. — As to legislative findings, see § 1, ch. 181, SLA 1976 in the Temporary and Special Acts of 1976 in Binder 9.

Section 14, ch. 181, SLA 1976, provides: "The legislature declares that this Act is passed pursuant to art. IV, secs. 1 and 15, Constitution of the State of Alaska, which empower the legislature to prescribe the jurisdiction of the courts, and to change the Rules of Court, and pursuant to the legislature's inherent power."

Sec. 08.08.090. Power of the bar to make or change bylaws and regulations. Any bylaw or regulation adopted by the Board of Governors may be modified or rescinded, or a new bylaw or regulation may be adopted, by a vote of the active members of the association under bylaws and regulations to be prescribed by the Board of Governors. (§ 7 ch 196 SLA 1955; am § 3 ch 168 SLA 1960; am § 7 ch 181 SLA 1976)

Effect of amendment. — The 1976 amendment substituted "bylaw or regulation" for "rule" in two places and "bylaws and regulations" for "rules" in one place and deleted "under § 80 of this chapter" following "adopted by the Board of Governors."

Editor's note. — As to legislative findings, see § 1, ch. 181, SLA 1976 in the Temporary and Special Acts of 1976 in Binder 9.

Section 14, ch. 181, SLA 1976, provides: "The legislature declares that this Act is passed pursuant to art. IV, secs. 1 and 15, Constitution of the State of Alaska, which empower the legislature to prescribe the jurisdiction of the courts, and to change the Rules of Court, and pursuant to the legislature's inherent power."

Sec. 08.08.100. Administrative Procedure Act. The bylaws and regulations adopted by the board or the members of the Alaska Bar under this chapter are not subject to the Administrative Procedure Act (AS 44.62). (§ 7 ch 196 SLA 1955; am § 3 ch 178 SLA 1960; am § 8 ch 181 SLA 1976)

Effect of amendment. — The 1976 amendment substituted "bylaws and regulations" for "rules."

Editor's note. — As to legislative findings, see § 1, ch. 181, SLA 1976 in the Temporary and Special Acts of 1976 in Binder 9.

Section 14, ch. 181, SLA 1976, provides: "The legislature declares that this Act is passed pursuant to art. IV, secs. 1 and 15, Constitution of the State of Alaska, which empower the legislature to prescribe the jurisdiction of the courts, and to change the Rules of Court, and pursuant to the legislature's inherent power."

Sec. 08.08.110. Admission, suspension and disbarment. Repealed by § 11 ch 181 SLA 1976.

Editor's note. — The repealed section derived from § 8, ch. 196, SLA 1955; § 7, ch. 32, SLA 1971.

As to legislative findings, see § 1, ch. 181, SLA 1976 in the Temporary and Special Acts of 1976 in Binder 9.

Section 14, ch. 181, SLA 1976, provides: "The legislature declares that this Act is passed pursuant to art. IV, secs. 1 and 15, Constitution of the State of Alaska, which empower the legislature to prescribe the jurisdiction of the courts, and to change the Rules of Court, and pursuant to the legislature's inherent power."

Legislative committee report. — For report on ch. 32, SLA 1971 (HB 111 am), see 1971 House Journal, p. 138.

Sec. 08.08.120. Disqualification to hear disciplinary matters. Repealed by § 11 ch 181 SLA 1976.

Editor's note. — The repealed section derived from § 8, ch. 196, SLA 1955.

As to legislative findings, see § 1, ch. 181, SLA 1976 in the Temporary and Special Acts of 1976 in Binder 9.

Section 14, ch. 181, SLA 1976, provides: "The legislature declares that this Act is passed pursuant to art. IV, secs. 1 and 15, Constitution of the State of Alaska, which empower the legislature to prescribe the jurisdiction of the courts, and to change the Rules of Court, and pursuant to the legislature's inherent power."

Article 3. Admission to Alaska Bar.

Section

Sec. 08.08.130. Eligibility for admission. Repealed by § 11 ch 181 SLA 1976.

Editor's note. — The repealed section derived from § 9, ch. 196, SLA 1955; § 1, ch. 33, SLA 1957; § 4, ch. 178, SLA 1960; § 1, ch. 45, SLA 1962; § 1, ch. 47, SLA 1965; § 1, ch. 135, SLA 1967; § 1, ch. 16, SLA 1970; § 5, ch. 69, SLA 1970; § 25, ch. 245, SLA 1970; § 1, ch. 71, SLA 1972; § 6, ch. 127, SLA 1974.

As to legislative findings, see § 1, ch. 181, SLA 1976 in the Temporary and Special Acts of 1976 in Binder 9.

Section 14, ch. 181, SLA 1976, provides: "The legislature declares that this Act is passed pursuant to art. IV, secs. 1 and 15, Constitution of the State of Alaska, which empower the legislature to prescribe the jurisdiction of the courts, and to change the Rules of Court, and pursuant to the legislature's inherent power."

Legislative committee reports. — For report on ch. 16, SLA 1970 (HB 624 am S), see 1970 House Journal, p. 290. For report on ch. 69, SLA 1970 (HB 564), see 1970 House Journal Supplement No. 2, p. 7.

Chapter 245, SLA 1970 (HCSSB 399 am H), was identical to CSHB 406 (Jud.). For report on CSHB 406 (Jud.), see 1970 House Journal Supplement No. 6. For report on ch. 71, SLA 1972 (HCSSB 383 am H), see 1972 House Journal, p. 898. For report on ch. 127, SLA 1974 (SCSHB 817 am S), see 1974 House Journal, p. 657.

Sec. 08.08.135. Study of law in office of practicing attorney.

Repealed by § 2 ch 135 SLA 1967; § 11 ch 181 SLA 1976.

Editor's note. — The repealed section derived from § 2, ch. 47, SLA 1965.

As to legislative findings, see § 1, ch. 181, SLA 1976 in the Temporary and Special Acts of 1976 in Binder 9.

Section 14, ch. 181, SLA 1976, provides: "The legislature declares that this Act is passed pursuant to art. IV, secs. 1 and 15, Constitution of the State of Alaska, which empower the legislature to prescribe the jurisdiction of the courts, and to change the Rules of Court, and pursuant to the legislature's inherent power."

Sec. 08.08.140. Out-of-state attorneys.

Repealed by § 11 ch 181 SLA 1976.

Editor's note. — The repealed section derived from § 3, ch. 196, SLA 1955; § 1, ch. 33, SLA 1957; § 4, ch. 178, SLA 1960; § 1, ch. 98, SLA 1963; § 7, ch. 127, SLA 1974.

As to legislative findings, see § 1, ch. 181, SLA 1976 in the Temporary and Special Acts of 1976 in Binder 9.

Section 14, ch. 181, SLA 1976, provides: "The legislature declares that this Act is passed pursuant to art. IV, sec. 1 and 15, Constitution of the State of Alaska, which empower the legislature to prescribe the jurisdiction of the courts, and to change the Rules of Court, and pursuant to the legislature's inherent power."

Legislative committee report. — For report on ch. 127, SLA 1974 (SCSHB 817 am S), see 1974 House Journal, p. 657.

Sec. 08.08.150. Fee for active members.

Repealed by § 11 ch 181 SLA 1976.

Editor's note. — The repealed section derived from § 10 a, ch. 196, SLA 1955; § 7, ch. 178, SLA 1960; § 1, ch. 161, SLA 1968.

As to legislative findings, see § 1, ch. 181, SLA 1976 in the Temporary and Special Acts of 1976 in Binder 9.

Section 14, ch. 181, SLA 1976, provides: "The legislature declares that this Act is passed pursuant to art. IV, secs. 1 and 15, Constitution of the State of Alaska, which empower the legislature to prescribe the jurisdiction of the courts, and to change the Rules of Court, and pursuant to the legislature's inherent power."

Legislative committee report. — For report on ch. 161, SLA 1968 (HB 350), see 1968 House Journal, p. 299.

Sec. 08.08.160. Fee for inactive members.

Repealed by § 11 ch 181 SLA 1976.

Editor's note. — The repealed section derived from § 10 b, ch. 196, SLA 1955.

As to legislative findings, see § 1, ch. 181, SLA 1976 in the Temporary and Special Acts of 1976 in Binder 9.

Section 14, ch. 181, SLA 1976, provides: "The legislature declares that this Act is passed pursuant to art. IV, secs. 1 and 15, Constitution of the State of Alaska, which empower the legislature to prescribe the jurisdiction of the courts, and to change the Rules of Court, and pursuant to the legislature's inherent power."

Sec. 08.08.170. Fee for applicants for admission.

Repealed by § 11 ch 181 SLA 1976.

Editor's note. — The repealed section derived from § 10 c, ch. 196, SLA 1955.

As to legislative findings, see § 1, ch. 181, SLA 1976 in the Temporary and Special Acts of 1976 in Binder 9.

Section 14, ch. 181, SLA 1976, provides: "The legislature declares that this Act is passed pursuant to art. IV, secs. 1 and 15, Constitution of the State of Alaska, which empower the legislature to prescribe the jurisdiction of the courts, and to change the Rules of Court, and pursuant to the legislature's inherent power."

Sec. 08.08.180. Nonpayment of fees.

Repealed by § 11 ch 181 SLA 1976.

Editor's note. — The repealed section derived from § 10 d, ch. 196, SLA 1955; § 8, ch. 127, SLA 1974.

As to legislative findings, see § 1, ch. 181, SLA 1976 in the Temporary and Special Acts of 1976 in Binder 9.

Section 14, ch. 181, SLA 1976, provides: "The legislature declares that this Act is passed pursuant to art. IV, secs. 1 and 15, Constitution of the State of Alaska, which empower the legislature to prescribe the jurisdiction of the courts, and to change the Rules of Court, and pursuant to the legislature's inherent power."

Legislative committee report. — For report on ch. 127, SLA 1974 (SCSHB 817 am S), see 1974 House Journal, p. 657.

Sec. 08.08.190. Disposition of funds.

Repealed by § 11 ch 181 SLA 1976.

Editor's note. — The repealed section derived from § 10 e, ch. 196, SLA 1955.

As to legislative findings, see § 1, ch. 181, SLA 1976 in the Temporary and Special Acts of 1976 in Binder 9.

Section 14, ch. 181, SLA 1976, provides: "The legislature declares that this Act is passed pursuant to art. IV, secs. 1 and 15, Constitution of the State of Alaska, which empower the legislature to prescribe the jurisdiction of the courts, and to change the Rules of Court, and pursuant to the legislature's inherent power."

Sec. 08.08.200. Procedure for admission.

Repealed by § 11 ch 181 SLA 1976.

Editor's note. — The repealed section derived from § 11, ch. 196, SLA 1955; § 5, ch. 178, SLA 1960.

As to legislative findings, see § 1, ch. 181, SLA 1976 in the Temporary and Special Acts of 1976 in Binder 9.

Section 14, ch. 181, SLA 1976, provides: "The legislature declares that this Act is passed pursuant to art. IV, secs. 1 and 15, Constitution of the State of Alaska, which empower the legislature to prescribe the jurisdiction of the courts, and to change the Rules of Court, and pursuant to the legislature's inherent power."

Sec. 08.08.205. Eligibility to take bar examination. Applicants who have not graduated from an accredited law school but are otherwise qualified may take the bar examination if they have completed a clerkship in the manner prescribed by § 207 of this chapter. (§ 12 ch 181 SLA 1976)

Cross reference. — As to admission to practice law, see Alaska Bar Rule II, adopted by the Alaska supreme court.

Editor's note. — As to legislative findings, see § 1, ch. 181, SLA 1976 in the Temporary and Special Acts of 1976 in Binder 9.

Section 14, ch. 181, SLA 1976, provides: "The legislature declares that this Act is passed pursuant to art. IV, secs. 1 and 15, Constitution of the State of Alaska, which empower the legislature to prescribe the jurisdiction of the courts, and to change the Rules of Court, and pursuant to the legislature's inherent power."

Sec. 08.08.207. Law clerks. (a) Every person who desires subsequently to qualify as a general applicant for admission to the Alaska Bar without having been graduated from an approved law school shall register as a law clerk as provided by this section. He must be a bona fide resident of the state and shall present satisfactory proof that he has been granted a bachelor's degree (other than bachelor of laws) by a college or university offering the degree on the basis of a four-year course of study and has successfully completed his first year of studies at a law school.

(b) The applicant shall obtain regular and full-time employment as a law clerk in the office of a judge of a court of record or an attorney or firm of attorneys licensed to practice law in Alaska and engaged in the general practice of law. The person by whom he is employed, or if he is employed by a firm, the person under whose direction he is to study, must have been admitted to practice law in this state for at least five years at the time the application for registration is filed, and be otherwise eligible to act as tutor. Before the commencement of the study of law under this section, the applicant shall file with the Alaska supreme court an application to register as a law clerk. The application shall be made on a form to be provided by the court and shall require answers to interrogatories the supreme court may determine from time to time to be relevant to a consideration of the application. Proof of a fact stated in the application may be required by the court. If the applicant fails or refuses to furnish any information or proof or answer any interrogatory required by the application, or independently by the court, in a manner satisfactory to the court, the application may be denied.

(c) Accompa
statement und
as a law clerk,
direction he is
that person wi
the applicant i
adopted by the
disciplinary pr
pending again
suspended or
change his tu
registration a
under his pric

(d) A law c
must pursue
weeks each y
being underst
duties of law
The tutor mu
clerk, must e
previous mon
requirements

(e) The ex
answered by
examination.
tutor shall be
and answers
together with
court, no cre

(f) If a reg
of his law stu
may cancel t

(g) The co
cover subject
from time to

(h) A regis
nonapproved
for work don
given for fra
school work.

(i) As used
(1) a law s
Council of I
Association

(c) Accompanying the application there must be submitted a statement under oath of the person by whom the applicant is employed as a law clerk, or, if he is employed by a firm, of the person under whose direction he is to study, certifying to the fact of the employment and that that person will act as tutor for the applicant and will faithfully instruct the applicant in the branches of the law prescribed by the course of study adopted by the supreme court. No person is eligible to act as tutor while disciplinary proceedings (following the service of a formal complaint) are pending against him, or if he has ever been censured, reprimanded, suspended or disbarred. If a registered law clerk finds it necessary to change his tutor during his period of study, a new application for registration as a law clerk is required and such credit given for study under his prior tutor as the court may determine.

(d) A law clerk whose registration has been approved by the court must pursue a course of study for three calendar years of at least 44 weeks each year, with a minimum each week of 35 hours of study (it being understood that the time actually spent in the performance of the duties of law clerk is to be considered as time spent in the study of law). The tutor must give personal direction regularly and frequently to the clerk, must examine him at least once a month on the work done in the previous month, and must certify monthly as to compliance with the requirements of this subsection and (e) and (g) of this section.

(e) The examinations shall be written and not oral, and shall be answered by the clerk without research or assistance during the examination. The monthly certificate of compliance submitted by the tutor shall be accompanied by the originals of all written examinations and answers given during the period reported. If the certificates, together with the required attachments, are not filed timely with the court, no credit may be given for any period of the default.

(f) If a registered law clerk does not furnish evidence of completion of his law studies within a period of six years after registration, the court may cancel the registration.

(g) The course of study to be pursued by a registered law clerk shall cover subjects, textbooks, case books, and other material the court may from time to time require.

(h) A registered law clerk who has attended either an approved or a nonapproved law school may, in the discretion of the court, receive credit for work done and obtain advanced standing. In no event will credit be given for fractional parts of semesters or terms, or for correspondence school work.

(i) As used in this section "law school" means

(1) a law school accredited, approved or meeting the standards of the Council of Legal Education of the American Bar Association or the Association of American Law Schools; or

(2) a school in Alaska offering a course of study which the supreme court approves as the equivalent to a year's study in a law school under (1) of this subsection. (§ 12 ch 181 SLA 1976)

Cross reference. — For amendment to Rule 2 of Part I of the Alaska Bar Rules, see § 13, ch. 181, SLA 1976, located in the 1976 Temporary and Special Acts and Resolutions in Binder 6.

Editor's note. — As to legislative findings, see § 1 ch. 181, SLA 1976 in the Temporary and Special Acts of 1976 in Binder 9.

Section 14, ch. 181, SLA 1976, provides: "The legislature declares that this Act is passed pursuant to art. IV, secs. 1 and 15, Constitution of the State of Alaska, which empower the legislature to prescribe the jurisdiction of the courts, and to change the Rules of Court, and pursuant to the legislature's inherent power."

Article 4. Unlawful Acts.

Sec. 08.08.210. Who may practice law. (a) No person may engage in the practice of law in the state unless he is licensed to practice law in Alaska and is an active member of the Alaska Bar. A member of the bar in good standing in another jurisdiction may appear in the courts of the state under the rules the supreme court may prescribe.

(b) The practice of law shall be defined in the Alaska Bar Rules.

(c) This section and § 230 of this chapter do not apply to the practice of law for the legislature by a person employed by or under contract with the legislature who

(1) has been employed as a member of its legal staff on or before September 14, 1976;

(2) has engaged in the practice of law on behalf of the legislature on or before September 14, 1976 and been compensated on a contractual or fee basis; or

(3) is employed by or under contract to the legislature and whose activities would constitute the practice of law under this chapter and under Alaska Bar Rules, until the results are released of the third Alaska Bar examination following that person's employment.

(d) Employees of the Department of Law whose activities would constitute the practice of law under this chapter and under Alaska Bar Rules are required to obtain a license to practice law in Alaska, no later than 10 months following the commencement of their employment. (§ 12 ch 196 SLA 1955; am § 9 ch 181 SLA 1976)

Revisor's note. — The supreme court has adopted Rule 81, Rules of Civil Procedure, which provides for the practice in state courts by attorneys from other jurisdictions. This is a matter within the court's power to regulate and the second sentence of this section is probably superseded.

Effect of amendment. — The 1976 amendment designated the provisions of this section as subsection (a), and in that subsection, deleted "private" preceding "practice of law" and inserted "is licensed to practice law in Alaska and" in the first sentence, and substituted "supreme court" for "board" in the second sentence. The

amendment also added subsections (b), (c) and (d).

Editor's note. — As to legislative findings, see § 1, ch. 181, SLA 1976 in the Temporary and Special Acts of 1976 in Binder 9.

Section 14, ch. 181, SLA 1976, provides: "The legislature declares that this Act is passed pursuant to art. IV, secs. 1 and 15, Constitution of the State of Alaska, which empower the legislature to prescribe the jurisdiction of the courts, and to change the Rules of Court, and pursuant to the legislature's inherent power."

Quoted in In re Houston, Sup. Ct. Op. No. 129 (File No. 325), 378 P.2d 644 (1963); In re Petition of Moody, Sup. Ct. Op. No. 1065 (File No. 2035), 524 P.2d 1261 (1974).

Sec. 08.08.220. Disciplinary proceedings and review. Upon finally determining any cause involving the discipline, disbarment, suspension, or reinstatement of a member of the Alaska Bar, the board shall certify its findings and recommendations on the cause to the supreme court. Within 30 days after receiving the findings and recommendations, the court shall issue, in full accordance with the recommendations, an order of disbarment, suspension, reinstatement, dismissal, or otherwise, unless the accused member sooner petitions the court for review of the proceedings, findings, and recommendations of the board. If such a petition is made, the court shall promptly review the cause in the manner prescribed in the Administrative Procedure Act (AS 44.62). (§ 14 ch 196 SLA 1955; am § 6 ch 178 SLA 1960)

Constitutionality. — Insofar as this section attempts to impose upon the supreme court the mandatory duty of issuing an order in full accordance with the recommendation of the board, it is unconstitutional for being an invasion of the inherent power of the court to discipline and disbar members of the Alaska Bar Association. In re Mackay, Sup. Ct. Op. No. 279 (File No. ABA 8), 416 P.2d 823 (1965), cert. den., 384 U.S. 1003, 86 S. Ct. 1907, 16 L. Ed. 2d 1016 (1966).

The Alaska Bar Act takes nothing away from the inherent power or authority of the court, but, on the contrary, adds helpful machinery. In re Paul, 17 Alaska 360 (1957).

It gives ample remedies and prescribes proper procedures should the applicant desire to have a hearing before the court upon the recommendations of the Alaska Bar. In re Paul, 17 Alaska 360 (1957).

Scope of review. — The review referred to in this section is not a limited review, but affords re-examination of the entire record by the court. In re Paul, 17 Alaska 360 (1957).

The board itself is not invested with judicial powers. In re Paul, 17 Alaska 360 (1957).

A petition for reinstatement should first be presented to the Board of Governors of the Alaska Bar, not to the courts. In re Paul, 17 Alaska 360 (1957).

Decisions of board merely recommendatory. — Any decisions which this chapter authorizes the Board of Governors to make in the hearings which they hold are merely recommendatory in character. In re Paul, 17 Alaska 360 (1957).

And only final orders of court work disbarment or reinstatement. — The only orders which have the effect of working disbarment or reinstatement of a person are the final orders of the court. In re Paul, 17 Alaska 360 (1957).

The power of the courts to suspend or disbar attorneys has long been recognized. In re Mackay, Sup. Ct. Op. No. 279 (File No. ABA 8), 416 P.2d 823 (1965), cert. den., 384 U.S. 1003, 86 S. Ct. 1907, 16 L. Ed. 2d 1016 (1966).

It cannot be defeated by the legislative branch of government. In re Mackay, Sup. Ct. Op. No. 279 (File No. ABA 8), 416 P.2d 823 (1965), cert. den., 384 U.S. 1003, 86 S. Ct. 1907, 16 L. Ed. 2d 1016 (1966).

Congress cannot limit the supreme court's power to discipline Alaskan lawyers either directly or by continuing in force the provision of a territorial statute claimed to have that effect. In re Mackay, Sup. Ct. Op. No. 279 (File No. ABA 8), 416 P.2d 823 (1965), cert. den., 384 U.S. 1003, 86 S. Ct. 1907, 16 L. Ed. 2d 1016 (1966).

There should not be read into § 8(d) of the Alaska Statehood Act an intent to limit

the powers of the supreme court in disbarment proceedings. In re Mackay, Sup. Ct. Op. No. 279 (File No. ABA 8), 416 P.2d 823 (1965), cert. den., 384 U.S. 1003, 86 S. Ct. 1907, 16 L. Ed. 2d 1016 (1966).

Appellate court may exercise power of disbarment on own motion. In re Mackay, Sup. Ct. Op. No. 279 (File No. ABA 8), 416 P.2d 823 (1965), cert. den., 384 U.S. 1003, 86 S. Ct. 1907, 16 L. Ed. 2d 1016 (1966).

A disciplinary proceeding is not criminal in nature, but is sui generis, being an exercise of the inherent power and jurisdiction of the supreme court over attorneys as officers of the court. In re Mackay, Sup. Ct. Op. No. 279 (File No. ABA 8), 416 P.2d 823 (1965), cert. den., 384 U.S. 1003, 86 S. Ct. 1907, 16 L. Ed. 2d 1016 (1966).

Hence, double jeopardy does not apply. — Double jeopardy in either its constitutional or its common-law sense, has a strict application to criminal prosecutions only. In re Mackay, Sup. Ct. Op. No. 279 (File No. ABA 8), 416 P.2d 823 (1965), cert. den., 384 U.S. 1003, 86 S. Ct. 1907, 16 L. Ed. 2d 1016 (1966).

Board's action must constitute final judgment in order to claim res judicata. — Before the attorney can lay claim to a violation of the doctrine of res judicata in his case, he must show that the action of the Board of Governors, in voting to concur in the minority report of the trial committee that his conduct did not call for any disciplinary action, constituted a final judgment in the proceeding. In re Mackay, Sup. Ct. Op. No. 279 (File No. ABA 8), 416 P.2d 823 (1965), cert. den., 384 U.S. 1003, 86 S. Ct. 1907, 16 L. Ed. 2d 1016 (1966).

But it is the order of the supreme court which constitutes the final judgment in the case. In re Mackay, Sup. Ct. Op. No. 279 (File No. ABA 8), 416 P.2d 823 (1965), cert. den., 384 U.S. 1003, 86 S. Ct. 1907, 16 L. Ed. 2d 1016 (1966).

Due process required where suspension for nonpayment of dues. — Although the Alaska Bar Association provides no procedure in either its bylaws or rules for a hearing before suspension for nonpayment of dues, this does not mean that procedural due process can be ignored. In re Petition of Crosby, Sup. Ct. Op. No. 782 (File No. 1567), 495 P.2d 1270 (1972).

Where nonpayment of dues is the sole issue involved in a suspension, the board may have power to suspend under AS 08.08.180; however, Bar Rule I and this section require that the board certify its findings and recommendations to the supreme court regarding suspension of bar members. In re Petition of Crosby, Sup. Ct. Op. No. 782 (File No. 1567), 495 P.2d 1270 (1972).

Complaint before bar association grievance committee held not a civil action within contemplation of federal removal statute. — See Alaska Bar Ass'n v. Dickerson, 240 F. Supp. 732 (D. Alas. 1965).

Suspension and order of restitution imposed. — In view of the attorney's apparent willingness to make restitution, and the flexibility permitted by an order of suspension with a condition attached to applying for reinstatement, more good can be accomplished by ordering his suspension from the practice of law for a period of one year and until reinstated, and further ordering that his reinstatement at the termination of the suspension shall be conditional upon his making restitution. In re Mackay, Sup. Ct. Op. No. 279 (File No. ABA 8), 416 P.2d 823 (1965), cert. den., 384 U.S. 1003, 86 S. Ct. 1907, 16 L. Ed. 2d 1016 (1966).

Disciplinary action for excessive fees. — An excessive fee is generally regarded as insufficient to warrant disciplinary action unless there are other factors coupled with the excessive fee. United States v. Stringer, 15 Alaska 183, 124 F. Supp. 705 (D. Alas. 1954), rev'd on other grounds, 16 Alaska 305, 233 F.2d 947 (9th Cir. 1956).

Appeal. — Should the attorney feel that the supreme court's investigation of his conduct and the decision in the case is arbitrary, irrational or discriminatory, and offensive to the 14th amendment, there is nothing to prevent him from seeking a writ of certiorari in the Supreme Court of the United States. In re Mackay, Sup. Ct. Op. No. 279 (File No. ABA 8), 416 P.2d 823 (1965), cert. den., 384 U.S. 1003, 86 S. Ct. 1907, 16 L.Ed. 2d 1016 (1966).

Applied in In re Mackay, Sup. Ct. Op. No. 596 (File No. ABA 8), 464 P.2d 304 (1970); Petition of Moody, Sup. Ct. Op. No. 1065 (File No. 2035), 524 P.2d 1261 (1974).

Sec. 08.08.230. Unlawful practice a misdemeanor. (a) Any person not an active member of the Alaska Bar and not licensed to practice law

in Alaska who engages in the practice of law or represents himself as entitled to engage in the practice of law as that term is defined in the Alaska Bar Rules, or an active member of the Alaska Bar who wilfully employs such a person knowing that such person is engaging in the practice of law or representing himself to be entitled to so engage is guilty of a misdemeanor and upon conviction is punishable by a fine of not more than $5,000, or by imprisonment for not more than one year, or by both.

