

**ALASKA STATE LEGISLATURE
HOUSE JUDICIARY STANDING COMMITTEE**

February 4, 2009

1:18 p.m.

MEMBERS PRESENT

Representative Nancy Dahlstrom, Vice Chair
Representative John Coghill
Representative Carl Gatto
Representative Bob Lynn
Representative Max Gruenberg
Representative Lindsey Holmes

MEMBERS ABSENT

Representative Jay Ramras, Chair

COMMITTEE CALENDAR

CONFIRMATION HEARING(S)

Select Committee on Legislative Ethics

Herman G. Walker, Jr. - Anchorage
Dennis E. "Skip" Cook - Fairbanks

- CONFIRMATION(S) ADVANCED

HOUSE BILL NO. 88

"An Act extending the termination date of the Board of Governors of the Alaska Bar Association; and providing for an effective date."

- MOVED HB 88 OUT OF COMMITTEE

PREVIOUS COMMITTEE ACTION

BILL: HB 88

SHORT TITLE: EXTEND BAR ASS'N BOARD OF GOVERNORS

SPONSOR(S): REPRESENTATIVE(S) RAMRAS

01/26/09	(H)	READ THE FIRST TIME - REFERRALS
01/26/09	(H)	JUD, FIN
02/04/09	(H)	JUD AT 1:00 PM CAPITOL 120

WITNESS REGISTER

HERMAN G. WALKER, JR., Appointee
Select Committee on Legislative Ethics
Anchorage, Alaska

POSITION STATEMENT: Testified as appointee to the Select
Committee on Legislative Ethics.

DENNIS E. "SKIP" COOK, Appointee
Select Committee on Legislative Ethics
Fairbanks, Alaska

POSITION STATEMENT: Testified as appointee to the Select
Committee on Legislative Ethics.

JANE W. PIERSON, Staff
Representative Jay Ramras
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Presented HB 88 on behalf of the sponsor,
Representative Ramras.

DEBORAH O'REGAN, Executive Director
Alaska Bar Association (ABA)
Anchorage, Alaska

POSITION STATEMENT: Responded to questions during discussion of
HB 88.

MITCHELL A. SEAVER, President
Board of Governors
Alaska Bar Association (ABA)
Ketchikan, Alaska

POSITION STATEMENT: Responded to questions during discussion of
HB 88.

STEPHEN J. VAN GOOR, Bar Counsel
Alaska Bar Association (ABA)
Anchorage, Alaska

POSITION STATEMENT: Responded to questions during discussion of
HB 88.

ACTION NARRATIVE

[1:18:32 PM](#)

VICE CHAIR NANCY DAHLSTROM called the House Judiciary Standing
Committee meeting to order at 1:18 p.m. Representatives
Dahlstrom, Gruenberg, Holmes, Coghill, Gatto, and Lynn were
present at the call to order.

CONFIRMATION HEARING(S)

Select Committee on Legislative Ethics

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VICE CHAIR DAHLSTROM announced that the committee would first consider the appointment of Herman G. Walker, Jr., to the Select Committee on Legislative Ethics.

The committee took an at-ease from 1:20 p.m. to 1:29 p.m.

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HERMAN G. WALKER, JR., Appointee, Select Committee on Legislative Ethics, in response to the question why he wishes to continue serving on the Select Committee on Legislative Ethics, relayed that he decided to keep serving for one more term because he felt that continuity within the committee was important given that it is currently dealing with some serious ethical issues. In response to comments and questions, he relayed that the committee is guided by laws enacted by the legislature, and therefore the committee relies heavily on input from its legislative members when interpreting those laws.

REPRESENTATIVE HOLMES asked whether there are any provisions of the Legislative Ethics Act that need clarification.

MR. WALKER indicated that the provision regarding constituent services needs to be readdressed because the current statutory language is so broad that anything could be considered a constituent service; this broad language hinders the committee whenever it attempts to interpret that provision of statute.

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REPRESENTATIVE COGHILL made a motion to advance from committee the nomination of Herman G. Walker, Jr., as appointee to the Select Committee on Legislative Ethics. There being no objection, the confirmation was advanced from the House Judiciary Standing Committee.

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VICE CHAIR DAHLSTROM announced that the committee would next consider the appointment of Dennis E. "Skip" Cook to the Select Committee on Legislative Ethics.

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DENNIS E. "SKIP" COOK, Appointee, Select Committee on Legislative Ethics, in response to the question of why he wishes to continue serving on the Select Committee on Legislative Ethics, relayed that he enjoys the work and can provide continuity within the committee, as well as a historical perspective. He added that over the years he's gained insight into how the legislature works as well as what does and doesn't work with regard to the Legislative Ethics Act. There have been a number of changes made to that statute because the language didn't comport with how things needed to work in order for the legislature to be able to conduct its business.

