

**ALASKA STATE LEGISLATURE**  
**SENATE JUDICIARY STANDING COMMITTEE**

April 27, 2007

1:39 p.m.

**MEMBERS PRESENT**

Senator Hollis French, Chair  
Senator Bill Wielechowski  
Senator Lesil McGuire  
Senator Gene Therriault

**MEMBERS ABSENT**

Senator Charlie Huggins, Vice Chair

**COMMITTEE CALENDAR**

Confirmation Hearings

Board of Governors of the Alaska Bar Association

Dr. Donald McLean - Wasilla  
CONFIRMATION ADVANCED

Commission of Judicial Conduct

Henry Novak - Kenai  
CONFIRMATION ADVANCED

Alaska Judicial Council

Charles Kopp - Kenai  
CONFIRMATION ADVANCED

Violent Crimes Compensation Board

Gerad Godfrey - Valdez  
CONFIRMATION ADVANCED

SENATE BILL NO. 141

"An Act relating to limited liability companies."  
MOVED SB 141 OUT OF COMMITTEE

SENATE BILL NO. 38

"An Act relating to scheduling Salvia divinorum and Salvinorin A  
as controlled substances."  
MOVED SB 38 OUT OF COMMITTEE

**PREVIOUS COMMITTEE ACTION**

BILL: SB 141

SHORT TITLE: LIMITED LIABILITY COMPANIES

SPONSOR(s): SENATOR(s) MCGUIRE

03/28/07 (S) READ THE FIRST TIME - REFERRALS  
03/28/07 (S) JUD  
04/23/07 (S) JUD AT 1:30 PM BELTZ 211  
04/23/07 (S) Scheduled But Not Heard

BILL: SB 38

SHORT TITLE: SALVIA DIVINORUM AS CONTROLLED SUBSTANCE

SPONSOR(s): SENATOR(s) THERRIAULT

01/16/07 (S) PREFILE RELEASED 1/5/07  
01/16/07 (S) READ THE FIRST TIME - REFERRALS  
01/16/07 (S) HES, JUD, FIN  
03/19/07 (S) HES AT 1:30 PM BUTROVICH 205  
03/19/07 (S) Moved SB 38 Out of Committee  
03/19/07 (S) MINUTE(HES)  
03/21/07 (S) HES RPT 5DP  
03/21/07 (S) DP: DAVIS, ELTON, THOMAS, COWDERY,  
DYSON  
04/27/07 (S) JUD AT 1:30 PM BELTZ 211

**WITNESS REGISTER**

DONALD RAE McLEAN

Wasilla, AK

**POSITION STATEMENT:** Governor's nominee to the Board of  
Governors of the Alaska Bar Association

GERAD G. GODFREY

Valdez, AK

**POSITION STATEMENT:** Governor's reappointment nominee to the  
Violent Crimes Compensation Board.

HENRY K. NOVAK

Kenai, AK

**POSITION STATEMENT:** Governor's nominee to the Commission of  
Judicial Conduct.

CHARLES M. KOPP

Kenai, AK

**POSITION STATEMENT:** Governor's nominee to the Alaska Judicial  
Council.

DAVID G. SHAFTELL, Attorney

Anchorage, AK

**POSITION STATEMENT:** Provided information related to SB 141.

DAVE STANCLIFF, Staff to Senator Therriault

**POSITION STATEMENT:** Introduced SB 38 for the sponsor.

**ACTION NARRATIVE**

**CHAIR HOLLIS FRENCH** called the Senate Judiciary Standing Committee meeting to order at [1:39:50 PM](#). Present at the call to order were Senator McGuire, Senator Wielechowski, Senator Therriault, and Chair French.

CHAIR FRENCH announced the first order of business to be confirmation hearings.

Confirmation Hearing, Board of Governors of the Alaska Bar Association

CHAIR FRENCH asked Dr. McLean to tell the committee about himself and his interest in serving on the Board of Governors.

[1:40:55 PM](#)

DONALD RAE McLEAN, governor's nominee to the Board of Governors of the Alaska Bar Association, introduced himself and highlighted his professional career and other interests including health law. He has practiced as a dentist in Wasilla for about 26 years.

CHAIR FRENCH asked if he has a particular interest in any area of law other than health.