(b) Nothing in this section prohibits the use of paralegal personnel as defined by rules of the Alaska supreme court. (§ 13 ch 196 SLA 1955; am § 10 ch 181 SLA 1976)

Effect of amendment. — The 1976 amendment designated the provisions of this section as subsection (a), and in that subsection, inserted "and not licensed to practice law in Alaska" near the beginning, deleted "private" preceding "practice of law" in two places near the middle, substituted the language beginning "as that term is defined" and ending "entitled to so engage" for "in the state other than as permitted by this chapter" near the middle, and substituted "$5,000" for "$1,000" near the end. The amendment also added subsection (b).

Editor's note. — As to legislative findings, see § 1, ch. 181, SLA 1976 in the Temporary and Special Acts of 1976 in Binder 9.

Section 14, ch. 181, SLA 1976, provides: "The legislature declares that this Act is passed pursuant to art. IV, secs. 1 and 15, Constitution of the State of Alaska, which empower the legislature to prescribe the jurisdiction of the courts, and to change the Rules of Court, and pursuant to the legislature's inherent power."

Sec. 08.08.240. Suspension upon conviction of certain crime.

Repealed by § 11 ch 181 SLA 1976.

Editor's note. — The repealed section derived from § 13, ch. 196, SLA 1955.

As to legislative findings, see § 1, ch. 181, SLA 1976 in the Temporary and Special Acts of 1976 in Binder 9.

Section 14, ch. 181, SLA 1976, provides: "The legislature declares that this Act is passed pursuant to art. IV, secs. 1 and 15, Constitution of the State of Alaska, which empower the legislature to prescribe the jurisdiction of the courts, and to change the Rules of Court, and pursuant to the legislature's inherent power."

Article 5. General Provisions.

Section

Sec. 08.08.245. Definitions.

Repealed by § 3 ch 135 SLA 1967.

Editor's note. — The repealed section derived from § 3, ch. 47, SLA 1965.

Sec. 08.08.250. Short title. This chapter may be cited as the Alaska Integrated Bar Act. (§ 1 ch 196 SLA 1955)

Battle With The Bar

THE ALASKA Bar Association, with a membership restricted to lawyers, hardly needs a lay voice speaking in its defense. It can do very well for itself, thank you. And it presumably will do so when and if it ever goes to court in a case brought against it by the office of the state ombudsman.

But the case itself does merit comment because it raises some issues that should be fascinating even to those who are neither lawyers nor often in the need of help from the ombudsman.

The Associated Press account tells this story:

The ombudsman, Frank Flavin, wants information from the bar association so he can respond to complaints filed by private citizens who have beefs about the way they have been represented by attorneys. He is asking about the bar association's procedures to handle grievance and disciplinary matters. He's not getting many answers.

Because the bar association seems to be dragging its feet in responding to his questions, the ombudsman is starting to apply the screws. He has gone into Superior Court and obtained a subpoena demanding minutes of bar association meetings, financial records dealing with the salary of the bar association's attorney, the amount of money spent on travel by members of the association's board and other financial data.

Mr. Flavin even contends the amount of money the bar association paid to newspaper columnist Art Buchwald, who entertained at the bar's annual convention banquet in Hawaii last February, was improper.

THERE MAY BE good arguments that an organization such as the Alaska Bar Association should not go to the Kauai Surf to hold its annual convention. Ketchikan, Fairbanks, Juneau, Kodiak, Seward, Anchorage or Cordova, to name a few communities in this state, would be glad to get the business.

Some quick-thinking lawyer could whip up a convincing brief that Art Buchwald's honorarium is too expensive for an Alaska organization and that Larry Beck, the Anchorage Community Chorus, the Repertory Theater or any number of Alaska entertainers would be happy to play or sing for their supper at a bar association convention banquet.

Maybe the board members of the lawyers' private club do spend too much money traveling hither and yon, presumably on the business of the association. The ones blessed with fat travel allowances probably don't think so, however.

And those who have anything to do with lawyers know that legal services — at least outside the public defender arena — are not cheap. Whether the lawyers pay their lawyer too much, however, is not much of a subject for debate. Who cares?

The answer is that Mr. Flavin cares, and is making all of these things a matter of legal dispute. But his demands may go too far.

Because he can't get an answer to what appears to be a legitimate public inquiry, he has pulled a trick from the lawyer's briefcase and issued a flurry of demands for other information that appears to be beyond the scope of his official responsibilities. He is practicing what in other bureaucratic domains is an ugly Big Brother tactic — the individual or the business that makes waves or refuses to be subsurvient to some official's interpretation of the regulations invites instant reprisal designed to put the squeeze on those who won't comply.

TO HIS CREDIT, Mr. Flavin has not done this before in his four years as the state's ombudsman. He has conducted himself with commendable restraint and meticulous attention to the narrow confines of providing a service to the public without undue hoopla and hubbub.

It's true, also, that the Alaska Bar Association is a private, dues-paying club with a status quite different from that of the Elks or the Rotary. It has a constitutional assignment and, by law, its members serve as officers of the court.

But whether its members go to Hawaii on business trips or spend their convention dollars at home hardly seems an appropriate matter for investigation or subpoena by the ombudsman.

It is proper for Mr. Flavin to inquire into legitimate complaints about lax disciplinary practices. And the bar association should respond, voluntarily or under command of a court order.

But to pursue the present line of court claims and counterclaims may do nothing more than add to the courts' civil logjam and provide fodder for after-dinner comedians and newspaper humor columnists.

EDITORIAL PAGE

The Anchorage Times

ROBERT B. ATWOOD
Editor and Publisher

WILLIAM J. TOBIN
Associate Editor
And General Manager

CLINTON T. ANDREWS JR.
Managing Editor

The Alaska BAR RAG

Volume 2, Number 10 | Dignitas, Semper Dignitas | October 1979 | $1.00

Johnstone, Avery Tapped for Bench


Karl Johnstone


Charles R. Avery

Karl Johnstone and Charles R. Avery were selected to fill vacant Third Judicial District Superior and District Court seats respectively by Governor Hammond who announced his choices publicly on Tuesday, October 9, 1979.

Sourdough

Johnstone, a 38 year old Anchorage attorney in solo practice, first came to Alaska in 1967 after graduating from the University of Arizona Law School in Tuscon.

He began practice in Alaska with the law firm of Delaney, Moore, Wiles & Hayes with whom he spent a year before opening his own office in Anchorage in March of 1968. He has been engaged in the private practice of law throughout his professional career.

Johnstone is a divorced father of four daughters aged 2 to 8. Aside from his family, he is a dedicated fisherman, enthusiastic amateur pilot, and member in good standing of the Anchorage chapter of the Benovolent and Protective Order of Elks.

Johnstone expressed delight at the news of his appointment and told the *Bar Rag*, "I hope I can do a good job and justify all those kindly remarks made in my support."

Cheechako

Avery is a 38 year old former Native Claims Appeals Board attorney with the U.S. Department of the Interior. He first came to Alaska in June of 1977. He was admitted to practice in this State in November of 1978. Previously a graduate of the Emory University School of Law, he was admitted to the Georgia Bar in 1965. He practiced law as a partner in the firm of DuBerry and Avery in Decatur, Georgia from 1972 to 1977.

Avery has been married 15 years and is the father of a 12 year old boy and a 9 year old girl. He is a fishing enthusiast who spends as much free time as possible with his family on his boat in Prince William Sound.

When asked for an expression of his thoughts on his new position, Avery told the *Bar Rag*, "Having actively practiced trial law for 11 years, I hope to offer the Bar what I looked for and liked in a judge which basically is a judge who knows the law and applies it along with common sense. I enjoyed working in front of a judge who rules quickly and fairly when the need arises but who otherwise allows attorneys working in front of him the freedom to try their own case."

Chief Admits Failure

By Karen Hunt

Chief Justice Jay Rabinowitz told the Anchorage Bar Association at its noon luncheon on October 15, that the present calendaring situation in Anchorage is a mess. Using such words as "Dismal" and "inefficient" Rabinowitz described the Status Quo as unacceptable and stated "I'm convinced early assignment is a must." Rabinowitz stated that the evidence before the Court calendaring Committee is inescapable that some type of individual calendaring is more efficient than the present master calendaring system utilized in Anchorage. He further commented that a motion practice that results in motions being noticed and scheduled for argument every day is "intolerable" for the Judges. Thus, a motion day is one of the suggestions being considered by the Committee which is comprised of **Art Snowden, Chairman, Chief Justice Rabinowitz, Justice Matthews, Presiding Judge Ralph Moody, Judge Victor Carlson, Judge Mark Rowland** and Court administrative personnel.

While the Committee is not unanimous in its recommendation, attention will be given to developing an individual calendaring system with central staff handling the calendars under the direction of the presiding Judge. While not going into detail, Rabinowitz referred frequently to the Fairbanks model as a vast improvement over that District's prior handling of calendaring. Commenting that the Fairbanks model was a possible guide, he indicated that a "cook book" should be developed on calendaring procedures for the entire State Judicial System. The Committee proposals are currently being circulated among the Anchorage Judges for comment.

Backlog Breakthrough

Rabinowitz announced that an intensive effort was under way for the month of January through April, 1980 which would utilize Judge time from all over the State to alleviate the present backlog of cases pending in Anchorage. Conversations are being held between the State Court System and the Federal Governmnet for possible use of the old Federal Courthouse court rooms to accommodate the additional Judge time which is being made available. Southeastern has indicated it will contribute two months of Judge time to Anchorage as will Fairbanks. Judge Cook is expected to be in Anchorage for one month also. Rabinowitz further announced that Senior Judges from Anchorage would be used and that Judge Hepp would be brough into Anchorage to hear criminal cases for one month.

In making his announcement, Rabinowitz stated that the past pro-

[continued on page 12]

New Bar Exec Announced

The Board of Governors selected **Randall P. Burns, Presently Executive** Director of the Alaska Public Offices Commission, to fill the position of Executive Director of the Alaska Bar Association, at its meeting on Friday October 27, 1979. Burns was chosen after a search lasting several months and a series of interviews held in both the September and October meetings of the Board of Governors.

The Alaska Public Offices Commission which Burns heads is an agency of the Office of the Governor which administers Alaska's campaign disclosure, regulation of lobbying, and conflict of interest laws. The five member commission employs seven support staff and contracts with nine municipalities as regional offices. Burns, as Executive Director, has been responsible for developing proposed amendments to Alaska's three disclosure statutes and regulations implementing those laws. He has conducted investigations of alleged violations of the disclosure laws, including the subpoening of records and witnesses and the submission of case analyses to the Commission. In addition, Burns has worked with the Attorney General's office in preparation of case files and in the referral of cases for prosecution.

As part of his duties in connection with overseeing compliance with and enforcement of the reporting requirements of the disclosure laws, Burns has been responsible for the preparation of instruction manuals for candidates, political groups, lobbyists and employers of lobbyists. In addition, he has designed reporting forms, supervised staff in processing and auditing reports, assessed civil penalties for incomplete or late reports, presented workships throughout the state for those subject to disclosure laws, and assisted municipalities with disclosure law requirements.

Burns has also been responsible for directing the Commission's public information programs, involving the planning and execution of hearings, media projects, and presentations to organizations. His duties have included the preparation of annual budget requests and their presentation for executive and legislative branch review. In connection with this function, Burns has testified before the State Legislature on proposed changes in disclosure laws, as well as budget requests.

In his interview before the Board, Burns noted a number of similarities between the Association's Directorship and that of the Public Offices Commission. He stated his interest in the new position because it offers him the opportunity to focus his energies in a new field while allowing him the pleasure of utilizing his current skills and abilities.

JUSTICE
ALASKA BAR ASSOCIATION
INTEGRITY COMPETENCY
ESTABLISHED 1896
ADVOCACY

The Alaska Bar Association has a new logo ready for use on stationary and in the electronic media. **Grant Pankhurst** from Nome, sent in the desing that won the Bar logo contest. **Carla Wilkins**, the Bar office receptionist prepared a design ready for the printer. The logo from grant Pankhurst came with an explanation of the design. His words were, "Justice - what everyone expects from the legal profession. Integrity and Competency - the major proceeds of the Alaska Bar Association. Advocacy - the basis of the legal system. The Scale is the symbol of Justice - the most recognized symbol of the legal profession; and the stars are from the flag of Alaska."

INSIDE

Ethics Committee Opinion No. 79-2

The question posed to the Committee is:

Is is proper for an attorney or an attorney's agent to go to the trash receptacle used by opposing counsel and remove bags of trash containing, among other things, copies of pleadings, correspondence, etc., that were discarded in the normal course of opposing counsel's operations?

The basic facts appear to be that as a hotly-contested case, involving substantial amounts of money, neared trial and while settlement negotiations were in progress, one attorney dispatched an investigator or someone else on the attorney's behalf to go to the trash receptacle used by his opposing counsel and remove bags of trash that had been disposed there in the normal operation of the opposing counsel's office.

Since a lawyer who removes or causes removal of trash containing documents from opposing counsel's office violates, if not the express letter of the Code of Professional Responsibility, then at least the spirit of it, this Committee finds such actions to be improper. Such conduct violates EC1-5 inasmuch as it is not in keeping with "high standards of professional conduct" and is not "temporate and dignified." While it is not such a clear violation, in this Committee's opinion, digging through and removing opposing counsel's trash is "prejudicial to the administration of justice" and "adversely reflects on his fitness to practice law" in contravention of DR1-102(B)(5) and (6). A violation of DR7-106(C)(6) also exists inasmuch as counsel has engaged "in undignified or discourteous conduct which is degrading," in the Committee's opinion, "to the tribunal." Finally, such acts clearly contravene Canon 9's mandate that a lawyer should avoid even the appearance of professional impropriety. EC9-2 and 9-6. While the conduct does not appear to be illegal, it nevertheless "diminishes public confidence in the legal system or in the legal profession." EC9-2. Clearly, a lawyer engaging in such activities has failed to:

> conduct himself so as to reflect credit on the legal profession and to inspire the confidence, respect, and trust of his clients and of the public; and to strive to avoid not only professional impropriety but also the appearance of impropriety. EC9-6.

Such an attorney might be ethically required to withdraw from the case if she or he came across any confidential information. As said by Henry Drinker:

> "A lawyer must also observe the customs of the Bar as well as the confidences of another lawyer, although indiscreetly given and improperly received, and although this may entail his withdrawal from the case." Drinker, **Legal Ethics**, 195 (1958) *See, also*, Op. No. 107, *Opinions of the Committees on Professional Ethics of the Association of the Bar of the City of New York and the New York County Lawyer's Association* (1958 ed.). Formal Opinion No. 47 of the American Bar Association requires withdrawal by an attorney who, even inadvertently, receives an improper disclosure of the opposing party's confidences.

In conclusion, while this Committee takes no position on whether an attorney engaging in the actions considered herein should be subject to discipline, it does find the conduct to be improper.

Adopted by the Board of Governors September, 1979.

U.S. District Court Fee Schedule

SCHEDULE OF FEES TO BECOME EFFECTIVE OCTOBER 1, 1979

Filing Fees:	
Civil Action -	$60.00
Habeas Corpus 28 USC 2254 -	5.00
Notice of Appeal (Civil & Criminal) -	5.00
For filing or indexing any paper not in a case or proceeding for which a case filing fee has been paid -	3.00
For registering a judgment from another district -	10.00
For filing a requisition for and certifying the results of a search of the records of the court for judgments, decrees, other instruments, suits pending, and bankruptcy proceedings, for each name searched -	2.00
For certifying any document or paper, whether the certification is made directly on the document or by separate instrument -	2.00
For reproducing any record or paper, per page (this fee does not include certification) -	.50
For comparing with the original thereof any copy of such transcript or record, entry record of paper, when such copy is furnished by any person requesting certification, per page (in addition to fee for certification) -	2.00
For reproduction of magnetic tape audio recordings, either cassette or reel-to-reel ($2.00 plus cost of materials) -	5.00 minimum
For admission of attorneys to practice -	15.00
For duplicate certificate of admission or certificate of good standing -	3.00

Pilot Programs Underway

Under the premise that each appeal is not entitled to nor should each receive the same treatment, oral argument without briefing has been initiated as a pilot program in two districts of the ninth circuit.

The program has thus far been limited to criminal cases which take three days or less to try, involving no factual or legal complexities and with no precedential value. Moreover, participation has been voluntary.

The Committee evaluating the program has thus far concluded that the procedure will not adversely affect appellate review, will provide more judge time for complex cases and time from filing to decision will be substantially shorter.

It is therefore being recommended that the voluntary nature be eliminated and that the program be expanded to included civil cases.

The challenge still to be resolved is the selection and classification of appropriate cases. Under consideration are various alternatives including designation of certain types, case by case review, option by the attorneys and by stipulation.

Also being implemented in three districts on an experimental basis is trial by arbitration. Civil cases, not in excess of $100,000.00 are referred, mandatorily, upon filing, to arbitration. There are a few exceptions, one of them being matters involving constitutional questions.

The principal feature of the program is hearing within 150 days of answer or 50 days after a dispositive motion such as one for summary judgment.

Trial de novo, as of right is available in District Court. The only penalty is possible award of costs for the arbitration if the losing party does not prevail at the District Court level.

United States Court of Appeals Panels to be Announced

The United States Court of Appeals for the Ninth Circuit has revised its practice with respect to advanced announcement of the identity of the judges selected to hear oral argument in particular cases. In the past, the identity of the three-judge panel hearing a case was not disclosed until the day of oral argument. Under the new procedures, the composition of the panel will be announced about one week prior to oral argument. In implementing a policy of announcing panel members in advance, the court has acted in response to a resolution introduced by the Lawyers Representatives to the Ninth Circuit Judicial Conference and passed by the Conference at its annual meeting in July.

The three-judge panel selected to hear particular cases will be identified by official announcements published by the court. These calendar announcements will be filed in each of the U.S. district courts in the circuit about one week prior to the scheduled oral argument. Attorneys may determine the identity of U.S. Court of Appeals judges who will be hearing their case by checking the bulletin boards of local U.S. district courts one week prior to argument or by checking with the Clerk's Office of the U.S. Court of Appeals during the week prior to oral argument. In adopting this policy, the court announced that motions for continuance will not be granted after the announcement of panel members has been made.

Letters to the Editor

Lost in the Shuffle

Dear Editor:

In the August issue of the *Alaska Bar Rag*, page 11 carried an article on the 9th Circuit Judicial Conference. In listing Alaska's current delegation, I note that the United States Magistrate was not named. Please be advised that the undersigned is presently serving a three year appointment as a Magistrate Delegate to the Judicial Conference, having been invited by Chief Judge Browning. I did attend the 1979 Judicial Conference at Sun Valley, Idaho, July 22 through July 25, 1979. Let's keep the record straight!

Very truly yours,
John D. Roberts
United States Magistrate

Editors Reply:

Done!

Bar Exam Results

70 Pass July Bar

Of 101 applicants who took the July Bar Exam, 70 passed for a pass rate of 70.2 percent. This includes 4 attorney applicants, of whom two were successful.

The number of applicants taking the exam this year is down from the two previous years: 125 took the exam in July, 1978; and 122 in July, 1977.

Swearing in will be November 9 in the Supreme Court at Anchorage.

Names of the successful applicants are:

Accinelli, Theodora C. 735 K Street, #M, Anchorage, 99501
Anderson, Arthur S. 2601 W. 32nd Ave., Anchorage, 99501
Antel, Helene M. SRA Box 378, Anchorage, 99507
Bandy, Denise, 5331 E. 26th #5, Anchorage, 99504
Bendell, David M., 630 W. 9th Ave., Anchorage, 99501
Brandt, Tamara D., Box 618, Douglas, 99824
Brink, Robert C., PO Box 91, Anchorage, 99501
Casperson, John E., 1109 Medfra Ave. #1, Anchorage, 99501
Davis, Laura L., 1902 Alder St., Anchorage, 99504
Donley, David, 1303 Southampton, Anchorage, 99503
Edwards, Donald W., 2811 Klamuth Ave., Anchorage, 99501
Evans, Robert A., P.O. Box 2871, Anchorage, 99501
Figura, Mark L., 810 N Street, Anchorage, 99501
Finley, Scott, 3016 E. 20th, Anchorage, 99504
Ford, Michael F., 352 Distin, Juneau, 99801
Friedman, Richard H., General Delivery, Sitka 99835
Gruenstein, Peter E. 717 O Street, Anchorage, 99501
Harvard, Andrew, 1327 G St., Anchorage, 99501
Heen, Mary L., 1624 W. 14th Ave., Anchorage, 99501
Herman, Barbara, PO Box 1728, Juneau, 99802
Hogan, Teresa Ann, Box 4-326, Anchorage, 99509
Howard, Craig, c/o Stanley Fischer, PO Box 2398, Kodiak, 99615
Johnson, Phyllis C., 156 8th Ave., Fairbanks, 99701
Jungreis, Michael, 2350 W. 69th Ave. #A, Anchorage, 99502
Kamm, Marilyn, 520 Halvorson Rd., Fairbanks, 99701
Kavasharov, Sarah T., c/o Spengler, 811 Basin Rd., Juneau, 99801
Lessmeier, Michael, 4921 Dartmouth Rd. #4, Fairbanks, 99701
Loescher, Joseph R., 5142 E. Northern Lights, Anchorage, 99504
Levy, Madeleine, 1010 W. 10th Ave., Anchorage, Ak 99501
Logan, Donald, Gen. Del., Anchorage, 99502
Luecker, Barry, SRA Box 42-S, Anchorage, 99507
Macy, Jennifer, PO Box 248, Bethel, 99559
Mason, Robert B., 510 L St #405, Anchorage, 99501
McConnell, Annalee G., 804 W. 14th Ave., Anchorage, 99501
McKinstry, Larry, Rt. 5 Box 5271, Juneau, 99803
McNeil, Chris, 421 W. 10th St., Juneau, 99801
Moran, Joseph, 2631 Lorn Baranof Dr., Anchorage, Ak 99503
Murphy, Laurel, 5800 Glenn Highway, Anchorage, 99504
Nichols, Clark, 420 L Street #301, Anchorage, 99501
Orbeck, Dale, P.O. Box 2546, Juneau, 99801
Owers, James, c/o Ms. J. Clarke Supreme Ct., Juneau 99801
Owers, Leslie L., General Delivery, Juneau, 99801
Page, Nelson G. 1129 G Street, Anchorage, 99501
Parke, John H., PO Box 248, Bethel, 99559
Parke, Marilyn D., PO Box 248, Bethel, 99559
Patterson, Albert D., 7718 Old Harbor Rd., Anchorage, 99501
Perkins, Joseph J., 510 L St., Anchorage, 99501
Perkerson, Barbara J., SRA 78A (Foster Dr.), Anchorage, 99504
Roberts, Thomas C., 410L Wedwood Dr. #1, Fairbanks, 99701
Rose, Elise, SRA Box 1550N, Anchorage, 99501
Sczudlo, Walter J., 1505 Crosson Av Fairbanks, 99701
Simmons, Douglas R., 6101 chevigny #B, Anchorago, 99502
Smith, Peter M., Box 6283 Airport Annex, Anchorage, 99502
Sorsby, William J., 9161 Claridge Pl., Anchorage, 99507
Stephens, Melvin M., II, Box 503, Kodiak, 99615
Steward, William, 5307 Dorbrandt, Anchorage, 99502
Stoetzer, James, 8411 Miles Ct., Anchorage, 99504
Swanson, Michael Alfred, 412 Gastineau #57, Juneau, 99801
Tervooren, Steven S., 1109 Medfra Ave. #6, Anchorage, 99501
Terwelp, Jeffery A., 110 E. 11th Ave. #11, Anchorage, 99501
Triem, Frederick W., Box 1270, Box 55, Sitka, 99835
Troll, Timothy E., PO Box 248, Bethel, 99559
Urig, Susan L., 734 W. 8th Ave., Anchorage, 99501
Vogt, Deborah, c/o Dept. of Law Pouch K, Juneau, 99811
Voigtlander, Gail T. 1837 Thunderbird Pl., Anchorage 99504
Walker, Russell W., 678 Grant Middle Ave., Ketchikan, 99901
White, Michael N., c/o District Attorney, 941 W. 4th, Anchorage, 99501
Williams, Stephen, PO Box 850, Fairbanks, 99707
Williams, Teresa, 204 E. 5th #213, Anchorage, 99501
Woodell, Michael, c/o Bradbury & Bliss, 430 C Street #301, Anchorage 99501

Support Our Advertisers

CLE News

Tax Conference

A tax conference sponsored by the Alaska Society of CPA's is set for November 29 in Anchorage at the Captain Cook and for November 30 in Fairbanks at the Travelers Inn. The subjects and speakers for the conference include the following:

Morning

New Appeals Procedure
Hank Biciedo
Appeals office, IRS
Seattle, Wash.

Tax Planning for Divorce
Gary C. Randall, Esq.
Gonzaga Univ. of Law
Spokane, Wash.

Tax and Accounting Aspects of Buying a Business
David Winder, CPA

David Winder, CPA
Peat, Marwick, MITCHEL & Co.
Seattle, Wash.

Afternoon

Pension and Profit Sharing Plans New Wrinkles on Some Old Ideas
Bob Doss, CPA

Current Income Tax Developments
Chuck Obendorf, CPA

Estate Planning
Theodore Sherwin, CPA

Current Tax Shelters
Ralph Papetti
Foster & Marshall, Inc.

An advanced afternoon session in Anchorage only will include the following:

Estate Planning Problems
Cheryl Baumbach, CPA
George Georig, Esq.
William Lawrence, Esq.

Real Estate Tax Shelters
Gary Postlethwait, CPA
William Bankston, Esq.
John Nabors
The Parkwood Co.

The fee will be $60.00 per person in advance and $70.00 at the door. Reservations should be sent to the Alaska Society of CPA's, P.O. Box 675, Anchorage, Ak. 99510 with indications of location and sessions selected.

Criminal Law Seminar

On January 1, 1980, the revised Alaska Criminal Code becomes effective. The new code dramatically and comprehensively alters the substantive aspects of Title 11 and adds a new sentencing scheme adopted in Title 12. Among other important features of the revised code, all crimes with the exception of murder and kidnapping are classified based on their seriousness as Class "A," "B," or "C" felonies, or Class "A," or "B" misdemeanors. The defendant has the burden of establishing an affirmative defense by a preponderance of the evidence. Additionally, the revised code provides for uniform penalty provisions.

The Continuing Legal Education Committee of the Alaska Bar Association is sponsoring a program for all attorneys on the revised criminal code. The program is to be held on November 16th and 17th in Fairbanks at the Traveler's Inn; on November 29th and 30th in Anchorage at the Anchorage Westward Hilton; and on December 7th and 8th in Juneau at the Juneau Hilton. This one and a half day seminar will present an overview of the revised criminal code, including comparisons with the present code, approximately one month before the new criminal code provisions take effect. The program schedule is to include an overview of the criminal code, including general principles of liability and culpability, sentencing, justification, offenses against persons, offenses against property, offenses against public administration, prostitution and gambling, weapons and offenses, offenses against public order and offenses against family, as well as several question and answer sessions and panel discussions.

