

HOUSE
JUDICIARY
1979-80

ABA SUNSET
REVIEW Files

ABA
SUNSET
REVIEW

#1

DOUGLAS POPE
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February 3, 1980

Hon. Charles Parr
Chair, House Judiciary Committee
Pouch V
Juneau, Alaska
99801

Re: sunset review of the integrated bar

Dear Mr. Chairman:

The purpose of this letter is to briefly state my views with respect to the sunset review of the integrated bar. I support termination of the present system. However, before I state my reasoning I wish to disclose that I have had no particular disagreements with the Alaska Bar Association that have affected me. My major contact with the Bar occurs each year when I pay my dues.

The conclusion that has led me to support termination is my belief that the Bar Association serves no useful purpose with regards to what I perceive should be a primary function--disciplining unethical conduct within the profession. The respect for the integrity of my profession is low, and I do not believe that it deserves to be higher. I frequently encounter conduct during the course of doing business in my profession that is either demonstrably improper or has the appearance of impropriety. This conduct has taken the form of improper communications to the press, ex parte communications with the judiciary, misrepresentations to the courts and concealing or withholding relevant evidence. Most of these examples occur during the course of litigation and are properly the role of the judiciary to control. The current system, with its divided policing functions, does little to impress the judiciary of the importance of this function. Until a strong and ethical professional guidance is obtained, the public is entirely justified in its distrust.

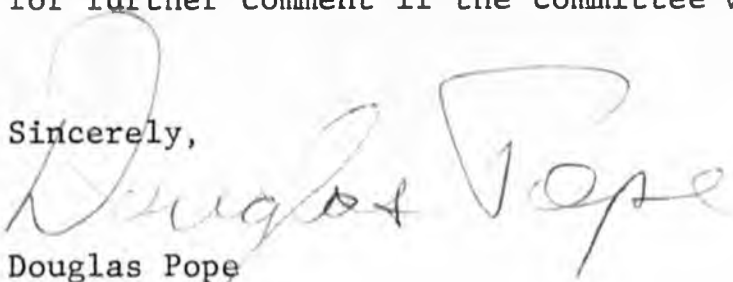
It should not be assumed from my position that I place great trust in the judiciary to adequately accept the responsibility. Today some judges will not stand for even the appearance of impropriety while others do not seem to place those appearances in high regard. I do believe, however, that the judiciary should be situated with that sole responsibility on a case by case basis. If they do not live up to their responsibility, or if the committee wishes for some lay oversight, then the judicial ethics oversight should be strengthened.

One final and different note that supports my conclusion. I am aware of at least one instance where the Bar did discipline an attorney who was convicted of a crime. The disciplinary committee recommended

a six month suspension from practice. Despite the absence of an appeal from that recommendation, and despite the lack of an opportunity for the particular attorney to be heard, the Board of Governors invoked a two year suspension. It is beyond my comprehension why a group of attorneys can feel that they are not bound by the due process and equal protection guarantees that we so often stress, yet the action of the Board of Governors clearly disregarded those guarantees. The judiciary would most certainly be more attuned to those guarantees.

I appreciate this opportunity to submit my views. I am available for further comment if the committee wishes.

Sincerely,


Douglas Pope

TO: REPRESENTATIVE CHARLES PARR, CHAIRMAN OF THE HOUSE JUDICIARY COMMITTEE
FROM: S. B. MITFORD, P. O. BOX 326, ANCHORAGE 99510 277-8116

I FULLY SUPPORT THE ABOLISHMENT OF THE ALASKA BAR ASSOCIATION AND RECOMMEND THAT ALL THE ASSOCIATION FILES ON DISCIPLINARY ACTIONS AND COMPLAINTS BE TURNED OVER TO THE STATE OMBUDSMAN FOR REVIEW FOR POSSIBLE INDICTMENTS IN CASES WHERE THE ASSOCIATION HAS FAILED TO ACT ON JUST COMPLAINTS, AND TO OFFER TO RECEIVE PUBLIC COMPLAINTS FOR LACK OF ASSOCIATION ACTION ON COMPLAINTS, TO IN FUTURE PROCESS NEW COMPLAINTS; THE TRAIL BODY TO EXCLUDE ANY ATTORNEYS. HOPE THIS SUPPORT WILL BE OF SOME ASSISTANCE.

SBM

February 5, 1980

Representative Joyce Munson
833 E. 79th Avenue
Anchorage, Alaska 99502

RE: Pending Legislation
Regarding the Practice of Law

Dear Joyce:

During the time that I have known you, while serving on the Board of Directors of the Mental Health Association, we have only infrequently discussed the practice of law. However, this issue is the purpose of my writing this letter.

I understand that there is proposed legislation before the legislature which would de-integrate the Bar and would establish a Commission, to be staffed by the governor, which would supervise the practice of law. This Commission would replace the present Board of Governors. I cannot express strongly enough my opposition to any concept or proposal which would take the supervision of the practice of law away from courts and lawyers. My position may seem very self-serving and flies in the face of our usual, and quite reasonable, assumption that no person or persons are immune from the need for supervision. However, I feel that the Board of Governors adequately serves this supervisory role and that the Board's replacement with a state Commission would be deleterious both to the administration of justice and to the public.

I cannot help but digress at this point to express my own view that legislative efforts directed against attorneys reflect the frustration and anger of a misinformed public. There is no greater myth relating to the practice of law than that attorneys are wealthy as a class. Several years ago a study was done showing that attorneys earn approximately half the income of doctors and that figure was approximately \$25,000. This hardly

represents a windfall income following seven years of post-secondary education. More importantly, the public has not been so much concerned with attorney income as with the burden that attorney fees places on their own incomes. In response to this problem our society must be honest enough to face the real cause of such a situation and avoid the use of scapegoats. Throughout the last several decades our courts, our legislatures, and our federal bureaucracy, as well as Congress, have increasingly "legalized" our society. There are many areas of life, such as the expulsion of students from school, sexual harrassment on the job, age discrimination, and numerous other areas which were previously the realm of societal norms and sanctions but which have now become the realm of the courts and of our legal system. Necessarily, the accomplishment of any task relating to these problems requires the use of attorneys and attorney time. Attorneys primarily bill by the hour. Therefore, the fee generated by any controversy depends on the length of time required by the attorney to competently attend to it. As government regulations grow and as the courts are increasingly flooded with litigation and understaffed, with the resultant delay in the completion of litigation, fees will undoubtedly increase. There exist many cases with which I am familiar where, if the attorney only billed for his overhead time and chose to make no income whatsoever, the client could still not afford the attorney's fee.

Therefore, as a class attorneys are not becoming filthy rich. Rather, the increased use of attorneys and the resultant increase in attorney fees reflects our society's desire to remedy social problems through the courts. I am not going to comment on whether I believe this is a good or bad trend. But what I think is important is that society itself has made this decision and it is woefully unfair to blame attorneys for the necessarily resultant increase in legal costs. It is somewhat reminiscent of the practice of ancient kings who would occasionally slay a messenger who bore bad news.

It is my understanding that some elements in the legislature would like to have access to attorney files and attorney discipline files. I can't express strongly enough my opposition to such a gross infringement upon the privacy not only of the attorney, who is frequently the subject of unjustified attacks, but also of his client whose secrets would be revealed in such an inquiry. There is no question that the legal profession, as with any

J. Munson
Page 3
February 5, 1980

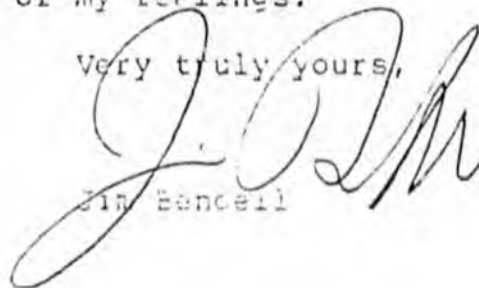
other profession, possesses some incompetent and dishonest persons. I heartily support any effort designed to minimize these problems. However, I do not believe that the establishment of a state Commission, with an additional layer of bureaucracy, would accomplish this goal.

Finally, Joyce, I oppose the establishment of a Commission because I frankly fear that many laypersons have a rather dim view of the Bill of Rights, the rights of mentally ill and indigent persons, the right of privacy, and many other of our civil liberties. Many of these persons are very well-meaning. For example, there was recently a rather notorious rape trial conducted in Anchorage where there were some representatives from anti-rape groups who cast rather jaundice eyes at the defense attorney representing the defendant. I sometimes wonder whether these persons wished that the defendant did not have a right to a trial. I believe that our profession acts in a commendable manner when it undertakes the representation of the most despised and wicked persons in our society. In fulfilling this role, the attorney follows zealously the canons of ethics and underlines his belief that all persons are entitled to legal representation. I wonder how many other persons in our society really believe that.

In our increasingly atomized and divided society, there exists only a few remnants of the sacred relationships from the past. Among these is the attorney/client relationship. These relationships stand as shields of the individual from the frequently callous voice of the mob. I believe that the Board of Governors of the Bar Association acts in the interest of the Bar as well as the interest of all of our clients in upholding the traditions of the legal profession. I hope that the legislature does nothing to interfere with this important function.

Thank you very much for taking the time to read this rather verbose expression of my feelings.

Very truly yours,



Jim Bence

JM:pac

2130 2nd
Douglas, Ak 99824
Feb 20, 1980

Charles Parr
Chairman
House Judiciary Committee

Dear Chairman Parr:

Although I am too busy to appear personally before the judiciary committee, or even to make this written testimony very complete or detailed, I would like for the House Judiciary Committee to know during its deliberation on sunset review of the Alaska Bar Association that there is at least one attorney out there who would like to see the bar association completely eliminated as a government recognized and protected monopoly in the field of legal services.

As a member of both the Alaska and Washington State Bar Associations, it has become apparent to me that the existence of a single recognized bar association is detrimental rather than beneficial to the recipients of legal services. Having taken bar examinations, it is apparent that they do not accurately reflect the ability of an applicant to perform as a competent or ethical attorney.

Instead, the public is lead to believe that anyone with a bar certificate on his wall is capable of handling his particular case. Then, when a particular attorney might come under attack from a dissatisfied client, there is often reluctance on the part of the 'legal establishment' (bar association) to fairly resolve the matter.

To my way of thinking, the bar monopoly is a means for an elite of the legal establishment to unjustly control the practice of law and to choose judges in a manner that almost completely circumvents democracy.

My solution is to leave the practice of law to the free market so that freely organized associations of 'attorneys' will develop which will set their own standards for admission to include levels of education, experience, and legal insurance for their mistakes.

In this manner, the consumer of legal services would have his choice of options widened, and the inadequate attorneys would be weeded out of the system since voluntary associations of attorneys would have incentive to build their reputations so as to attract clients.

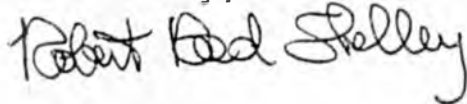
In addition, attorneys should be allowed to advertise freely and to set their fees as the free market might dictate.

While this testimony may incur the wrath of the legal establishment, my conscience could not allow me to do otherwise.

Parr
Page 2

To prove my point as to the public's demand for alternative legal services, I have often been requested as an attorney by persons who do not trust lawyers who play up to the legal establishment.

Yours truly,

A handwritten signature in cursive script that reads "Robert Reed Shelley". The signature is written in dark ink and is positioned above the typed name.

Robert Reed Shelley
Attorney-at-Law

February 21, 1980

Rep. Charles Parr
Chairman
House Judiciary Committee
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Dear Rep. Parr:

I would like to comment on the proposed "sunset" of the Alaska Bar Association. I have been a member of the Bar since 1974. I probably have an unusual perspective on the Bar, as I am one of the attorneys representing a group of lawyers and lay people who sued the ABA for holding a Board of Governors meeting in Hawaii a couple of years ago. The plaintiffs in that case lost in the Superior Court, but our appeal was argued to the Supreme Court in April, 1979, and therefore awaits a decision.

I think the ABA either should be abolished, or, alternatively, that its Board of Governors should be completely restructured to give control to lay people selected by the Governor, confirmed by the House or Senate or both, and required to serve staggered terms of a number of years.

The ABA as presently constituted is largely ineffective in performing the functions bar associations are designed to perform. In theory, such associations are to ensure the ethical standards of lawyers are maintained and the competency level of lawyers is at a minimum level. Normally the latter function is done through bar exams and continuing legal education programs.

Statistics show that the ABA rarely disciplines its lawyers for ethical violations. The rare discipline that is imposed is mild at best. The ethical complaint process, furthermore, takes too long, and does little to provide recourse to clients who nonetheless must sue for malpractice if they seek monetary compensation for a damaging ethical violation.

The ABA's activities also do nothing to ensure that minimal levels of competency for lawyers are maintained. The bar examination is basically a literacy test. One need not have went to law school to be able to pass it; anyone with basic writing skills who has been to college and who can take one of the many bar examination review courses offered could pass the exam. Continuing legal education is not mandatory, and therefore the fact that on occasion the ABA offers seminars, training sessions, and so forth is irrelevant to its obligation to ensure that its members are well trained. I have had lawyers tell me that they have never read a law review

and have no idea what the inside of the local library looks like.