DR. McLEAN replied he's currently taking a class in administrative law and he finds it very interesting. It's the interaction of government with people.

CHAIR FRENCH noted that he may send a packet with information about a health care bill he recently submitted. That is separate from this proceeding, he added. Finding no questions he announced that committee members would sign a letter to forward his name to the full body for consideration. Doing so does not indicate an intention to vote either for or against the appointee at a further time. No objection was stated, and the name was advanced.

DR. McLEAN thanked Chair French and said that everyone he knows appreciates the hard work that all legislators are doing in Juneau.

At ease to do paperwork.

Confirmation Hearing, Violent Crimes Compensation Board

CHAIR FRENCH announced the committee would hear from Gerad Godfrey as a reappointment nominee for the Violent Crimes Compensation Board. He asked him to tell the committee why he continues to be interested in serving.

[1:46:19 PM](#)

GERAD G. GODFREY, governor's reappointment nominee to the Violent Crimes Compensation Board, said when he was first nominated four years ago the board had an ambitious agenda that has grown more ambitious over time. For example the board is working with the Tribal Victims Assistance agency within the U.S. Department of Justice looking for grant money to assist Alaska Natives who are victims of violent crimes. Another issue the board is taking up is educating faith-based and safe community representatives from Christian, Jewish, and Muslim organizations about the resources that are available to victims of violent crimes. The board has unfinished business, he concluded.

CHAIR FRENCH thanked Mr. Godfrey for his work. "I know I speak for the committee when I say that you are rapidly becoming one of the statewide leaders in the area of victims' rights," he said.

[1:53:20 PM](#)

SENATOR McGUIRE thanked Mr. Godfrey for his work. "I speak for many other Alaskans when I say how grateful we are that you've taken this tremendous tragedy in your life and turned it into a venue by which you can help other victims of violent crime," she stated.

MR. GODFREY said it's comforting to see the motivation and foresight that legislators have. The bills that Senator French and Senator McGuire have introduced are encouraging.

SENATOR THERRIAULT referred to his resume and asked if he had graduated from the training academy and applied to become a fish and wildlife trooper.

MR. GODFREY said he was hired as a trooper and he resigned because of the politics at the time. He was asked to reconsider, but he's never looked back. Currently he's working on a graduate degree.

CHAIR FRENCH announced that committee members would sign a letter to forward his name to the full body for consideration. Doing so does not indicate an intention to vote either for or against the appointee at a further time. No objection was stated, and the name was advanced.

At ease to do paperwork.

Confirmation Hearing, Commission of Judicial Conduct

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CHAIR FRENCH announced the committee would hear from Mr. Henry Novak who has applied to be a member of the Commission of Judicial Conduct. He asked him to explain his interest in serving on the commission.

HENRY K. NOVAK, governor's nominee to the Commission of Judicial Conduct, said he is the director of the Cook Inlet Council on Alcohol and Drug Abuse. He said his background in working with the court system in the substance abuse field gives him experience to draw on.

CHAIR FRENCH asked him to explain the difference between the Judicial Conduct Commission and the Judicial Council.

MR. NOVAK said he understands that the Commission on Judicial Conduct investigates complaints of ethical concerns regarding judges

CHAIR FRENCH summarized that the commission looks into charges or allegations of misbehavior and unethical behavior by judges. It conducts inquiries and offers proposed resolutions to the charge.

MR. NOVAK added the commission deals with personal ethics. It does not rule on any judgments that a judge has made.

CHAIR FRENCH thanked him for making that distinction. It is not a court of appeals that looks into legal rationales; it looks at the behavior of judges. He asked that the term is for serving.

MR. NOVAK said it's a four-year term. Responding to further questions, he said he was born and raised in Alaska and he's lived in Kenai for 14 years.

CHAIR FRENCH asked if he brings strong biases either for or against judges and the legal system with respect to his new duties.

MR. NOVAK said no. When he's been called to testify as an expert witness on substance abuse issues he's always been treated respectfully.

CHAIR FRENCH noted he had a BA in psychology and commented that it may be useful in the near future.

CHAIR FRENCH announced that committee members would sign a letter to forward his name to the full body for consideration. Doing so does not indicate an intention to vote either for or against the appointee at a further time. No objection was stated, and the name was advanced.