In addition to a manual on the revised criminal code, each participant will be given comprehensive outlines of the presentations. The manual and outline will be made available to interested members of the Alaska Bar who are not able to attend the CLE for a nominal fee.

Due to the substantially increased enrollments in all CLE couses, advance registration is strongly recommended. All members of the state bar and judiciary will be receiving a registration form in the mail in the near future.

Anchorage Bar News

On October 22, 1979, the elections for Officers and directors of the Anchorage Bar Association was held. The new officers for the upcoming year are:

Tom Boedeker	**President**
Stan Howitt	**Vice President**
Ken Jacobus	**Treasurer**
Larri Spangler	**2nd Vice President**

The Board members are: **Bruce Bookman, Vince Vitale, John Havelock, Ken Jensen.**

During the past month, a number of excellent programs have been presented. The most notable among these were the programs by Chief Justice Rabinowitz and the Attorney General, Avrum Gross.

Chief Justice Rabinowitz addressed the association regarding calendaring problems and other court system problems occurring in Anchorage. The Chief Justice made specific reference to the calendaring committee composed of court system personnel. His special thanks were extended to the private members of the Bar who were active in making suggestions to the committee.

Although at the time of his address to the Bar Association the committee had not issued its formal report and recommendations, the Chief Justice did tell us what recommendations would be made. The principal features dealing with the court problems in Anchorage will be to abolish central calendaring and to return individual calendaring. Also, beginning in January and continuing through April, judges from other judicial districts will sit in Anchorage to attempt to work off the backload of cases. The Chief Justice indicated there was a possibility that some of the files handled by these other judges may have to be in other court facilities outside of the State courthouse. Another possible result of the committee study could be the changing of the motions calendar so that a judge only hears motions on one particular day of the week. This proposal would allow greater time on the other days for handling trials.

Since Chief Justice Rabinowitz's talk, the committee has issued its report. Hopefully, resulting changes will alleviate some of the problems. However, it does appear obvious that cooperation between the Bar and the court system will be necessary to alleviate the problems. A special thanks should go to those members of the private Bar who freely gave of their time to make the suggestions and meet with the committees. This kind of cooperation can go a long way towards solving problems.

Rebate to Taxpayers

Avrum Gross addressed the association with regard to disposition or use of the expected oil revenues. In brief, he discussed possible repeal of income tax, the use of a rebate to the taxpayers, or use of the revenue to create permanent funds. Mr. Gross indicated that the Governor's favored position would be use of the revenues for permanent fund purposes. The pointed out flaws in the income tax and direct rebate methods as benefit from the revenues could be obtained through long-term use of the money from a permanent fund in which the income only would be expended. The comments by Mr. Gross were of great interest to the Bar as the disposition of the fund will affect the continued economic vitality of the State. It is an area in which all members of the Bar as citizens should express their views.

Letters to the Editor

Ombudsman's Subpoenas

Dear Editor:

I find it very difficult to comprehend the position adopted by the Alaska Bar Association respecting its obligation as a public agency to respond to subpoenas initiated by the ombudsman under specific statutory authority.

It may be for lack of imagination that I cannot perceive a legal theory upon which the Alaska Bar Association could claim that it is not a regulatory agency of the State of Alaska. Of course, I, like other lawyers who have been around a long time, are aware of the recurrent battles which have been fought to prove or disprove that the Association fits at one or another place on the State organizational chart. But all that notwithstanding, the nature of the Association as a public agency must be tested in context with the governmental function it serves within the State of Alaska.

The Alaska Bar Association collects a franchise tax from all persons practicing law within the State of Alaska. There can be no serious question but what the Alaska Bar dues constitute a business or occupational license fee and, hence, the proceeds of that tax constitute public funds. While we may, for historical reasons and by virtue of our charter avoid the general prohibition against dedicated funds, that unquestionable benefit cannot be stretched to cloak us with immunity from all laws and regulations governing the expenditure of public funds.

In addition to the tax money generated by Bar dues, the Alaska Bar Association received reimbursement of its costs in performing some of the governmental functions delegated to it by the Supreme Court of Alaska. Here too our organization is involved in the administration of public funds for a governmental purpose and we have no right to set ourselves above the law in respect to an accounting of our activities in the interest of the general public.

While the games being played with the ombudsman may be the heady stuff of which headlines are made within our house organ, *The Bar Rag*, the policy adopted by the Board exposes our association to an unnecessary and immediate risk of destruction. The legislature of the State of Alaska—and properly so in my opinion—might well view our claim to immunity from law as a convincing reason to legislate us out of existence. And should such a result be the fruit of our arrogance, the very valuable functions of an independent Bar Association would be sacrificed. I would urge all members

(continued on page 5)

STAFF

Harry Branson..... Editor in Chief
William T. Ford..... Managing Editor
Rand Dawson..... Advertising Director
Wm. W. Garrison..... Bar Editor
Donna C. Willard..... Copy Editor

Contributing Editors

John Havelock — **Wayne Anthony Ross**
Deirdre Ford — **Russ Arnett**
Barbara Schuhmann — **Joe Kalamarides**
Richard Whittaker — **Andy Kleinfeld**

Ace Reporters

Kathleen Harrington — **Judith Bazoley**

The Bar Rag is published monthly. Mail received at Box 3576, Anchorage, AK 99510.

The Bar Rag is available to non-lawyers by subscription for $10 a year, or may be purchased from the Alaska Bar Association office, 360 "K" Street, Anchorage, AK 99501 for $1.00 a copy. Display and classified advertising rates are available.

"Random Potshots"

[Editor's Note: John Havelock was unable to make the deadline this week so otherwise rejectable copy contributed anonymously has been used as filler. We apologize to our readers.]

Dean **Vernal Hafcocked** retired the other day from the University (some say forced out for dithering, excessive muttering and simian similitude. Vernal, late in the evening, fended off the charge with half-hearted vehemence.) Six of us older chaps who have known if not liked Vernal for some time cajoled each other into teking him to dinner, if not from love or respect, we nodded, at least pro forma.

We came by at half past six. Obviously not early enough. Old Vernal already had an Everclear gleam in his eye of legal pad yellow purity. Though cleanliness was not among his virtues, for the occasion he had evidently tried to clean that bilious Rumanian suit of his, the one with all the vents, patches and pleats, that gave the garment the shape of an amoeba with a bad case of indigestion. You could see the dry soap remains of several efforts with the end of a dabbing cloth, one on the lapel next to his left vest pocket evoked Argentina. A Roschach figure adorned his right side pocket in which was stuffed an unread advance sheet, still affecting the legal scholar even after school hours.

At the Ribhause, we danced in feigned graciousness to avoid sitting next to him but one task was mine by lot. The Provost had sent another memo around in January ordering the establishment of a tradition. Each retiring prof would be interviewed appropriately by a colleague in the fall for the yearbook, hopefully generating a couple of extra strands of instant ivy to wrap around the commons building:, disguising its economic origins, architectural plans borrowed from the mess hall of the nearby Air Force base.

Old Vern was predictably oblivious to my purpose. His secretary says he stuffed official memoranda in one of those logs-from-newspaper machines, kept in the corner of his room, and took a briefcase full home Thursday afternoon to stoke a weekend fire. Otherwise he had no use for them. Maybe those burnt memos were avenged in the end.

Hafcocked brightened to the first question, thinking I cared. "Future of the University? Listen, when the State didn't have any money, the politicians stuffed it down this rat hole. Now for Chissake, they got money coming out of their ears and no one gives a shit about the place."

I shifted slightly, thinking an appeal to vanity might give me something more printable if less colorful. "Vern, you came here with the birth of legal education. What do you consider your major accomplishment?"

He turned slowly, then directing a fat finger at my chest, "Abortion he accused; then reflecting. "Well, it sure as hell ain't got much to do with legal education. Christ, you know its not just lawyers that the public hates, it's the law, too. No surprise. We have never taught the public law. Why should they see good in an instrument of frustration? Who said the University would be an exception? Rules and regulations are a tangled briar, a veil to bureaucratic intrigue and selfish purpose. Right?" he leared at me, making heavy fun of my duties as assistant to the Deputy Dean of the College of Arts and Letters.

(continued on page 5)

The Chinese Are Coming! The Chinese Are Coming!

By Russ Arnett

Chinese students coming to the U.S. soon will be stopping at Alaska Pacific University to polish their English and, by living in Anchorage, examine the U.S. in microcosm. The "Five Modernizations" China is pursuing include modernization of China's legal system. Civil and criminal codes enacted by the Chinese Parliament take effect in January 1980. The Gang of Four will be tried and Chinese and foreign reaction to the trial concerns China's leadership. Alaska lawyers will be asked to explain to the Chinese students our court procedures and the legal protections which we cherish.

Perhaps we should explain to them that during a trial actually two trials may be in progress. Just as a college test may itself be tested to determine whether it has accomplished its purposes, so also a trial may be tried to see what it accomplished, or did not accomplish. Were the Supreme Court itself present en banc during a trial, and the justices even kibitzing with the trial judge, and were the Supreme Court to certify the trial was conducted in conformity with all rules of substance and procedure, the trial still might be a failure.

What are the effects of the trial upon those whom it touches? This is how the trial must ultimately be judged. Its effects ripple through society and may have a half-life longer than strontium 90. The monetary costs to the litigants may exceed the amount in dispute without considering the cost to the State. Some trials cause social wounds to fester. Courts are used by social and economic activists more to pursue their grand designs than as forums for settling particular disputes.

I was asked to explain our judicial system to one of the Chinese students, a Mr. Chang.

"Our system of justice," I told him, "like that of all civilized systems, is basically a search for truth."

"But you say that lawyers make arguments even though they personally do not believe they are sound."

"A lawyer is hired to win and if he does not exercise every effort in behalf of his client short of deliberately presenting false evidence he is betraying his duty to his client." I explained.

"Why not forbid lawyers from making arguments they not believe?" he inquired.

"False logic or faulty arguments are perfectly permissible," I argued. "Whether the lawyer believes them is irrelevant. American judges and jurors know this."

"But how," asked Chang, "can you claim this is seeking truth?"

"I know you orientals have your ancient and inscrutable traditions and all that, but you must realize too, the common law has evolved over centuries. Millions of cases have been decided with the guilty punished and the innocent set free."

"You mean all guilty are punished and all innocent set free?" he smiled.

"Of course not. We don't claim perfection. If a man commits a crime our goal in Alaska is to rehabilitate him as well as protect the public."

"Then if defense attorney knows his client committed crime," said Chang, "why not have client plead guilty? You seem more anxious to get him off than to reform him."

"But, you see, the State must be able to prove him guilty. He may in fact commit a crime but still be innocent in the eyes of the Law."

"Well, wouldn't more guilty be punished and innocent freed if both lawyers told the Court all they know and say only what they believe, as though they were officers of the court."

"The most important consideration." I cautioned him, "is not to punish guilty. It is far better for a thousand guilty to go free than for one innocent man to be convicted."

"Have observed in your courts that wealthy who can afford high priced lawyer more likely to go free. Is what we are told in China."

(Showing irritation). "Look, Chang. China doesn't have a modern legal system so you have difficulty understanding ours. Or do you think you do?"

"Is rather like (suppressing a giggle) Chinese ...e drill."

"I never could stand a smartass."

Potshots

(continued from page 4)

"Yeah, I've been one helluva success. Lawyers didn't want to see anything happen; cops didn't want anything to happen; the University didn't want anything to happen, a triumph of ignorance and institutional inertia."

We needed an uplifting thought. "Vern, think of the justice system. haven't we made great strides in Alaska?"

Vern sneered: "Don't be tacky, man. We started using tape recorders in the courthouse in 1960. So that's progress? We have a new criminal sentencing code that will make our jails Newgates. The best answer we can find for court congestion is more courts to congest. The judges humor the 'culture of lawyers' while the culture kills justice. We are as progressive as a digestive tract."

Mine was rebelling, possibly the old coot, but more likely the Ribhause garlic salt that was supposed to make Kenai beef as tasty as it was chewy. It would have been the decent thing to take him home but no one wanted to make the effort to wedge him out of there in his present mood.

"You know, you bastards, you are all lying to the public. TV makes up stories about cops, judges, lawyers and parole officers and you say, 'Yeah man, that's us.' Bullshit! Like Sir Walter Scott described the age of chivalry. You wish. You're all just bums, believing lies, lying to yourselves, protecting your ass and trying to make a buck."

He was becoming incoherent. I could pick out some sentiments from an old alumni magazine from my own school for the interview and no one would notice the difference, including Vern. He'd probably think he actually said it. Traditions are still made that way. We oused out into the parking lot. It was still raining. Would summer never end?

Letters

(continued from page 4)

of the Alaska Bar Association to review very carefully the wisdom of the present policy of the Board of Governors and provide the Board with an expression of opinion concerning the time, effort and energy now being devoted to the Board's claim that we are above the law.

Sincerely yours,
JENSEN, HARRIS & ROTH
Kenneth D. Jensen

Bar Rag Interview

Wendell Kay

Part II

By Kathleen Harrington

Wendell Kay

KH: How long did your partnership with Judge Buckalew last?

WK: Buck and I stayed in partnership or associated until about 1960. At about that time, it became necessary to sell that building and move to another place. I bought a building at that time and we decided to dissolve and separate, by that time **Les Miller** was working for me. So we decided to separate and Les and I bought a building which is now where the Captain Cook parking garage is. By that time they had built a new state court building, we are talking about a period 1959-60, so we bought that building, a nice house, it was a nice house, we remodeled it. **Bob Libbey** came to join us and then **Bill Jacobs** so the firm was Kay, Miller, Libbey & Jacobs. And we had a very busy, busy practice. And the little building was very handy to the court. We just slipped out the front door and run over to the court. The earthquake in 1964 however substantially demolished a considerable portion of the building. And for about six months we practiced out of two trailers located across the street in front of where the Captain Cook is now.

KH: Where were you when the earthquake hit?

WK: I was in Haines, Alaska conducting a meeting of the local boundary commission of which I was then the chairman. And there wasn't much earthquake there in Haines. It just shook the building a little and I remember some gentlemen was just finishing speaking and the light fixtures shook quite a bit and the building rattled a little and I said "We want to thank you for those earth shaking remarks." And everybody laughed and then about five minutes later a State Trooper came running in and announced there had been a terrible earthquake in south-central Alaska and that Anchorage was in flames and Seward was in flames and the meeting quickly adjourned and we all ran to the telephones. I got back to Anchorage the next day to find that my house was uninjured except part of the chimney fell off. And the family was all fine. The office was substantially damaged. So, as I said, we practiced out of trailers for awhile and then we were going to rebuild the office into a nice building. In fact we ...en it when the city condemned ...le property for parking pur-

And so we then moved into 6th Avenue Building which is the building that was occupied by Burr, Pease & Kurtz.

KH: Have you ever had any desire to become a judge?

WK: No, I really never did. I enjoy practicing law too much. I don't say that with any sense of disrespect or anything like that because I certainly respect people who do like to be judges who are willing to become judges. I think it's a sacrifice in a way to become a judge. It hurts your social life; your comradship with other lawyers is impaired, I'm sure. I don't think I would have made a judge anyway because I don't have a judicial temperament. I'm very partisan, I'm very much an advocate and I think it would have been very difficult for me to be a judge.

KH: What about on the Supreme Court?

WK: Well, I was once drafted. The lawyers of Anchorage circulated a petition on my behalf and asked that I be appointed to the Supreme Court in about 1966 at a time when there were two vacancies. And I was very gratified. I ranked very high on the bar poll. But I had some enemies on the judicial council and my name never got to the Governor. One of my partners, Les Miller, was on the judicial council at the time but there were two or three guys on the council that I had had trouble with, Jack Warner down in Seward for one. I threatened to throw him out of a window down in Juneau one time at the legislature.

KH: Why was that?

WK: Because he was a reactionary no good rascal. I should have thrown him out of the window but I didn't do it. Anyway, he was on the judicial council so naturally he voted against me. But that's okay. I really am happy, very happy I didn't get the job because it would have been an altogether different lifestyle than I've been used to. I've enjoyed my freedom in a way and I probably never would have started going to Arizona and never started teaching down there. I would have missed a great experience if I had not.

KH: When did you start teaching in Arizona?

WK: The founding dean at Arizona State Law School was a fellow by the name of **Willard Pedrick** and Pedrick had been a year behind me at law school and he had worked on the law review under my supervision. He thought I was really a great legal scholar and one thing or another and so we continued our friendship through the years. In fact, his son came up here in high school and worked his way through college working various jobs that I helped him get. Anyway, he asked me down to give some lectures and I gave a series of four lectures at Arizona State and at the University of Arizona on roughly the subject of trying a criminal case. The jury selection, final argument and so on and so forth. And they were well received. I remember **Pat Rodey** was I think president of the Bar Association of Arizona when I gave those lectures and they were very well received by the student body of both schools. That was in 1974 and that summer Dean Pedrick's teacher of trial practice was killed in an automobile accident and so he picked up the phone and called and asked if I would come down and teach a course in trial practice that winter and the wife and I had enjoyed Arizona very much when we were down there for the month or so at the time we gave the lectures

[continued on page 6]

Wendell Kay

(continued from page 5)

the previous year so we decided yes, there was not much of a choice, I said yes I would be glad to teach. That was in 1975 when I went down and taught for eight weeks as a visiting professor and I've been very fortunate. There have been two deans since then and both of them have continued to invite me so I never know from year to year whether I will be invited or not but so far I've been fortunate, I've been invited every year.

KH: When you teach the course of trial strategy and trial practice do you do it in an anticdotal way?

WK: No. I don't think kids really, war stories about law practice are very entertaining but I don't think you learn very much by merely telling a class a bunch of war stories. In fact the dean warned me not to do it. So I don't. You may tell a story once in a while if it illustrates a point very well. I think it's good to hammer a point home by telling a story that illustrates what can happen to you if you don't do it. But, no, I teach by its a common method of teaching trial technique now days. The student does the work and the professor plays judge and critiques my kids. My kids start off by arguing motions which is fairly easy. You want to break them in easy. Any law school senior ought to be able to get up and make an argument. Then we go into jury selection. And we bring actual people. Everybody brings somebody and we select jurors in cases. I use a bunch of materials that I've accumulated and put togehter eight or nine different cases and so they pick juries, they pick a juror in a criminal and a juror in a civil case. Then we make opening statements. Everybody makes an opening statement. Everybody is critiqued by me and the rest of the class. Sometimes I use a video tape if we have time to video tape a few of them and let them see what they look like when they make an opening statement. Then we go to direct examination of witnesses and cross-examination at the same time. Direct examination is immediately followed by cross-examination of the same witness. And that takes quite a period of time for everybody to do a direct and cross-examination. By that time it's getting down to final argument time. And we do final arguments and everybody has a final argument and then we spend about one session picking up incidental things like motions after trial and so on and so forth.

KH: Is the setting in a criminal context or a civil context?

WK: Both. Half the cases are civil and half are criminal and if I think a kid is inclined to want to do criminal work I give him a lot of civil cases and if a kid is inclined to do civil work I give him a lot of criminal cases.

KH: Have you had any especially embarrassing moments in court?

WK: Well, you try not to think about your most embarrassing moments in court.

KH: But they are hard to forget, aren't they?

WK: Believe me they do occur. There is not much you can do about it sometimes. Recovering from embarrassing moments and not showing embarrassment is the hardest thing to do I think. I recall trying a case with George Grigsby, a civil case over the rental of a tractor in which my client had assured me that he was telling the truth about certain circumstances on the rent. He ran a little construction company here in town at the time and George completely demolished him. Finally he admitted that he had lied and of course I felt like getting down and crawling out of the courtroom on my hands and knees.

KH: What did you do?

WK: Asked the judge to dismiss the case. Took the guy back over to the office, castigated him, ran him out and told him never to come back. That was about all you could do. I'm sure there have been some more embarrassing moments but I can't remember any right now. Probably blanked them out of my mind. I can remember one, no, go ahead.

KH: You don't want to do that?

WK: No, it wasn't mine. It was another lawyers.

KH: Was it a good story?

WK: Not a bad story. It's about George Grigsby. A woman by the name of Marie Cox had an establishment over on Fifth Avenue. This was probably the early 50's. Called Marie's Chili Parlor. Actually it was a front. She had a pot of chili in the front room and girls in the back. And an assault with the dangerous weapon happened in there one night inthe back. One guy stabbed another and then ran out the back door, jumped over a fence. George is defending him. And Marie is on the witness stand and George is cross-examining her about the events and he got for some reason stuck on the location of the door and he kept asking her, "Now, did the door open from the left or from the right? Is the handle on the left or the right. Does the door open in or does it open out?"

And Marie looked at him with considerable puzzlement for a while and finally she lost her temper. She said, "Mr. Grigsby, why are you asking me all these questions about that door? You know that door. You are in and out of there every night."

Now the ordinary lawyer, that would have destroyed him. Grigsby never batted an eye. There was a big roar of laughter from the courtroom. George never batted an eye. He merely held up his hand and when the laughter subsided he said, "Ah, yes Mrs. Cox, of course I know about the back door but I'm sure that none of these fine gentlemen on the jury know about the back door." Whereupon half of the jury proceeded to blush, duck and there was another roar of laughter from the courtroom. Now I don't know whether you could do that or I could do that but it happened and George got away with it.

Talking about embarrassing moments. I was down at seminar this last weekend, last Friday at the Kenai Bar Association and the head man from Texas, a very fine gentleman by the name of Broadus Spivey had just arisen to tell us all about opening statements and final arguments and one thing or another when the side door of this room occupied by 35 eager students of the laws opens and in staggers a very drunk female client of mine, who operates a fine establishment here in town known as Char's Escort and Dating Service. And she proceeds to lurch through the chairs and sit down about ten feet away from Mr. Spivey and fixed him with a beady glare. And Spivey didn't know quite what to do but he continued talking whereupon every three sentences she would exclaim, "That's right. You're right there."

So I suggested to one of the gentlemen that it seemed to me that they better get the woman out of there, that she was a trouble maker and no telling what she was going to do when she was drunk. So he and another young man went up and got her by the arm and they were leading her out and I'm hoping to God she doesn't see me when all of a sudden she spots me and lets out a wild shreak, "Oh, Wendell," and tries to tackle me around the neck. Now that was an embarrassing moment but I proceeded, I was last on the program fortunately. So I succeeded in telling them about George Grigsby and Marie and said I wished I had George's ability to turn an event.

KH: Do you remember the case you've most enjoyed trying?

WK: Gosh, I enjoy trying almost all cases. Some you don't enjoy. Sometimes you may have disagreeable clients, an unpleasant set of facts. I recall just a few years ago defending a young man accused of murder. The evidence indicated that he had possibly stabbed the victim, a young housewife 37 times. Rather gruesome pictures. Really a very difficult, unfortunate sad case. As far as a really exciting case a recent one was the trial of *State vs. Duncon Webb.* This was an unusual case where you get a young lawyer accused of in effect of being an accessory to murder. And it was a very, very touchy case resulting in a hung jury. Seven for acquital on the main count. They acquited him on one count. On the chief court it was seven to five for acquital. But it was a very, very difficult case. I was not able to try, to handle the case on the retrial. He was defended by a fine lawyer from San Francisco.

KH: Are there any cases in your memory that gave you a great deal of satisfaction in terms of either the people you were representing or the result of a combination of the two?

WK: Are there any cases in your memory that gave you a great deal of satisfaction in terms of either the people you were representing or the result of a combination of the two?

WK: Oh yes. I've tried a great many cases and I think everytime you get a successful result your heart swells with job and you tend to feel that you are indeed the greatest trial lawyer in the world and then of course the next time out you get beat and a dark cloud of gloom descends over the world and you're convinced that you are a stumblebum but it all evens out and while you tell yourself during a particularly agonizing trial that this is an awful way to make a living, that you will never do it again, that you don't know why you let yourself in for it, that you should have been ar undertaker; when it's all over a few weeks later you forget all that and you look back on the case and your career with a lot of satisfaction. You remember the good parts and the happy times and the great victories and then you tend to somewhat pass over the more dismal aspects of practicing law of which there are many. I recall for some reason I wanted to determine whether I had talked to a certain person in the late winter of 1963. And I keep minute books daily, calendar books for a long ways back. The ones before 1964 were destroyed in the earthquake unfortunately along with a lot of interesting files and briefs. But anyway, I went back in 1963 and checked through January and February and in a period of six weeks I tried nine cases. Those were Superior Court cases. One after the other. Some criminal, some civil. Twice the jury in the preceding case was still out while we were picking the jury for the next case. That is a lot of strain if you can imagine trying nine major cases in six weeks. One after the other without any rest. The only days between cases were weekends.

And of course you worked on the weekends to get ready for Monday. I'm sure I couldn't do it now but in those days I thought that was fun. How exciting it was to have something to do instead of just sitting around the office twiddling your thumbs or writing papers. You had to rush into court and start picking another jury. That was great. That's the way it ought to be. I would shudder to try that now.

Information to Bar Rag

Meetings have recently been held between court representatives, members of the Anchorage Bar Association and Alaska State Medical Association to discuss procedures regarding the appointment of Medical Malpractice Advisory panels as provided for by A.S. 09. 55.536.

To insure timely appointments of the panel, the court is requesting counsel to designate all medical malpractice complaints filed as COMPLAINT FOR MEDICAL MALPRACTICE.

Definite procedures have been forumulated and are in the process of being implemented. Interested counsel are invited to contact the Legal Technician at the Clerk's office for more specific information, 264-0441.

LeEllen Baker
Chief Deputy Clerk
Office of the Clerk
303 K St.
Anchorage, Alaska
Ph. 264-0442.

Coming Events

1979

November 16, 17	Criminal Code Seminar	Fairbanks
November 29, 30	Criminal Code Seminar	Anchorage
December 7, 8	Criminal Code Seminar	Juneau
December 6, 7, 8	**Board meeting**	Anchorage

Proposed Amendments

Proposed Amendment to Section 1 of Rule I-1, Alaska Bar Rules

The introductory phrase of Section 1 of Rule I-1 of the Alaska Bar Rules is amended to read: "As used in Rules I-1 through I-8:

Section 1 of Rule I-1 of the Alaska Bar Rules is amended by adding at the end of said section a new subsection (h) as follows:

(h) "Receipt of Written Notice" means actual receipt of a written notice, personally or by mail, by the addressee of such writing except notices sent by the Alaska Bar Association which are considered received by the addresses three days after the postmark date of the Certified or Registered Mail to the latest address of the addressee on file with the Alaska Bar Association."

Proposed Amendment to Alaska Bar Rule I-2

Section 1(b) of Alaska Bar Rule I-2 is amended to read as follows:

(b) Be a graduate of a law school which was accredited or approved by the Council of Legal Education of the American Bar Association or the Association of American Law Schools when the applicant entered or graduated or submit proof that the law course required for graduation from such a law school will be completed and that a degree will be received as a matter of course before the date of examination. Certified proof of graduation, together with a certified copy of the applicant's law school transcript, shall be sent directly from the school to the Alaska Bar Association and received prior to the date of the examination. Graduates of law schools in which the principles of English common law are taught but which are located outside the United States and beyond the jurisdiction of the American Bar Association and the Association of American Law Schools may qualify for examination upon proof that the foreign law school from which they graduated meets the American Bar Association Council of Legal Education standards for approval, and provided further that an applicant who has graduated from a foreign law school shall submit certified proof of successful completion of not less than one academic year of education at a law school accredited or approved by the Council of Legal Education of the American Bar Association or the Association of American Law Schools, which certified proof shall include evidence satisfactory to the Board that the graduate of a foreign law school has successfully completed not less than one course in United States constitutional law and civil procedure in the United States.