The ABA has also done nothing material to ensure that legal services are provided to bush communities, or that minorities are given assistance to become lawyers. That the largest minority population in Alaska (Alaska Natives) has less than a handful of members in the ABA is distressing.

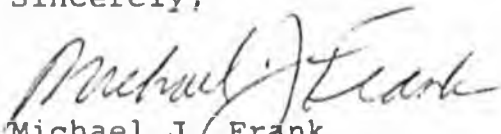
The ABA employs a lobbyist in Juneau, or at least it has in the past. Since ABA membership is mandatory, ABA members really have no way of disassociating themselves from the positions the lobbyist is instructed to take by the Board of Governors. This raises, in my opinion, grave free speech questions. It is my understanding that the Board may have limited the "lobbying" of the lobbyist to avoid these problems, but as far as I know there are no written parameters limiting the lobbyist's roll in Juneau.

Needless to say, I also think it an abomination that the ABA's Board of Governors meets outside the State of Alaska at least once each year. Next year I hear that the Board intends to change the Hawaii location to Mexico. In my view (and hopefully the Supreme Court's) this violates Alaska's open meeting act. Even if it does not, however, it certainly is questionable behavior in the public's perception, and does little to enhance the image of lawyers in the eyes of Alaska's citizens. I resent the use of mandatory dues (in essence, a tax like any other) that I supply to the ABA for mid-winter tropical vacations for ABA Board members when such funds could be used to finance minority scholarships, mandatory education programs, periodic competency testing, and other functional activities of the ABA.

Most of the grievances I have could probably be solved by a restructuring of the ABA Board to give control to lay people. I would rather see the judiciary take over the ABA's functions, but the likelihood of abolition of the ABA is probably remote. At least with the continuation of the ABA the legislature would retain some control, control that would be absent if the judiciary did the job, although I do think the judiciary would do a very responsible job. It is difficult for me to believe that a better job cannot be done.

Thank you for hearing my views. I would appreciate it if you circulated this letter among members of your committee if possible.

Sincerely,


Michael J. Frank
2224 Turnagain Parkway
Anchorage, Alaska 99504

Ph: 243-7645



Alaska Court System

State of Alaska

303 "K" STREET
ANCHORAGE, ALASKA
99501

ARTHUR H. SNOWDEN II
ADMINISTRATIVE DIRECTOR

(907) 273-8611

March 12, 1980

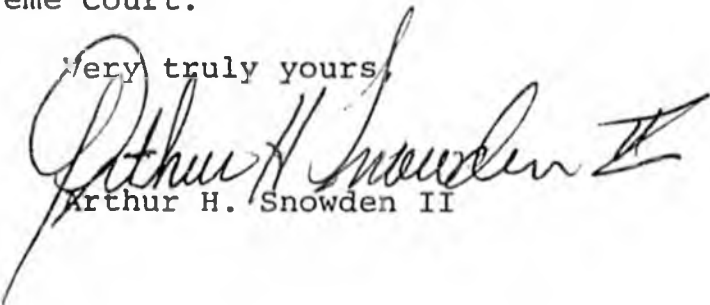
The Hon. Charles Parr, Chairman
House Judiciary Committee
Room 126, State Capitol Building
Juneau, Alaska 99811

Dear Representative Parr:

In my letter of March 4, 1980, with reference to the sunset of the Alaska Bar Association, I stated in the last sentence that the Court hopes that the Bar Association and the Legislative Budget and Audit Committee can reach a reasonable accommodation of their present dispute.

I wish to make it clear that in commenting on this subject, in no way did I intend to comment or convey any information on the merits of the controversy between the Legislative Budget and Audit Committee and the Alaska Bar Association before the Supreme Court.

Very truly yours,



Arthur H. Snowden II



Alaska Court System

State of Alaska

303 "K" STREET
ANCHORAGE, ALASKA
99501

ARTHUR H. SNOWDEN II
ADMINISTRATIVE DIRECTOR

(907) 274-8611

March 12, 1980

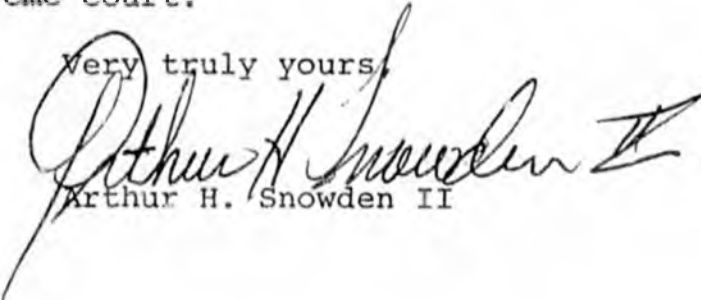
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Very truly yours,



Arthur H. Snowden II



Alaska State Legislature

House of Representatives

Committee on Judiciary

Pouch V
State Capitol
Juneau, Alaska 99811

Official Business

TO: Charlie Parr, Chairman, and Members of the House Judiciary
Committee

FROM: Margaret W. Berck, Counsel to the Committee

DATE: March 12, 1980

RE: Recodification of the Alaska Integrated Bar Act.

*Section 1.

Chapter 08. Alaska Bar Act.

Sec. 08.08.010. CREATION OF THE ALASKA BAR ASSOCIATION. There is created an agency 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)

Sec. 08.08.020. MEMBERS. A person licensed to practice law in the state may become a member of the Alaska Bar.

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)

Sec. 08.08.040. BOARD OF GOVERNORS OF THE ALASKA BAR; ELECTION AND APPOINTMENT. The Board of Governors of the Alaska Bar shall consist of nine members, six of whom shall be elected by and from among the members of the association and three non-attorney members who shall be appointed by the governor.

(b) Of the elected members, one shall be elected by and from among the members of the association resident in the first judicial district; two shall be elected by and from among the members of the association resident in the third judicial district; one shall be elected by and from among the members of the association resident in the combined area of the second and fourth judicial districts; and two shall be at large from the entire state.

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

(d) Two members of the Board of Governors shall be elected annually and one member of the Board of Governors shall be appointed annually on the following triennial rotation:

(1) in the first year, one member shall be appointed, one member shall be elected at large, and one member shall be elected from the third judicial district;

(2) in the second year, one member shall be appointed, one member shall be elected from the combined area of the second and fourth judicial district, and one member shall be elected from the first judicial district;

(3) in the third year, one member shall be appointed, one member shall be elected at large and one member shall be elected from the third judicial district.

Sec. 08.08.050. ELECTION OF BOARD OFFICERS. The active members of the Alaska Bar Association shall elect annually by a majority vote the association's officers from among the membership of the Board of Governors.

Sec. 08.08.060. VACANCIES ON THE BOARD. A vacancy affecting an elected membership position on the board shall be filled by appointment by the remaining board members until the next annual election. A vacancy

affecting an appointed membership position on the board shall be filled by appointment by the governor. Vacancies affecting appointed membership positions shall be filled for the unexpired term.

Sec. 08.08.070. MEETINGS OF THE BOARD. All meetings of the Board of Governors of the Alaska Bar shall be in compliance with AS 44.62.310, et. seq. Reasonable notice to the general public shall be provided. Furthermore all meetings shall take place within the geographical boundaries of this state.

Sec. 08.08.080. POWERS OF THE BOARD. (a) Except as may be otherwise provided in the statutes or the Alaska Bar Rules, the board may adopt reasonable provisions:

(1) concerning membership and 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, investment, and disbursement of membership, admission or licensing fees, penalties, and all other funds;

(5) providing for the maintenance of the register of each attorney admitted to practice as an attorney at law in the courts of this state;

(6) providing for continuing legal education and certification of continuing legal education programs;

(7) providing for the specialization of attorneys admitted to practice as an attorney at law in the courts of this state;

(8) providing for the organization and government of local

subdivisions of the Alaska Bar;

(9) 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, discipline, licensing and continuing legal education;

(2) adopt reasonable bylaws and regulations consistent with statutes and 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, inactive, judicial, and honorary members.

Sec. 08.08.090. ANNUAL REPORT TO LEGISLATURE. The Board of Governors shall report annually to the Chairmen of the Senate and House Judiciary Committees of the Alaska State Legislature on all matters concerning admissions, discipline, and disbarment proceedings, except for those matters defined as confidential by court rule. Furthermore this report shall address any modification, repeal, or addition to the bylaws and regulations of the Alaska Bar as well as any modification, repeal, or addition to or any proposed modification, repeal, or addition to the rules of court.

Sec. 08.08.100. POWER OF THE ALASKA BAR TO MAKE OR CHANGE BYLAWS AND REGULATIONS.

repealed
 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 ~~repealed~~, 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)

Sec. 08.08.110. ADMINISTRATIVE PROCEDURE ACT.

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 118 SLA 1960; am § 8 ch 181 SLA 1976)

Sec. 08.08.120. LICENSE FEES. The fee for the initial issuance and the annual renewal of a license ^{to practice law in the state} shall be \$25.00. License fees are due and payable to the Alaska Bar.

Sec. 08.08.130. SUSPENSION FOR NONPAYMENT OF LICENSE FEES. (a) Any attorney-at-law failing to pay the license fee within 30 days after it becomes due shall be notified in writing by certified or registered mail that the Executive Director of the Alaska Bar shall petition a Justice of the Supreme Court of Alaska for an order suspending such person for nonpayment of license fees.

(b) The Executive Director of the Alaska Bar shall annually notify the clerks of court of the names and date of suspension of all persons who have been then or previously suspended and not reinstated.

(1) Any person who has been suspended for less than one year, upon payment of the license fee, in addition to a penalty of \$10.00 per month of delinquency, shall be reinstated upon certification by the Executive Director of the Alaska Bar to the Supreme Court and the clerks of court that the license fees and penalties have been paid.

(2) Any person who has been suspended for a year or more, upon determination of good character by the Board, and upon payment of all accrued license fees, in addition to a penalty of \$10.00 per month of delinquency, shall be reinstated upon certification by the Executive Director of the Alaska Bar to the Supreme Court and the

clerks of court that the person is of good character and that the license fees and penalties have been paid.

Sec. 08.08.140. DEFINITION OF THE PRACTICE OF LAW. (a) Any person who either is or represents himself to be or causes any other person reason to believe that he is an attorney-at-law or a member of the bar of any jurisdiction, is engaged in the practice of law while performing any of the following acts for or on behalf of any other person, with or without compensation:

- (1) Appearance in or conduct of litigation or performance of any act in connection with proceedings, pending or prospective before a court of this State unless otherwise provided by court rule; or
- (2) Appearance in or conduct of litigation or performance of any act in connection with proceedings pending or prospective before any other body constituted by law to settle controversies; or
- (3) Giving counsel as to any person's legal rights or obligations;
or
- (4) Preparation or procurement of instruments or other papers creating, limiting, claiming, granting, terminating, or otherwise **securing** legal rights; or
- (5) Engaging in any act or other practice determined by the courts of law to constitute the practice of law.

(b) Any person not included in subsection (a) of this section who, for compensation, performs any of the acts set forth in (1) through (5) of subsection (a) of this section, is engaged in the practice of law unless such acts are performed as part of the regular conduct of a business the primary purpose of which is other than the performance of any of the acts set forth in (1) through (5) of subsection (a) of this section. The practice of law shall not include actions by government employees in the course of their employment within the agency by which they are employed.

(c) The term "person" as used in this section includes a corporation, company, partnership, firm, association, organization, business trust, bank or governmental entity as well as a natural person.

Sec. 08.08.150. WHO MAY PRACTICE LAW.

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.~~

~~(b) (c)~~ This section and § ~~200~~²⁰⁸ 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.

~~(c) (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)

Sec. 08.08.160. EMPLOYMENT OF PROFESSIONAL TEST ADMINISTRATORS IN THE CONSTRUCTION AND GRADING OF THE ALASKA PORTION OF THE ALASKA BAR EXAMINATION; TRAINING REQUIREMENTS FOR MEMBERS RESPONSIBLE FOR THE PREPARATION AND GRADING OF THE ALASKA BAR EXAMINATION.

(a) The Board of Governors of the Alaska Bar shall contract with professional test administrators to assist the Alaska Bar in the preparation of questions and graders' analyses regarding the Alaska portion of the Alaska Bar Examination.

(b) Those members of the Alaska Bar who are designated by the board to prepare questions for the Alaska Bar Examination or to grade the Alaska Bar Examination shall ~~receive training~~ ^{HAVE BEEN TRAINED} in the preparation and grading of bar examinations.

Sec. 08.08.170. ELIGIBILITY TO TAKE BAR EXAMINATION.

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) § 180

Sec. 08.08.180. 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 ~~accredited~~ 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. → practice of law in this state

(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 university an application to register as a law clerk. The application shall be made on a form to be provided by the university and shall require answers to interrogatories the university 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 university. If the applicant fails or refuses to furnish any information or proof or answer any interrogatory required by the application, or independently by the university, in a manner satisfactory to the university, the application may be denied.

(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 courts of study adopted by the university. 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 university may determine.

(d) A law clerk whose registration has been approved by the university 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 university, 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 university may cancel the registration.

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

(h) A registered law clerk who has attended ~~any law school~~ a ~~law school~~ law school may, in the discretion of the university, 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

(1) "law school" means a law school ^{whether or not} 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 a school in Alaska offering a course of study which the university approves as the equivalent to a year's study in a law school under this section;

(2) "university" means the University of Alaska.