At ease to do paperwork.

#### Confirmation Hearing, Alaska Judicial Council

CHAIR FRENCH announced the committee would hear from Mr. Kopp. He asked him to give his background and interest in becoming a member of the Alaska Judicial Council.

CHARLES M. KOPP, governor's nominee to the Alaska Judicial Council, said he was born and raised in Alaska. He highlighted his personal and professional resume. He received a bachelor's degree in justice from UAA and has worked for the Kenai Police Department for 18 years. He's been chief for the last 5 years. His interest in servings stems from a lifelong involvement with the justice system including investigative case work, critical incident management work, drug courts, prevention programs, therapeutic courts, traffic safety and numerous other issues that have brought him in contact with the courts. Also he said he served as Kenai interim city manager for 9 months. His background is broad and the sum of it has given him an interest in the Alaska Judicial Council. In several years he will have the option of retiring from public safety and it's quite likely that he will further his education in the field of law.

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CHAIR FRENCH noted that he's stayed active in his field, which is impressive and that he's participated in multiple community service activities for more than a decade. "I salute you for that," he said.

SENATOR McGUIRE highlighted criticisms of the council from last year and said she was impressed that for the first time in 20 years the council reflected on its own bylaws and procedures and then suggested to the legislature improvements for how judicial appointments would be handled. She encouraged continued self reflection because of the continual tension about whether judges should be elected or not. Although she doesn't support electing judges, she recognizes that some members of the public support that practice. So it's important to continue to operate in a way that gives the public a sense that the system works and has integrity, she said.

SENATOR McGUIRE mentioned the subject of cluster or block voting on the part of bar members and suggested the council give that some thoughtful attention. Another issue is the right or ability of a judicial applicant to confront his or her accuser. She suggested these issues could be handled in the same confidential manner as ethics complaints so that the accused and the accuser would be afforded the opportunity to have a thorough vetting of issues without having allegations hanging out there that can hamstring a good candidate. She encouraged continued improvements and the recognition that it is the Judicial Council that is responsible for maintaining integrity and the public's perception of integrity so it's not necessary to go to the unfavorable system of electing judges.

[2:09:10 PM](#)

MR. KOPP said he agrees and he supports transparency with regard to making council decisions. In fact he believes he was asked to serve because of his perspective on the importance of Judicial Council transparency. He noted that he wrote an open letter on that subject and council members have responded favorably to his comments. He understands that the council has critically reviewed its process in terms of how public it is and how it can be improved. Council members are very aware of the issue of block voting, he said. We all tend to look through a lens of bias that reflects our experience, he added. His objective is to promote transparency in terms of how decisions are made and to make sure that the governor has as much information as is needed to make good appointments.

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CHAIR FRENCH referred to a policy dispute he has with Mr. Kopp with regard to the make up of the Alaska Police Standards Council and said reasonable minds can differ. "I don't bring any position about that issue to my consideration here today," he added.

MR. KOPP said he appreciates his saying so, but knowing the chair's background he already had confidence that that was the case.

CHAIR FRENCH noted the upcoming openings for judges in the Kenai area and highlighted that he may be sitting on the judicial council at that time and that his officers would appear before those judges.

MR. KOPP said he's had conversations about that and he would hope that he wouldn't bring any problematic biases. "I would hope to be able to share my insights to the council...but if I'm unreasonable my thinking can be corrected," he said.

CHAIR FRENCH thanked him for his willingness to serve. Finding no further questions he announced that committee members would sign a letter to forward his name to the full body for consideration. Doing so does not indicate an intention to vote either for or against the appointee at a further time. No objection was stated, and the name was advanced.

At ease to do paperwork.

#### **SB 141-LIMITED LIABILITY COMPANIES**

[2:16:35 PM](#)

CHAIR FRENCH announced the consideration of SB 141.

SENATOR McGUIRE, sponsor of SB 141, said the bill is by request of industry. It will clarify that an organization providing professional services can organize its business using a limited liability company (LLC). This will end speculation on the authority of the use of an LLC for professional services. She noted that a group of professionals meet to talk about recent court decisions and statutes that have passed in other states for the purpose of keeping Alaska current. The legislature decides whether the policies that are suggested comport with what it thinks is appropriate, she added.