Proposed Amendments to Alaska Bar Rules 5, 6, 7, 7.1 & 8

1. Rule 5, Alaska bar Rules, is repealed. Rule 6 is redesignated as Rule 5. Rule 7 is redesignated as Rule 6. Rule 7.1 is redesignated as Rule 7.

2. Rule 7, Alaska Bar Rules (now Rule 6) is amended to read as follows:

Section 1. Notice and representation by counsel.

(a) Notice of any final adverse determination by the Board, a master or committee appointed by the Board, shall be given to an applicant. Such notice shall be sufficiently specific to allow the applicant to be able to prepare a response, petition for review, or request for hearing as may be permitted under these rules.

(b) The Board shall send written notice by certified mail to the applicant's latest address on file with the Executive Director.

(c) An applicant may be represented by counsel in all proceedings for admission to the practice of law. Such counsel shall be admitted to practice in the State of Alaska, and shall file a written appearance with the Board. Thereafter, notices required or permitted to be served upon the applicant shall be served upon his counsel.

Section 2. An applicant who has been denied an examination permit or has been denied certification to the Supreme Court for admission to practice shall have the right, within thirty days after receipt of written notice of such denial, to file with the Board a written statement of appeal. Such statement of appeal shall be verified by the oath of the applicant that all statements contained therein are true, on the applicant's own knowledge, or on the basis of information furnished to him. Failure to file a timely appeal statement shall constitute a waiver of any right to appeal. In his statement of appeal, an applicant shall state all grounds upon which he intends to rely and may:

(a) Object to the form of notice from which such appeal is taken on the ground that it is so indefinite or uncertain that he cannot reasonable prepare his statement;

(b) Present new matter on which he relies to establish his eligibility to take the examination or for admission to practice, whichever is applicable.

An applicant who is denied an examination permit or who is denied certification shall allege facts which, if true, would establish an abuse of discretion or improper conduct on the part of the Board, the Executive Director, the committee or a master. If the allegations in the verified statement are found to be sufficient by the Board, a hearing shall be granted. No hearing shall be granted on the sole allegation that the examination, in whole or in part, was assigned an improper grade by the committee of law examiners. If a hearing is denied, the applicant may appeal from the denial of the hearing under the procedures of Rule 8.

Section 3 [Section 2 of present Rule 7].

Section 4 [Section 3 of present Rule 7].

Section 5 [Section 4 of present Rule 7].

Section 7 [Section 6 of present Rule 7].

Rule 7, Alaska Bar Rules (renumbered as Rule 6) is further amended by adding at the end thereof a new Section 7, as follows:

Section 7. When the Board denies an examination permit on the basis of character, the Board shall give the applicant not less than ten (10) days written notice of its action, and a statement of the specific grounds on which the denial of the examination permit is based. Within ten (10) days of receipt of such written notice, the applicant may submit to the Board such written argument, documentation, or other material as the applicant deems relevant to the denial of the examination permit. Upon receipt of any such material, the Board shall reconsider the denial in a timely fashion and give written notice of its decision.

Proposed Amendments to Article VI of the Alaska Bar Association By-Laws

Section 1 of Article VI is amended as follow .

SECTION 1. Officers. A president-elect, vice-president, secretary, and treasurer shall be elected by a majority vote of the active members of the Alaska Bar in attendance at the annual meeting.

There is added to Article VI a new Section 6 to read as follows:

SECTION 6. Treasurer. The treasurer shall be responsible for the financial accounting of the association, and shall render a report of the status of the financial affairs of the association at each meeting of the Board of Governors and shall give an oral report to the membership at the annual meeting. The treasurer shall have such further duties as the Board of Governors shall direct.

DISCIPLINE REPORT

Advertising- Use of Trade Names

Apparently some confusion exists regarding the method and means by which an attorney may advertise his/her services to the public. It is strongly suggested that any attorney wishing to advertise, consult and review beforehand Alaska Code of Professional Responsibility, Canon 2, as amended by Supreme Court Orders 356 and 357 effective April 1, 1979 and July 1, 1979 respectively.

Specifically, regarding the use of trade names, prohibitions against their use were contained in DR 2-102(B) and such prohibitions have been carried over into the DR as amended. Consequently, Alaska Bar Ethics Opinion 76-2 is still controlling.

Regarding the constitutionality of such restrictions, the attention of those interested is directed to two recent decisions in this area: **Friedman v. Rogers**, 99 S. Ct. 887 (1979) and **In re Oldtowne Legal Clinic**, P.A., 400 A.2d 1111 (md. 1979).

Attorney Violates Code

Recently the Alaska Supreme Court issued an opinion wherein it determined that an attorney had violated the Code of Professional Responsibility in three separate instances. **In the Matter of Craddick**, #1877, July 13, 1979. The Bar office has received numerous requests for supplemental information on the nature of the violations. In an effort to provide ethical guidelines for attorneys practicing in Alaska, the following has been taken from the findings made by the Area Hearing Committee. These findings were

[continued on page 8]

Advertising

(continued from page 7)

adopted unanimously by the Disciplinary Board.

COUNT I

The petition for formal hearing initially alleged four separate violations of the Code of Professional Responsibility. Count I of the petition alleged unauthorized advertising, a violation of DR 2-102(a). This count was dismissed by the Area Hearing Committee on the basis of the U.S. Supreme Court decision issued in *Bates v. State Bar of Arizona*, 43 US 350 (1977).

COUNT II

Count II of the petition alleged a violation of DR 7-105, which prohibits an attorney from presenting, participating in presenting, or threatening to present criminal charges solely to obtain an advantage in a civil action.

The charge arose out of a meeting in the office of the respondent. Present at the meeting were the respondent, respondent's client, an employee of the client, the employee's husband, and the employee's attorney.

Prior to the meeting respondent's client had advised the respondent that the employee had stolen money from the client and that the client wanted the money returned. Respondent's client supplied respondent with evidence tending to prove a taking of funds amounting to $7.28 and had told respondent that he was certain the employee had stolen much larger and substantial funds.

Respondent contacted the employee and instructed her to appear in his office. Prior to their appearance, respondent had no knowledge or expectation that the employee's husband, an attorney, would accompany her.

The sole purpose of the meeting was to cause the employee to admit the taking of the sum of money from her employer, respondent's client, and to arrange for a method of repayment.

Respondent was of the expressed opinion that his client lacked any proof of a taking in excess of $7.28.

At the meeting, respondent was asked by the employee's attorney as to which capacity respondent was acting, viz, as city attorney or as a private attorney to the employer.

Respondent stated that he was acting as a private attorney and could not, in any event, be involved in his capacity as City Attorney because the subject of discussion involved either a felony or embezzlement, and a City Attorney's jurisdiction did not include either felonies or embezzlements. It is not clear which position was stated by respondent, or which position respondent admits to have taken. It is clear that he stated one or the other.

During the course of the meeting, respondent stated that he had proof of the employee taking as much as $750.00 but respondent refused to disclose that proof to either her or her attorney.

Respondent, on one or more occasions, stated that if the employee would admit to the taking and arrange for repayment, "nothing further would happen," or "it won't go any further."

When the employee denied the charges made by respondent, the meeting ended with the respondent advising all concerned that the matter was going to be given to the District Attorney, and the employee's attorney came away with the distinct impression that criminal charges involving as much as $1,000.00 would be filed against his client.

After the departure of the employee, her husband, and her attorney, respondent asked his client what client wished to do; the client directed respondent to see that criminal charges were filed.

Subsequently, a misdemeanor charge was laid against the employee charging her with taking $7.28. This charge was later dismissed.

The Area Hearing Committee concluded that respondent had arranged a confrontation with his client's employee for the sole purpose of gaining an admission from her that she had taken as much as $750.00 from her employer and exacting from her a promise to repay, knowing full well that respondent did not have a shred of proof to support that claim.

At the meeting, respondent first declared that the subject matter involved a felony, later lied to the employee and her attorney by stating that he had proof of a taking of at least $750.00 and finally making it clearly understood by all of those in attendance that if the employee admitted the obligation and made arrangements to be paid same the matter would go no further.

Respondent's expressed belief was that his conduct, as above described, did not violate the Code of Professional Respondibility, DR 7-105, because he did not make a direct threat of criminal prosecution.

Respondent is apparently of the mistaken belief that it is perfectly proper to resort to the use of innuendo in evading the prohibition of DR 7-105.

COUNT III

Count III of the Petition alleged a violation of DR 5-105 of the Code of Professional Responsibility which obligates the lawyer to decline or cease employment if the interest of another client may impair or compromise the lawyer's independent professional judgment.

The Area Hearing Committee found that during the period wherein the complaint arose, respondent was employed as attorney for the City and Borough. The employment contract allowed respondent to engage in the private practice of law if such practice was not in conflict with the City's interest.

Respondent was hired and paid a legal fee by private clients to appear before the Sitka Planning and Zoning Commission to present to the Commission the historical background of the legal title and certain real property which his clients were seeking to either subdivide or obtain a variance for an order to sell the property as two lots. This appearance and presentation was in fact made by respondent.

Approximately three weeks after the initial presentation respondent again appeared before the Planning and Zoning Commission, at the request of the Commission in his capacity as City and Borough Attorney. At the request of the Commission, at said meeting, respondent outlined for the Commission various legal theories under which the Commission might properly deny the application of respondent's private clients.

The Planning and Zoning Commission denied the petition of respondent's private clients based upon the grounds suggested by respondent.

At a subsequent meeting of the assembly of the City and Borough at which the Client's appeal of the Commissions' denial was considered, respondent, in his role as City and Borough attorney advised the assembly that it could legally subdivide the property in question if it saw fit.

The Assembly ultimately approved the petition of respondent's private client.

The Area Hearing Committee found that although respondent was a contractual part-time City and Borough attorney, he was in fact under obligation to the City and Borough at all times and as to the ongoing activities of the City and Borough.

A part-time City and Borough attorney cannot represent a private client before any deliberative body of the city and borough because his obligation is to the City and Borough whether or not called upon by the body in question. His independent judgment must necessarily be impaired or compromised when he undertakes representation of a private client before any such body. Thus, respondent should have rejected representation of these private clients before the Planning and Zoning Commission in the first instance.

After having accepted and gone forward with the representation of the private client, respondent then should have not rendered legal advice to the Planning and Zoning Commission and Assembly as their attorney, on the Petition of the respondent's private client.

Respondent maintains a view that his conduct as above described did not violate the proscriptions of DR 5-105 because his representation was not as an advocate, in that he never specifically recommended denial or approval of the private client's petition.

COUNT IV

Count IV involved violations of DR 4-101(b), which proscribes an attorney from revealing a confidence or secret of a client; DR 5-105(a) which requires that an attorney decline preferred employment if the exercise of his profesional judgment on behalf of a client will be or is likely to be adversely affected by the acceptance of the proferred employment; and DR 5-105(b) which requires an attorney to discontinue multiple employment if the exercise of his independent professional judgment in behalf of a client will be or is likely to be adversely affected by his representation of another client.

At all pertinent times respondent acted as the City Attorney. According to his understanding with his primary employer, the City, respondent was permitted to carry on a private practice so long as it was not in conflict with the interest of the City.

Respondent was placed on retainer as attorney for a family corporation. The corporation held, as its principle asset an apartment building.

After respondent was placed on retainer the Corporation was notified by the State Fire Marshall that certain improvements had to be made if the apartment building were to remain occupied by its tenants.

From time to time respondent acted on behalf of his private client to prevent the closure of the principal asset, the apartment building.

Several months after respondent was retained by the Corporation respondent discovered that his principal client, the City, had instigated the Fire Marshall's demand for improvements to the apartment building.

Respondent then informed the corporation of the conflict of interest and withdrew his representation.

Respondent continued to represent the city on the same matter.

During the course of respondent's private employment, as counsel for the corporation, respondent learned that there might be adequate reserves available for financing the required improvements.

To the respondent's direct knowledge, his client did not want to use any reserve funds to make the required improvements.

Respondent, acting as City attorney, telephoned the mortgagee of the apartment building to deterine whether such funds were available.

The area hearing committee concluded that respondent through his representation of the corporation, gained confidential knowledge of the corporate finances. Subsequently, respondent attempted to use this knowledge contrary to the wishes of the corporation to further the interest of the city. Undoubtedly, respondent also believed that his actions were taken in the best interest of his former client and it would seem that his former client did in fact have more to lose if the apartment building were shut down than he would by having any reserve accounts made available for the improvements.

By substituting his judgment for that of his former client, respondent quite likely could have saved the day for both the city and his former client. That however was not in accord with the wishes of his former client.

In using the information respondent gained from his representation of his former client, respondent clearly breached DR 4-101(b).

In continuing with his representation of the City, with regard to the corporation, respondent breached DR 5-105 (a) and (b). Upon learning of the conflict above, respondent should have terminated his employment, not only with his private client, but with the city, insofar as such representation related to the corporation.

Boedecker Elected President

Thomas R. Boedecker was elected President of the Anchorage Bar Association on October 22, 1979. During the noon meeting at the Westward Hilton, a complete slate of officers and board members were elected to serve with him. The new officers are **Stanley Howitt**, Vice-President, **Larri Spengler**, Second Vice-President, **Douglas Williams**, Secretary, and **Kenneth Jacobus**, Treasurer. The new board members are **Bruce Bookman**, **Vincent Vitale**, **John Havelock** and **Kenneth D. Jensen**.

IN THE TRIAL COURTS FOR THE STATE OF ALASKA
FOURTH JUDICIAL DISTRICT AT FAIRBANKS
604 Barnette Street, Rm. 342
Fairbanks, Alaska 99701

Notice to Claim Exhibits, Depositions and Transcripts

If you were involved in any Civil or Misdemeanor court case filed in the Fourth Judicial District before January 1, 1978, which is now closed and not on appeal, you should make arrangements to immediately remove from our file any exhibits, depositions and transcripts you wish to keep.

If these exhibits, depositions and transcripts are not claimed and removed from the court system on or before January 1, 1980, they will be destroyed.

You may call 452-1551 or write to the above address for further information.

DATED at Fairbanks, Alaska this 21st day of August, 1979.

JAMES R. BLAIR
Presiding Superior Court Judge

Should You Incorporate Your Law Practice?

By Robert L. Doss, Jr.

Corporations, and professional corporations in particular, have been called everything from the ultimate tax shelter to a pain in the neck (and perhaps a few other things which do not suit the tenor of this publication to repeat). The objective of this set of articles will be to examine the incorporation of a law practice, in the process hopefully explaining why some of the more positive statements made about professional corporations are true; when the time may be right, if ever, for you to incorporate your practice; to point out some of the costs and traps involved in forming, operating and dissolving a professional corporation so that you do not come away from the experience with a professional corporation with some of the more negative feelings mentioned. Hopefully these articles may be of some use both to those of you who know little or nothing about professional corporations and may be considering at some time the incorporation of your practice; as well as those of you who have a greater degree of familiarity with corporations, who may already be practicing as a professional corporation, for your own needs and perhaps those of your clients in other fields.

Why Incorporate?

There are both tax and non-tax reasons for incorporating. Some of the tax as well as the non-tax aspects of incorporating will be explored in our next article. The material that follows will be a consideration of the employee benefit tax advantages of incorporating.

The major tax advantage to be obtained in incorporating a professional group is in the retirement plan area. The general tax characteristics of retirement plans, whether corporate plans or plans maintained by a proprietorship or partnership, known as Keogh or HR-10 plans, are probably familiar: employer contributions to the plan are tax deductible by the employer within certain limits; the participants in the plan are not currently taxed on the contributions made on their behalf; the income earned on the funds held in the plan, whether in the form of a trust or some other arrangement, is generally not subject to income tax as it is earned by the plan; lump-sum distributions to a participant or his beneficiary may quality for very favorable income taxation rates; and a distribution upon death to the beneficiary of a participant in a plan may be exempt from estate tax.

* * *

There are certain distinguishing characteristics that should be considered, however, between corporate qualified plans and Keogh plans. The major distinguishing characteristic is the limitations on the deductible contribution which may be made by the employer. The maximum deductible contribution to a Keogh plan for each individual in the plan is the lesser of $7,500.00 or 15% of compensation. If a corporation adopts a pension plan or a profit sharing plan (or both), it may be able to deduct contributions of up to the lesser of 25% of an employee's compensation, or $32,700.00, the latter amount being subject to periodic cost-of-living adjustments. A corporation may also adopt another type of pension plan, known as a defined benefit plan, which, depending on the age of the key participant, may provide for substantially larger deductible contribution levels, in some cases in excess of 100% of current compensation.

With respect to the employees that would be eligible to participate in a qualified plan, with a Keogh plan the employer may impose a waiting period of up to three years of employment before an employee may be eligible to participate in the plan. If an employee does satisfy this eligibility period, and becomes a participant in the plan, all contributions made to the plan on his behalf would become immediately vested; that is, if the employee were to leave at any time subsequent to his entry into the plan, he would have a nonforfeitable right to all contributions made to the plan on his behalf and earnings thereon. A corporate plan may have a similar rule to the one just stated with respect to a Keogh plan. A corporate plan, however, may have a shorter eligibility period, not to exceed one year, and at the same time adopt a vesting schedule which could reduce or eliminate a departing employee's nonforfeitable right to his interest in the plan for a number of years. Thus, the plan may provide that an employee terminating service prior to four years of service with the employer would not be entitled to any portion of the contributions made by the employer on his behalf. If the employee had worked for four years, his percentage of the contributions made on his behalf would be limited to 40%, and that percentage would increase gradually with each subsequent year that the employee had worked so that he would not earn a nonforfeitable right to 100% of those contributions until he had been employed for as much as eleven years. The amounts forfeited by terminating employees, in profit sharing plans, may be allocated among the remaining participants in the plan in a similar fashion to the allocation of the employer contribution. In pension plans, the amounts forfeited reduce required employer contributions to the plan.

In a corporate plan, loans may be made by the participants from the plan to the extent of their vested interest, and perhaps in greater amounts with adequate security. Under certain circumstances, and in certain corporate plans, participants may make withdrawals from the plan, subject to current taxation, prior to termination of employment and at any age. No loans may be made from a Keogh plan to a partner or proprietor, nor may withdrawals be made by these individuals prior to the attainment of 59½ without being subject to a penalty of 10% of the amount of the withdrawal or loan.

Finally, corporate plans have the capability of having a great deal of portability between plans; that is, if a participant leaves the employment of a corporation, and as a result receives a distribution from the qualified plan of that corporation, he may avoid taxation on the distribution if it is transferred to an individual retirement account, or to another qualified corporate plan or a Keogh plan. The self-employed participant in a Keogh plan can only make a tax free rollover to an individual retirement account, and then only provided that the individual is either disabled or has attained age 59½.

The other major tax advantages available to a corporation that are not available to partnerships and sole practitioners are the availability of group term life insurance and the use of a medical expense reimbursement plan. Group term life insurance may be taken out (if there are enough employees to qualify for group insurance), which may cover the stockholders who are employees as well as the other employees, and the premiums will be deductible by the corporation. If the coverage per employee does not exceed $50,000.00, the premium paid by the corporation is not treated as additional compensation to the employee.

Under a medical reimbursement plan, the payments that the corporation makes for the medical expenses of its employees are deductible to the corporation but not taxable to the employees. It should be noted, however, that the Revenue Act of

[continued on page 10]

Taxation

(continued from page 9)

1978 provides that, beginning in 1980, if the medical reimbursement plan does not meet certain non-discrimination standards, the medical expenses or reimbursements paid to or for the highly compensated employees will be subject to taxation to those employees. Thus this particular corporate planning tool has been severely curtailed and potentially eliminated by those provisions.

When to Incorporate?

Taking into account the various tax advantages to be achieved by incorporating a professional group, the question is often raised as to when is the proper time to incorporate. Though other factors are involved, as numerical analysis is certainly a relevant factor in this timing decision. Ignoring for the moment the various costs associated with incorporating, the analysis should initially focus on the relative amount of deductible contributions which may be made to qualified plans, either in an unincorporated form, to a Keogh plan, or to a corporate plan. For example, assume we have a proprietorship, with a net income of $45,000.00, the proprietor would be able to make a deductible contribution to a Keogh plan for his account of $6,750.00 or 15% of the earned income. In a corporate plan (or plans), assuming a salary of $45,000.00, as an employee he would be entitled to contribute and deduct as much as $11,250.00 for his account (and as noted above, perhaps more through use of a defined benefit plan). The difference in deductible amounts between a Keogh plan and a corporate plan is even greater at larger amounts of earned income or salary. For instance at a comparative level of $75,000.00 the maximum contribution to the Keogh plan would be $7,500.00, while the maximum contribution and deduction for the corporate plan would be $18,750.00. At a comparative level of $125,000.00, the relative deductible amounts would be $7,500.00 versus $31,250.00. Even if we were to assume that the only plan to be maintained by a corporation was a profit sharing plan, in order to retain the maximum degree of flexibility each year since it requires no fixed contribution, once the comparative level of salary and earned income exceeded $50,000.00, the comparative amount deductible in the corporate plan would be increasingly greater than the amount deductible for the Keogh plan.

* * *

Obviously part of the consideration in determining whether or not to incorporate a practice is what the costs of incorporating would be. Each of you is familiar with your own charges, of course, for the various steps involved in the actual incorporation. Since there would be a new entity, there may be additional annual accounting expenses. If you are involved in installing retirement plans, you are also familiar with what your fees might be for those services. Initial costs for retirement plans, if you or your client are advised to go to outside services, may range anywhere from no fee at all for adopting certain prototype plans or as much as $2,000.00-$3,000.00 for a combination of individually designed plans. The annual administrative cost of maintaining a plan maybe in the range of $500.00 $1,500.00, depending upon the number of employees covered by the plan, and to what degree you choose to control the investment of the plan.

A frequent objection to maintaining a qualified plan is the cost of covering employees of the professional group other than the professional employees. As I will illustrate, this "cost" may not exist, and by means of various design techniques, you may actually get the government to pay all the "cost" of covering employees, as well as some of your own investment, by means of reduced corporate taxes.

A common design technique is to require a waiting period for participation in a plan tied with a deferred vesting concept. As noted above in comparing a Keogh plan to a corporate plan, a corporate plan may include an eligibility waiting period for participation in the plan of up to one year, and the attainment of age 25. The corporate plan which includes an eligibility period of one year or less may adopt a deferred vesting period which will have the effect as turnover occurs, depending on the type of plan, of either increasing the account of the remaining participants or decreasing the required cost to the employer for contributions to the plan.

Another technique employed to minimize the cost of covering non-professional employees is to integrate a plan with Social Security. Without going into a detailed explanation, the general result of this integration is to allocate a portion of a contribution to the higher paid employees only, with the balance being allocated among all participants. Of course this has the effect of allocating a greater amount, as a percentage of compensation, to the higher paid employees than to other employees. For example, where the contribution for each shareholder-employee may amount to 25% of his compensation, the total contribution for the other employees may be considerably lower, perhaps as low as 5-10% in some plans.

* * *

A final design technique of rather recent interest involves the concept of operating a professional practice as a partnership, with the partners being separate one-person professional corporations and/or individuals. The purported advantage of this sort of arrangement is that each partner is able to adopt a qualified plan tailored to his needs, without the necessity of covering any other employees, since there are none. That is all non-partner employees are employees of the partnership, not of any of the partners. This concept, though not a new one, was given a considerable boost by the result in the case of **Thomas Kidde**, 69 T.C. 1055 (1978). That case was appealed by the government to the Ninth Circuit on October 6, 1978. In the case, a corporation, Thomas Kidde, M.D., Inc. was a one-man professional corporation that formed a partnership with another one-man professional corporation in which each professional corporation owned a 50% interest. Several professionals who were formerly employed by Kidde, Inc. became employees of the partnership (the Tax Court held that they were employees despite the taxpayer's contention that they were independent contractors). The Court held that the partnership's employees were not to be attributed to Kidde, Inc. because it did not control the partnership and that, since control of a partnership is defined in the Code as being more than 50% ownership for other purposes, it should also be defined by that criterion for purposes of Section 401(a)(3), thus the corporate plan would not need to cover the employees of the partnership as eligible participants. This holding was contrary to a long-held IRS position, set forth in Rev. Rul. 68-370 (1968-2 CB 174), and reconfirmed in several recent Private Letter Rulings. Basically the position of the IRS is that, unless the employee group is clearly an independent contractor with respect to its services to the professional corporation(s), each partner would be required to in some fashion cover a portion of the salaries of the partnership employees in his qualified plan.

Illustration

To tie together the foregoing discussion of cost and design techniques, let us consider a practical example.

The firm of Suem and Savem, A Professional Corporation, has recently incorporated. They are considering adopting retirement plans. Suem and Savem are each 40 years old. They have set their salaries at $80,000 per year each. They have one associate, age 27, whose salary is $25,000; a secretary/bookkeeper, age 35, whose salary is $18,000 and a secretary/receptionist, age 25, whose salary is $15,000. Savem is inclined to favor deferring as much income through retirement plans as he can, up to 25% of his compensation. He is not sure they can afford all that, but feels they can certainly contribute an amount equal to 10% of compensation annually. Suem thinks it will be too expensive to cover the other employees, and would rather invest the money on his own. Alternatively, he would like to know what would be available to him if they did adopt plans, and he decided to quit five or 15 years from now, or retire at age 65.

The following table was prepared to illustrate what net amount of cash would be available to Suem based on an annual investment of $20,000 (25% of his $80,000 salary):

After-tax cash available to Suem after a period of years.

Year 5	
Alternative A	$58,326
Alternative B	$110,466
Alternative C	$116,296
Alternative D	$127,692
Year 15	
Alternative A	$250,472
Alternative B	$372,016
Alternative C	$392,506
Alternative D	$418,719
Year 25	
Alternative A	$582,918
Alternative B	$809,409
Alternative C	$843,559
Alternative D	$946,668

Alternatives

A: No plan is adopted. Suem invests $20,000 of after-tax earnings.

B: The corporation adopts a profit sharing plan and a money purchase pension plan which requires a contribution of 10% of compensation. The total annual contribution to the accounts of each shareholder is $20,000.

C: Suem and Savem, A Professional Corporation is split up into a **Kidde** arrangement. Neither shareholder covers any of the other employees in his plan. Suem contributes $20,000 per year to his plan.

D: The corporation adopts a profit sharing plan and a defined benefit pension plan which calls for an annual cost for each shareholder of $8,000, or 10% of their compensation. The total amount put into both plans each year for each shareholder is $20,000.

Assumptions

1) All employees are eligible participants.

2) The associate and the secretary/receptionist turn over every two years.

3) The secretary/bookkeeper is permanent.