(am §§ 1 — 8 ch 119 SLA 1978)

Sec. 08.08.190. DISCIPLINARY PROCEEDINGS AND REVIEW.

a person licensed to practice law in the state

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)

person ←

Sec. 08.08.200. CRIMINAL PENALTY FOR THE UNLAWFUL PRACTICE OF LAW.

who engages in the practice of law

(a) Any person not licensed to practice law in the state[↑] as that term is defined in AS 08.08.140, or a person who is licensed to practice law in the state who wilfully employs ~~and~~ a person[↑] knowing that such person is engaging in the practice of law is guilty of a Class A misdemeanor.

not licensed to practice law

(b) Nothing in this section prohibits the use of paralegal personnel as defined by the rules of the Alaska supreme court.

Sec. 08.08.150. CONDITIONS FOR THE RECEIPT OF STATE FUNDS. No state funds shall be provided to the Alaska Bar unless all records of the Alaska Bar are made available to either the legislative auditor or the state ombudsman as his official duties or responsibilities may require.

Sec.08.08.160. SHORT TITLE. This chapter may be cited as the Alaska Bar Act.

*Section 2. AS 45.50.495 is amended by adding a new subsection to read:

(c) The attorney general may investigate complaints of unlawful acts and practices of attorneys which constitute violations of AS 45.50.471 and bring actions under AS 45.50.501 to restrain the unlawful acts and practices notwithstanding AS 45.50.481(1).

*Section 3. ALASKA BAR RULE 7, SECTION 1 IS AMENDED TO READ:

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 [ALLEGATION] in the verified statement are found to be sufficient by the Board, a hearing shall be granted. A hearing shall be granted in all cases where the applicant requests it and the score of the applicant on the bar examination is within five points of the passing grade of the
bar examination.

*Section 4. ALASKA BAR RULE 2, SECTIONS 1,2, and 3, ARE AMENDED TO
READ:

Section 1. Every applicant for examination shall

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

(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 examination 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) Establish domicile in the State of Alaska at least 30 days prior to the first day upon which the bar examination is to be given. Domicile may be shown for purposes of taking the bar examination by physical presence in Alaska for the 30-day period prior to the first day of the examination.

Section 2. An applicant who meets the requirements (a) through (e) 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.

[Section 3. An applicant who meets the requirements of (a) and (c) through (e) 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) Is admitted to practice and is an attorney in good standing in the bar of another state;

(b) Graduated from law school after June 8, 1973 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.] (Added by Supreme Court Order 161 effective immediately; amended by Amendment No. 1 to Supreme Court Order 161 effective April 12, 1974; by Supreme Court Order 220 effective December 15, 1975; and by Supreme Court Order 347 effective April 1, 1979)



Alaska State Legislature

House of Representatives

Committee on Judiciary

Pouch V
State Capitol
Juneau, Alaska 99811

Official Business

MEMORANDUM

February 20, 1980

TO: Charlie Parr, Chairman, and Members of the House
Judiciary Committee

FROM: Margaret W. Berck, Staff

SUBJECT: Sunset Review of the Alaska Bar Association

Attached is a civil rule change proposed by the Alaska Bar Association to the Alaska Supreme Court. Currently this proposal is before the Supreme Court and has not been acted upon as of this date.

In essence, the proposal would preclude legal representation by lay persons in administrative agency proceedings or in arbitration proceedings. Both Alaska and Federal law frequently make provisions for individuals to obtain a lay person to represent them in an administrative agency hearing. The rationale for these provisions is clear. Most citizens are unable to bear the expenses of hiring an attorney to represent them in such matters.

For various reasons, it is unlikely that the Alaska Supreme Court will adopt the Bar's proposal. Most significant perhaps is the fact that the scope of the civil rules is limited to actions or proceedings in the courts. It seems clear that these rules may not be utilized by the Alaska Supreme Court to dictate to the executive branch how it will run its administrative hearings.

In my opinion this proposal by the Bar is noteworthy to the Committee not only because it reflects sloppy legal work, but also because it reflects a restraint of trade philosophy.

MWB:vc
Att.

CIVIL RULE 81

As proposed, Civil Rule 81 would read:

(a) Who May Practice.

(1) Members of the Alaska Bar Association. Subject to the provisions of paragraphs (2) and (3) of this subdivision, only attorneys who are members of the Alaska Bar Association shall be entitled to practice in the courts and before the administrative agencies of this state (.) or in any arbitration proceedings in Alaska.

(2) Other Attorneys (.) - Courts. A member in good standing of the bar of a court of the United States, or of the highest court of any state or any territory or insular possession of the United States, who is not a member of the Alaska Bar Association who is not otherwise disqualified from engaging in the practice of law in this state, may be permitted, upon motion, to appear and participate in a particular action or proceeding in a court of this state. The motion and notice of hearing thereon shall be served on the executive (SECRETARY) director of the Alaska Bar Association, the State Department of Revenue, the local municipal taxing authority and, unless the court directs otherwise by an order pursuant to Rule 5(c) of these Rules, on each of the parties to the action or proceeding. With his motion, the applicant must file with the court the following:

(a) The name, address and telephone number of a member of the Alaska Bar Association with whom the applicant will be associated (, WHO MAINTAINS AN OFFICE IN THE JUDICIAL DISTRICT WHERE THE ACTION OR PROCEEDING IS PENDING, and who is authorized to practice in the courts of this state.

- (b) A written consent to the motion, signed by such member of the Alaska Bar Association.
- (c) A certificate of the presiding judge or clerk of the court where he has been admitted to practice, executed not earlier than 60 days prior to the filing of the motion, showing that he has been so admitted in such court, that he is in good standing therein and that his professional character appears to be good.
- (d) A list of each judicial, administrative or arbitration proceeding in Alaska in which he or any member of his firm is currently appearing as counsel or has appeared within the past 24 months.
- (e) An affidavit in which he consents to be subject to the Disciplinary Rules of the Alaska Bar Association.
- (f) Provide proof of payment of Alaska income taxes for all income earned within the preceding two years of the date of the motion and produce proof that he has paid all license taxes in the year in which the motion is made in accordance with AS and AS.

An attorney thus permitted to appear may participate in a particular action or proceeding in all respects, except that all documents requiring signature of counsel for a party may not be signed solely by such attorney, but must bear the signature also of local counsel with whom he is associated. Section (a)(3) is repealed and new subsection (3) is added to read:

(d) A list of each judicial, administrative or arbitration proceeding in Alaska in which he or any member of his firm is currently appearing as counsel or has appeared within the past 24 months.

(e) An affidavit in which he consents to be subject to the Disciplinary Rules of the Alaska Bar Association.

(f) Provide proof of payment of Alaska income taxes for all income earned within the preceding two years of the date of the motion and produce proof that he is in possession of a valid business license and that he has paid all license taxes in the year in which the motion is made in accordance with A.S. and A.S.

Any attorney thus permitted to appear may participate in a particular action or proceeding in all respects, except that all documents requiring signature of counsel for a party may not be signed solely by such attorney, but must bear the signature also of local counsel with whom he is associated.

Section (a)(3) is renumbered as Section (a)(4) and reenacted to read:

(4) Authority and Duties of Attorneys. Local counsel shall be primarily responsible to the court, administrative agency or arbitrator for the conduct of all stages of the proceedings, shall be presented during all proceedings before the court, administrative agency or arbitrator and their authority shall be superior to that of attorneys permitted to appear under paragraphs (2) and (3) of this subdivision.

(remainder of rule remains the same)



Alaska State Legislature

House of Representatives

Committee on Judiciary

Pouch V
State Capitol
Juneau, Alaska 99811

Official Business

TO: Charlie Parr, Chairman, and Members of the House Judiciary
Committee

FROM: Margaret W. Berck, Staff

DATE: February 14, 1980

Request number 34 asked the bar association the following: "Provide the source, purpose and amount of all state funds obtained by the Alaska Bar Association during 1976, 1977, 1978 and 1979."

The bar association responded: "The Alaska Bar Association receives State funds from only one source (the Alaska Court System) for only one purpose (discipline). This contribution represents approximately only fifty percent (50%) of the discipline costs incurred by the Association."

The attached excerpts from my previous report to this Committee and also from information subsequently provided by Art Snowden more clearly set forth state financial involvement in the Alaska Bar Association.

*Nels - the bar president
stated last Fri. that state funds
for this year = \$60,000 (of
which \$50,000 was for discipline and
\$10,000 was for office space)*

fees defray the costs of regulating the profession is significant. If taxpayers support most of the costs of regulating all professions but for the legal profession, what justifies this differentiation. 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 fees 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 for the application form and a \$250 examination fee. Should application fees be structured to absorb admission costs, no additional financial burden falls on the taxpayer.

→ 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 furnished with free office space, use of equipment and supplies provided by the court system. Several years ago, when the Bar Association was required to vacate those offices, moving expenses were provided by the court system. Currently office space for the Bar Association is being subsidized by the Department of Law at the rate of \$10,000 per annum, raising a question of conflict of interest.³ [corrected by subsequent information from Art Snowden which is attached hereto.]

Additionally, for the past several years state funds have been provided to defray the association's expenses for disciplinary proceedings. In 1978 the Bar Association received \$58,600 from the state; in 1979, \$36,700, and the Allocation for 1980 is \$51,000.⁴ This state

³This information was disclosed by Richard Barrier, Manager, Fiscal Operations and Deputy Administrator, Alaska Court System.

⁴The reason disbursements in 1979 were lower than the previous year, and also lower than the 1980 allocation, was because the court system overpaid 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.

QUESTION #5: Whether the Alaska Court System currently is providing any funds to the Alaska Bar Association to assist that association in its rental payments for office space. If such funds are or have been provided in the past, please list the amount of such funds for each of the following years: 1976, 1977, 1978, and 1979.

ANSWER: The Alaska Court System has provided free office space for the Alaska Bar Association for at least the past eight years. Prior to the building of the Boney Memorial Court Building, the Bar Association was housed in leased space in the basement of the Voyager Hotel, along with the Land Recording Office. This rent was included in the Court System budget. With the completion of the new court building, space was freed up in the old court building which was allocated to the Alaska Bar. This amounted to approximate 900 square feet. From 1973 to 1977 the Bar Association resided in the office on the third floor of the old Anchorage court building. In 1977 at the request of the District Attorney, arrangement was made to transfer the Bar Association off the third floor of the old court building and into Department of law space in the Australaska building, to permit the District Attorney to house a special prosecution unit in space on the third floor of the old court building. In effect what happened was that the Bar Association moved into space which was under lease to the Department of Law. There was a tradeoff of space between the Court System and the Department of Law. This situation remained through the end of FY 78. In FY 79 the Bar Association negotiated a new lease for space in the Australaska building which was an expansion over the previous space. At that point in time the Court System agreed to pay the Bar Association an amount for rent approximately equivalent to the amount of free rent that the Bar had previously been provided by the Court, or \$10,000 a year. In FY 79 the Bar Association was paid \$10,000 towards its office rent in the Australaska building.

1976 and 1977 Official Audits of the
Alaska Bar Association

ALASKA BAR ASSOCIATION

REPORT ON EXAMINATION OF FINANCIAL STATEMENTS

YEAR ENDED DECEMBER 31, 1977 AND 1976

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February 16, 1978

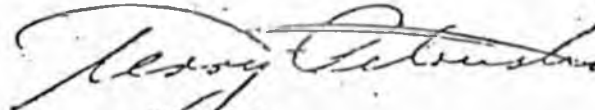
The Members

Alaska Bar Association

Anchorage, Alaska

We have examined the balance sheet of the Alaska Bar Association as of December 31, 1977, and the related statements of unrestricted revenues and expenses and changes in fund balances for the year then ended. Our examination was made in accordance with generally accepted auditing standards and, accordingly, included such tests of the accounting records and such other auditing procedures as we considered necessary in the circumstances:

In our opinion, the aforementioned financial statements present fairly the financial position of the Alaska Bar Association at December 31, 1977, and the results of its operations for the year then ended in conformity with generally accepted accounting principles applied on a basis consistent with that of the preceding year.



TERRY L. PETRUSKA, C.P.A.

ALASKA BAR ASSOCIATIONBALANCE SHEETSGENERAL FUND

December 31

	ASSETS	
	1977	1976
Current Assets:		
Cash	\$ 139,460	\$ 113,675
Accounts receivable (Note B)	9,307	4,338
Prepaid expenses	-	2,997
Total Current Assets	148,767	121,010
Library and Equipment (Note A)		
Video Tape library	4,830	4,830
Library	1,868	1,868
Office furniture and equipment	17,092	15,076
	23,790	21,774
Less accumulated depreciation	(13,513)	(10,848)
Total Library and Equity	10,477	10,926
	\$ 159,244	\$ 131,936

LIABILITIES AND FUND BALANCE

Current Liabilities:		
Accounts payable	\$ 9,208	\$ 6,525
Accrued and withheld payroll taxes	375	1,085
Unearned membership dues (Note A)	47,029	39,960
Unearned fees (Note A)	16,430	11,200
Note payable (Note C)	552	2,097
Payable to client security fund (Note D)	3,284	2,290
Total Current Liabilities	76,878	62,957
General Fund Balances:		
Reserve for working capital (Note E)	13,577	13,577
Unappropriated	68,789	55,402
Total Fund Balance	82,366	68,979
	\$ 159,244	\$ 131,936

See notes to financial statements.