[2:19:40 PM](#)

SENATOR McGUIRE explained that SB 141 is designed to keep the state's trust and estate planning laws up to date and competitive, thereby continuing to bring more business and revenue into the state. To date Alaska has received over \$2 million in direct revenue through increased life insurance premium taxes, corporate taxes, and LLC and LP filings. Alaska competes in these markets with at least 7 other states that have enacted similar legislation, she said. Also, SB 141 will delete AS 10.50.150(d) to allow a founder of an Alaskan LLC to be a co-manager without having the assets of the company included in the founder's gross estate for purposes of calculating federal tax.

[2:22:00 PM](#)

DAVID SHAFTELL, Attorney, said he is a member of the group to which the sponsor referred. It includes attorneys and trust officers who have worked since 1996 to improve trust and estate statutes. A number of significant bills have passed giving Alaska the opportunity to be a leader in this area, he said.

MR. SHAFTELL said SB 141 deals with two technical subjects. First, it clarifies that professionals can use a limited liability company as a business entity. The Division of Corporations wisely has overlooked that statutory ambiguity and approved the formation of LLCs. Although that has been the administrative practice, he said some of us worry about it ending up in court.

[2:24:55 PM](#)

CHAIR FRENCH commented he doesn't know how the language could be wrongly construed, but he'll accept the suggestion to add the phrase, "including the rendering of a professional service."

MR. SHAFTELL acknowledged the point and turned to Section 2, which deals with an extremely technical subject that has caused great concern among estate planners. Under 26 U.S.C. Sec. 2036(a)(2), if a person forms a trust or family limited liability partnership (LLP) or a family LLC and retains powers to effect the enjoyment of interests that the person has given away or sold, then all those interests will be pulled back into the founder's estate and taxed at his or her death. To avoid this problem a special manager must be appointed to have authority over distributions and liquidation of the LLC. To make this effective, AS 10.50.150(d) must be deleted.

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CHAIR FRENCH clarified that Section 4 repeals subsection (d).

MR. SHAFTELL agreed that Section 4 deals with the second purpose of the bill.

CHAIR FRENCH commented that those who don't practice in this area of law approach it somewhat warily. When these bills come through he always has a glimmer of concern because he isn't conversant and experienced in these matters. However, nothing suggests that a wrong step has been taken and he doesn't expect anything different today. You and the other sponsors have been very straightforward, he said.

CHAIR FRENCH closed public testimony and asked for discussion among the members.

[2:30:58 PM](#)

SENATOR THERRIAULT disclosed that his wife practices in this area of law. Also, he along with legislative drafters wrote the first LLC law for Alaska. "It was one of my first bills," he added.

SENATOR THERRIAULT motioned to report SB 141 from committee with individual recommendations and attached zero fiscal note. There being no objection, it was so ordered.

At ease for paperwork.

**SB 38-SALVIA DIVINORUM AS CONTROLLED SUBSTANCE**

[2:32:44 PM](#)

CHAIR FRENCH announced the consideration of SB 38.

SENATOR THERRIAULT, sponsor of SB 38, said Mr. Stancliff would introduce the bill.

DAVE STANCLIFF, Staff to Senator Therriault, said the bill will add *Salvia divinorum*, the most potent naturally occurring hallucinogenic substance on the planet, to the state's list of controlled substances. He cited cautionary testimony from users and said that young people in particular are being targeted. The problem law enforcement has with this substance is that it can't be detected in the bloodstream. Another problem is that it's readily available over the Internet and Alaska is considered to be a "green-light" state for shipping the substance. In fact it's being sold down the street and in other places around the state as incense. Indications are that shipments stop or are much reduced when an area becomes "red-light." Simply because the substance can't be identified in the bloodstream should not

be an impediment to saying that Alaska is not a place to sell *Salvia divinorum*.

SB 38 simply places *Salvia divinorum* on same schedule II list as peyote, mescaline and LSD. This is not a safe drug, he concluded.

[2:39:26 PM](#)

CHAIR FRENCH recalled the bill coming through judiciary last year but he didn't recall its presence in local head shops. He asked if this is a new phenomena.