4) The following vesting schedule is adopted: 0-3 years = 0%, 4 years = 50%, 5 years = 100%.

5) The corporate tax rate is 25%.

6) Suem's individual incremental tax rate is 50%.

7) Suem removes all his funds from the plan(s) at the end of the period indicated, and the lump-sum distribution would qualify for ten-year forward averaging.

8) The funds invested earn 8% before taxes.

9) The plans are integrated with Social Security to the maximum extent possible.

10) the annual administrative costs for the plans are $1,000.

11) The calculations include Suem's portion of the "cost" of including employees in the plan where appropriate.

Addendum

The Ninth Circuit dismissed an appeal from the Tax Court case of **Thomas Kiddle, M.D., Inc.** in October, 1979. More importantly, on October 4, 1979, the Tax Court, in a declaratory judgment action, **Lloyd M. Garland, M.D., F.A.C.S., P.A. v. Commissioner of Internal Revenue**, Dkt. No. 9956-78R, held that the pension plan of a professional medical association which was a 50% partner with an individual doctor in a medical practice was a qualified plan where the only employer of the professional association was a physician, and the employees of the partnership were not covered by the association's plan. The significant aspect of this decision was that the Tax Court relied upon IRC Code Sections 414(b) and (c) in reaching its decision. The **Kiddle** case had been decided based on rules in effect prior to the adoption of the above code sections in 1074. The court stated that, in a situation to which Section 414 applies, it would be the exclusive test for determining whether common control exists in coverage questions. It remains to be seen whether the Internal Revenue Service will follow this decision or will continue to litigate the issue.

One Giant Step Nowhere and Other Ramblings

By Marc Grober

To those members of the bar who have practiced in the field of Indian Law, there is no finer example of giving with one hand and taking with the other than the manner in which the Federal government redresses native grievances.

One artifice employed by the Feds has been the tautology—keep 'em running in circles. One of the oldest symbols known to man and popularized in *Worm Ouraborous*, the serpent swallowing itself is perhaps the thematic forerunner of such works as *Catch-22*; you just can't get there from here.

* * * *

In the past this treatment of American aboriginals has been in large part limited to the federal administration (with their bureaucratic variation on the theme: "blessed are those who move in little circles for they are destined to become big wheels"). Even the BIA, though still apparently dissatisfied with their own performance, has failed to measurably improve that performance over the last century.

* * * *

Though the bar has been witness to the occasional decision ignoring the general rule that statutes passed for the benefit of Native Americans be construed liberally in their favor, the Federal Courts have usually been the fountainhead of Indian Rights as they have consistently reprimanded the Department of the Interior and local government for taking advantage of these people during the cultural transition from enlightened communal regimes to capitalism.

* * * *

I was somewhat dismayed however that while reading the Alaska Federal District Court's opinion in *People of South Naknek v. Bristol Bay Borough* (A76-211-memorandum and order, March 6, 1979) the specter of the avaricious worm haunted my perusal.

The Court at page 6 of that opinion states:

> While State law concerning fixtures may be helpful as a guide in determining what is a "permanent improvement," the tax immunity question is a matter of federal law. No state, of course, could remove the tax immunity by applying a narrow definition of fixtures or reclassifying the improvements as personal property. (citations omitted).

The Court concludes that though the land homes or other permanent improvements on restricted land are exempt from local taxation, there is no such prohibition with respect to "personal" property.

Not Exactly Ruled From The Grave, But...

The Court grounds its opinion in large part on two Supreme Court decisions: *U.S. v. Rickert*, 18 U.S. 432 (1903) and *Mescalero Apache Tribe v. Jones*, 411 U.S. 145 (1973) While *Rickert* contains language which apparently the Court paraphrased prohibiting state courts from attempting to tax improvements by expanding "personalty" and limiting "realty," (aren't Federal Courts required to *apply* state substantive law), *Rickert* is over 75 years old. *Mescalero* on the other hand states that whether an improvement is realty or personalty for the purpose of local taxation is to be determined on the basis of the "intimacy" between improvement and land. Though *Rickert* contains the prohibition, it lacks a test, which Supreme Court provides in *Mescalero*. In other words, some finder of fact must determine whether an improvement has been "permanently" affixed to the land.

Must the home owner provide a foundation for his improvements? How is the home to be affixed so that it meets the *Mescalero* test? Hasn't that decision been left to the Borough?

These are all questions that came to a head in the Bristol Bay area as Bristol Bay Borough and the City of Dillingham attempted to tax the property of natives in the region. In a series of skirmishes between local government and restricted title holders, local government attempted to levy taxes on all realty and personalty located in the area (yes folks, even the fishing boats that were owned outside of the municipality but which exchanged cargo in the municipal docks felt the glinting stare of local revenooers).

In Alaska, however, the law of personalty and realty is much the same as in the states involved in *Rickert* and *Mescalero*. Mobile homes are personalty, at least most of the time. In fact (though such matters are just now coming into the current legal arena with the banks climbing over consumers as the bottom slowly sinks out of our "outside" based economy) the question of the priority of a security agreement on a mobile home as against the mortgage or deed of trust on the real property to which it has been affixed is truly a classical property issue.

Skeletons In the Cellar

A legal approach to this problem is handicapped by the fact that in many bush communities real foundations are engineering nightmares and many people live in cabanas or wannigans—non-affixed improvements. Further complications are raised by a native cultural tradition that though there is no private ownership of land there can be private ownership of one's cabins, shacks, homes. While in the bush it is far from unusual to be told that one person owns a cabin that sits on another's property, it is just as common to see a will that leaves the house to the testator's daughter and the land it sits on to his son. Such a will can and has tied up estates for months.

There could be little doubt in anyone's mind that restricted land is not taxable but personal property is. The question of importance for the Court to decide was where the line between the two could be drawn. In citing *Mescalero* it is apparent that the Court left the real issue rattling "understairs," allowing local authorities to determine whether or not a certain improvement is taxable, the Court guarantee to the contrary notwithstanding.

Bringing It Home

These problems are not limited solely to natives or to the bush (there is substantial acreage in restricted title in urban and suburban Alaska). Let's look at an example.

Jack and Jill purchase some property on Hillside in Anchorage on a wrap around escrow (now de rigeur in the Anchorage area). At the same time they purchase a mobile home and sign a security agreement thereon which is promptly filed with the Department of Motor Vehicles. Now, Jack gets a contractor friend to put in a foundation and a first floor and they jack the mobile home (now freed of its mobilizing structure) on top (yes, people have done this).

Jack and Jill then sell the "home" to a bfp without telling him of the security agreement on the second floor and proceed to get themselves killed trying to visit our state capital by plane. In one hour or less tell me who gets what for which reasons (such sweet remembrances of law school). All of which is a bit far afield from King Salmon (no doubt where Jack and Jill would have landed if they had gone to visit South Naknek instead of the site of the state's new capital reconstruction).

In *South Naknek* plaintiff's motion for summary judgment was granted in part and denied in part, but did plaintiffs really get any relief at all? The case of *Johnson v. Dillingham* (case Number 76-16207 Third Judicial District at Kodiak) graphically illustrates where the matter was prior to *South Naknek* and whore it is now.

Now You See It, Now You Don't

In *Johnson* a native holder of a restricted title "gave" a cabin located on his land to his daughter who claimed the cabin. However, in briefing the matter before Judge Madsen plaintiff's attorney, Alaska Legal Services Corporation, stated that their client did not have a possessory or any other interest in the house (although the stipulated facts were expressly to the contrary).

Both parties briefed the issues of affixing chattels to realty extensively. The Court settled the matter by finding that:

> Delores Johnson is not the owner nor does she have any possessory interest in the house.
>
> Memorandum decision and opinion, January 8, 1979

Basically the Court found that the house was permanently *affixed* to the land and was therefore realty which issue, however, was mooted out by the Court's finding (directly contradicted by the record), that Delores Johnson had no interest in the house (the city was only attempting to tax Ms. Johnson's possessory interest). The Court did not address defendant's claim that Ms. Johnson's possession of the home constituted some interest that was taxable.

California, on the other hand, allows taxation of tenancies, even where those tenancies are provided to federal employees by federal agencies to keep personnel on site. One would have thought that, barring Judge Madsen's opinion, the same would be true in Alaska.

George W. Thompson in his *Commentaries on the Modern Law of Real Property* (see §18 et seq for example) points out that the distinction between personalty and realty has always been a function of societal needs, a determination akin to "highest and best use".

The Alaska District Court was in essence requested to weigh the financial needs of local government against federal pre-emption due to prior commitments to the subject aboriginals on a balance beam bounded in a historical milieu having a tradition of conservative acculturation. Reducing the Aforesaid to English: "Where to now"?

The Court's response (perhaps based on the only prior Alaska State case on point, *Johnson*) was a paper shrug.

Devitt Committee Final Report Out

Statement of Leonard S. Janofsky

Last week the Judicial Conference of the United States adopted the final report of its committee, known as the Devitt Committee, which was created to consider Standards for Admission to Practice in the Federal Courts. The conference approved creation of a special committee to oversee and monitor, on a pilot basis, (A) an examination in federal practice subjects, (B) a trial experience requirement and (C) a peer review procedure. The experimentation would be conducted in a selected number of district courts which would volunteer their cooperation.

The Judicial Conference also recommended by the Devitt Committee is highly desirable. In fact we urged such pilot testing when the ABA testified before the Devitt Committee last April. The ABA will cooperate with the Judicial Conference as these experiments go forward.

These experiments will provide the opportunity to determine whether the concerns relating to an examination in federal practice subjects and trial experience requirements expressed by the young lawyers, minorities and state and local bar associations have validity and, if so, whether appropriate changes can or should be made to accommodate such concerns.

As regards the recommendation of the Judicial Conference that the ABA consider amending its law school accreditation standards to make courses in trial advocacy mandatory in all law schools, it should be noted that at the same time that the Devitt Committee was developing its recommendation, a task force of the ABA Section of Legal Education, known as the "Task Force on Lawyer Competency: The Role of the Law Schools," was also studying the law school curriculum. It has recently submitted a series of 28 recommendations for the improvement of law school education.

The ABA Board of Governors has authorized the distribution of the task force report to educators and to state and local bar associations for study and comment. The task force has recommended that law schools "offer instruction in litigation skills to all students desiring it." Whether it will be feasible or desirable to make such courses mandatory is not yet clear. The effective teaching of trial skills requires a small teacher-to-student ratio and is, therefore, very expensive. Thus the funding of such a curriculum is likely to be far more difficult than the development of the curriculum and faculty. The law schools have also raised the concern of academic freedom. The proposal of the Judicial Conference will be referred to the ABA Section of Legal Education for study and recommendation.

The ABA currently is involved in a program to which I intend to give high priority during my presidency, whereby we are developing mass production techniques for the teaching of trial skills to lawyers already admitted to practice. The highly popular and successful programs of the National Institute for Trial Advocacy have already been capsulized by the ABA into a nine-day course. This year we are conducting a pilot program in two states to develop techniques that will further intensify the program and lower its cost so as to bring it within the time and financial means of young lawyers and those engaged in solo or small office practice. That program should be available early next year to all bar associations and continuing legal education administrators throughout the country.

Rabinowitz

(continued from page 1)

posals by the Anchorage Academy of Trial Lawyers and an ad hoc committee of trial attorneys in anchorage recommending appointment of experienced trial lawyers to act as pro temp Judges in order to alleviate the backlog will not be used.

Additionally, Rabinowitz announced that the evidence was sufficient to enable the Court System to ask the legislature for two additional Superior Court Judges for Anchorage. In response to listeners questions, Rabinowitz urged the Anchorage Bar Association and the Alaska Bar Association to support the Court's request in Juneau through lobbying efforts.

In closing, Rabinowitz observed that the proposals submitted to the Court by the ad hoc committee of trial attorneys in Anchorage wherein that group recommended specific time periods for moving litigation through the Court are compatible with the proposals presently being considered by the Calendaring Committee.

Reforms Require Cooperation

Rabinowitz recognized the tension existing between the Supreme Court and the Superior Court on the issues of past Court System freedom given to each District to develop on its calendaring systems and concern on the part of the trial bench that the Supreme Court is not supporting the trial bench in affirming sanctions imposed by the Trial Court upon attorneys who fail to follow the rules of civil procedure. Citing the Constitution, Rabinowitz was firm in his statement that the Constitution gives the Supreme Court exclusive domain for Court administration. However, he observed that any reforms from any source are going to require trial Judge and lawyer cooperation to effectively administer any calendaring system which attempts to move litigation through the Court efficiently with justice for all.

In closing, Rabinowitz indicated that the calendaring Committee is not unanimous in the decision, but it is likely to continue to review present discovery practice and procedures. Rabinowitz hinted that reform may be necessary in that area in order to make any calendaring system effective.

Rabinowitz also indicated in response to questioning there must be a difference in treatment between the simpler cases and the more complex cases if either are going to be given trial dates certain in order to move them expediently and efficiently through the Courts.

When asked for comment, Judge Carlson stated that the ad hoc lawyers committee suggestion to have self-imposed time limits on cases in order to move them through the Courts was needed because there is not enough Judge time available to actively involve the Judge in all phases of the litigation and to "do it all."

You Are Cordially Intived by the Trial Courts of the State of Alaska To the Installation of
C. Richard Avery
As Judge of the District Court of Alaska
On the Sixteenth Day of November Nineteen Hundred and Seventy-Nine At Four O'Clock P.M.
In Courtroom C, Third Floor Boney Memorial Court Building Anchorage, Alaska

U.S. Postage Paid
Bulk Mail
Permit
No. 401
Anchorage, Alaska

The Alaska BAR RAG

Volume 2, Number 5 | Dignitas, Semper Dignitas | May, 1979 | $1.00

Year Long Study Fructified!

Sitka: Vivid History in Magnificent Setting

This year the Alaska Bar Association has picked one of the most beautiful settings in Alaska for its annual convention and business meeting. Sitka, Alaska rests on the shores of the Pacific Ocean, protected by Cape Edgecumbe with its Mt. Fujiyama-like extinct volcano which rises to an altitude of 3,271 feet and myriads of small islands which dot the coast line. The snow capped peaks of the Tongass National Forest serve as a spectacular backdrop for the city in a setting of serene and majestic beauty.

Still rich in both Tlingit and Russian cultures, the Sitka of today is a thriving modern city with a population of 8,300. A $70,000 Japanese owned pulp mill and tourism are the basis of a sound economy. The Japanese current which flows close to Sitka shores keeps the climate moderate all year.

Rich in History

Sitka boasts excellent accommodations and meeting facilities, including the recently constructed Shee Atika Lodge, the Sheffield House, the Potlatch House and the Sitka Hotel. Sitka also has the only complete convention center in Alaska, the Centennial Building which is a hub of visitor and convention activities in Sitka. In addition to four meeting rooms, there are exhibit areas, a kitchen and an auditorium which seats 500 persons. During the summer months, Sitka's Now Archangel Dancers present authentic Russian folk dances.

Sitka's history is present in St. Michael's cathedral which is at the focal point of Sitka's history as the capital of Russian America. Built between 1844 and 1848 the original structure was destroyed by fire in 1966. Its many priceless art treasures, including icons and artifacts, were saved and can be viewed in the new cathedral which stands in the same location and is an exact replica of the original church.

(continued on page 2)

Inside

Rare European Oak Dominates Federal Court Complex

Three or four hundred years ago, a European Oak tree took root in Germany where it lived until it was felled during a windstorm. It was thereafter purchased by a New York firm, which specializes in furniture and rare woods, and transported to its factory where it languished for some 30 years.

That self-same oak, cut into veneer measuring forty one-thousandths of an inch, now decorates the federal court complex in Anchorage's new Federal Building.

At an installed cost of approximately $785.00 per lineal foot, oak paneling covers the walls of five courtrooms and has also been used for the bookcases in five judicial chambers. There is also a sixth chamber yet to be completed.

The estimated cost for the paneling in just one of the large courtrooms is $40,000.00 for materials alone while the bookcases run approximately $10,000.00 per unit. Each office contains an estimated $40,000 worth of shelving and cupboards which were all custom built and hand finished once in place.

There are two large courtrooms, reminiscent of theatres in the round and one intermediate courtroom on the second floor of the building. Facilities for the U.S. magistrate and Bankruptcy judge, smaller in size, are located on the ground floor.

Besides luxurious chambers, the district court judges will have their own elevator to transport them from basement parking to the second floor. While not originally incorporated in the plans and hence the subject of extensive renovation after the building was in place, the elevator was initially to be a stock variety costing some $40,000.

However, further extensive modifications and additional "security" equipment now necessitates a custom build elevator with an estimated cost of $200,000 to $300,000. At first floor level, the elevator will stop in the law library, another sizeable room.

The type of millwork utilized in the court complex does not survive well in the Alaskan climate which has an average humidity of 13 percent. In order to sustain the oak paneling, a constant humidity of 50-55 percent is essential. Thus far, the operators of the Federal Building have only managed to achieve a 34 percent humidity level. As a result, the European oak is warping off the walls.

American oak, which looks almost identical, and which would have fit in well with the government's "buy American" plan, could have been obtained at one-third of the cost.

Judge Kalamarides Dies

Anchorage Superior Court Judge Peter J. Kalamarides, 63, died in an airplane crash at Campbell Lake in Anchorage shortly after noon on Sunday May 6. Judge Kalamarides was alone piloting a 1963 Piper Cub on floats when he crashed on takeoff. An observer indicated that it appeared a wing had fallen off the plane.

Risk Management Committee Makes Recommendations

Resolution #3 passed at the June, 1978 Annual Meeting required a study of malpractice self-insurance by the Alaska Bar Association. The inside pages of this issue of the *Bar Rag* presents the data and recommendations of the Self-Risk Management Committee which has studied the Norman self-insurance proposal and solicited proposals from the insurance market for the past year. The committee members **Keith Brown, Charles Flynn, Roger Holmes, Karen Hunt, Ken Jarvi, Ronald Kull** and **Donna Willard** have recommended one of the proposals to the membership. A survey to get membership response has been mailed to each member and the results will be presented at the Annual Business Meeting in Sitka on Saturday, June 9, 1979.

The Norman Resolution

The Resolution resulted from a presentation by **Peter Norman**, Risk Consultant of Vancouver, BC to the Board of Governors in Hawaii in February, 1978. Norman was hired by the Board of Governors to do a feasibility study of Bar Association self-insurance in Spring, 1978. A claims loss questionnaire was responded to by the membership in May, 1978. Norman reported to the Board of Governors in June 1978 recommending that the Association institute a mandatory and exclusive self-insurance program with a $2,500 individual deductible. The Association would handle all claims up to $25,000 exposure. Coverage up to $75,000 would be purchased from an insurance company making the limit of liability $100,000 per insured member.

The Norman Proposal

Norman was subsequently rehired as a consultant to verify the loss data, make a coverage proposal to the committee and to solicit a private carrier willing to provide the second layer of coverage from $25,000 to $100,000. Although Norman has declined to identify the carrier, he has advised the Association that he has a commitment from it to write the second layer and to enter into a reinsurance agreement with the Bar Association self-insurance fund for a present price of $220 per member. In addition, Norman has recommended that each insured member pay the Bar Association Liability Fund $480 to cover all expenses and pay claims from $2,500 to $25,000 and to pay all claims expenses up to $100,000 liability limit.

The committee, with Board of Governors approval, also contacted representatives of each of the only ten carriers presently writing E & O coverage for lawyers in the country.

(continued on page 2)

Sitka

(continued from page 1)

Another major historical site is the Sitka National Historical Park where the battle between the Russians and the Tlingit Indians was fought in 1804. This battle won for Russia an overseas empire in North America. Today, the fort and battle site are preserved and interpreted at the Sitka National Historical Park. The visitor center houses exhibits and Indian craft workshops.

Another fascinating historical collection may be found at Sheldon Jackson Museum located on the beautiful campus of Sheldon Jackson College housing one of the finest collections of Indian and Eskimo artifacts in Alaska. Many of the relics were collected by the early missionary for whom the college was named.

In addition to sight seeing, excellent fishing is available in the area. Sitka's waters abound in salmon, halibut, red snapper, crab, herring and abalone. Bring your tackle.

Alaska Lawyers Like CLE

By Ron Kull

As it now stands, Alaskan lawyers and judges like mandatory continuing legal education—but not a whole lot.

In a statewide poll currently being conducted by the Alaska Bar Association, 155 say they favor mandatory CLE while 141 are opposed.

In addition the poll revealed:

1. Most firms have no policy requiring members to attend CLE courses, but nearly all pay the costs of such programs.

2. An overwhelming number of those responding have attended some CLE courses during the past three years, and most of those have done a good portion of their study outside the state.

3. Most favor giving CLE credit for teaching an approved course.

4. Most reject the concept of granting waivers based on geographical remoteness, but most do favor granting CLE credit for attendance at videotape courses.

With the above exceptions, few generalizations can be made from the poll.

On the question of what should be required if a rule mandating CLE is adopted, the responses range all over the place—from a minimum attendance of a quarter of an hour a year to 45 hours a year. If a generalization can be made in this area, it would appear that most favor a given minimum number of hours each year rather than leaving a staggered requirement, i.e., 45 hours every three years.

The judges who voted in the subject appeared to be about evenly split on whether mandatory CLE should be imposed. And rural lawyers likewise were split on the subject.

Interestingly, one judge opined that CLE should be required of all those in active practice, thereby presumably eliminating judges. One court attache said that court clerks shouldn't be required to attend—but that everyone else should.

Also, some lawyers who attend substantial numbers of CLE courses were adamantly opposed to compulsory CLE while some who said they have attended no courses thought CLE should be required.

Members of the Alaska Bar Association will be given the opportunity to cast a formal vote on this topic. As indicated elsewhere in this issue of the *Bar Rag*, a resolution will be introduced at the business session of the annual meeting in Sitka, providing that a minimum of 15 CLE hours per year be required as a condition to the practice of law.

Anchorage Board Seat to be Determined in Election Run-Off

From a field of thirteen candidates, the election for the Board of Governors position from the Third Judicial District has resulted in a run-off election between two Anchorage attorneys. **Rick Helm** gathered the most votes with 101 and **Elizabeth Kennedy** came in second with 85 votes. Run-off ballots containing their names have already been sent to the voters. Results of these ballots are due in the bar association's office by 4:30 May 11.

In the other districts, current members of the Board of Governors won re-election. **William (Bart) Rozell** from Juneau was elected without opposition and **Richard D. Savell** from Fairbanks won a two man contest against **John D. Van Winkle, Jr.** from Nome.

Computer Legal Research Firm to Open

Computerized law research will soon be available to the entire legal community. **Comp.LEX**, a recently organized Anchorage firm, has contracted with West Publishing Company to provide access to its **WESTLAW** service. **WESTLAW** is the publishing company's name for its data base containing hundreds of thousands (millions?) of headnotes, statutes and full texts of cases from reported Federal and State cases plus military court cases.

Comp.LEX will install its terminal facility in its offices in Suite 205, 360 K St. - across from the Law Library. They are predicting a June 1, 1979 start-up date.

The **Comp.LEX** terminal will make it possible for anyone to rapidly receive a review of cases relevant to any issue and a print-out of the material he chooses to take with him.

Research may be accomplished using West's well-known Key Number System or the case citation, if known. The most outstanding feature, however, is the computer's ability to rapidly scan thousands of cases for those containing frequent reference to the words or phrases the researcher used to describe the issues of interest. For example, the terminal will display all cases in which the following sample words appear very frequently: "unsafe food additive and adulterated"

The terminal at **Comp.LEX** will display those cases where the words appear most frequently. Further, the cases will be ranked by the frequency of the sample words. The cases may be further limited to those decided in particular courts, even by particular judges.

The terminal operator need not understand how a computer functions or be familiar with any programming language. In fact, he can be only a "hunt and peck" typist. Parties the contract with **Comp.LEX** will receive a brief training session permitting them the flexibility of personally operating the terminal at **Comp.LEX**. Non-contracting parties will require the assistance of **Comp.LEX** staff in the operation of the terminal.

The contracts will require a minimum purchase of three hours per month (about 42 minutes per week). Contracts are renewed monthly. **Comp.LEX** staff believe that the more law firms use their service the more its great value will be revealed. Use of the terminal at **Comp.LEX** will reduce the time spent doing manual research. In addition, the staff says, the more the terminal is used, the more proficient the operator becomes and the less it costs. Also, a contract saves a considerable sum compared to the same amount of time purchased sporadically by a noncontracting party.

The staff at **Comp.LEX** will conduct limited research for those requesting it, under certain conditions. In most cases, the staff's duties will be limited to operating the terminal under the direction of researchers not desiring to do it themselves.

It will also be possible to telephone **Comp.LEX** say, during a break in a difficult case and request a print-out of that case surprisingly cited by the other side. Or, you may be in Egegik and need some help.

Last, but not least, that same **Comp.LEX** facility will permit the use of dozens of other computer data bases across the nation. There are too many to list from **Comp.LEX's** lengthy catalog, but here is a sample taken at random:

- The American Institute of CPA's
- Society of Actuaries
- Bank of America
- National Center for Child Abuse and Neglect
- Dow Jones
- National Library of Medicine
- American Psychological Association
- U.S. Environmental Protection Agency
- The Financial Post

So, if, for example, you have a whiplash case you can use the terminal at **Comp.LEX** to obtain relevant back injury cases and obtain medical journal articles on whiplash plus any information on psychological aspects, if you suspect some relevancy. All of this information is made available in an unbelievably few minutes. This makes major national libraries

(continued on page 6)

Special Committee

(continued from page 1)

Study was also made of the Professional Liability fund in Oregon and the Southern States Bar Conference group approach to purchasing package coverage from a carrier for 13 southern states and Hawaii.

Only four carriers expressed any interest in writing E & O in Alaska: American Home Group through National Union Fire, the present Bar-endorsed carrier; INAX a subsidiary of INA which purchased GATX in March, 1978; ICA a lawyer-owned Texas insurance company writing coverage in Texas and New Mexico; and the Shand Morahan group comprised of Evanston, Northbrook, and Mutual Fire & Marine and American Banker.

National Union Fire and INAX made specific proposals which are presented in this issue. Shand Morahan declined to make a proposal within the time schedule required by Resolution #3, but has indicated through its Alaska broker that it does plan to enter the Alaska market in the future.

Loss data for Alaska attorneys was made available to each of the interested carriers. The data was gathered not only from the questionnaire results from 88.4 percent private attorneys and 85.83 percent public practice attorneys, but also from present and past carriers in Alaska; defense attorney conference with Norman; and the Insurance Division of the Alaska Department of Commerce.

The membership survey and committee recommendation will be considered by the Board of Governors at its meeting in Sitka June 5, 6 and 7, 1979.

Incorporation in Alaska: Some Tax Considerations

By William Van Doren

This is the first of a two part article dealing with incorporation in Alaska and is intended for the general practitioner not specializing in taxation. General practitioners should be aware of some of the basic tax considerations in advising their clients and incorporating new businesses. The second part, to be published in the next issue of the *Bar Rag*, deals with some of the elementary tax considerations involved with incorporating existing, active businesses, both sole proprietorships and partnerships.