ALASKA BAR ASSOCIATIONSTATEMENT OF UNRESTRICTED REVENUES AND EXPENSES
AND CHANGES IN FUND BALANCEGENERAL FUND

	<u>Year Ended</u>	
	<u>1977</u>	<u>1976</u>
REVENUES:		
Membership dues	\$ 166,294	\$ 143,993
Admission fees	48,000	40,213
Continuing legal education	14,484	8,956
Insurance fees	2,565	1,925
Convention revenues	3,747	16,754
News Letter revenues	-	660
Interest income	5,102	1,146
Lawyer referral and administrative services - Anchorage Bar Association	5,188	4,453
Alaska Court System contract for disciplinary services	37,301	21,766
Miscellaneous	694	769
	<u>283,375</u>	<u>240,635</u>
EXPENSES:		
Bar admission (Note F)	32,164	33,079
Board of Governors (Note F)	14,635	11,517
Discipline and unauthorized practice (Note F)	69,405	22,660
Continuing legal education	11,673	8,705
Committees	2,265	157
Legislative	9,376	9,952
News Letter	896	1,675
U.C.L.A. - Alaska Law Review	8,122	10,630
Convention	9,342	16,847
Lawyer referral	5,605	548
Administrative (Note F)	105,505	95,480
	<u>269,988</u>	<u>211,590</u>
Excess of unrestricted revenues over expenses	13,387	29,045
FUND BALANCE:		
Beginning of year	68,979	39,934
End of year	<u>\$ 82,366</u>	<u>\$ 68,979</u>

See notes to financial statements.

ALASKA BAR ASSOCIATIONBALANCE SHEETCLIENT SECURITY FUND

December 31 -

1977 1976ASSETS

Cash	\$ 17,729	\$ 8,138
Receivable from General Fund	3,285	2,290
	<u>\$ 21,014</u>	<u>\$ 10,428</u>

FUND BALANCE

Beginning of year	\$ 10,428	\$ 7,480
Additional contributions	10,586	2,948
End of year	<u>\$ 21,014</u>	<u>\$ 10,428</u>

- See Note D -

See notes to financial statements.

ALASKA BAR ASSOCIATIONNOTES TO FINANCIAL STATEMENTSYEARS ENDED DECEMBER 31, 1977 AND 1976Note A. Summary of Significant Accounting Policies.

(1) Accounting basis for reporting income.

The Association's accounting records are maintained on the accrual method. Receipts for membership dues are recognized as revenue in the period to which they apply. Administrative fees collected for the Alaska Bar Insurance Trust Fund are recognized as income by the General Fund when received. Fees collected from applicants for admission to the Association are recognized as follows:

- (a) Forms and charter investigation fee are recognized when received.
- (b) Application fee is recognized during the period in which the applicant sits for the examination.

(2) Library and Equipment.

Contributions of books are recorded at their estimated fair market values at time of receipt, and other items are recorded at cost. Depreciation expense is computed by the straight-line method over the estimated useful life of the asset.

(3) Income Taxes.

The Association is exempt from income taxes as a public agency of the State of Alaska.

Note B. Accounts Receivable.

Accounts receivable were due from the following:

	December 31	
	1977	1976
Alaska State Court	\$ 6,713	\$ 2,455
Idaho Bar Association	1,109	1,109
Alaska Bar Association Insurance Trust Fund	1,030	205
Anchorage Bar Association	455	569
	\$ 9,307	\$ 4,338

ALASKA BAR ASSOCIATION

NOTES TO FINANCIAL STATEMENTS

YEARS ENDED DECEMBER 31, 1977 AND 1976

Note C. Note Payable.

The Association is obligated on an installment note, dated April 3, 1975, payable in 36 equal installments of \$141 per month including interest. Collateralized by duplicating equipment.

Note D. Client Security Fund.

During 1975, the Board of Governors established a fund, pursuant to a rule promulgated by the Supreme Court of the State of Alaska, to provide amounts for settling claims related to members' client trust funds. The Client Security Fund is funded from membership dues.

Note E. Reserve for Working Capital.

The reserve was created by the Board of Governors as a segregation of the General Fund Balance. The fund is not restricted to any specific purpose.

Note F. Detail of Selected Expenses.

	December 31	
	1977	1976
Bar admission:		
Rentals	\$ 1,739	\$ 1,349
Mailing and supplies	2,549	639
Salaries	8,573	9,118
Grading fees and per diem	14,462	10,103
Litigation costs	3,642	10,953
Telephone and miscellaneous	1,199	937
	<u>\$ 32,164</u>	<u>\$ 33,079</u>
Board of Governors:		
Travel and per diem	\$ 11,838	\$ 8,608
Telephone	1,469	1,524
Rent	370	1,130
Postage and supplies	488	291
Miscellaneous	470	164
	<u>\$ 14,635</u>	<u>\$ 11,517</u>

ALASKA BAR ASSOCIATION

NOTES TO FINANCIAL STATEMENTS

YEARS ENDED DECEMBER 31, 1977 AND 1976

Detail of Selected Expenses: (Continued)

	December 31	
	1977	1976
Discipline and unauthorized practice:		
Salaries	\$ 62,293	\$ 20,284
Supplies	3,028	464
Travel	3,188	176
Telephone	896	446
	<u>\$ 69,405</u>	<u>\$ 21,370</u>
Administrative:		
Telephone and telegraph	\$ 1,395	\$ 2,099
Salary of Executive Director	40,917	35,700
Expense allowance and travel, Executive Director	3,743	1,200
Secretarial and bookkeeping salaries	27,077	29,292
Office supplies	2,688	4,906
Postage	3,997	4,576
Office equipment rental	6,180	3,902
Audit and accounting	3,424	2,850
Library	804	633
Payroll taxes	7,547	5,357
Depreciation	2,465	2,335
Insurance, including employee medical	2,168	1,372
Reproduction and printing	1,525	478
Dues	255	125
Interest expense	147	314
Judicial poll	956	491
Miscellaneous	1,217	210
	<u>\$106,505</u>	<u>\$ 95,840</u>

Note G: Group Insurance Fund Transfer:

On March 31, 1976, the Association transferred the assets and liabilities of the Group Insurance Fund to the Alaska Bar Association Trust Fund. Below is a summary of the assets and liabilities transferred to the trust:

ALASKA BAR ASSOCIATIONNOTES TO FINANCIAL STATEMENTSYEARS ENDED DECEMBER 31, 1977 AND 1976Note G. Group Insurance Fund Transfer. (Continued)

Cash	\$ 3,616
Premiums and administrative fees receivable	<u>469</u>
Assets transferred	<u>\$ 4,085</u>
Insurance premiums received in advance	\$ 3,716
Administrative fees collected for the Alaska Bar Association	<u>369</u>
Total liabilities transferred	<u>\$ 4,085</u>

1977 and 1978 Official Audits of the
Alaska Bar Association

ALASKA BAR ASSOCIATION

REPORT ON EXAMINATION OF FINANCIAL STATEMENTS

YEAR ENDED DECEMBER 31, 1978 AND 1977

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February 1, 1979

The Members
Alaska Bar Association
Anchorage, Alaska

We have examined the balance sheet of the Alaska Bar Association as of December 31, 1978, and the related statements of unrestricted revenues and expenses and changes in fund balances for the year then ended. Our examination was made in accordance with generally accepted auditing standards and, accordingly, included such tests of the accounting records and such other auditing procedures as we considered necessary in the circumstances.

In our opinion, the aforementioned financial statements present fairly the financial position of the Alaska Bar Association at December 31, 1978 and the results of its operations for the year then ended in conformity with generally accepted accounting principles applied on a basis consistent with that of the preceding year.

TERRY L. PETRUSKA, C.P.A.

ALASKA BAR ASSOCIATION

BALANCE SHEETS

GENERAL FUND

<u>ASSETS</u>	<u>December 31</u>	
	<u>1978</u>	<u>1977</u>
Current Assets:		
Cash	\$ 140,925	\$ 139,460
Accounts receivable (Note B)	14,872	9,307
Prepaid expenses	2,120	-
Total Current Assets	<u>157,917</u>	<u>148,767</u>
Library and Equipment (Note A)		
Video Tape library	4,830	4,830
Library	1,868	1,868
Office furniture and equipment	24,926	17,092
	<u>31,624</u>	<u>23,790</u>
Less accumulated depreciation	<u>(15,334)</u>	<u>(13,313)</u>
Total Library and Equity	<u>16,290</u>	<u>10,477</u>
	<u>\$ 174,207</u>	<u>\$ 159,244</u>

LIABILITIES AND FUND BALANCE

Current Liabilities:		
Accounts payable and accrued expenses	\$ 2,302	\$ 9,583
Advanced fees for Hawaii convention	20,478	-
Unearned membership dues (Note A)	62,028	47,029
Unearned fees (Note A)	11,700	16,430
Note payable	10,000	552
Payable to client security fund (Note C)	3,453	3,284
Total Current Liabilities	<u>109,961</u>	<u>76,878</u>
General Fund Balances:		
Reserve for working capital (Noted)	13,577	13,577
Unappropriated	50,669	68,789
Total Fund Balance	<u>64,246</u>	<u>82,366</u>
	<u>\$ 174,207</u>	<u>\$ 159,244</u>

See notes to financial statements.

ALASKA BAR ASSOCIATION

STATEMENT OF UNRESTRICTED REVENUES AND EXPENSES
AND CHANGES IN FUND BALANCE

GENERAL FUND

	Year Ended	
	December 31	
	<u>1978</u>	<u>1977</u>
REVENUES:		
Membership dues	\$ 191,266	\$ 166,294
Admission fees	48,686	48,000
Continuing legal education	11,687	14,484
Insurance fees	1,392	2,565
Convention revenues-Hawaii	16,080	-
Convention revenues-Other	13,621	3,747
Interest income	7,433	5,102
Lawyer referral	3,125	960
Administrative services-Anchorage Bar	975	4,228
Alaska Court System contract for disciplinary services	54,620	37,301
Miscellaneous	2,482	694
	<u>351,367</u>	<u>283,375</u>
EXPENSES:		
Bar admission (Note E)	29,875	32,164
Board of Governors (Note E)	34,217	14,635
Discipline and unauthorized practice (Note E)	74,351	69,405
Continuing legal education	16,996	11,673
Committees	932	2,265
Legislative	8,762	9,376
News Letter	1,213	896
U.C.L.A. - Alaska Law Review	6,672	8,122
Convention-Hawaii	16,515	-
Convention-Other	14,223	9,342
Lawyer referral	12,200	5,605
Contractual service-self insurance	11,642	-
Administrative (Note E)	142,689	106,505
	<u>369,487</u>	<u>269,988</u>
Excess (deficit) of unrestricted revenues over expenses	(18,120)	13,387
FUND BALANCE:		
Beginning of year	<u>82,366</u>	<u>68,979</u>
End of year	<u>\$ 64,246</u>	<u>\$ 82,366</u>

See notes to financial statements.

ALASKA BAR ASSOCIATION

BALANCE SHEET

CLIENT SECURITY FUND

	<u>ASSETS</u>	<u>December 31</u>	
		<u>1978</u>	<u>1977</u>
Cash		\$ 29,591	\$ 17,729
Receivable from General Fund		<u>3,453</u>	<u>3,285</u>
		<u>\$ 33,044</u>	<u>\$ 21,014</u>
<u>FUND BALANCE</u>			
Beginning of year		\$ 21,014	\$ 10,428
Additional contributions		<u>12,030</u>	<u>10,585</u>
End of year		<u>\$ 33,044</u>	<u>\$ 21,014</u>

- See Note C -

See notes to financial statements.

ALASKA BAR ASSOCIATION

NOTES TO FINANCIAL STATEMENTS

YEARS ENDED DECEMBER 31, 1978 AND 1977

Note A. Summary of Significant Accounting Policies

(1) Accounting basis for reporting income.

The Association's accounting records are maintained on the accrual method. Receipts for membership dues are recognized as revenue in the period to which they apply. Administrative fees collected for the Alaska Bar Insurance Trust Fund are recognized as income by the General Fund when received. Fees collected from applicants for admission to the Association are recognized as follows:

- (a) Forms and charter investigation fee are recognized when received.
- (b) Application fee is recognized during the period in which the applicant sits for the examination.

(2) Library and Equipment.

Contributions of books are recorded at their estimated fair market values at time of receipt, and other items are recorded at cost. Depreciation expense is computed by the straight-line method over the estimated useful life of the assets.

(3) Income Taxes.

The Association is exempt from income taxes as a public agency of the State of Alaska.