MR. COOK, in response to a question, agreed that the provision pertaining to constituent services needs to be readdressed. This need was highlighted by a situation in which a great deal of assistance had been given to a constituent. The committee first attempted, via the issuance of an opinion, to establish an hour limit, but this was not well received, so the statute was rewritten such that the committee would interpret the provision [on a case-by-case basis]. The problem with that is that AS 24.60.030(a)(2) simply says that public funds or facilities cannot be used for the private benefit of a legislator, legislative employee, or another person. This doesn't make sense given that that's what legislators do for their constituents, and given that the statute defines "benefit" very broadly such that anything a legislator does for a constituent can be interpreted as being for the constituent's private benefit. The committee, he relayed, would appreciate having legislators address this issue so that the committee won't have to struggle with it.

MR. COOK, in response to other questions, offered his belief that although the committee is sometimes limited by confidentiality requirements, the committee receives good input from those legislators who sit on the committee, and welcomes input from other legislators as well.

REPRESENTATIVE GATTO, noting that identity theft has become prevalent, questioned whether the disclosure requirements for those who sit on the Select Committee on Legislative Ethics need to be revised.

MR. COOK said he doesn't feel as though the disclosure requirements are overly onerous. Given that legislators themselves are required to disclose a lot of personal information and that committee members work with legislators and in some cases even judge their behavior, he doesn't mind disclosing the same type of information about himself, he added.

MR. WALKER concurred that full disclosure is necessary given that committee members are sometimes called upon to judge the behavior of legislators.

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REPRESENTATIVE COGHILL made a motion to advance from committee the nomination of Dennis E. "Skip" Cook as appointee to the Select Committee on Legislative Ethics. There being no objection, the confirmation was advanced from the House Judiciary Standing Committee.

HB 88 - EXTEND BAR ASS'N BOARD OF GOVERNORS

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VICE CHAIR DAHLSTROM announced that the final order of business would be HOUSE BILL NO. 88, "An Act extending the termination date of the Board of Governors of the Alaska Bar Association; and providing for an effective date."

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JANE W. PIERSON, Staff, Representative Jay Ramras, Alaska State Legislature, explained on behalf of Representative Ramras, sponsor, that HB 88 would extend the termination date for the Board of Governors of the Alaska Bar Association (ABA), and noted that the Division of Legislative Audit has recommended that the termination date for the Board of Governors be extended to June 30, 2017, which is the date proposed by the bill.

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MITCHELL A. SEAVER, President, Board of Governors, Alaska Bar Association (ABA), opined that the sponsor statement for HB 88 succinctly sets forth the duties of the ABA, that being to screen applicants for admission to the ABA, and to discipline members of the ABA to ensure that they adhere to professional standards. Both of those activities are subject to supervision

by the Alaska Supreme Court. The ABA is also responsible for, or involved in, a wide number of activities, including fee arbitration, handling disputes between clients and their lawyers, lawyer referral services, continuing legal education (CLE), promoting pro bono legal services to low-income Alaskans, and maintaining a fund that reimburses those clients damaged by an the dishonest acts of an attorney.

MR. SEAVER noted that through the efforts of the ABA's staff and countless volunteers, the aforementioned functions are performed without any cost to the State of Alaska. He observed that this is the third time in the past four years that the Board of Governors has been before the legislature regarding a sunset extension; each of the prior times, an eight-year extension was recommended, but only shorter extensions were approved. He concluded by indicating that the Board of Governors would prefer to be granted the eight-year extension.

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STEPHEN J. VAN GOOR, Bar Counsel, Alaska Bar Association (ABA), mentioned that he has been impressed with the dedication and willingness of the Board of Governors to take on the very difficult issues that it's confronted with, not the least of which involves disciplining members of the ABA; the Board of Governors is dedicated to the timely and complete investigation and prosecution of complaints against ABA members, and ultimately such cases are reviewed by the Alaska Supreme Court. He remarked that the ABA is small compared to bar associations in other states, and that although Alaska has a difficult bar exam, it's one that's designed to illustrate minimal competence to practice law, knowledge of Alaska law, an ability to spot issues, and an ability to thoroughly explain a legal problem in a manner expected of a lawyer.

MR. VAN GOOR encouraged the committee to recommend the extension of the Board of Governors' sunset date. The [Board of Governors] is functioning according to statute, he opined, and noted that it is accountable to the Alaska Supreme Court. In response to a question, he explained that every disciplinary case that comes before the Board of Governors is considered both by the lawyers elected to serve on it and by the three public members appointed to serve on it; furthermore, under current rules, at least one of the three members chosen to hear a particular disciplinary case must be a public member. He characterized the participation of the public members, both in such hearings and on the Board of Governors in general, as a

tremendous asset in that it brings a different perspective to the Board of Governors. He assured the committee that there is oversight sufficient to ensure that the professional responsibilities of the Board of Governors are being met, and surmised that it is the lawyers themselves who are in the best position to assess whether another lawyer's actions violate the rules of professional conduct, since a certain degree of expertise is required in order to understand the issues involved.