MR. STANCLIFF replied he discovered one shop in Anchorage and one in Fairbanks. Since that time a number of other locations have the substance including one down the street here in Juneau. It's a fairly good source of revenue. You can buy the leaf, the plant, or the extract. Use is proliferating and youths are being targeted. Many experienced "mind travelers" warn against its use, particularly for youths. But there is support for allowing people over age 18 to use the substance. That's a policy call you have to think about, he said.

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SENATOR McGUIRE asked if the problem is that law enforcement can't stop sales because there's nothing on the books about the substance.

MR. STANCLIFF said that is the problem; currently there is nothing that would allow interdiction.

SENATOR McGUIRE suggested it might be time to consider an ability for the Department of Public Safety to use something like the emergency regulation process before going to the legislature for a full vetting.

MR. STANCLIFF said an advantage to law enforcement is that it is very difficult to grow *Salvia divinorum* in places that it doesn't occur naturally. If Alaska were to become a "red-light" state it would be easier to control than a substance that readily grows here.

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CHAIR FRENCH questioned why the federal government hasn't taken any action on this substance.

MR. STANCLIFF answered it is on the Drug Enforcement Administration (DEA) watch list and federal legislation is being

considered. Also, the Navy bans this substance as part of its administrative code. "I think they're just lagging behind the states...and the states aren't waiting," he added.

CHAIR FRENCH pointed out that the substance is legal today. Passing this law means that in 90 days it would be a B felony to possess and an A felony to sell or distribute. It seems as though we've either severely under reacted on one side or we're about to severely over react on the other, he said.

MR. STANCLIFF said he isn't sure what happened with regard to transition periods when other psychotropic substances were made illegal. There is an increased awareness and he knows that Internet sites warn that Alaska is looking at outlawing the substance. Currently someone could argue that they thought the substance was sage and they'd have a good shot at a successful defense because the best chemists at the state lab can't identify the psychotropic substance from the plant.

CHAIR FRENCH clarified that the penalty for a C felony is 0-5 years with no presumptive sentence. The penalty for a B felony is 0-10 years with no presumptive sentence, but there's a guideline for serving. Referring to the statement that the lab can't identify the substance, he questioned how the crime could be prosecuted.

MR. STANCLIFF said a lab can identify the substance that causes the psychotropic reaction. The chemical and botanical difficulty is to identify that particular plant among thousands in the sage family.

[2:49:08 PM](#)

SENATOR WIELECHOWSKI referred to an article that says that *Salvia divinorum* has medical and research value. Noting that it's potentially being used as a non-addictive painkiller, for Alzheimer's disease, and mental illness he asked if this bill would ban medical use or research.

MR. STANCLIFF said no. In fact this is the only substance of its kind that promises to help people who have addictions to more serious substances. On the other side there's evidence that it exacerbates depression. It is an unpredictable substance and very little is known about it. Error on the side of caution, but keep the door open for medical and scientific purposes, he said.

SENATOR McGUIRE added there is nothing in the substance schedule that prohibits prescription. The bill says the penalties come

into play unless the substance is prescribed. I don't see a problem as long as research and prescription by a licensed physician aren't prohibited.

CHAIR FRENCH observed that if the state makes the substance illegal, head shops will stop carrying it and the market will evaporate.

SENATOR MCGUIRE suggested the committee consider an effective date to allow the public time to learn about the change in law. Intent language could also be added to make folks as aware as possible.

CHAIR FRENCH brought up the topic of an effective date.

SENATOR THERRIAULT said his sense is that a limited number of sites within the state are selling the substance so a long period isn't necessary.

CHAIR FRENCH agreed that 90-days would do it.

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SENATOR THERRIAULT noted that the poison quarterly newsletter warns against using *Salvia divinorum*. "There's a lot of alarming information about this and the power of this drug so I think it's advisable that we do take the step that is suggested in the legislation today," he stated.

CHAIR FRENCH said he supported the bill in a previous session. Finding no further questions or testimony he closed public testimony.

SENATOR MCGUIRE motioned to report SB 38 from committee with individual recommendations and attached fiscal note(s). There being no objection, it was so ordered. There being no further business to come before the committee, Chair French adjourned the meeting at [2:54:50 PM](#).