Note B. Accounts Receivable

Accounts receivable were due from the following:

	December 31	
	1978	1977
Alaska State Court	\$ 10,200	\$ 6,713
Idaho Bar Association	-0-	1,109
Alaska Bar Association Insurance Trust Fund	1,409	1,030
Bar Rag	3,000	-0-
Others	263	455
	<u>\$ 14,872</u>	<u>\$ 9,307</u>

ALASKA BAR ASSOCIATION

NOTES TO FINANCIAL STATEMENTS

YEARS ENDED DECEMBER 31, 1978 AND 1977

Note C. Client Security Fund

During 1975, the Board of Governors established a fund, pursuant to a rule promulgated by the Supreme Court of the State of Alaska, to provide amounts for settling claims related to members' client trust funds. The Client Security Fund is funded from membership dues.

Note D. Reserve for Working Capital

The reserve was created by the Board of Governors as a segregation of the General Fund Balance. The fund is not restricted to any specific purpose.

Note E. Detail of Selected Expenses

	December 31	
	1978	1977
Bar admission:		
Rentals	\$ 2,489	\$ 1,739
Mailing and supplies	1,748	2,549
Salaries	9,118	8,573
Grading fees and per diem	14,006	14,462
Litigation costs	82	3,642
Telephone and miscellaneous	2,432	1,199
	\$ 29,875	\$ 32,164
Board of Governors:		
Travel and per diem-Other	\$ 26,200	\$ 11,838
Travel and per diem-Hawaii	4,780	-
Telephone	1,544	1,469
Rent	-	370
Postage and supplies	753	488
Miscellaneous	940	470
	\$ 34,217	\$ 14,635
Discipline and unauthorized practice:		
Salaries	\$ 62,684	\$ 62,293
Supplies	1,733	3,028
Travel	2,601	3,188
Telephone	988	896
Rent	5,522	-
Litigation	823	-
	\$ 74,351	\$ 69,405

ALASKA BAR ASSOCIATION

NOTES TO FINANCIAL STATEMENTS

YEARS ENDED DECEMBER 31, 1978 AND 1977

Note E. Detail of Selected Expenses (Continued)

	<u>December 31</u>	
	<u>1978</u>	<u>1977</u>
Administrative:		
Salary of Executive Director	\$ 40,455	\$ 40,917
Expense allowance and travel, Executive Director	5,797	3,743
Secretarial and bookkeeping salaries	25,452	27,077
Payroll taxes	11,596	7,547
Office supplies	6,019	2,688
Postage	4,047	3,997
Office equipment rental	7,141	6,180
Office rent	8,281	-
Staff parking	675	-
Telephone and telegraph	3,272	1,395
Audit and accounting	10,554	3,424
Library	1,627	804
Depreciation	2,022	2,465
↳ Litigation-Horowitz, et al. v. ABA	7,092	-
Insurance, including employee medical	5,243	2,168
Reproduction and printing	1,035	1,525
Dues	230	255
Interest expense	12	147
Judicial poll	458	956
Miscellaneous	1,481	1,217
	<u>\$142,689</u>	<u>\$106,505</u>

February 1, 1979

The Trustees
Alaska Bar Association Trust Fund
Anchorage, Alaska

We have examined the balance sheet of the Alaska Bar Association Trust Fund as of December 31, 1978, and the related statement of operations and changes in fund balance for the year ended December 31, 1978. Our examination was made in accordance with generally accepted auditing standards and, accordingly, included such tests of the accounting records and such other auditing procedures as we considered necessary in the circumstances.

In our opinion, the aforementioned financial statements present fairly the financial position of the Alaska Bar Association Trust Fund at December 31, 1978, and the results of its operations for the year then ended in conformity with generally accepted accounting principles.

TERRY L. PETRUSKA, C.P.A.

February 1, 1979

The Board of Directors
Alaska Bar Foundation, Inc.

I have verified the activity of the Alaska Bar Foundation, Inc. for the year ended December 31, 1978. In addition, cash bank balances were confirmed and verified as of December 31, 1978.

As such, the following balance sheet as of December 31, 1978 and statement of revenues and expenses and changes in fund balance for the year ended December 31, 1978 accurately reflect the financial position of the Alaska Bar Foundation, Inc. as of December 31, 1978.

Sincerely,

Terry L. Petruska, C. P. A.

BALANCE SHEET AT DECEMBER 31, 1978

Cash in savings and savings certificates	\$ 6,102
	<u>\$ 6,102</u>
Accounts payable - Alaska Bar Association	\$ 263
George F. Boney Memorial Fund Balance-Unappropriated	<u>5,739</u>
	<u>\$ 6,102</u>

STATEMENT OF REVENUE AND EXPENSE AND CHANGES IN
FUND BALANCE FOR THE YEAR ENDED DECEMBER 31, 1978

Interest income	\$ 332
Excess of revenue over expenses	332
Fund balance - beginning of year	<u>5,407</u>
Fund balance - end of year	<u>\$ 5,739</u>

ALASKA BAR ASSOCIATION TRUST FUND

BALANCE SHEET

December 31, 1978

ASSETS

Cash \$ 4,706

LIABILITIES AND FUND BALANCE

Insurance premiums received in advance \$ 3,297

Administrative fees payable to Alaska
Bar Association 1,409

Total Liabilities 4,706

Fund balance -
\$ 4,706

See notes to financial statements.

ALASKA BAR ASSOCIATION TRUST FUND

STATEMENT OF OPERATIONS AND CHANGES IN FUND BALANCE

Year Ended December 31, 1978

Revenues (Note 2):	
Insurance premiums	\$ 16,380
Administrative fees	<u>1,429</u>
	<u>17,809</u>
Expenses (Note 2):	
Insurance premiums	16,380
Administrative fees	<u>1,429</u>
	<u>17,809</u>
Excess of revenues over expenses	<u>\$ -0-</u>

See notes to financial statements.

ALASKA BAR ASSOCIATION TRUST FUND

NOTES TO FINANCIAL STATEMENTS

Year Ended December 31, 1978

1. Organization:

The Trust Fund was organized March 11, 1976 pursuant to a trust indenture entered into by the Alaska Bar Association and its members. Operations began April 1, 1976.

The purpose of the Trust is to provide and maintain a broad range of health and welfare benefits for the Association's members, their employees and families through insurance policies issued by licensed insurance carriers. These benefits were available to the Association's members through the Association's Group Insurance Fund prior to the organization of the Trust Fund.

2. Significant Accounting Policies:

The following is a summary of the Trust Fund's significant accounting policies:

Insurance Premiums

Insurance premiums are recognized as revenues at the time the premiums are due and payable to the insurance carriers. Amounts received from subscribers in excess of amounts immediately due and payable to the carriers are deferred until the premium due date.

Administrative Fees

Administrative fees collected from subscribers are recognized as income when collected. At the time the fees are collected an expense is recorded to recognize the administrative support provided by the Alaska Bar Association.

Income Taxes

The Alaska Bar Association Trust Fund is subject to income taxation as a complex trust as defined by the Internal Revenue Code. A provision for income taxes will be provided should the Trust have taxable income in the future.



Alaska State Legislature

House of Representatives

Committee on Judiciary

Official Business

Pouch V
State Capitol
Juneau, Alaska 99811

TO: Charlie Parr, Chairman, and Members of the House Judiciary
Committee

FROM: Margaret W. Berck, Staff

DATE: February 14, 1980

Attached hereto is an internal report prepared by the Board of
Governors of the Alaska Bar Association which indicates the
length of time involved in the disposition of disciplinary
matters.

DOCKET #	OPENED	ACTION		
1	11/71	Informal adm 12/9/77	12/9/77	7 years
7	5/17/73	Dismissed 12/12/77 (HC)	12/12/77	7
8	6/4/73	Dismissed 10/15/77	10/15/77	52
13	9/14/73	Informal adm 12/6/77	12/6/77	51
23	1/8/74	Combined with #234 12/31/77; before hearing comm by 9/30/78		
35	4/8/74	Ready for Brd 1/21/78; to be informally adm 3/31/78; private reprimand 8/24/78	8/24/78	52
46	10/7/76	On Brd agenda 10/78; S.C. decision pending 3/3/79		
48	8/2/74	Ready for Brd 1/21/78; to be informally adm 3/31/78; private reprimand 8/24/78	8/24/78	48
57	10/17/74	Dismissed 10/26/77	10/26/77	3 years
59	11/9/74	Argument before S.C. 2/78; public censure 9/5/78	9/5/78	46
70	2/18/74	Informal adm 10/15/77	10/15/77	44
87	5/9/75	Dismissed 11/1/77	11/1/77	28
93	5/29/75	Dismissed 12/30/77	12/30/77	29
94	6/2/75	To rev comm member 8/9/77; informal adm 2/15/78	2/15/78	32
102	7/?/75	Before hearing comm 12/31/77; S.C. decision pending 3/31/79		
104	7/ /75	10 of 12 original charges dismissed in 1977 (RCMR); 2 charges to review comm 3/28/78; dismissed 4/5/78 (RCMR)	4/5/78	33
123	10/10/75	Abeyance before hearing comm; pending matters before S.C. 12/31/77		
130	10/25/75	Brd ordered abeyance 10/15/77 pending dispo of civil lit		
133	11/25/75	Ready for hearing 12/31/77; dismissed 11/24/78	11/24/78	36
139	12/12/75	Dismissed 3/8/78 (RCMR)	3/8/78	27
147	3/10/76	To rev comm member 9/9/77; returned from rev comm 3/31/78; dismissed 9/11/78 (RCMR)	9/11/78	30
148	3/5/76	In abeyance until <u>Bates</u> interpretation; dismissed 5/9/78 (RCMR)	5/9/78	26

DOCKET #	OPENED	ACTION		
151	4/5/76	Brd held in abeyance 12/11/78; combined with #178; ready for hearing 12/31/78		
154	4/10/76	Ready for Brd 1/21/78; to be informally adm 3/31/78; informal adm by Pres. 5/78	5/?/78	25
156	5/25/76	Informal adm 10/15/77	10/15/77	17
163	8/4/76	Informal adm 10/15/77	10/15/77	14
178	9/21/76	Ready for hearing 12/31/77; combined with #220 12/31/78		
187	11/9/76	Dismissed 10/4/77	10/4/77	11
196	11/30/76	To rev comm member 11/15/77; dismissed 3/31/78 (RCMR)	3/31/78	16
198	11/30/76	Held in abeyance; under invest by 3/31/78; dismissed 6/2/78 (RCMR)	6/2/78	19
199	10/30/76	S.C. ordered suspension	?	
200	12/8/76	Informal adm (RCMR) date ?	?	
203	1/10/77	Informal adm w/stip to conditions by respondent as of 10/31/77; dismissed 1/20/78	1/20/78	12
204	1/17/77	Dismissed 11/1/77	11/1/77	10
205	1/19/77	Dismissed 12/1/77	12/1/77	11
206	1/24/77	Informal adm 11/1/77	11/1/77	10
208	2/25/77	Abeyance pending therapy outcome; petition inactive status to SC 3/31/78; inactive status SC 4/20/78	4/20/78	14
215	3/8/77	Dismissed 3/29/78 (RCMR)	3/29/78	12
216	3/9/77	Informal adm 11/16/77	11/16/77	8
217	3/9/77	To rev comm member 9/28/78; informal adm 11/24/78 (RCMR); reopened by respondent 1/19/79		
218	3/11/77	Dismissed 9/28/78 (RCMR)	9/28/78	18
219	3/14/77	To rev comm member 3/10/78; dismissed 4/13/78 (RCMR)	4/13/78	13
220	3/22/77	Ready for hearing 9/30/78; combined with #178 on _____		
221	4/18/77	Dismissed 11/1/77 (RCMR)	11/1/77	7

222	?	In abeyance 12/31/77 pending civil lit		
223	5/17/77	Dismissed 5/9/78 (RCMR)	5/9/78	12
225	5/17/77	To rev comm member 9/17/78; informal adm 10/25/78 (RCMR); reopened by respondent 1/19/79		
226	5/20/77	To rev comm member 5/30/78; dismissed 9/18/78 (RCMR)	9/18/78	16
227	6/2/77	Dismissed 9/11/78 (RCMR)	9/11/78	15
228	6/28/77	To review comm member 5/9/78; ready for hearing 9/30/78		
229	6/28/77	To review comm member 9/29/78; dismissed 12/18/78 (RCMR)	12/18/78	18
230	?	Dismissed 8/25/78 (RCMR)	8/25/78	?
231	6/30/77	Under investigation		
233	7/5/77	Dismissed 12/30/77 (RCMR)	12/30/77	5
234	7/11/77	Combined with #26 3/31/78; to rev comm member 9/30/78; combined with #23 12/31/78; ready for hearing comm 9/30/78		
235	8/1/77	Dismissed 9/5/78 (RCMR)	9/5/78	13
236	7/28/77	Dismissed 5/22/78 (RCMR)	5/22/78	10
237	8/3/77	To rev comm member 9/25/78; dismissed 10/28/78 (RCMR)	10/28/78	14
238	7/26/77	Brd held in abeyance 1/21/78 crim; dismissed 9/28/78 (RCMR)	9/28/78	
239	7/26/77	Brd held in abeyance 1/21/78 crim; dismissed 9/28/78 (RCMR)	9/28/78	14
240	8/24/77	Dismissed 8/28/78 (RCMR)	8/28/78	12
241	9/16/77	Dismissed 9/22/78 (RCMR)	9/22/78	12
242	9/28/77	Dismissed 9/15/78 (RCMR)	9/15/78	12
243	10/10/77	Dismissed 12/6/77 (RCMR)	12/6/77	2
244	10/21/77	Dismissed 12/12/77 (RCMR)	12/12/77	2
245	10/21/77	Brd held in abeyance 1/21/78		