It is assumed that the general practitioner has determined that his client's new business would be better served by commencing in corporate form, tax considerations aside. Provided the requisite formalities are followed, corporations are treated as separate taxpayers. The tax rates are different for corporations than individuals as most practitioners realize. These rates are graduated, like those for indivuduals but at different levels. For the first $25,000, the 1979 rate is 17 percent; the next $25,000, 20 percent; the next $25,000, 30 percent; for the next $25,000 (i.e. between $75,000-100,000) the rate is 40 percent and for income over $100,000 the rate is 46 percent. Within these brackets the rate fixed, thus if the corporation's net annual income is only $5,000, the tax rate of 17 percent applies. (Note: There are limits to the extent a corporation can be utilized by the owners as their private tax-sheltered bank, discussed in subsequent articles). The new corporation can choose its own year-end, thus its tax year can end at any convenient month within one year of the commencement of business. For example, in the fishing industry, most taxable income is earned in the months of July, August, September. By choosing a year-end of June 30, the tax on this income (for 1979) would not be due until August 15, 1980, or a deferral until later next year when subsequent income can more easily pay the tax-estimated tax due. For industries such as certain retail sales with peak incomes in November and December, deferrals of nearly a year are possible.

Earnings as Services

Because corporations are separately taxed, care is required to get the earnings to the owners with a minimum of tax. For new businesses the owners usually are the persons actually running the business. Earnings will be paid either as dividends or as compensation for services (salaries). It is preferable to take the earnings as services because the owners salaries are treated as "earned income" subject to certain limitations to taxes, if reasonable, taxed often at lower rates than dividends. Salaries are deductible to the corporation (reducing taxable earnings) while dividends are not. Thus dividends are first subject to the corporate tax rates, then taxed again as they are paid to shareholders ("the double tax").

Corporate formalities must be followed to obtain the benefits of the corporate taxes. The government, but not the taxpayers, can treat lack of proper formalities to the advantage of the government. Several traditional problems have arisen. If the assets, bank accounts, corporate minutes, meetings and employment contracts are not properly documented, taxpayers have been hurt. The failure to transfer the assets to the corporation has resulted in treating the business (for tax purposes) as a sole proprietorship, if it results in higher taxes. The same result can occur if bank accounts or contracts are not in the corporate name. If the corporate minutes are not kept, similar problems can arise. Failure to document employment status payroll deductions for the owner employees could result in the salaries being treated as dividends; so too if the salaries are unrealistically high for the type of job in question in the industry, the result could be combined taxes at the corporate and shareholder level in excess of the salaries paid.

Investments as Loans

Most owners prefer to "loan" their investment to the company so that they can withdraw their investment as a non-taxable "return of capital." Carried to extremes, this will not work. Each industry is different but the larger the loan, and the smaller the equity investment, the greater the risk that the loan will be treated as investment equity and the repayments as "dividends" (double tax).

The foregoing problems relate not only to new but existing corporations as well. Of particular note are two provisions that apply at the incorporation stage together with choosing a tax year-end. These are the small business stock and sub-chapter S provisions, taken here in turn.

Code Section 1244

Code Section 1244 (of the Internal Revenue Code) provides a "safety valve" in the event the new venture fails. Normally, when stock becomes worthless and has been held for a time, the loss attributable to the stock is a long-term capital loss to the shareholder and deductible at 50¢ on the dollar, limited to $3,000 per year. Section 1244 allows qualifying stock losses to be deducted dollar for dollar up to $50,000 ($100,000 for joint returns) as ordinary losses against income. Every new businessman hopes and expects his business to be a success, but if the business fails, he can obtain benefits of ordinary losses. The formalities are specific, and are strictly construed against the taxpayer. First, the corporation must qualify. To qualify the property (other than stock and securities) and money received for stock (including paid in surplus) can not exceed $1,000,000; (the corporation needs not formally adopt a plan. Second, only common stock in U.S. companies qualified; Third, only individuals and partnerships qualify as shareholders and of these, and only these acquiring stock directly from the corporation; last, if during the period the corporation does well, its equity plus the remaining stock available under the plan can not total over $1,000,000. It has been recently discovered in California that failure to advise clients of Section 1244 stock constitutes attorney malpractice. The corporate formalities need to be followed as outlined above. Counsel are directed to the fact that there are approximately 100 elections that can be made for new businesses and a check-list of these elections and an explanation can be found in the Prentice-Hall and Commerce Clearing House Services in the Law Library. Each loose leaf service on Federal Taxes also includes check-lists on the various elections that can be made. One of the more important elections, and the other major election to be treated in this article, is the election to be taxed on a sub-chapter S corporation. A qualifying corporation may elect to have its income taxed directly to the shareholders, rather than paying a corporate tax. It has often been said that the sub-chapter S election is tantamount to treating a corporation as a partnership for tax purposes. While there are many similarities between the taxation of sub S corporations and that of a partnership, counsel is cautioned that there are significant differences which may create traps for the unwary. Code Sections 1371 through 1378 of the Internal Revenue Code set forth the requirements, the election, and the operation of the taxing scheme for sub-chapter S corporations. The BNA tax management portfolios, which are available at the law library, also indicate the several differences between the sub-S Corporation and partnerships and also set forth in greater detail the specifics, an outline of which is set forth below.

Election Eligibility Conditions

In order to be eligible to make the election, a corporation must meet the following conditions:

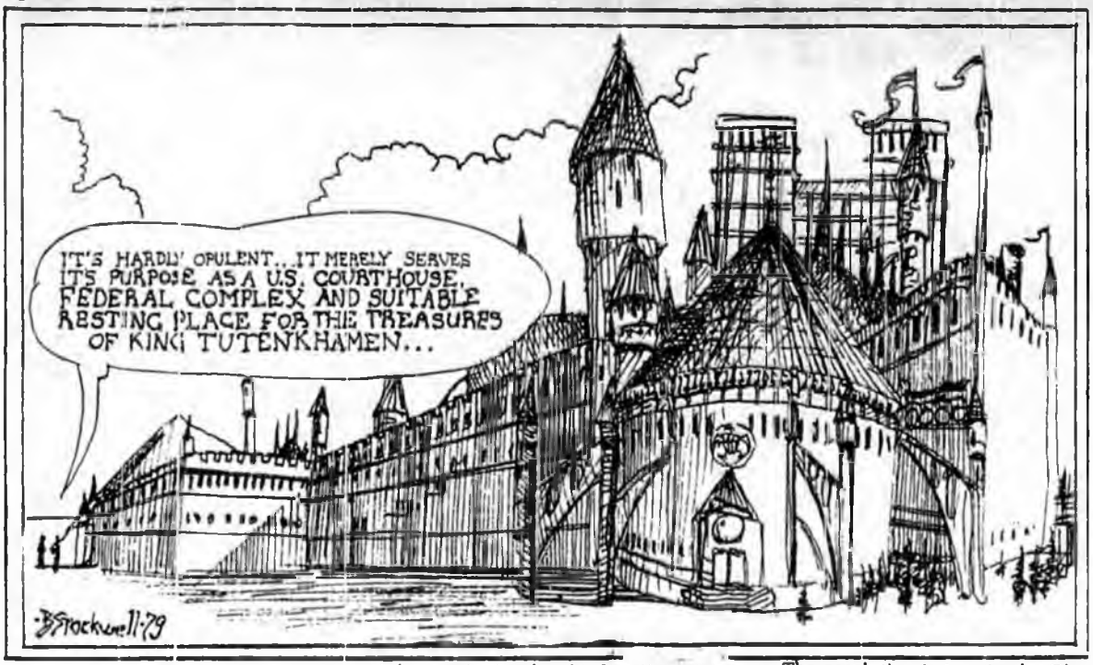
First: It must have less than 15 shareholders: secondly all shareholders must be individuals or estates (a grantor trust or a pooling trust may also be a shareholder) no other trusts may be shareholders; thirdly it must have only one class of stock; fourthly it must be a United Stated domestic corporation; fifthly it must not be a member of an affiliated group of corporations eligible to file a consolidated return; and lastly it must not have any non-resident aliens as shareholders.

In order to qualify, a corporation may not have passive type income, for example from rents, royalties, or dividends and interest, but otherwise it may qualify and there is no limitation of the size nor the type of its assets. Husbands and wives are treated as one shareholder for purposes of determining the number of shareholders of the sub S corporation. This applies without regard to the manner in which the stock is owned by the husband and wife. Children are treated as separate shareholders even though they are minors.

Debt Equity Ratio Problem

The problem of one class of stock has created much litigation. The general concept is, and has been for some time with regard to qualification of sub S Corporations, that the Code is specific and if the specific provisions are not met, the corporation will not qualify. Counsel should also be aware that the provisions of the election are also specific, and if not met to the letter, will not effectuate a valid election (discussed below). The one class of stock, has resulted in the IRS taking the position that if stock which has been issued has different voting rights, there may be "two classes" of stock, thus disqualifying an election or the corporation for qualification for an election. If each group of shareholders however, has the right to elect members of the board of directors based upon the proportional number of share in each group, there is considered to be one class of stock. A corporation may have two types of stock provided only one type of common stock is actually issued and outstanding. Any special or preference type of stock, having preferencial rights to dividends or distribution of assets upon liquidation, will disqualify the corporation. Private pooling agreements between shareholders may qualify and avoid the problems of "one class stock" provided that such agreements are not part of the formal corporate structure.

(continued on page 15)



Editorial

Cod Liver Oil

One of the resolutions before this year's Alaska Bar Association in Sitka calls for the institution of a mandatory continuing legal education program for the Alaska lawyer. A recent poll of Alaska attorneys on the subject of mandatory CLE, reported elsewhere in this newspaper, brought mixed results with slightly more attorneys in favor of the concept than opposed to it. Of those in favor of mandatory CLE, there appeared to be little uniformity on the question of how much is good for us.

The resolution raises a number of questions besides those covered in the poll. Perhaps initially the question should be asked, do we need continuing legal education at all? What good does it do us? Does it make up better attorneys? Does it protect the public? Does it protect our clients? Does it make us more money? Do we win more trials, write better contracts or negotiate better deals? So far, social scientists or statisticians haven't been able to prove that consuming continuing legal education programs makes us better lawyers. Many lawyers who attended continuing legal education programs would answer the above questions in the affirmative, however. They participate because they hope that these programs in some way will sharpen their skills. If pressed, most of them will tell you that there is something to be gained from almost every program they attend.

The next question is, if CLE, like cod liver oil, won't hurt you and it might help you, why is it necessary to force attorneys to participate in these programs? Anyone who has attended CLE programs given by the Alaska Bar Association over the past several years would notice that the participants are the same people mostly, and possibly these are the ones who do not need as much continuing education as the non-participants. It would appear that the majority of attorneys in Alaska do not attend these programs and will not, unless forced to do so. Under a mandatory system, these people would have to attend some program or programs every year. The immediate result would be exposure of all of the bar to some information which might help them to be a better job for their clients, particularly if the quality of the programs is high.

What about the older, wiser, more experienced attorney who has had many, many years of practice of a particular specialty and is generally acknowledged to be a leader in that specialty. Why should he have to take continuing legal education programs? Perhaps, a mandatory program will not satisfy this practitioner's needs. The alternative in this case might be to credit him with his mandatory CLE requirement if he were to teach programs rather than to participate in them as a student. Or instead of teaching, the experienced attorney might be given credit for writing articles for the UCLA Alaska Law Review or other legal publications.

What about the Alaska practitioner in a remote area? Is it fair to ask him to pay an extra tariff to come to Anchorage or Fairbanks or Juneau or Ketchikan or some other center in order to participate in these programs while the attorney living in the more populated areas has them available without transportation or housing costs. One solution to this is the video tape program which could be made available, at mailing costs, throughout the state and which is compatible with the video tape machinery in all the public schools and libraries in the state. Someone who wanted to practice in a community like Bethel could complete the necessary number of credit hours by watching these programs. Another answer to the bush attorney's problem is to give full credit to anyone who attends the annual meeting of the Bar Association which means that once a year he would have the expense of a trip inside Alaska.

Given enough quality programs, assuming that these programs are accessible to all Alaskan attorneys, and further assuming that there are programs available which will be meaningful to every segment of the Alaska Bar and every experience level, a mandatory CLE program might just help us all, including the public we serve.

The resolution is too simple. Obviously, these issues would have to be addressed in any full scale program. Whatever is decided upon this question, it is hoped that as many attorneys as possible come to Sitka and vote on it.

Letters to the Editor

Dear Editor:

While reading Russ Arnett's column in the last *Bar Rag*, I thought fondly of watching Russ question the late Frank Evans on a debtor's examination some few years ago. Frank was a rotund gentleman who "owned" a joint out the old Seward Highway called the Club Oasis. He had an extreme aversion to paying anybody anything. He drove a Chrysler Imperial, wore a big diamond ring, a $300 suit, and smoked dollar cigars.

As Russ bored in with his questions, however, it developed that Frank's sister in Texas owned the Chrysler, and "the Corporation" owned everything else including the very gold in his teeth. He was exceedingly vague as to who owned "the Corporation."

Eventually, Mr. Evans outsmarted himself; he refused to pay his lawyer. Hell hath no fury like an unpaid S.J. Buckalew. Somehow, both Internal Revenue and Buck ended up grabbing the stock in "the Corporation," and Frank's corporate veil was pierced. People got paid and Frank's wife, Mama Joe, ended up running the Oasis. Russ never told me whether his client shared in the bounty.

Changing the subject, Norm Gorsuch's report indicated that Senator Ed Dankworth is trying to "modify"

(continued on page 5)

STAFF

Harry Branson ..... Editor in Chief
William T. Ford ..... Managing Editor
Wev Shea ..... Advertising Director
Wm. W. Garrison ..... Bar Editor
Donna C. Willard ..... Copy Editor

Contributing Editors

John Havelock — Wayne Anthony Ross
Rand Dawson — Russ Arnett
Barbara Schuhmann — Bernard Trink
Richard Whittaker — Andy Kleinfeld

The Bar Rag is published monthly. Mail received at Box 3576, Anchorage, AK 99510.

The Bar Rag is available to non-lawyers by subscription for $10 a year, or may be purchased from the Alaska Bar Association office, 360 "K" Street, Anchorage, AK 99501 for $1.00 a copy. Display and classified advertising rates are available.

President's Column

By Kenneth O. Jarvi

It has been a sometimes frustrating, sometimes rewarding year which has lead me at times to wonder what, if anything, I have accomplished as your President.

After a quick mental review, I was ready to conclude that the results were minimal. However, a second more searching analysis, has lead to a positive assessment.

While you, as members of the Association, must reach your own conclusions as to the success or failure of my leadership, I would like to offer the following observations which illustrate the fact that the Alaska Bar has not been stagnant during the last year.

First, bar-bench relations, which had deteriorated through misunderstanding and lack of communication, have been re-vitalized. The President and President Elect now meet with the Chief Justice and the Court Administrator on a monthly basis. Those sessions are devoted to frank discussions of all facets of the profession.

Second, and one of my primary goals, there has been a complete restructuring of the Alaska Bar committees. For far too long, most committees existed in name only. However, for the past year they have been effective, functioning units involved in many phases of bar association activity.

Third is the newly formed Law Related Education Committee which is now providing education in varied aspects of the legal system to all segments of the community. Not only will this promote a better understanding of our profession but it fills a gap in public knowledge which has existed for years.

Other areas in which there have been marked improvements are the speedy disposition of disciplinary matters, the dissemination of information to the membership through the newly created "Alaska Bar Rag" and an expanded C.L.E. program.

Of a less tangible but nevertheless real nature is the awakened response which I have witnessed among the members of this Association. Only two years ago, any mailing from the Bar Office was greeted with apathy. In the months just past, we have had more people register for and attend more programs and meetings than ever before. Moreover, more people have applied for committee assignment than ever I thought possible.

While everyone's desire for an appointment could not be fulfilled, the interest exhibited at least indicates that the Alaska Bar Association is alive and well. I believe that I have made some contribution to that interest but, even more important, I hope that it will continue.

There are other activities also deserving of mention, not the least of which is the work of the Self-Risk Management Committee, reported elsewhere in this edition, the creation of policy and personnel manuals for the Board of Governors and the well-organized, open-minded operation of the Bar Office.

This Bar, together with those of the other forty-nine states faces tremendous challenges in the next two or three years and it will only be with input and work by the members of the Association that they will be successfully met. The activities just discussed indicate that the necessary support is present. If I have in any way generated that sentiment, I feel that I have accomplished a great deal.

It has been both a privilege and a pleasure to serve as your President and I look forward to seeing you in Sitka.

Bills & Notes

By Norm Gorsuch

May 3, 1979

The First Session of the Eleventh State Legislature is rapidly drawing to a close. It is expected that the Legislature will adjourn sometime before May 7. The Senate, after clearing out of its own Rules Committee, resolutions and citations, adjourned for three days in order to wait for the House to complete its business and send over to the Senate a backlog of bills. At this time in the session, the House and Senate play poker with each other using priority bills designated by the State and House leadership as trading stock. Not infrequently, a bill designated a House priority is not deemed important by the Senate majority and vice versa. This annual exercise in bicamerialism adds to the length of the session because these various priority problems must be resolved before adjournment.

* * *

Caught up in this end of the session process is an Intermediate Court of Appeals Bill, SB 104. There are enough votes on the House floor to pass a Senate Bill which would establish the Court. However, the bill has not yet reached the floor. The House Judiciary Committee added a sunset review provision in its version of the bill which could terminate the court on July 1, 1981. As the bill is now structured, the Intermediate Court of Appeals would have appellate jurisdiction in actions and proceedings commenced in the Superior Court involving criminal prosecution, post conviction release, court jurisdiction over minors, habeas corpus, probation and bail. In addition, the Court of Appeals has appellate jurisdiction in all actions and proceedings commenced in the District Court. Appeals from the new Court of Appeals to the Supreme Court would be within the jurisdiction of the Supreme Court under AS 22.05.010.

* * *

One reason for the delay in the consideration of the Court of Appeals bill by the House is the refusal by the State Senate leadership to appoint a Free Conference Committee to meet with the Free Conference Committee appointed by the House on HB75, a bill relating to the right of privacy and access to public records authorized by Charlie Parr, D-Fairbanks. Parr is insisting upon passage of a bill more closely resembling the bill that the House passed rather than the greatly altered version passed by the Senate. Parr, as Chairman of the House Judiciary Committee, was one of the key legislators in favor of deferring the creation of a new Court of Appeals until the legislature studies the issue in more depth.

* * *

Other issues currently holding up legislative adjournment are the Free Conference Committee deliberations over the so called sunset bills. Generally, the Senate voted in favor of continuing the existence of the agencies subject to the sunset review and the House voted to either terminate them or modify their statutes. This different philosophy will have to be ironed out in Free Conference. In addition, the capital improvement budget must be completed by the House and Senate Free Conference Committee on the Budget; a Northwest pipeline project resolution authorizing further interim studies of specific financing questions must be passed; the raw fish tax which passed the House must be concurred in by the Senate; the State lands disposal bill must be completed and last minute efforts are being initiated to complete a proposed bill to at least establish the management structure for the Permanent Fund. Furthermore, the House and Senate leadership are at loggerheads over the state employee pay raise bills currently pending in the Senate Finance Committee. The House wants to pass them and the Senate wants to use the 30 million dollars for other projects.

* * *

The Court System budget has been reviewed by the Free Conference Committee and is basically a maintenance budget. It is unlikely that the additional Superior Court Judge for Anchorage will be approved by the Legislature this session, although the Kotzebue Superior Court post was authorized. The Judicial pay raise bill is currently lodged in the Senate along with all of the other state employee pay raises.

Resolutions Received

Petitions have been received for the introduction of several resolutions at the annual business meeting of the Alaska Bar Association to be held in Sitka on June 7, 1979. Members of the Bar Association will be asked to consider the following resolutions:

—a resolution that the Alaska Bar Association endorse INAX as the Bar-sponsored malpractice carrier for attorneys practicing law in Alaska;

—that meetings of Alaska Legal Services be published in the same manner and with the same notice required of the Alaska Bar Association;

—that legislation be introduced to amend the Alaska Legal Services Corporation Act to provide that no divorce or personal bankruptcy case be rejected by personnel of Alaska Legal Services if the person applying for legal representation is eligible for their services;

—that the Alaska Bar Association institute a prepaid legal services plan;

—that the Alaska Bar Association institute a cooperative buying association for the benefit of its members;

—that Bar dues for persons admitted less than 5 years be $150; and

—that the license to practice law in Alaska be conditioned on completion of 15 hours of Continuing Legal Education.

Letters

(continued from page 4)

the exclusionary rule. Ed should be given a short course in the background and reasons for excluding evidence which is unlawfully obtained. In the '20s and '30s the common method of obtaining confessions from persons suspected of crime in many cities, particularly New York and Chicago, was to beat the confession out of them. As one High Commissioner to India noted, "It is far easier to sit in the shade rubbing pepper into some poor devil's eyes than it is to be out in the hot sun gathering evidence." Senator Dunkworth may not be aware, in any event, that the Nixon Supreme Court has been punching holes in the exclusionary rule for several years. **Stone v. Powell** has eliminated that application of the rule in habeas corpus cases, so that a state trial court can ignore the rule and you will get no relief in the federal court on your writ. **428 U.S. 465. Schecklo th v. Bustamonte** put the official stamp of approval on the vast number of dubious "oral consents" allegedly uttered in search cases, wiping out dozens of well-reasoned contrary cases in the courts of appeal, particularly the Ninth Circuit. **412 U.S. 218.** There are others. After examining the alternatives, the courts have concluded that the only way to limit such police misconduct is to make it unprofitable by excluding the evidence.

The Chief Justice, among others, used to claim that the exclusionary rule is unnecessary because the victim of the illegality can sue the police. However, the Supreme Court pretty well eliminated such suits in **Rizzo v. Good, 432 U.S. 362.** Perhaps **Bob Ziegler** can shape Ed up.

Wendall Kay
Arizona State University
College of Law
Tempe, Arizona 85281

Dear Reg:

Websters defines specter as any object of fear or dread. **Mr. Jarvi** suggests that the inquiry by the federal government as to bar association violations of federal trade law is therefore to be feared and dreaded.

This investigation however has been "in the wings" for several years now and is most certainly deserved under our present laws. One who has nothing to hide need not fear any inquiry. I am one attorney that not only supports publicly responding in full to that questionnaire but also the separation of the bar association from the judicial branch of government.

"Fear of Feds" is of course understandable and for many Alaskans myself included, loathing can be tacked thereon, but perhaps the best way to discourage Federal meddling is to show uncle that our laundry is clean. And it certainly wouldn't hurt the Bar's PR to make public what we are doing to ensure that there are no unfair trade practices happening.

However, if it's not the show and tell that is upsetting but the fact that the Feds have their hands in our pants again, perhaps it is time that we declared a breach in our contract with uncle, uphold our State Constitution, and secede from the Union.

I would rather see my dues spent answering the questionnaire or seceding from the Union than blowing them fighting a losing battle over whether or not lawyers are immune from laws preventing the public from being bilked.

The attitude exemplified by Mr. Jarvi's article is disgraceful and I believe it would be edifying to the public to have it published in the Anchorage *News* or *Times*.

Sincerely yours,
Marc Grober
805 W. Third Ave.
Anchorage, AK 99501

Coming Events

May 10—Institute on the New Rules of Evidence, Juneau.
May 11—Institute on the New Rules of Evidence, Anchorage.
May 12—Institute on the New Rules of Evidence, Fairbanks.
May 17-19—Meeting of the Board of Governors, Anchorage.
June 1—Institute on Basic Estate Planning, Ketchikan.
June 2—Institute on Basic Estate Planning, Anchorage.
June 4-6—Meeting of the Board of Governors, Sitka.
June 8-9—Annual Meeting, Alaska Bar Association, Sitka.
Sept. 8—Institute on the New Bankruptcy Act, Anchorage.
Sept. 21—Stress Workshop, Anchorage.
Sept. 28—Institute on the Alaska Lien Law, Anchorage.
Oct. 12—Institute on the Alaska Lien Law, Fairbanks.

"Random Potshots"

By John Havelock

"Statutory Gripes"

State legislative leaders engage in weekly breast-beating extolling Alaskan hire, throwing themselves with postured abandon at constitutional ramparts.

Legislation may have already passed at the time of this printing which will send the cost of state government soaring by millions of dollars without bringing a murmur of protest in the community. By increasing the already substantial bidding preference granted to Alaskan concerns, the cost of the state's enormous purchasing requirements will be jacked up again, needlessly, all in the name of Alaskan pride and prejudice.

Rooms full of supposedly educated men and women have been known to nod affirmatively to the exhortation that Alaska be kept for Alaskans, without blushing. In short, there is no more a jingoist people under the American flag.

A Profitable Monopoly

Yet this cultural and economic chauvinism appears to present no obstacle to a small firm in far away Virginia that enjoys a profitable Alaskan monopoly over essential goods and services in the state. Not a single item or component of this product is manufactured in the state. Not a single employee of this enterprise is stationed within the boundaries of Alaska. As is generally the case with monopolies, the product of this enterprise is widely complained of among its principal users for inadequacies real or imagined. Strange to say these complaints make up one of the most influential groups in the state yet their objections fall on deaf ears.

Lawyer readers will ruefully recognize the **Michie Company**, publisher of the Alaska Statutes, which has now enjoyed a state-granted monopoly, free of competition in price or service, for seventeen years, under the specific patronage of the legislature, with no end in sight.

Yes, Virginia

Virginia is assuredly the last refuge of true gentlemen. For the pace at which Alaska Statutes are reduced to form for the compilation is indeed gentlemanly. One suspects that out of respect for tradition, legislative enactments are tied with ribbons and sealing wax and dispatched in a leather pouch aboard clipper ships around the Horn to Charlottesville, there to be labored over by scriveners with quill pens in the cooler hours of the evening before the lead is poured and the print run for a return to Alaska by the same method.

Know Alaska

In a knowledge based society, speedy and extensive access to legislative enactments, Supreme Court annotations, internal cross-references and external references such as administrative interpretations is essential. Looking to future needs, we should be developing a linkage between the statutes and electronic data retrieval systems that is accessible to the average practitioner. Instead, we are struggling with a system which scarcely leaves the researcher beyond where he would be with a copy of enrolled bills. Adequate cross-coding between statutes and regulations such as the Alaska Administrative Code is a must to the contemporary practitioner. Interpretative memoranda of the Attorney General and the Legislative Council, cross referencing to federal statutes and the borrowed statutes of other states, the inclusion of federal laws of special applicability to Alaska and the interpretive gloss on those statutes given by administrative decisions and solicitor's

(continued on page 6)

Tax Committee Reports

In late 1978, the Board of Governors of the Alaska Bar Association approved the formation of a Taxation Committee, and appointed the initial membership of the committee. Subsequently, on January 18, 1979, the Taxation Committee held its organizational meeting. The membership discussed the goals of the committee, and created the following subcommittees:

(1) **Legislative Subcommittee.** The four members of this committee (representing Anchorage, Fairbanks and Juneau) will attempt to keep a constant monitoring upon tax and tax-related legislation which is before the legislature. The Committee intends to review such legislation, and where appropriate, make recommendations to the legislature. In addition, we plan to recommend needed legislation in the tax area. We will work with the Taxation Committee of the CPA Society, and propose unified legislation recommendations, where possible. **George Goerig** and **Ralph Duerre** are Co-Chairmen of this subcommittee, and the other members are **Franklin Fleeks** and **Steve Pearson.**

In April, the Taxation Committee met and discussed tax legislation pending before the legislature in Juneau. The committee's conclusions and the recommendations were subsequently drafted and sent to the Chairman of the Senate and House Finance Committees.