MR. VAN GOOR, in response to comments, explained that cases come before the disciplinary board of the Alaska Supreme court in one of two ways: the cases are either prosecuted in front of a hearing committee, or "we" present a stipulated disposition to the disciplinary board and then to the Alaska Supreme Court. Either way, there is public input, which has been extremely valuable.

REPRESENTATIVE COGHILL referred to Recommendation No. 3 in the Division of Legislative Audit's report regarding Audit Control Number 41-20057-08: "The board should adhere to existing public notice requirements for all meetings or modify the bylaws to clearly address conference call board meeting procedures and public notice requirements." He asked whether that recommendation has been discussed by the Board of Governors yet.

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MR. VAN GOOR said he'd drafted some bylaw amendments for consideration by the Board of Governors at its January meeting; the Board of Governors voted to publish those proposed amendments for member comment, and so he is anticipating that the amendments will be back before the Board of Governors at its May meeting.

REPRESENTATIVE COGHILL referred to Recommendation No. 2 in the Division of Legislative Audit's report regarding Audit Control Number 41-20057-08: "The board should consider developing a database of disciplined lawyers in the Bar's website."

MR. VAN GOOR relayed that the Board of Governors is in the process of revising its database so that such information can be displayed on its web site.

REPRESENTATIVE COGHILL, referring to language on page 19 of the aforementioned report, asked how the Board of Governors promotes reform in the law and in judicial procedure.

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DEBORAH O'REGAN, Executive Director, Alaska Bar Association (ABA), indicated that such reform is mostly promoted via court rules and amendments to them. In response to a question regarding language on pages 13-14 of the aforementioned report, she said that the Lawyers' Fund for Client Protection (LFCP) is not something that would be administered by a state regulatory agency, nor is the fee arbitration process or the mediation process or the Interest on Lawyer Trust Accounts ("IOLTA funds"). Sometimes, she noted, lawyer referral services are provided by private organizations, but the ABA isn't competing with such organizations because there are so many ways to find a lawyer, particularly with the advent of the Internet. Most of the aforementioned services wouldn't be provided by anybody if the weren't provided by the ABA. In response to a comment, she clarified that although the ABA doesn't require lawyers to do pro bono work, it does have a pro bono director whose job it is to convince lawyers to do more pro bono work.

REPRESENTATIVE GRUENBERG referred to Recommendation No. 1 in the Division of Legislative Audit's report regarding Audit Control Number 41-20057-08: "The board should recommend to the Alaska Supreme Court that mandatory minimum CLE for attorneys be adopted." He asked Ms. O'Regan to comment.

MS. O'REGAN explained that because of a recent court rule change, lawyers will now have to have completed three hours of Mandatory Ethics CLE (MECLE) by December 31, and must now report the hours they've completed. The ABA anticipates being able to provide the Alaska Supreme Court with some statistics around mid April. In response to questions, she said she envisions that the Board of Governors will continue recommending to the Alaska Supreme Court that it mandate 12 hours of CLE, but noted that a current Board of Governors cannot bind a future Board of Governors.

REPRESENTATIVE GRUENBERG mentioned that some states' bars have started to provide programs in specialized fields of law.

MS. O'REGAN relayed that the Board of Governors had discussed this issue in the past, but decided that the ABA was too small of an association to be able to provide effective specialization certification and so chose instead to simply recognize the specialization granted at the national level by the American Bar Association.

MR. VAN GOOR, in response to a question, relayed that [Rule 7.4(b)] of the Alaska Rules of Professional Conduct says:

(b) a lawyer may communicate the fact that the lawyer has been certified as a specialist in a field of law by a named organization or authority, but only if that certification is granted by an organization or authority whose specialty certification program is accredited by the American Bar Association.

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MS. PIERSON, in response to a question about the effective date clause, explained that the Board of Governors has a one-year wind down period and so could continue to operate until 2010 should HB 88 not be enacted.

REPRESENTATIVE GRUENBERG questioned whether the title should be altered such that it too would stipulate a sunset date of June 30, 2017.

VICE CHAIR DAHLSTROM expressed a preference for moving HB 88 from committee as it's currently written, and suggested to Representative Gruenberg that he discuss any possible amendments with the sponsor before the bill is heard in its next committee of referral.

REPRESENTATIVE COGHILL, expressing an interest in maintaining legislative oversight, said he is not yet convinced that the sunset date should be 2017.

REPRESENTATIVE HOLMES pointed out that the [Board of Governors of the] ABA has offered to provide the legislature with an update every year, but the chairs of the judiciary committees chose not to take advantage of that offer last year because of scheduling conflicts.

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REPRESENTATIVE COGHILL moved to report HB 88 out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, HB 88 was reported from the House Judiciary Standing Committee.

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ADJOURNMENT

There being no further business before the committee, the House Judiciary Standing Committee meeting was adjourned at 2:31 p.m.