246	11/8/77	To rev comm member 9/28/78		
248	11/18/77	Dismissed 7/21/78 (RCMR)	7/21/78	8
249	2/15/78	Under investigation		
250	2/15/78	Under investigation		
251	3/8/78	Dismissed 8/28/78 (RCMR)	8/28/78	5
252	3/8/78	Under investigation		
253	3/24/78	Dismissed 12/11/78 (RCMR)	12/11/78	9
254	3/30/78	Under investigation		
255	4/4/78	Dismissed 12/4/78 (RCMR)	12/4/78	8
256	4/5/78	Under investigation		
257	4/24/78	Under investigation		
258	4/25/78	Under investigation		
259	5/23/78	Under investigation		
260	6/2/78	Reinstatement petition; S.C. reinstatement 7/25/78	7/25/78	1
261	6/2/78	Under investigation		
262	6/2/78	Dismissed by 9/30/78 (RCMR)	9/30/78	3
263	6/19/78	Under investigation		
264	7/5/78	Dismissed 12/26/78 (RCMR)	12/26/78	5
265	7/5/78	Dismissed 12/26/78 (RCMR)	12/26/78	5
266	7/18/78	Dismissed 8/16/78 (RCMR)	8/16/78	1
267	7/24/78	Under investigation		
268	7/19/78	To rev comm member 9/27/78; ready for hearing 12/31/78		
269	7/24/78	Dismissed 12/18/78 (RCMR)	12/18/78	5

DOC#	DATE	STATUS	
270	8/3/78	Under investigation	
271	8/9/78	Dismissed 12/20/78 (RCMR)	12/20/78 4
272	8/28/78	Under investigation	
273	10/4/78	Under investigation	
274	11/6/78	Under investigation	
275	4/28/78	Under investigation	
276	11/20/78	Under investigation	
277	11/20/78	Under investigation	
278	11/14/78	Under investigation	
279	2/9/79	Under investigation	
280	3/6/79	Under investigation	
281	1/25/79	Informal adm 3/20/79 (RCMR)	3/20/79 2



Alaska State Legislature

House of Representatives

Committee on Judiciary

Official Business

Fouch V
State Capitol
Juneau, Alaska 99811

November 7, 1979

Donna C. Willard
President
Alaska Bar Association
P.O. Box 279
Anchorage, Ak. 99510

Dear Ms. Willard;

The House Judiciary Committee, pursuant to its obligations under the sunset law, AS 44.66.010, et. seq., and pursuant to its general authorities and powers as a standing committee of the Alaska State Legislature, requests the following information from the Board of Governors of the Alaska Bar Association:

1. How many attorneys are admitted to practice law in the State of Alaska, excluding those who are practicing on a waiver?
2. How many attorneys are practicing law on a waiver for Alaska Legal Services Corporation?
3. How many attorneys are practicing law on a waiver for the United States Armed Forces Expanded Legal Assistance Program?
4. What is the total number of attorneys practicing law in the state pursuant to a waiver?
5. How many legal interns are certified in the State of Alaska?
6. How many active members of the Alaska Bar Association are there?
7. How many inactive members of the Alaska Bar Association are there?
8. How many judicial members of the Alaska Bar Association are there?
9. How many honorary members of the Alaska Bar Association are there?

10. How many active members of the Alaska Bar Association are women and how many women were active members in 1976, 1977 and 1978?

11. How many active members of the Alaska Bar Association are Natives and how many Natives were active members in 1976, 1977 and 1978?

12. How many members of the Alaska Bar Association are black and how many blacks were active members in 1976, 1977, and 1978?

13. How many active members of the Alaska Bar Association are Hispanic and how many hispanics were active members in 1976, 1977 and 1978?

14. How many active members of the Alaska Bar Association are Asian and how many Asians were active members in 1976, 1977 and 1978?

15. What steps has the Alaska Bar Association taken to increase membership of women and minorities?

16. What steps has the Alaska Bar Association taken to implement any of the recommendations contained in the 1979 report from the association's Committee on Legal Educational Opportunities?

17. List all standing committees of the Alaska Bar Association?

18. What are the powers, duties and functions of the Alaska Bar Association's standing committees?

19. Furnish all annual reports from the Alaska Bar Association's standing committees for the years 1976, 1977 and 1978.

20. Furnish all reports issued by the special committee established by the Alaska Bar Association to study and evaluate the Alaska bar exam.

21. Briefly describe all continuing legal education programs in 1976, 1977, 1978 and 1979.

22. How many ethics opinions did the Alaska Bar Association render in 1976, 1977, 1978 and 1979?

23. Briefly describe the legislative programs of the Alaska Bar Association in 1976, 1977, 1978 and 1979.

24. Briefly describe the Alaska Bar Association's lawyer referral system.

25. List the dates and locations of all meetings of the Board of Governors of the Alaska Bar Association for 1976, 1977, 1978 and 1979.

26. What type of public notice is provided for meetings of the Board of Governors of the Alaska Bar Association?

27. How many non-attorney agencies or groups were notified by the Alaska Bar Association of its consideration of a proposed rule amendment to define the practice of law?

28. How many non-attorney individuals were notified by the Alaska Bar Association of its consideration of a proposed bar rule amendment to define the practice of law?

29. Provide the position title, duties and powers as well as salaries and fringe benefits of all paid staff positions within the Alaska Bar Association for 1976, 1977, 1978 and 1979.

30. What is the turn-over rate for each of the positions?

31. Furnish copies of the Alaska Bar Association's budgets for 1976, 1977, 1978 and 1979.

32. Furnish copies of all financial audits of the Alaska Bar Association conducted in 1976, 1977, 1978 and 1979.

33. Furnish a copy of the budgets for the Bar Rag for 1978 and 1979.

34. Provide the source, purpose and amount of all state funds obtained by the Alaska Bar Association during 1976, 1977, 1978 and 1979.

35. Provide the total travel and per diem expenses paid by the Alaska Bar Association to members of the Board of Governors in 1976, 1977, 1978 and 1979.

36. Provide the total travel and per diem expenses paid by the Alaska Bar Association to individuals, other than members of the Board of Governors, for 1976, 1977, 1978 and 1979.

37. Furnish a copy of the profit and loss statement for the mid-winter Hawaii Convention prepared by V. Goodrow on August 27, 1979.

38. Provide the total income derived from applications for admissions to the Alaska Bar Association in 1976, 1977, 1978 and 1979.

39. What was the total expense of the admission procedures of the Alaska Bar Association, excluding the cost of any court litigation arising therefrom, for 1976, 1977, 1978 and 1979?

40. What was the total cost of the admission procedures of the Alaska Bar Association, including the cost of any court litigation arising therefrom, for 1976, 1977, 1978 and 1979?

41.. Provide the total amount of funds expended by the Alaska Bar Association for court litigation in 1976, 1977, 1978 and 1979, including the case name, docket number, brief discription of the issues involved, whether the case was appealed to the Supreme Court and the final disposition. Additionally, it should be noted if the Alaska Bar Association was assessed attorney's fees and costs pursuant to Rule 82 or if the Alaska Bar Association was able to recover a portion of its attorney's fees and costs pursuant to that rule.

42. Furnish a copy of the application form which the Alaska Bar Association requires all applicants for admission to complete.

43. Briefly describe what comprises the Alaska Bar Association examination for attorney applicants.

44. Briefly describe what comprises the Alaska Bar Association examination for general applicants.

45. What was the total number of general applicants who took the spring Alaska Bar examination in 1976, 1977, 1978 and 1979?

46. What was the total number of general applicants who passed the spring Alaska Bar examination for 1976, 1977, 1978 and 1979?

47. What was the total number of general applicants who took the summer Alaska Bar examination in 1976, 1977, 1978 and 1979?

48. What was the total number of general applicants who passed the summer Alaska Bar examination in 1976, 1977, 1978 and 1979?

49. What was the total number of attorney applicants who took the spring Alaska Bar examination in 1976, 1977, 1978 and 1979?

50. What was the total number of attorney applicants who passed the spring Alaska Bar examination in 1976, 1977, 1978 and 1979?

51. What was the total number of attorney applicants who took the summer Alaska Bar examination in 1976, 1977, 1978 and 1979?

52. What was the total number of attorney applicants who passed the summer Alaska Bar examination in 1976, 1977, 1978 and 1979?

53. What was the total number of females, Alaska Natives, blacks, Hispanics and Asians who as general applicants took the spring Alaska Bar examination for the years 1976, 1977, 1978 and 1979?

54. What was the total number of females, Alaska Natives, blacks, Hispanics and Asians who as general applicants passed the spring Alaska Bar examination for the years 1976, 1977, 1978 and 1979?

55. What was the total number of females, Alaska Natives, blacks, Hispanics and Asians who as general applicants took the summer Alaska Bar examination for the years 1976, 1977, 1978 and 1979?

56. What was the total number of Alaska Natives, females, blacks, Hispanics and Asians who as general applicants passed the summer Alaska Bar examination for the years 1976, 1977, 1978 and 1979?

57. What was the total number of females, Alaska Natives, blacks, Hispanics and Asians who as attorney applicants took the spring Alaska Bar examination for the years 1976, 1977, 1978 and 1979?

58. What was the total number of females, Alaska Natives, blacks, Hispanics and Asians who as attorney applicants passed the spring Alaska Bar examination for the years 1976, 1977, 1978 and 1979?

59. What was the total number of females, Alaska Natives, blacks, Hispanics and Asians who as attorney applicants took the summer Alaska Bar examination for the years 1976, 1977, 1978 and 1979?

60. What was the total number of females, Alaska Natives, blacks, Hispanics and Asians who as attorney applicants passed the summer Alaska Bar examination for the years 1976, 1977, 1978 and 1979?

61. Who is the Alaska Bar Association disciplinary administrator?

62. Distinguish between the type of complaints which are referred to a hearing committee as opposed to those complaints which are referred to a conciliator.

63. Provide a copy of the "Request for Investigation" form which is currently utilized by the Alaska Bar Association as well as copies of any previous forms used for this purpose.

64. Furnish copies of all original disciplinary reports prepared for the Alaska Supreme Court during the years 1976, 1977, 1978 and 1979.

65. Furnish copies of any revised disciplinary reports prepared for the Alaska Supreme Court during the years 1976, 1977, 1978 and 1979.

66. Provide an explanation for any revision of a disciplinary report prepared for the Alaska Supreme Court for the years 1976, 1977, 1978 and 1979.

67. Provide a copy of the card index on discipline, indicating the type of case, disposition, whether or not appealed, the disposition if appealed to the Alaska Supreme Court.

68. For the years 1976, 1977, 1978 and 1979, furnish statistical data reflecting:

a. The types of complaints against attorneys received and acted upon;

b. The types of investigations conducted and the results thereof;

c. The procedural steps taken with respect to each type of complaint processed and the ultimate disposition of each such action;

d. The number of times any member of the Alaska Bar Association subject to the Alaska Bar rules has been the subject of a complaint or investigation, the type of complaint or investigation in which each such attorney was the subject, the dates on which each procedural step was taken with respect to each such complaint or investigation and the ultimate disposition of each such action with respect to each such attorney.

69. Provide the total number of complaints against attorneys received by the Alaska Bar Association for the years 1976, 1977, 1978 and 1979.

70. Provide the total number of attorneys who were disciplined for the years 1976, 1977, 1978 and 1979.

71. What was the total number of attorneys who were the subject of a private admonition by the Alaska Bar Association disciplinary administrator for the years 1976, 1977, 1978 and 1979?

72. What was the total number of attorneys who were the subject of a private reprimand during the years 1976, 1977, 1978 and 1979?

73. What was the total number of attorneys who were the subject of a public censure during the years 1976, 1977, 1978 and 1979?

74. What was the total number of attorneys who were suspended from the practice of law during the years 1976, 1977, 1978 and 1979?

75. What was the total number of attorneys who were disbarred from the practice of law during the years 1976, 1977, 1978 and 1979?

76. From the date of the initiation of the complaint, how long did it take the Alaska Bar Association to resolve disciplinary actions filed in 1976, 1977 and 1978?

77. Are records maintained on previous disciplinary complaints against an attorney regardless of whether such complaints are ultimately dismissed?

78. What percentage of disciplinary complaints were filed against an attorney by a client of such attorney during the years 1976, 1977, 1978 and 1979?

79. What percentage of disciplinary complaints were filed by the Alaska State Bar Association disciplinary administrator during the years 1976, 1977, 1978 and 1979?

80. What percentage of disciplinary complaints were filed against an attorney by an individual living in Alaska, but not within Anchorage, Fairbanks, Ketchikan, Sitka or Juneau, for the years 1976, 1977, 1978 and 1979?

81. What was the total number of attorneys who have been disciplined for observing misconduct on behalf of another attorney and failing to report such conduct during the years 1976, 1977, 1978 and 1979?

82. What was the total number of judges who have been disciplined for observing misconduct on behalf of a lawyer and failing to report such during the years 1976, 1977, 1978 and 1979?