(2) **New Tax Law Developments Subcommittee.** The purpose of this subcommittee is to monitor new developments in the area of state taxation. This subcommittee will bring such developments before the Taxation Committee for general discussion. In addition, this subcommittee will coordinate the preparation of monthly tax articles which will be published in the *Bar Rag*. The purpose of the articles is to provide practical, useful tax information to the members of the Bar. **William Van Doren** and **Bernard J. Dougherty** are Co-Chairmen of this subcommittee, and all of the members of the Taxation Committee will work upon the projects of this subcommittee.

(3) **Continuing Education and Public Education Subcommittee.** This subcommittee will coordinate, organize and assist the presentation of continuing education programs in the field of taxation. In addition, this subcommittee will provide organization and personnel for this presentation of programs to the public relating to taxation matters. **Peter Ginder** is the Chairman of this subcommittee, and **Stanley Reitman** and **David Shaftel** are also members.

In addition to the above subcommittees, **Stanley Reitman** has agreed to serve as liason between the Tax Committee and the CPA Society, and has agreed to be the Law Library Resources representative.

The Taxation Committee has monthly meetings on the second Friday of each month at the conference room of **Cole, Hartig, Rhodes, Norman & Mahoney.**

Coastal Seminar Announced

A one day seminar on the implementation of the Coastal Zone Management Act in Alaska will be presented on Saturday, May 19, 1979 from 9 a.m. to 4 p.m. on the University of Alaska's Anchorage campus. This program is a joint presentation of the Environmental Law Committee of the Alaska Bar Association and the University of Alaska's Planning Program of the Department of Business and Public Affairs.

The committee has designed a seminar which brings together representatives of all the groups which will be affected by the implementation of the Act. Speakers will include **Jon Tillinghast**, Asst. Attorney General, Juneau, **Wayne Pinchon**, Coastal Zone Management Coordinator, U.S. Fish and Wildlife Service, Anchorage, **Roger Beers**, Natural Resources Defense Counsel, San Francisco, California and **Francis A. Ulmer**, Director, Division of Policy Development & Planning Office of the Governor, and co-chairman of Coastal Policy Council. The speakers and panelists are each knowledgeable representatives of particular points of view that are expected to influence the decision making process under the Coastal Zone Management Act. Each participant is actively involved in the policy formulation process under the Act, and will share his or her experience with those attending the seminar.

Advanced registration may be obtained by contacting **Jana M. Pearis**, 190 Muldoon, Suite "C", Anchorage, Alaska, 99504. Telephone 333-5588. The cost of the seminar is $20.00 or $10.00 for students. Late registration will begin at 8:30 a.m. at room 188 of the Consortium Library on the University of Alaska campus in Anchorage.

Dept. of Justice Has Computer

JURIS, a legal research computer terminal was installed in the law library of the United States Attorney's office in Anchorage in January. According to **Richard Kibby**, Assistant U.S. Attorney, this research aid was originally to be used by various divisions of the Dept. of Justice in d-2 lands cases, but now is routinely employed for a wide variety of legal research functions.

The system contains all Federal case law from 1960 and U.S. Supreme Court opinions from 1900 in full text. It also has the West Key number headnotes for all states from 1967. Searching is done by asking the computer to locate cases containing given words or combinations of terms. Searches may also be limited to certain jurisdictions and names of judges may also be search words. It is estimated that use of the computer terminal cuts research time by 75 percent.

Although JURIS is presently available only to members of the Dept. of Justice and the U.S. District Court, other Federal agencies have expressed interest in its use. The terminal will be located in the new Federal Building in Anchorage when the U.S. Attorney's office moves there.

Computer

(continued from page 2)

available in Alaska without travel or manual research.

The Comp.LEX staff are busy preparing a "mail-out" to all members of the Alaska Bar Association and any other persons that might be interested. This mail-out will provide the necessary information about contracting, receiving the brief training, or using the terminal only occasionaly. Comp.LEX plans to offer complete law research services, legal writing and a word processing facility in the near future.

With both WESTLAW and the other many national libraries available through the Comp.LEX terminal, close to the Law Library and the State Court building, Alaska attorneys will have an invaluable research tool near at hand. The terminal's time and money saving features will be appreciated by many. The staff at Comp.LEX will be glad to hear from all interested parties. Why not drop them a line? As of May 15, Comp.LEX will be receiving mail at Suite 205, 360 K St., 99501.

Potshots

(continued from page 5)

opinions are essential tools to the lawyer's work.

Hope and Faith

In his 1962 preface the Publisher promised "copious references" which "will serve to tie together the kindred portions of the Statutes." "It is our hope and belief" said Vice-President Dublett, "that these annotations are both exhaustive and accurate." How many Alaska lawyers would join in that expression of faith today?

Apart from necessary access by lawyers and judges, a law driven society cannot afford to shut off laymen from access to special parts of the law of concern to them. Criminal codes, commercial codes, laws relating to corporations, laws relating to consumer protection, laws relating to the organization of state government, these and dozens of other specific areas of the law need to be separately packaged and published for local users.

The full exploration of the publishing necessities and potentials with respect to Alaska law making simply cannot be met by an organization not attuned to the existing political and economic structure of the state.

Serious consideration should be given, considering the growth of the state and changes in technology, printing and communications to bringing this enterprise up to date, at home.

Charity

Even if it proves undesirable to shift from Michie, a serious review of the publisher's effort in maintaining the statutes and its distributional practices should be undertaken

Loss of Zip

It is absurd that pamphlet replacements are not available within the boundaries of the state. The volumes should be coordinated with a workable advance sheet system on legislation and judicial opinion. Likewise, there is no excuse for having to wait weeks for a new set of volumes from the time of ordering. Lawyers owning a set with any maturity will find that the metal grips have lost their zip and the binders jam or fall apart unexpectedly. The index tabs are split. The covers pop from unanticipated pamphlet loads.

No doubt the gentlemen at Michie make a professional effort. However, a lot has changed in Alaska since that contract was first let. Both the needs and capabilities of the state's legal community have changed substantially.

Overdue Review

The performance of the Michie Company under its contract has never been reviewed by a disinterested body of users. Such a review is long overdue. The system of knowledge transfer in law from law making to law use in this state has not been examined in close to twenty years.

If the publishing of the Alaska Statutes was brought home it would doubtless spawn a variety of subsidiary legal publishing ventures which would improve the access of the Bar and the public to legal information. One has in mind, for instance, the needs of the several hundred lawyers and laymen who now use the Alaska Native Claims Settlement Act in their daily practice. With a major contract to meet the overhead, one could hope that a small but brisk trade could be begun in Alaska in publications encompassing less than the whole thing.

CLE pamphlets for probate, trial practice, collections, etc., would be very helpful and would likely be forthcoming if we had someone in the state hustling to expand his business.

Gloomy Note

Closing on a gloomy note, there are an increasing number of hungry young lawyers in the state now who would be willing to work at relatively low rates in producing a more extensive and useful product.

Committee Recommends INAX

After a year of study of the current availability and cost of malpractice insurance in Alaska including the Norman proposal for Bar Association self insurance, the Self-Risk Management Committee comprised of **Keith Brown, Charles Flynn, Roger Holmes, Karen Hunt, Ken Jarvi, Ron Kull and Donna Willard** unanimously recommends that INAX be sponsored by the Bar Association as the Bar-endorsed malpractice carrier for Alaskan attorneys. Committee recommendation is based upon the following nine factors which the committee considered to be weighted in favor of the INAX proposal:

1. INAX covers paralegals, investigators, abstractors and law clerks at no additional charge to the policyholder, but they are not named insureds.

2. INAX coverage includes libel, slander and malicious prosecution claims.

3. Under the INAX policy, defense costs are paid in addition to coverage limits and are not deducted from liability limits.

4. INAX liability coverage is available in Alaska up to a 5 million dollar limit.

5. Under the INAX policy, if the policyholder does not agree to a settlement offer that is less than its policy limits, the company does not limit its liability to the amount for which the claim(s) could have been settled. It continues to defend. Additional defense costs will be paid by the company on a pro rata basis, but future settlement or judgment will be paid up to policy limits.

6. The INAX-furnished defense is not withdrawn should policy limits be exceeded but the company continues to defend and pays its pro rata share of expenses if liability limits are exceeded.

7. For the attorney who has been in practice with two or more years of prior acts exposure, the premium rate is less. The premium for zero or one year of prior acts exposure is greater under the INAX policy, but the committee weighted the cost break given to the more experienced attorney as affecting more members of the Association. Thus, the premium structure of the INAX policy was considered more favorable to most of the members.

8. INAX has recognized the value of and need for a loss prevention program in those areas where most claims arise. Thus it has developed and provides, at no cost to the Association or to the policyholder, an in-house loss prevention program which includes two annual CLE seminars with expert speakers, films, video and brochures.

9. INAX will select an in-state adjustor to develop knowledge and expertise in handling attorney malpractice claims.

The committee recommends INAX realizing that INAX did not have as favorable provisions as National Union Fire in three areas. INAX does require that the policyholder deductible be paid for each occurence which results in claims made in one policy period. National Union Fire requires only one deductible per policy period regardless of the number of occurences which gives rise to claims. Loss data indicates very few attorneys have more than one occurance per policy period that results in malpractice claims.

INAX does not have as favorable an extended reporting endorsement or tail available in that it only provides an unlimited tail for 225 percent of the last annual premium due 30 days after termination of the policy. National Union Fire provides the same unlimited tail at the same premium rate, but also provides an optional three year and six year tail at reduced charges. The National Union tail premium can also be paid in installments.

Finally INAX does not provide discounts for CLE as does National Union Fire. However, the committee determined that the CLE discount offered may be of limited value to many of the members because it requires the individual attorney to first pay at least a $1,000 annual premium before the discount is applicable.

The committee evaluation of the Norman self-insurance proposal is reported elsewhere in this issue of the *Bar Rag*.

Loss Control Program to be Considered

A mandatory feature of the Norman self-insurance proposal is a loss prevention program to attempt to prevent malpractice claims. The program is based upon the fact that the number, scope and cost of attorney malpractice suits in Alaska have doubled in the past five years. The resultant high damages paid have resulted in insurance carriers withdrawing or limiting their coverages; lawyers paying higher premiums or going bare; and the Bar Association attempting to find solutions to the underlying causes.

In order to effectuate a self-insurance program which can aid in loss prevention, the Self-Risk Management Committee recommends the following:

1. Mandatory reporting of all claims to the Bar Association office in order that the type of claims being alleged can be known for use in planning CLE seminars.

2. Because the majority of claims are made regarding errors or omissions in law office management, a rule change be proposed to the Supreme Court requiring each active practitioner to attend six hours of law office management CLE in a three year period. A bylaw change should be passed by the Board of Governors mandating that the Association present six hours of such CLE every year rotating the program between districts two and four, district three and district one.

3. The Board of Governors enact

[continued on page 12]

Loss Prevention Program Proposed

A mandatory feature of the Norman self-insurance proposal is a loss control program to attempt to control the scope and severity of malpractice claims once an act or omission has occured but which act or omission may potentially be controlled to lessen or eliminate the damage to the client.

In order to effectuate a self-insurance program which can aid in loss control once an attorney is aware of a potential malpractice problem, the Self-Risk Management Committee recommends the following:

1. Because many malpractice claims may be capable of repair before reaching the lawsuit stage, the Board of Governors should propose a rule to the Supreme Court requiring attorneys to report possible claims to the Association as soon as the lawyer reasonably foresees a potential claim.

2. The Board of Governors should create a standing claims repair committee to which three lawyers are appointed to serve staggered terms of three years each. The committee should function as follows:

A. The lawyer gives notice of a potential claim to the insurer and to the committee which within five days selects a Repair Expert who has at least five years of experience in the area of potential claim. Said expert's fees to be paid as defense costs from the Association Self-Insurance funds. Client disclosure must also be made.

B. Within 20 days after his appointment, the Repair Expert takes whatever action, if any, is possible to repair the error or omission. Disclosure of all such activities must be made to the client.

C. Neither members of the Repair Committee, the Repair Expert nor any member of their firms can represent any party if repair is not accomplished and a lawsuit results.

D. The Bar Association indemnifies members of the Repair Committee and the Repair Expert should they be sued in any resultant lawsuit.

3. The Conciliation Panel procedures of new Bar Rule 16 should be developed to encourage discontented clients who have neither a fee dispute nor an ethical complaint to utilize the procedures to achieve resolutions of their complaints.

Self Insurance Is Not Recommended

Peter Norman, Risk Management Consultant hired by the Board of Governors, has made the following proposal to the Association recommending that it initiate a self-insurance malpractice program for Alaska attorneys. Norman's proposal requires mandatory participation by each attorney engaged in any form of private practice in the State of Alaska. Each attorney would be required to pay a flat fee per year of $480 to a group fund managed by the Bar Association or lose the license to practice law.

The fund would pay costs, defense fees and damages for malpractice claims between the limits of $2,501 and $25,000. The fund would also pay defense costs on all claims up to $100,000. The individual attorney would pay the first $2,500. For an additional $220, each attorney would be covered up to $100,000 liability limit with coverage obtained by the Bar Association from an insurance carrier. The carrier would also provide stop-gap coverage in the event that fund monies were exhausted during the policy year.

Attorneys that wanted more than $100,000 limits would need to secure the additional coverage from an insurance carrier. Prior acts would be covered up to the $100,000 limit. Upon retirement or appointment to the Bench, an attorney could purchase "tail" coverage for $100 per year for claims presented in the future for some act or omission during the policy period.

Participation Required

All attorneys licensed to practice law in Alaska would be required to participate in the program except government employed attorneys; corporation employed lawyers (this does not exempt professional corporations); public aid attorneys; and admitted attorneys not engaged in the private practice of law in Alaska. Exempted attorneys would be required to participate in the fund if they did any pro bono, family or friends' legal work, however.

The Bar Association would administer the fund, issue policies, bill for premiums, and investigate, adjust and otherwise handle the claims. The Association would also be responsible for either complying with the Alaska Insurance Code requirements or getting legislative exemption, in part or in whole, for its insurance program. If legislative exemption resulted in the insurance industry antitrust exemptions being non-applicable, the Association would also be responsible for complying with the state and federal anti-trust laws. The tax exemption issues would also be the responsibility of the Association.

Norman's proposal also mandates aggressive loss prevention/loss control programs to be administered by the Bar Association. See articles elsewhere in this issue of the *Bar Rag* for an explanation of these two programs.

Norman suggests that there are several advantages to the members if the Board of Governors adopts his proposal. The primary advantage is Bar Association control over attorney malpractice problems in Alaska. Through the mandatory loss prevention and loss control programs, both the extent of and type of claims would be under the continuous scrutiny and management of the Association.

Coverage Always Available

A second advantage proposed by Norman is that minimum coverage of $25,000 would always be available to each privately practicing attorney

[continued on page 12]

Alaska Claims Follow National Trend

E & O claims against Alaska lawyers have followed three national trends. (1) The number of claims has drastically increased. (2) Majority of claims are based upon acts or omissions in meeting filing dates; ignoring statutes of limitations; or delayed advice to clients causing most of them. These claims are frequently classified as law office management problems. (3) Finally, damages paid in settlement or judgments have skyrocketed.

The major E & O carrier in Alaska for 1970-1975 was Mission Insurance Company. During that period Mission collected $152,637 and paid out $187,750 in claims and $26,623 in defense expenses for a loss ratio of 140 percent.

In 1974 six claims were made. The figures for 1975 when National Union Fire became the Bar-endorsed carrier reveal that eight claims were made. In 1976 eight claims were made. The number of claims made in 1977 and 1978 jumped to 12 each year. Through March, three claims have been reported to the Bar-endorsed carrier for 1979.

No E & O lawsuit against attorneys has been tried to date. Settlements range from dismissed for no dollars to over a quarter of a million dollars. Defense costs have ranged from less than 10 percent of the settlement figure to as high as 50 percent of the settlement paid. The majority of closed cases incurred defense costs of approximately 25 percent of the settlement amount.

For the years 1974 through 1978 at least nine claims were made alleging missed statute of limitations or other filing dates. A possible additional 13 claims may have alleged similar negligence. Research has revealed 44 known claims in the past five years. Additional claims may not be known because they were not listed on the questionnaires or not discovered because the coverage was placed through out-of-state brokers and written by international carriers not admitted to write in the State of Alaska.

DISCLAIMER

The information contained within the *Bar Rag* regarding coverage terms and premium costs is information furnished to the Self-Risk Management Committee by the named brokers and/or insurance carriers and/or Peter Norman. Each broker and carrier was given an opportunity to review information and to advise of errors or misrepresentations. The Bar Association, Board of Governors and committee members disclaim any and all responsibility for the accuracy of the information presented. The reader relies upon the information to his/her detriment at his/her own risk.

E & O Insurance Programs Compared

AREA COVERED	PRESENT BAR-ENDORSED AMERICAN HOME (NATIONAL UNION FIRE)	INAX	NORMAN
INSURED	Sole proprietors, partners of a partnership, stockholders or members of professional corporations or professional associations. Any lawyer who is an employee of the named insured. Any lawyer who was previously a named insured (other than sole proprietor) who terminated his relationship with the firm, but only for professional services rendered prior to termination. Changes in firm must be reported to company within 30 days. For additional charge, paralegals, law clerks, abstractors and investigators may be covered.	The named insured and predecessor firms; any partner, officer, director, stockholder, or employed lawyer of the named insured or lawyer who, during policy period becomes such: any former partner, officer, director, stockholder, or employed lawyer acting in his professional capacity on behalf of the named insured; the heirs, executors, administrators, and legal representatives of each insured in the event of death, incapacity, or bankruptcy. The lawyer is covered for acts or omissions of his non-attorney staff without additional charge; however, they are not "additional insureds."	Mandatory participation required as a condition to maintain an active license to practice law in Alaska except for the following: 1) Attorneys elected or employed exclusively on a full-time basis by a governmental entity. 2) Attorneys employed exclusively on a full-time basis by a public or private corporation, association or other business entity except for a professional corporation whose business is the practice of law. 3) Attorneys employed by legal aid services corporations who are eligible for professional liability insurance through the National Legal Aid and Defenders Association. 4) Attorneys not engaged either full-time or part-time in the private practice of law in Alaska.
COVERAGE	Covers claims arising out of acts or omissions of the insured and any other person for whom the insured is legally responsible for professional services rendered, or which should have been rendered in the insured's capacity as a lawyer. When the insured acts as a fiduciary, such services shall be deemed professional legal services but only to the extent that the insured would have been legally responsible in the usual attorney-client relationship as attorney for a fiduciary, except for any loss sustained by the insured as the beneficiary or distributee of any trust or estate. Libel, slander and malicious prosecution are excluded.	Claims first made against the defined insured for any act or omission in professional services rendered or which should have been rendered in the insured's capacity as a lawyer or Notary Public. When the insured acts in a fiduciary capacity, such services shall be deemed professional services but only to the extent that the insured would be legally responsible in the usual attorney/client relationship as attorney for a fiduciary except for any loss sustained by the insured as the beneficiary or distributee of any trust or estate. Claims for libel, slander and malicious prosecution (personal injury) arising out of the conduct of professional services of the insured as a lawyer or Notary Public.	Claims arising from any act or omission of the defined insured arising out of the performance or failure to perform professional services for others, in the insured's capacity as an attorney except that, the insured when acting in a fiduciary capacity, shall be covered only for acts or omissions in the usual attorney/client relationship. Unknown as to whether libel, slander and/or malicious prosecution are covered.
DEFENSE, SETTLEMENT AND SUPPLEMENTARY PAYMENTS	The company shall defend. Written consent of the insured before settlement. If the insured refuses to settle as recommended by the company and elects to contest the claim, company's liability shall not exceed the amount for which the company would have been liable at that time. Company shall not be obligated to pay any claim, claims expense, or continue defense after limits of liability have been exhausted. Claims expense included within limits of liability, and if limits are exhausted the company shall have the right to withdraw, tendering control of defense to the insured.	The company shall: defend even if suit is groundless, false, or fraudulent; make such investigation and negotiation as it deems expedient; but written consent of the insured is required before the company can settle a claim. If consent is refused, applicable policy limits are still available. Defense costs are payable in addition to the limit of liability, however, in the event of payment of a claim in excess of the limit, the company shall pay such proportion of claim expenses as the amount of the limit of liability bears to the total amount paid to dispose of the claim.	The Bar Association shall defend even if allegations are groundless, false or fraudulent; but the Bar Association may make such investigation and, with the consent of the insured, such settlement of any claim or suit as it deems expedient; if the insured and Bar Association fail to agree on whether settlement shall be made then such issue shall be decided by an arbitrator being a member of the Alaska Bar Association appointed by the Chief Justice of the Supreme Court of Alaska whose decision shall be binding. Total defense costs are deducted from first $25,000 layer including costs incurred for damages payable from $75,000 layer.
CLAIMS MADE FORM	Applies to acts or omissions if claim is first made during the policy period or extended reporting period. Claim is first made if: a) during the policy period or extended reporting period insured knows or becomes aware of a possible claim and gives written notice to the company; b) if payable claim is made, any additional claims brought subsequently to that policy year resulting from the same or related acts shall be considered part of the claim first made during the policy year. A claim is considered first made when company first receives notice.	Applies to acts or omissions if claim is first made during the policy period or extended reporting period. Claim is first made if: a) during the policy period or extended reporting period insured knows or becomes aware of a possible claim and gives written notice to the company; b) if payable claim is made, any additional claims brought subsequently to that policy year resulting from the same or related acts shall be considered part of the claim first made during the policy year. A claim is considered first made when company first receives notice.	Applies to claims first made during policy period if insured first knows or becomes aware of claim or possible claims and gives written notice to the Bar Association during such period.
PRIOR ACTS	Prior acts included if the insured did not know nor could have foreseen a possible claim before effective date of policy. If other valid and collectible insurance exists, this policy shall apply as excess with claims expense included in the limits of liability.	Prior acts covered if the insured had no knowledge, nor could have reasonably foreseen a possible claim before the beginning date of the policy when there is no other valid and collectible insurance applicable to the claim. If other valid and collectible insurance exists, this policy shall apply as excess.	Unlimited coverage if insured did not know and could not reasonably have foreseen claim prior to policy period and if no other insurance is applicable.
POLICY PERIOD	The period of time between the inception date and effective date of termination, expiration or cancellation of coverage, specifically excluding any extended reporting period.	The period from the effective date of the policy to the expiration date or earlier termination date, if any. Policies are issued for one year.	From the time when coverage has been effected through the Alaska Bar Association and for which a premium has been paid, until either the expiration date or until cancellation of coverage, whichever first occurs.
TERRITORY	Worldwide providing claim is made or suit is brought within the United States or Canada.	Worldwide.	Worldwide providing claim is made or suit is brought within the United States.

EXTENDED REPORTING ENDORSEMENT (TAIL)	In cases of cancellation or non-renewal by either the insured or the company, the insured may purchase an endorsement providing an unlimited extended reporting period for claims which occurred prior to the termination of the policy period but which are first made in the extended reporting period. The insured shall pay a premium equal to 225% of the last annual premium. A three year limited tail is available at 100% last annual premium. A six year limited tail is available at 150% last annual premium. Premiums may be paid in installment.	Unlimited extended reporting endorsement is available to the insured for 225% of the last annual premium in the event of cancellation or nonrenewal by the company of the insured. Covers claims which arise during the policy period but are reported during the extended reporting period. Payment of the additional premium is due within 30 days of the termination.	For an annual charge of $100 unlimited tail is available. Because coverage is mandatory for all active members of the Bar Association in full or part-time private practice, tail is available only to members who cease practicing law or change to judicial status.
LIMITS OF LIABILITY	Claims expenses are included within the limits of liability. All claims expenses shall first be subtracted from the limits of liability with the remainder being the amount available to pay money damages. The first limit is applicable to all claims and expenses arising out of the same or related professional services without regard to the number of claims. The aggregate limit is available for all claims made in a policy period. Deductible applies only once during policy period regardless of number of claims during same period.	Claims expenses are not deducted from limits of liability. The "aggragate" amount is limit for all claims made during each policy year or last policy year plus extended reporting endorsement if purchased regardless number of lawyers in firm. Deductible is subtracted from total amount of damages and claims expenses paid and company is liable only for difference. Deductible is applicable to each claim made during policy period regardless of number of claims made during same period.	$100,000 per occurrence includes $2,500 deductible and the $75,000 liability limit obtained by Bar Association from private insurance carrier for all damages arising out of all acts or omissions in connection with the same professional services regardless of the number of claims or claimants, and regardless of the number of certificates that have been issued to the partnership or corporation, its members or employees against who claim or claims are being made. Deductible is paid per claim.
CLAIMS EXPENSE	Fees charged by attorney(s) designated by the company. All other fees, costs, and expenses resulting from the investigation, adjustment, defense and appeal of claim if incurred by the company or by the insured with written consent of the company. Does not include salary charges of regular employees or officials of the company. Deductible applies to these expenses.	Legal expenses arising from the defense of any claim, including attorney's fees, arbitrator's fees, court costs, expert's fees, and costs incurred in connection with the attendance of witnesses at a trial or arbitration proceedings. The deductible applies to these expenses. The cost of investigation and adjustment of claims by salaried employees of the company (including attorneys) and fee adjustors shall be borne by the company.	All adjusting costs and fees, defense costs and fees are borne by the self-insurance fund of the Bar Association.
EXCLUSIONS	1. Criminal or malicious acts. 2. Deliberate, dishonest or fraudulent acts. 3. Employer's claim against salaried employee. 4. Bodily injury or property damage. 5. Insured's activities as officer, director of any employee trust, charitable organization, corporation, company or business other than that of the named insured. 6. Punitive or exemplary damages. 7. Claim arising out of any other business enterprise owned, controlled or managed by the insured, including property. 8. Prior acts if the insured knew or could have reasonably foreseen a possible claim before effective date of policy. 9. Standard Nuclear Energy Liability Exclusion. 10. Libel, slander and malicious prosecution.	1. Criminal, or malicious acts. 2. Deliberate, dishonest or fraudulent acts. 3. Claims arising out of any other business enterprise owned, controlled or managed by the insured including property. 4. Insured's activities solely as a partner, officer, director, or stockholder of any firm or corporation not named in the declarations. 5. Bodily injury, sickness, disease, death or property damage. 6. Insured's activities as a public official or as an employee of a governmental body, subdivision, or agency thereof. 7. Standard Nuclear Energy Liability exclusion. 8. To discrimination by the insured on the basis of race, creed, age, or sex. 9. Lawyers who practice patent/copywrite law for over 51% of total practice. 10. Lawyers who practice entertainment law for over 16% of total practice. 11. Lawyers who practice title/abstracting law for over 76% of total practice. 12. Punitive damages are not specifically excluded, but all intentional acts are excluded which may lead to coverage questions.	1) Any dishonest, fraudulent, criminal or malicious act or omission of any insured. 2) To any claim made by an employer against an insured who is a salaried employee of such employer. 3) Bodily injury to, or sickness, disease or death of any person, or to injury to or destruction of any tangible property, including the loss of use thereof; unless arising out of the performance of professional services, which is covered hereunder. 4) Acts or omissions committed prior to the policy period if the insured on the effective date of this policy had knowledge that such acts or omissions might be expected to be the basis of a claim or suit. 5) Conduct of any business enterprise owned by the insured or in which the insured is a partner, or which is controlled, operated or managed by the insured, either individually or in a fiduciary capacity, including the ownership, maintenance or use of any property in connection therewith. 6) Any punitive or exemplary damages.
WAIVER OF EXCLUSION AND BREACH OF CONDITIONS	Coverage is provided for the "innocent partner." If a dishonest, fraudulent, malicious or criminal act is committed without the personal knowledge or personal acquiescence of other named insureds or personal passivity after acquiring such knowledge. Coverage is also provided to the "innocent partner" relating to the giving of notice to the company with respect to which any other insured is in default. After receiving knowledge, the insured will comply with such condition promptly.	Coverage is provided for the "innocent partner." If a dishonest, fraudulent, malicious or criminal act is committed without the personal knowledge or personal acquiescence of other named insureds or personal passivity after acquiring such knowledge. Coverage is also provided to the "innocent partner" relating to the giving of notice to the company with respect to which any other insured is in default. After receiving knowledge, the insured will comply with such condition promptly.	Coverage is provided for the "innocent partner." If a dishonest, fraudulent, malicious or criminal act is committed without the personal knowledge or personal acquiescence of other named insureds or personal passivity after acquiring such knowledge. Coverage is also provided to the "innocent partner" relating to the giving of notice to the company with respect to which any other insured is in default. After receiving knowledge, the insured will comply with such condition promptly.
OTHER INSURANCE	If the insured has other applicable insurance, the company shall respond pro rata. With respect to prior acts coverage, the insurance will only apply as excess over any other valid and collectible insurance and shall then apply only in the amount by which the applicable limits of this policy exceeds the sum of applicable limits of all other insurance. If this policy is treated as excess, any claims expense allowed shall be included in the limit of liability.	With respect to prior acts coverage, the insurance will only apply as excess over any other valid and collectible insurance and shall then apply only in the amount by which the applicable limits of this policy exceeds the sum of applicable limits of all other insurance.	If the insured has other insurance against a loss covered by this policy, except insurance specifically arranged to apply as excess over the insurance provided by this policy, the insurance hereunder shall apply only as excess insurance over any other valid and collectible insurance and shall not be called upon in contribution.
CONFORMANCE TO STATE STATUTES	No such provision.	Terms of this policy which are in conflict with the statutes of the State wherein this policy is issued are hereby amended to conform to such statutes.	Terms of this policy in conflict with Alaska Statutes are hereby amended to conform to such statutes.
MAXIMUM LIMITS AVAILABLE	$1,000,000/$1,000,000	$5,000,000/$5,000,000	$100,000/$100,000

(continued on page 10)

NOTICE OF CLAIM OR SUIT	As soon as the insured becomes aware of any act or omission which would reasonably be expected to be the basis of a claim or suit covered by the policy, written notice shall be given to the company as soon as practicable together with the fullest information obtainable. If claim is made or suit is brought, all documents shall immediately be forwarded to the company. If during the policy period or the extended reporting period, the company receives written notice of any act or omission which could be expected to give rise to a claim, any claim which subsequently arises shall be considered to be a claim reported during the policy year when written notice was received.	During the policy period or the extended discovery period, the company shall be given written notice of any act, error or omission which could reasonably be expected to give rise to a claim against the insured under this policy. Any claim which subsequently arises out of such act, error or omission shall be considered to be a claim reported during the policy year or extended discovery period in which the written notice was received.	Upon the insured or the named insured becoming aware of any act or omission which might reasonably be expected to be the basis of a claim or suit covered herein, written notice shall be given by or on behalf of the insured to the Bar Association as soon as practicable. If claim is made or suit is brought against the insured, the insured shall immediately forward to the Bar Association every demand, notice, summons or other process received by him or his representative.
ASSISTANCE AND CO-OPERATION OF THE INSURED	The insured shall cooperate with the company and upon request, assist in making settlements, in the conduct of suits, and in enforcing any right of contribution or indemnity against any person or organization other than an employee of any insured who may be liable to the insured. The insured shall attend hearings and trials and assist in securing and giving evidence and obtaining the attendance of witnesses. The insured shall not, except at his own cost, voluntarily make any payment, assume any obligation or incur any expense.	The insured shall cooperate with the company and upon request, assist in making settlements, in the conduct of suits, and in enforcing any right of contribution or indemnity against any person or organization other than an employee of any insured who may be liable to the insured. The insured shall attend hearings and trials and assist in securing and giving evidence and obtaining the attendance of witnesses. The insured shall not, except at his own cost, voluntarily make any payment, assume any obligation or incur any expense.	The insured shall cooperate with the Bar Association and, upon the Association's request assist in making settlements, in the conduct of suits, and in enforcing any right of contribution or indemnity against any person or organization other than an employee or any insurer who may be liable to the insured because of acts or omissions with respect to whom insurance is afforded under this policy, and the insured shall attend hearings and trials and assist in securing and giving evidence and obtaining the attendance of witnesses. The insured shall not, except at his own cost, voluntarily make any payment, assume any obligation or incur any expenses.
SUBROGATIONS	The company shall be subrogated to all the insured's rights of recovery against any person or organization other than an employee of an insured. The insured shall assist however necessary to secure such rights and do nothing after the loss to prejudice them.	The company shall be subrogated to all the insured's rights of recovery against any person or organization other than an employee of an insured. The insured shall assist however necessary to secure such rights and do nothing after the loss to prejudice them.	In the event of any payment under this policy, the Bar Association shall be subrogated to all insured's rights of recovery therefore against any person or organization other than (i) an employee of any insured, (ii) an employee or member of any insured partnership, (iii) any corporation or an employee or member of any corporation owned by the insured but only with respect to services in connection with the practice of law, and the insured shall execute and deliver instruments and papers and do whatever else is necessary to secure such rights. The insured shall do nothing after loss to prejudice such rights.
ASSIGNMENT	The interest hereunder of any insured is not assignable. If the insured shall die or be adjudged incompetent, this policy shall cover the insured's legal representative.	The interest of the insured shall not be assignable. In the event of the death or incompetency of the insured, this policy shall cover the insured's legal representative as an insured as respects any liability previously incurred and covered by this policy.	The interest hereunder of any insured is not assignable. If the insured shall die, be adjudged incapable of managing his affairs or become bankrupt or insolvent, this policy shall cover the insured's legal representative as an insured with respect to acts or omissions covered by this policy. Bankruptcy or insolvency of the insured or of the insured's estate shall not relieve the insurer of any of its obligations hereunder.
CANCELLATION	The insured may cancel by surrendering the policy or by giving written notice stating when cancellation should be effective. Return premium shall be computed short rate. The company must give 30 day written notice of cancellation. Return premium shall be computed pro rata.	The insured may cancel by surrendering the policy or by giving written notice stating when cancellation should be effective. Return premium shall be computed short rate. The company must give 30 day written notice of cancellation. Return premium shall be computed pro rata.	First $25,000 level of insurance through the Bar Association is mandatory and exclusive. Cancellation by individual member and/or Bar Association not permitted. Second level of insurance covering claims in excess of $25,000 up to $100,000 limit will be subject to cancellation by carrier and/or Bar Association as per terms of the agreement entered into.
CLE DISCOUNTS	5% if premium in excess of $1,000 or individual participates in Bar Approved CLE. 10% if premium in excess of $1,000 and individual participates in Bar Approved CLE. 15% if premium in excess of $5,000 and 50% or more of firm members participate in Bar Approved CLE.	None.	None.
LOSS PREVENTION PROGRAM	None.	In-house loss prevention program which provides at least two law office management seminars per year at company expense. Program includes expert speakers, video and brochures. Mandatory participation by Association; does not require attendance by policy holders however.	Mandatory loss prevention and loss control programs both as explained elsewhere in Bar Rag this issue.
RULE 82 ATTORNEY FEES	Covered by policy. No endorsement necessary.	Covered by policy. No endorsement necessary.	Unknown.
BROKER	Clary Insurance Agency.	Dougan, Eader, Reynolds, and Wheller	None selected to date.

E & O Insurance Premium Information

AMERICAN HOME PRESENT PREMIUMS

Deductible	Limit	No Prior Exposure	1 Year Prior Exposure	2 Years Prior Exposure	3 Years Prior Exposure	4 Years Prior Exposure	5 years or more Prior Exposure
- 0 -	100,000/	400	540	630	720	810	900
1,000	300,000	320	432	504	576	648	720
2,500		300	378	441	504	567	630
10,000		260	351	410	468	527	585
25,000		200	270	315	360	405	450
50,000		160	216	252	288	324	360
100,000		80	108	126	144	162	180
- 0 -	200,000/	500	675	788	900	1013	1125
1,000	600,000	420	567	662	756	851	945
2,500		400	540	630	720	810	900
5,000		380	513	599	684	770	855
10,000		360	486	567	648	729	810
25,000		300	405	473	540	608	675
50,000		260	351	410	468	527	585
100,000		180	243	284	324	365	405
- 0 -	500,000/	600	810	945	1080	1215	1350
1,000	500,000	520	702	819	936	1053	1170
2,500		500	675	788	900	1013	1125
5,000		480	648	756	864	972	1080
10,000		460	621	725	828	932	1035
25,000		400	540	630	720	810	900
50,000		360	486	567	648	729	810
100,000		280	378	441	504	567	630
- 0 -	1 million/	700	945	1103	1260	1418	1575
1,000	1 million	620	837	977	1116	1256	1395
2,500		600	810	945	1080	1215	1350
5,000		580	783	914	1044	1175	1305
10,000		560	756	882	1008	1134	1260
25,000		500	675	788	900	1013	1125
50,000		460	621	725	820	932	1035
100,000		380	513	599	684	770	855

1) No surcharges applied to any type practice.

2) CLE deduction: Deduct 5% if premium over $1000 or individual participates in CLE
Deduct 10% if premium over $1000 and individual participates in CLE
Deduct 15% if premium over $5000 and at least 50% of firm participates in CLE.

3) To cover paralegals, law clerks, abstractors and investigators, add 50% of lawyers' average annual rate to total firm rate. (e.g. in a ten person firm, take average years of experience of lawyers, find premium rate applicable to that experience and add 50% of that charge to total firm premium.)

4) Broker has binding authority unless applicant has had three or more claims in five years of practice.

5) Company requires that coverage under one policy be purchased for all attorneys who share space, staff and/or otherwise give appearances of an existing partnership.

INAX PROPOSED PREMIUMS **

Deductible *	Limit	No Prior Exposure	1 Year Prior Exposure	2 Years Prior Acts Exposure	3 Years Prior Exposure	4 Years Prior Exposure	5 Years or More Prior Exposure
$1000 (Minimum)	100,000/ 100,000	400 (Base)	440	480	520	560	600
	250,000/ 250,000	560	600	640	680	720	760
	500,000/ 500,000	640	680	720	760	800	840
	1,000,000/ 1,000,000	720	760	800	840	880	920
	2,000,000/ 2,000,000	1008	1048	1088	1128	1168	1208
	3,000,000/ 3,000,000	1188	1228	1268	1308	1348	1388
	4,000,000/ 4,000,000	1332	1372	1412	1452	1492	1532
	5,000,000/ 5,000,000	1440	1480	1520	1560	1600	1640

* For $2500 deductible subtract $40 from the rate applicable to the number of years in practice and the limits wanted.
For $5000 deductible subtract $60 from the rate applicable to the number of years in practice and the limits wanted.
For $10000 deductible subtract $80 from the rate applicable to the number of years in practice and the limits wanted.
For $25000 and higher, application must be submitted to underwriters for rate determination.

** Surcharges on some types of practice
1. BI-Plaintiff: if 50 to 75% of total practice add $60 to applicable rate.
BI-Plaintiff: if 76 to 100% of total practice add $100 to applicable rate.
2. Patent/Copywrite: if 25 to 50% of total practice add $100 to applicable rate (if more, coverage unavailable).
3. Real Estate: if 50 to 75% of total practice add $60 to applicable rate.
Real Estate: if 76 to 100% of total practice add $100 to applicable rate.
4. Entertainment: if 1 to 15% of total practice add $40 to applicable rate (if more, coverage unavailable).
5. Title/Abstracting: if 50 to 75% add $100 to applicable rate (if more, coverage unavailable).
6. SEC: Submit to underwriting because modification factors will vary depending on nature of practice.
7. $200 is maximum amount that can be added to applicable rate regardless of number of modification factors applicable to applicant.

Deductions possible:

1. If using a computorized system of docket control deduct $60 from applicable rate.

2. If law firm has over 25 lawyers $80 deduction from applicable rate may be available depending on length of establishment, loss experience and type of practice.

1. Paralegals, law clerks and secretarial staff are covered without additional charge.

2. Broker has binding authority unless applicant has SEC practice.

3. Company requires that coverage under one policy be purchased for all attorneys who share space, staff and/or otherwise give appearance of an existing partnership.

ALASKA BAR ASSOCIATION SELF-INSURANCE PREMIUMS

Deductible	Limit	Premium regardless of years in practice or prior claims
$2500	100,000/100,000 *	$700) full-time or part-time private practice)) ($220 paid to insurance carrier; $480 paid to Bar Association))

* Of this limit, the individual attorney is responsible for $2,500 payable for claims and/or expenses.

the Alaska Bar Association is responsible for $22,500 payable for claims and/or expenses.

an insurance carrier will be responsible for $75,000 payable for claims and for stop-gap re-insurance for the Bar Association fund.

1) At inception, no surcharge is added for prior claims, type of practice or law clerks, secretarial staff or paralegals.

Self Insurance Not Recommended

(continued from page 7)

in Alaska thereby eliminating the risk that any attorney would need to be without malpractice insurance either because the cost was too great or carriers refused to write coverage in Alaska for that attorney.

Finally, Norman points to an annual premium of $700 per year per attorney for $100,000 coverage as a lower cost policy than what is available from the insurance carriers willing to write $100,000 levels of coverage in Alaska for attorneys.

After spending a year studying the current malpractice insurance market and the Norman self-insurance proposal, the Self-Risk Management Committee is unanimous in not recommending that the Alaska Bar Association self insure its members for malpractice claims. The committee, comprised of **Keith Brown, Charles Flynn, Roger Holmes, Karen Hunt, Ken Jarvi, Ron Kull** and **Donna Willard**, found the following factors weighed against recommendation that the Bar adopt the Norman self-insurance program.

The program would have to be mandatory and exclusive malpractice coverage which would require that every member of the Bar Association who did any private practice for friends, family, etc. would have to pay a premium and participate in the Fund.

The program would require the Bar Association to purchase a group deductible policy of $25,000 per member from an insurance carrier. Oregon, with a membership of over 5,000 lawyers, has been unable to purchase such coverage although it has a group deductible of $100,000.

Although the Association Fund would operate on the one hand as a group deductible in relationship to an insurance carrier, on the other hand the Bar Association would become an insurance carrier itself for the first $25,000 of coverage thereby requiring it to either meet the minimum one million dollar capitalization requirement of the Insurance Code or to get statutory exemption from the Legislature.

Statutory Exemption

If statutory exemption were granted to the Bar Association by the Legislature, depending upon the scope of the exemption, the Fund could be subject to antitrust considerations. Because insurance companies are regulated by the insurance codes, they are exempt from antitrust legislation. If it is exempted from insurance code regulations, the Association becomes exposed to antitrust determinations particularly because to be economically feasible, the Fund must be mandatory and exclusive malpractice coverage for Alaska lawyers.

Also, if exempted from the code, individual attorneys lose the scope of Insurance Code protections developed for policyholders or regular insurance companies.

In order to avoid depleting the Fund in a single year when high damage claims are paid, re-insurance of the Fund must be obtained from the insurance market. Oregon has been unable to secure such coverage to date although it has over 5,000 attorneys participating at $500 per attorney per year.

If re-insurance of the Fund cannot be obtained, the individual attorneys in Alaska in the private practice of law become subject to an additional assessment above the normal premium charge to cover the amounts necessary to pay the defense costs and damages incurred in one year. The defense costs for all claims up to the $100,000 limit must be paid by the Fund although it is liable only for the first $25,000 in damages.

Costs to Association

Self-insurance requires the Bar Association to go into the insurance business which means incurring all of the policy writing, publishing and billing costs which would require the Association administration and Board of Governors to become experts in the insurance business.

Because the Fund would earn interest on the premium collected, tax liabilities will also be incurred by the Association. Bookkeeping, auditing and tax reporting costs would also have to be met from the premium charged. For merely $25,000 of Fund provided coverage, these costs are uneconomical.

The premium for a $2,500 individual deductible on every claim, $22,500 Fund liability and $75,000 carrier liability program is proposed at $700 per lawyer. The sum of $220 is the projected figure per member for the level of insurance from $25,000 to $100,000 with $480 remaining in the Association Fund to pay all administrative costs, defense costs up to the $100,000 limit and claims damages up to $25,000 (minus the individual $2,500 deductible). The cost is uneconomical when compared with the same limits and deductible from National Union Fire ($720) or INAX ($560) for attorneys with five or more years of experience. With less experience, the carriers' premiums are less.

The projected revenues collected for the fund for one year are $399,000, calculated as follows:

750 private practice attorneys pay	$480 =	$336,000
100 part-time attorneys pay	$480 =	48,000
150 judges and/or retired attorneys (not practicing law anywhere) pay	$100 =	15,000
		$399,000

The cost projections by Norman are as follows:

(a) Broker's fee for securing coverage from $25,000 to $100,000	$25,000
(b) Norman's consulting fee (payable for two years)	25,000
(c) Administration cost for part-time secretary	8,000
(d) Accounting and office expenses	8,000
(e) Estimated adjusting and defense costs per year	100,000
(f) Maximum of six claims paid per year	136,200
	$302,200

The committee considers these costs projections to be unrealistic because Norman is suggesting that actually to run the program, a part-time secretary, paid $8,000 a year, can be an expert able to run an insurance company and be a claims handler for active files.

Defense Costs Not Included

Secondly, the defense cost allocation permits only approximately $17,000 per file for legal defense fees at $75 per hour for six active claims per year. No defense costs are included in this breakdown. Last year, one claim settlement plus the defense costs and fees would have required more monies than the amount allotted for all claims and all defense costs for the entire year. Likewise, given that the known number of claims for the past two years have been double the projected number, the committee thinks that the estimate of only six claims per year is unrealistic.

The considerations discussed above were the major reasons for committee rejection of the Norman self-insurance proposal. The final determination of the committee is to recommend that INAX be the Bar-sponsored malpractice carrier for attorneys in Alaska.

The premium charge for equal coverage is less expensive than the self insurance proposal and offers coverage options up to five million liability limits. Therefore, based upon availability of coverage and cost considerations, self-insurance was not, in the committee's opinion, economically necessary or feasible at this time.

Loss Control Program

(continued from page 7)

a bylaw change requiring the Association to present CLE seminars in every area of substantive law where two or more claims have been made. The Board of Governors should also strongly consider a proposal to the Supreme Court requiring attorneys who have a claim made against them to attend CLE in areas of substantive law where E & O is alleged.

4. The Board of Governors enact a bylaw change mandating the Association to present, as a part of the annual meeting, an annual update on current developments in the substantive areas of law.

Little Will

By Wayne Anthony Ross

Living in Alaska keeps a body away from family. If you don't bring 'em with you when you move to Alaska, chances are you seldom see aunts, uncles, cousins, nephews or nieces except on occasional visits outside. Often years go by without seeing favorite relatives.

My nephew and godson, my brother's oldest son, I hadn't seen since 1971 and even then I only saw him for one day in Dallas, Texas. He was then nine years old a thin, scrawny kid with glasses.

Last year when little Will was in high school, I thought it might be fun to have my boys meet their Texas cousin so I invited Little Will to come to Alaska in August.

At the airport, when Little Will's flight was arriving, I waited in vain for a scrawny kid with glasses. Suddenly behind me I heard a deep voice say "Hello Uncle Wayne." I turned around and looked up into the face of my nephew, Little Will.

He was smoking a cigarette (16 years old!) and was over six feet tall. I would guess he would go 235 lbs. Little Will was little no longer.

After getting him home, and getting him set up with an ashtray (never did get used to that ashtray!), we planned his vacation.

He had brought a fishing reel but no fishing rod, so I gave him an extra Eagle Claw take-down rod that I had. We then went to the store where I bought him about $30 worth of lures.

Will Breaks Rod

The next day saw us at Eagle Rock on the Kenai River. About the first cast Will lost a $3.00 lure in the tree behind us. After more casts, the tree behind us looked Christmasy with all the bright colored pieces of metal hanging from it. I was just about to tell Will that we'd better leave before we'd have to file an environmental impact statement, when Will got a strike. The silver salmon took off and Will let out a holler. Will reared back on the rod, hard, and I heard a loud crack. The fish kept going one way and Will went the other, falling backwards over a log onto his butt, the broken remnants of my Eagle Claw in his hand. Back to Kenai we went.

Did you know that the cheapest fishing rod in Kenai during salmon season is over thirty dollars? Nephew Will needed a fishing rod so I contributed to the Kenai economy. I also replaced the fishing lures Will lost in the trees. That Kenai sporting goods store put a big dent in a hundred dollar bill.

We went back to a different spot on the Kenai River where there were less trees. Will walked out on a log to fish. I cautioned him about the swift current. I then went upstream about fifty feet to fish. I saw Will's first cast miss the trees behind him and sail out nicely over the swift water. The line wrapped around the only snag in about two miles of river. Will had to break the line (and lose the lure) to get free. As he bent over his tackle box (with the new assortment of lures I had just bought), I heard a mighty splash. Will had slipped off the log tipping the tackle box over and spilling its contents into the swift current. Will was wet up to his waist and since we didn't have any more lures we called it a day.

Will Destroys Reel

On Friday afternoon Will decided, without my knowledge, to take his fishing reel apart and clean it. When I got home Will met me at the door with a handful of pieces in his hand. "Uncle Wayne," he said, "Do you have an extra spring?" When he had taken the reel apart a spring had flown out and was last seen flying past the TV set into the No Man's Land of the toy box. Now, I am the first to admit that I am not mechanically inclined. (I even have trouble setting the alarm clock!) so I knew that even if the impossible happened and we found the spring, I'd still never be able to get the reel back together. We therefore put the parts from Will's reel in a bag and put it back in his luggage. I then went out to the garage and from a shelf I got down a fine old Shakespeare reel I had owned and used for many years. After cautioning Will to be careful with it, I showed him how to use it in preparation for the morrow.

On Saturday, Jerry Yeator and his brother-in-law, Dave, Will and I took off in Jerry's plane for Prince William Sound. We landed in a lake, taxied to shore, and then prepared to walk about a mile downstream from the outlet of the lake to salt water to fish where the stream runs into Prince William Sound.

Will Baptizes .22

Finally we reached salt water.

The tide was out. The salmon were in. We put our gear down and clambered over the rocks to the water. The first cast Will snagged a rock and broke his line losing another lure. After his second cast, I saw him looking into the water below the rock he was standing on. "What's the matter, Will?" I asked.

"Oh...nothing," he said continuing to look into the water.

I walked over to him. Then I noticed that my fine old Shakespeare reel no longer had a handle on it. "What happened to my reel Will?" I asked.

"The handle fell off into the water, Uncle Wayne," he said.

"Find it, Will," I said with some firmness.

Will hung over the water peering into the depths. "Be careful Will," I said. "You'll fall in. That rock you are sitting on is slippery."

"I'm O.K., Uncle Wayne," said Will.

As I turned my back I heard a splash. Will emerged from the water a moment later, my 22 revolver which he was carrying, and his Dad's pocket watch, both wet with salt water. (Did you know that a pocket watch won't run more than a half hour after emersion in salt water? And you should see how quick a colt Diamondback starts to rust!)

Will Breaks Another Rod

We finally borrowed another reel from Dave (who didn't know any better).

Will was consistent. He made the next cast with the borrowed reel and caught the lure on the same rock he had caught with his first cast. With a shout "I GOT ONE, UNCLE WAYNE!" Will reared back on the rod hard and again I heard a loud crack. Good-bye one thirty-five dollar Kenai fishing rod.

By this time I was beginning to see it as a challenge. In the interests of science, I decided, I would continue furnishing equipment to this young man until I saw just how much destroyed equipment it took before one young Texan could catch a fish.

I slipped Dave ten bucks and borrowed another rod for Will. Will promptly lost three more lures. I bought six extra lures from Jerry. Will lost two more.

The tide was coming in when we noticed Will's tackle box floating out in the water. He had put it below the high water mark and as the tide came in the box floated away. Fortunately, we retrieved it as well as my colt Diamondback which was not submerged. Will had put the Diamondback on a rock to dry out, again below the high water mark. It was easy to find. The leather belt was sticking out of the water.

Will Breaks Thermos

We then sent Will with the thermos jug back upstream a hundred yards or so, to fresh water, to fill it up so we could have a drink of water. When he got back, I noticed the thermos tinkled. Will apparently had slipped on a stump dropping the thermos and breaking its liner.

Back we went to fishing. I finally got a nice silver salmon on the line. "I'll net him for you," said Will. "I'm wet anyway!" Will grabbed the floating landing net and ran into the water again. (The silver was still 50 yards from shore and not at all convinced that he wanted to be landed). As Will entered the water, he and the floating landing disappeared. The net floated to the surface first. Then came Will sputtering and coughing. He had stepped into a hole. Instinctively he grabbed my fishing line to steady himself. The line broke. My silver got away.

We finally made it back to Anchorage after Jerry made Will promise not to touch any part of the airplane.

It was a warm August afternoon as we landed at Lake Hood. While unloading the airplane Jerry brought out three beers from a cooler he had in the back of his car. I got one swig out of mine before putting it on the pier to unload more gear. A moment later I heard a splash. Will had tripped over the bottle with his foot, kicking the beer into Lake Hood.

We have several more incidents involving Will such as dropping the collection plate full of change the next day at Sunday Mass and I am still finding my tools in the woods below our house as the spring snow melts. (How a Texan would hope to cut firewood with a hammer and tire iron is beyond me but we finally got Will back on a plane to Texas).

Last week I got a note from Will asking me to send him college brochures from Anchorage Community College. Says he's considering moving to Alaska. I think President Carter must have heard about Little Will. That certainly would explain Carter's concern over the Alaskan environment which resulted in his massive land withdrawals. Carter's afraid what might happen to the environment if Will were to move up here permanently.