83. What percentage of requests for investigation were determined to be inadequate, incomplete or insufficient to warrant further attention of the Board of Governors during the years 1976, 1977, 1978 and 1979?

84. What percentage of disciplinary complaints were filed against an attorney by another attorney for the years 1976, 1977, 1978 and 1979?

85. What percentage of disciplinary complaints were filed against an attorney by a judge or magistrate during the years 1976, 1977, 1978 and 1979?

86. What was the total number of requests for investigation which were referred to the fee arbitration panel for the years 1976, 1977, 1978 and 1979?

87. Furnish factual summaries, without reference to either parties by name, of each fee arbitration dispute which was concluded in 1976, 1977, 1978 and 1979.



Alaska State Legislature

House of Representatives

Committee on Judiciary

Official Business

Fench V
State Capitol
Juneau, Alaska 99811

1016 W. 6th, Suite 201
Anchorage, Ak. 99501.

Telephone 277-7548

November 7, 1979

Donna C. Willard
President
Alaska Bar Association
P.O. Box 279
Anchorage, Ak. 99510

Dear Ms. Willard;

Upon receipt of your letter of September 17, 1979, the House Judiciary Committee requested the Legal Division of the Legislative Affairs Agency to provide a legal opinion as to the current status of the Alaska Bar Association. A copy of that legal opinion will be furnished to the Alaska Bar Association for its response.

However, pursuing your offer of cooperation, the House Judiciary Committee is submitting the enclosed informational requests pursuant to its obligations under the sunset law, AS 44.66.010, et. seq., and pursuant to its general authority and powers as a standing legislative committee.

The purpose of the informational request is to familiarize the House Judiciary Committee with the organization, operation and programs of the Alaska Bar Association as well as its regulation and control of the legal profession in Alaska. Obtainment of this information in advance of the upcoming public hearings required by the sunset law will greatly enhance the effectiveness of those hearings.

The following questions are intended to illicit non-confidential information in accordance with your letter of September 17, 1979. All the requests are made for information not contained in statutes, Alaska Bar rules or ethical codes. Since the Alaska Bar Association is scheduled for sunset review every four years, unless an earlier review is mandated, data spanning the last four years is relevant.

As the 1980 legislative session commences on January 14, 1980, the House Judiciary Committee requests that the information solicited be provided on or before that date.

Should you desire to meet with me concerning any specific request or to discuss the issue in general, please feel free to contact our Anchorage office. Our office in Anchorage will be maintained throughout the month of November.

Sincerely yours,

Margaret W. Berck

Margaret W. Berck,

Counsel to the House Judiciary Committee



Official Business

Alaska State Legislature

House of Representatives

Committee on Judiciary

Pouch V
State Capitol
Juneau, Alaska 99811

MEMORANDUM

February 19, 1980

TO: Charlie Parr, Chairman, and Members of the House
Judiciary Committee

FROM: Margaret W. Berck, Staff

SUBJECT: Sunset Review of the Bar Association

1. There is no audit by the State Auditor on the Bar Association. The State Auditor is awaiting the results of forthcoming litigation against the Bar Association regarding his access to confidential records maintained by the Bar Association.

2. Bart Rozell testified that the State Auditor does not have access to individual tax returns in the Department of Revenue. The State Auditor told me that that is not true. He stated that he has a signed agreement with the Department of Revenue which allows him access to those materials under various conditions that protect the privacy rights of the taxpayers involved. Similarly, the State Auditor has access to other confidential records maintained by the State such as juvenile records and welfare records in the Department of Health and Social Services. The State Auditor stated that the Bar Association's resistance to permitting a review of their confidential records is the first time in the history of the State Auditor's office that they have been denied access.

3. According to responses submitted by the Bar Association, the Board of Governors has held two meetings out of the State since 1976. Both of these meetings occurred in Hawaii, one in February 1978 and one in January 1979. As a result of the 1978 meeting, several members of the Bar filed suit against the Association contending that such an out-of-state meeting violated the public meeting law. This case is currently before the Alaska Supreme Court. The Bar Association has expended some \$7,292.00 defending this litigation. (See Report on Examination of Financial Statements, Year Ended December 31, 1978 and 1977, page 7, which is included in your packets.) In assessing the costs of individual

members for the Hawaii meetings, the Bar representatives only mentioned travel and per diem expenses of the Board of Governors. I believe that the costs of litigation resulting from such action should also be included in any cost assessment to individual members.

4. The Committee should note that the Continuing Legal Education programs offered by the Bar Association are not free to the members. Individual members seeking to take such a course, must pay for it. Ms. Williard stated that the Bar Association generates income as a result of these programs. For that reason it appears that the dues paid by individual members do not support these programs.

LOUISIANA BAR
JOURNAL

JUNE 1979/VOL. 27 No. 1



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PRESIDENT, 1979-80

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ON THE COVER

John C. Combe, Jr., New Orleans, President 1979-80

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PRESIDENTS MESSAGE



John C. Combe, Jr.

The office of President-Elect of the Louisiana State Bar Association provides the nominee with a wonderful opportunity to listen and learn — to be seen and not heard.

It offers him the chance to experience the total breadth and scope of State Bar activity through contact with and participation in all section and committee functions and attendance at meetings of the Board of Governors and House of Delegates. Learning the interrelationship and interaction of these branches of the Association is vital to the incoming President before he assumes the duties of office.

On the regional and national levels through the Southern Regional Conference of Bar Presidents and the National Conference of Bar Presidents your President-Elect joins with his contemporaries from sister states to discuss and attempt to resolve common issues affecting the practice of law and the activities of the organized Bar in general. In this process, the prior experience of other Bar Associations may be exchanged, successful projects fostered, and pitfalls avoided.

My year of listening and learning has been a particularly rewarding experience since I was privileged to listen and learn from our outgoing President, Bob Wright who has

served our Association admirably during the past year and our Executive Counsel, Tom Collins, whose foresight, organization and dedication to the Bar deliver "more miles per gallon" to our Association than other comparable Associations with significantly higher dues structures. The inexorable financial crunch continues, however, and a realistic dues increase must be implemented in the near future if the Association is to maintain its present level of activities and services to the Bar.

The primary goal of my administration will be to open lines of communication between the State and local Bar Associations and to seek and to encourage more input from individual lawyers and local Bar Associations as to the direction and focus of State Bar activities. To this end each Governor on the Board for the coming year will be asked to maintain close personal contact with all local Associations within his district and to report to the Board of Governors all suggestions, recommendations and criticisms relating to State Bar activities. Similarly, each Governor in his district and your elected officers and Executive Counsel will make themselves available, whenever possible, to meet with local Associations for discussion of any areas of interest to the

local Bars to keep you informed of the activities of your State Bar and to advise you of current issues affecting the legal profession.

I also intend to harness the energy, enthusiasm, and effort of the young lawyers of the State by involving their membership in the workings of all State Bar Committees.

These goals are modest in the sense that they do not involve serious controversy or significant financial outlay, nor do they require that the Association set sail on an uncharted course. In another sense, however, these goals may be Utopian and beyond reach for their realization depends upon a corresponding commitment on your part to participate, to assist, and to get involved with the activities of your Association.

It is a humbling experience to realize the great honor you have bestowed upon me and the myriad responsibilities of this office. I pledge to you my best efforts on behalf of the lawyers of Louisiana to fulfill this trust. I ask your cooperation in the coming year. If together we succeed the legal profession and the public we serve will profit by our combined efforts.



LOUISIANA STATE BAR ASSOCIATION

1979 ANNUAL MEETING



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W. R. Grace & Co.
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The fibers and textile business of
Beaunit Corporation
a subsidiary of
El Paso Natural Gas Co.
has been acquired by private investors
with the assistance of
financing provided by
Walter E. Heller & Company

Illkon Corporation
has acquired
the Thermoplastic Division of
Ansanto Company
with the assistance of
financing provided by
Walter E. Heller & Company

Baker Laboratories, Inc.
has acquired the baby food business of
Beach-Nut, Inc.
a subsidiary of Squibb Corporation
with the assistance of
financing provided by
Walter E. Heller & Company

J. Josephson, Inc.
the wall covering business of
Coronet Industries, Inc.
a subsidiary of RCA Corporation,
has been acquired by its founder
with the assistance of
financing provided by
Walter E. Heller & Company

Amy Industries, Inc.
has acquired
Cuba Block, Inc. a subsidiary of
Ashland Oil, Inc.
with the assistance of
financing provided by
Walter E. Heller & Company

MKT Corporation
has acquired
the MKT Division of
Koehring Company
with the assistance of
financing provided by
Walter E. Heller & Company

Helbros Watches, Inc.
has acquired
the Helbros Watch Division of
Elgin National Industries, Inc.
with the assistance of
financing provided by
Walter E. Heller & Company

Avtex Fibers, Inc.
has acquired
the Fiber Division of
FMC Corporation
with the assistance of
financing provided by
Walter E. Heller & Company

Bainbridge Plastics Corp.
has acquired
the American Plastics Division of
Tenneco Chemicals, Inc.
with the assistance of
financing provided by
Walter E. Heller & Company

Refinemet International Company
has acquired
the Refinemet International Company
Whittaker Corporation
with the assistance of
financing provided by
Walter E. Heller & Company

Smith Jones, Inc.
has acquired
Frigiking, Inc.
with the assistance of
financing provided by
Walter E. Heller & Company

Cummins Engine Company, Inc.
has acquired
the Cummins Engine Company, Inc.
with the assistance of
financing provided by
Walter E. Heller & Company

Whitewater, Inc.
has acquired the
Tennessee hardwood lumber producing properties of
Fibreboard Corporation
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In keeping with the established policy of the Committee on Professional Responsibility there are listed below disciplinary proceedings now pending before the Supreme Court of Louisiana. This practice does not violate the confidential nature of this Committee's proceedings. Such proceedings prior to the actual filing with the Supreme Court remain confidential. Once filed with the Court such proceedings become part of the public records.

On September 1, 1971, the new rules of procedure went into effect. These rules became Article XV, of the Articles of Incorporation of the Association. Under Section 5 of Article XV the Committee may issue public reprimands and such action may be published in the LOUISIANA BAR JOURNAL.

DISCIPLINARY PROCEEDINGS FILED AND PENDING IN LOUISIANA
SUPREME COURT AND PUBLIC REPRIMANDS ISSUED BY THE COMMITTEE

Report By Committee On Professional Responsibility

DATE FILED	DOCKET NO.	RESPONDENT	DISPOSITION AND DATE
3/23/76	57,734	Roger W. Jordan Metairie	Petition for Disciplinary Action. Commissioner's Report filed 1/22/79. Set on Court's Docket for argument on 6/22/79.
6/29/76	58,273	O. Romaine Russell Baton Rouge	Suspended by Order of Court dated 7/24/76. Petition for further Disciplinary Action filed 1/8/76. Further proceedings awaiting final judgment of federal court.
8/26/76	58,520	James F. Quaid, Jr. Metairie	Disbarred by Judgment of Court dated 3/5/79, effective 9/30/76. Judgment now final.
12/15/76	59,001	Earl J. Schmitt, Jr. New Orleans	Suspended by Order of Court dated 1/18/77. Petition for further Disciplinary Action filed 7/8/77. Proceedings awaiting final judgment on appeal from Criminal District Court.
1/18/77	59,169	W. D. Atkins, Jr. Lafayette	Petition for Disciplinary Action. Commissioner appointed. Awaiting hearing date.

DATE FILED	DOCKET NO.	RESPONDENT	DISPOSITION AND DATE
5/10/77	59,855	Ford E. Stinson Benton	Suspended 3 years by Judgment of Louisiana Supreme Court dated 3/5/79. Rehearing denied 4/9/79. Execution of SUSPENSION STAYED by Order of Louisiana Supreme Court dated 4/17/79 to allow Respondent to perfect appeal and/or writ to United States Supreme Court.
7/8/77	60,211	Robert D. Edwards Jefferson Parish	Petition for Disciplinary Action. Motion to dismiss denied; defenses urged in said motion; referred to merits by Court 7/3/78. Commissioner's Hearing on Merits held 9/25/78. Awaiting Report of Commissioner.
7/25/77	60,354	Ronald L. Causey Baton Rouge	Petition for Disciplinary Action. Commissioner appointed. Commissioner's hearings held 8/18/78, 9/13/78, 9/21/78, and 10/4/78. Awaiting Commissioner's Report.
8/15/77	60,462	Caliste Beard, Jr. Lafayette	Petition for Disciplinary Action. Commissioner's Report filed 1/3/79. Set on Court's Docket for argument on 6/22/79.
8/15/77	60,463	William A. Summers, III Metairie	Petition for Disciplinary Action. Commissioner's Report filed 1/3/79. Set on Court's Docket for argument on 6/22/79.
8/15/77	60,465	Albert A. Bensabat, III New Orleans	Suspended by Order of Court dated 9/1/77. Further proceedings filed on 6/27/78. Awaiting answer of Respondent.
7/25/77	60,881	W. D. Atkins, Jr. Lafayette	Suspended by Order of Court dated 11/11/77. Further proceedings awaiting appeal from criminal conviction.
10/26/77	60,906	J. Daniel Rivette New Orleans	Suspended one year from practice of law and reprimanded by Court by Order dated 3/5/79. Judgment now final.
10/28/77	60,922	Alfred E. Mitchell Plaquemine	Petition for Disciplinary Action. Commissioner appointed. Commissioner's Hearing held 11/28/78. Commissioner's Report filed 4/6/79. To be set on Court's Docket for argument.
12/20/77	61,252	James T. Adams Shreveport	Suspended one year from practice of law by Order dated 3/5/79. Judgment now final.
3/3/78	61,716	Ford E. Stinson Benton	Suspended 3 years by Judgment of Louisiana Supreme Court dated 3/5/79. Rehearing denied 4/9/79. Execution of SUSPENSION STAYED by Order of Louisiana Supreme Court dated 4/17/79 to allow Respondent to perfect appeal and/or writ to United States Supreme Court.
3/13/78	61,799	Johnnie A. Jones Baton Rouge	Petition for Disciplinary Action. Commissioner appointed. Commissioner's Hearing held 8/1/78. Commissioner's Report filed 12/20/78. Argument before Court held 4/9/79 and matter submitted.
3/28/78	61,905	William A. Summers, III Metairie	Petition for Disciplinary Action. Commissioner appointed. Commissioner's hearing held 11/15/78. Awaiting Commissioner's Report.
6/27/78	62,547	G. Emitte Core Baton Rouge	Petition for Disciplinary Action. Commissioner appointed. Commissioner's hearing held 2/1/79. Awaiting Commissioner's Report.
10/12/78	63,242	John E. Miller Baton Rouge	Petition for Disciplinary Action. Commissioner appointed. Commissioner's hearing held 4/25/79. Awaiting Commissioner's Report.
11/29/78	63,509	Donald J. Robinson Dallas, Texas	Suspended by Order of Court dated 12/7/78. Further proceedings awaiting final judgment on appeal from Criminal District Court.

Annual Report of the Immediate Past President



BOB F. WRIGHT

It has been the custom that at the end of his term, the President of the Louisiana State Bar Association give to the membership his annual report. And such it should be, in keeping with the fact that any man upon whom is bestowed the honor and responsibility of leading a group of professionals such as make up the membership of the Louisiana State Bar Association should render an accounting for his stewardship.

I have attempted through the year to cover current topics by way of the President's Letter in each of the Bar Journals and would, as is customary of attorneys make same a part of my report by reference rather than by repetition. I will, however, attempt to indicate some of the areas of development and evolution that have taken place during the past twelve months and what your Bar Association has attempted to do through its officers, Board of Governors, House of Delegates, Committee and Section volunteers, and our staff.

One of the primary areas of interest to bar associations commencing with the American Bar Association and all of the states are the efforts made to improve the delivery of competent legal services. This is an area that actually benefits both the public and the bar in view of the fact that the public gets the competent legal services and the attorneys have avenues through which they can pursue their chosen profession and, at

the same time, of course, obtain some degree of success in doing so. With this premise, I will make a few brief remarks with reference to the activities of certain committees of your bar association, with the full knowledge that it being impossible to cover all that there will be some, of necessity, not mentioned, which is by no way an indication as to the degree of importance.

Bar Admissions—An area often overlooked by the public is the involvement of the Bar Association in assuring that only those who appear to be competent are admitted to the practice of law in the State of Louisiana. This involves a Committee of the Supreme Court composed of ten individuals who give much of their time to the preparation and grading of the Bar Examination twice each year and, in addition thereto, to defending on many fronts the proliferation of law suits by individuals attempting to set aside the rules for admission as they now exist. It is noted that at the present time the Louisiana State Bar Association is admitting somewhere around 600 to 700 lawyers each year.

Continuing Legal Education Committee—Under the chairmanship of James Wysocki, was once again successful in holding seminars in the seven metropolitan areas. Invitations were so distributed so that

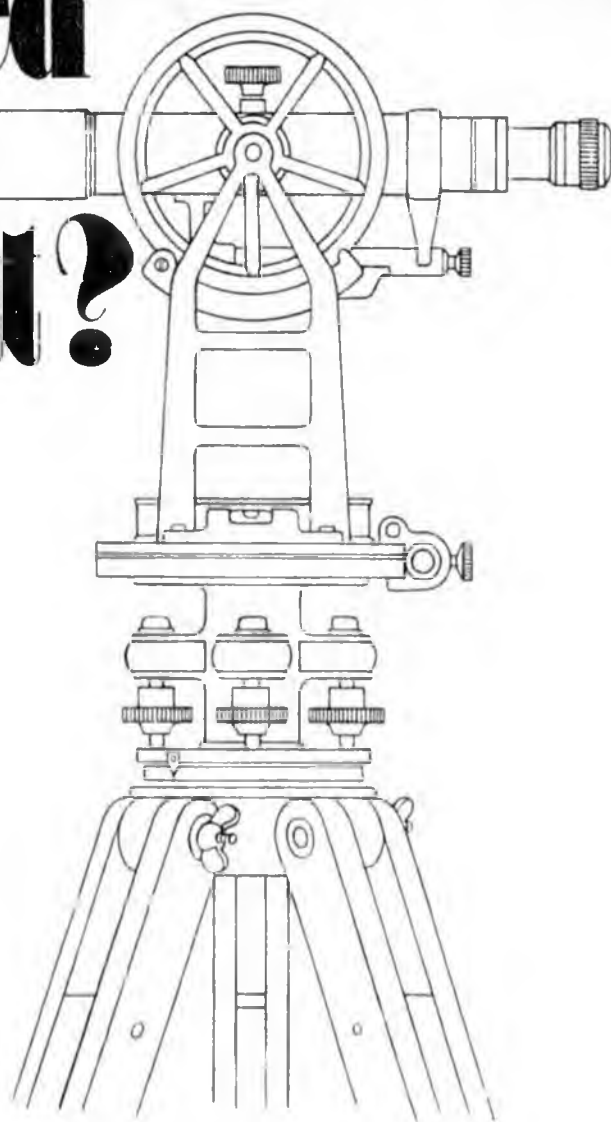
all members of the Association were given at least one and perhaps two opportunities to attend these well-received seminars. This year, we have been able to arrange one additional feature, namely, the taping of the programs and being able to offer the cassettes to those who attend as well as those that are unable to attend. There is hope that in the future the CLE programs will continue to grow and thereby add additional benefits and increase the number of seminars and perhaps go into in-depth programs, especially in the area of trial competency. This increase will definitely be required should designation become a reality.

Designation. As many members will recall, at the meeting of the House of Delegates at the Annual Meeting in 1978, there was presented to the House of Delegates for approval a designation plan. This plan was not accepted at that time and subsequent to the meeting of that House of Delegates, the Committee on Designation, under Phillip Wittman of New Orleans, continued its efforts with reference to preparation of a plan that would be acceptable to the members of this State and, at the same time, attempted to educate the membership concerning the importance of such a program. It would appear that not only would this program answer what appears to

(Continued on page 13)

Who Owned it Before That?

Compiling title evidence can be a complex task! Back in the thirties, a title report was required by the federal government's Reconstruction Finance Corporation before approval of a loan. One loan applicant, New Orleans Attorney N. R. Howard, had supplied title information dating back to 1803, but R.F.C. then asked, "Who owned the land before that?" Howard replied, "I note you wish titles to extend further than I have presented. I was unaware that any educated person did not know that Louisiana was purchased from France in 1803. France acquired title by conquest from Spain, who acquired it by right of discovery in 1492 by a Genoese sailor named Columbus, who had been granted the privilege of seeking a new route to India by the Spanish Queen, Isabella. The Queen, being a pious woman and careful about titles (almost as careful, I might say, as the R.F.C.), took the precaution of securing the Pope's blessing on the voyage before she financed Columbus.



Now the Pope, as you know, is the emissary of Christ, who is the Son of God, who, it is commonly accepted, made the world. Therefore, I believe it is safe to assume that He also made that part of the world called Louisiana." It seems safe to assume that the R.F.C. granted the loan!

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Annual Report of the Immediate Past President

(Continued from page 11)

be a need for information to the public and an area of possible increased competency amongst the members, but that it would as well serve as a source of possible income to the Association based upon the charges that would be made with reference to designation. Thus, the plan itself would become self-supporting, in addition to offering funds for possible other areas of activity by the Association to benefit both the profession and the public. It is hoped that in the coming year that the Committee will complete its work and it is anticipated that the membership will be, in advance of the next mid-winter meeting, furnished a copy of the plan in order that each member may be fully apprised of its contents and each member may contact his representative on the House of Delegates so that the House may make its vote at the mid-winter meeting in connection with the adoption of such a plan.

Lawyer Referral—After a successful pilot program in Baton Rouge, the State Lawyer Referral Committee has been most active in encouraging and assisting other local bar associations in adopting lawyer referral programs. Michael Rubin of Baton Rouge has been most instrumental in having Lawyer Referral Programs commenced in other areas of the State, as well as increasing the activities of lawyer referral in Baton Rouge and other areas, including use of various elements of the media in connection with lawyer referral education and services to the public. This has resulted in a great improvement in the dissemination of information with reference to the law and, especially with reference to lawyer referral. At the present time, the Lawyer Referral Committee has

not adopted a plan in an attempt to establish a statewide lawyer referral program with a centralized number but is working toward the establishment of lawyer referral programs in the areas throughout the State. It is anticipated that the Committee will continue considering centralization of lawyer referral as individual programs multiply and the need may become more apparent.

Advertising—There continues to be developments in the area of advertising by attorneys. On December 1, 1977, our Supreme Court adopted by Order amendments to the Code of Professional Responsibility in an attempt to bring our rules in keeping with the decision of *Bates and O'Steen versus State Bar of Arizona*. Experience has been gained over the months since that time and it is anticipated that your new President, John C. Combe, Jr., will be appointing a second task force to go back into the subject of advertising in order to update the Association's position, especially with reference to the desires of the membership and the needs of the public. It is suggested that all members interested in this area of advertising communicate their feelings in connection with this subject and the limitations that they feel should or should not be placed thereon by writing to the Association's office in New Orleans, which information will be filtered to the new task force on advertising.

Public Relations—In addition to adding to the staff a full-time person, your Public Relations Committee, under Raymond Salassi, has been working very diligently in many areas. It has published a great number of updated pamphlets which have proven of great benefit, both to the profession and to the consumer. These brochures may be obtained on an individual basis at no charge and in quantities at the cost of printing. In addition, Speaker Kits have been prepared and a Speakers Bureau is

being formulated. For the first time in many years, the professional handling of public relations is starting to have its anticipated results.

Consumer Protection—Consumer Protection Committee formulated for the purposes of ascertaining whether or not there was a need for a Section on Consumer Law, has almost completed its task. James Gelpi, Chairman, anticipates that there will be a resolution filed at the mid-year meeting in 1979 requesting that the House of Delegates approve the formation of a Consumer Law Section. In connection with the establishment of new sections, there was also a committee studying whether or not there was a need for an antitrust law section and this committee, under Dando Cellini, has likewise completed its task and it is also anticipated that a resolution will be presented to the House of Delegates at the mid-winter meeting in 1979 requesting that a Section on Antitrust be formulated and approved.

Committee on Professional Responsibility—Unknown to many of the public and even to some members, the Association expends significant amounts of money and man hours through volunteers and staff, in policing itself. A reading of the Bar Journal will indicate the number of cases pending and active in the Supreme Court in this most important area. Despite the amounts of money being expended, the long hours put in by volunteers who serve as members of the Committee, and by staff time, there is still a need for further development in this area which can only be realized through some type of funding. The Board of Governors continues to look for sources of income for the use of the Committee in order that it may expand its operations and more fully carry out its functions both to the bar and to the public.

Special Committee on Insurance—It goes without saying that all

attorneys have felt the press of increased cost for professional liability insurance in addition to the difficulty in obtaining such coverage. This is especially true with reference to the unavailability of occurrence type insurance which has now been practically totally substituted by what is referred to as claims made. This changeover has caused quite a bit of concern to attorneys, especially to those who may have retired and/or entered the judiciary. I am happy to report that your committee, under Louis D. Smith, has extended itself to the utmost and has been able to continue offering to the membership coverage. There is also signs that the market for professional liability insurance is on an improvement course and we do hope that in the future that we will be in a position to assist our members more in this particularly important area.

Law Reform Committee—A special note must be made of the work of our Committee on Law Reform. Under the chairmanship of David Conroy, this Committee continues to monitor legislative developments as well as to consider needed legislative change. With now full LSBA staff involvement, this Committee reviews and prepares for consideration and action of the House of Delegates the Annual Report and Recommendations on legislation pending in the Louisiana House and Senate. For the second year the Committee has, through Edward F. Glusman acting as legislative liaison, been able to follow up on the Association's recommendations and vocally make these known. Many members of the Committee and other volunteers join in these follow up procedures.

Some of the other benefits that we were able to realize during the past year through the efforts of volunteers and staff have been an arrangement with Avis Car Rental for a discount program to all members of the Louisiana State Bar Association,

a discount program with the Monteleone Hotel in New Orleans, in which city many of the meetings of the Association are held, and an arrangement with the publishers of the Arkansas, Louisiana and Mississippi Legal Directory who will commence in 1979 the publishing of a Louisiana Legal Directory in which the Association will participate with reference to some financial return. Also of note is the fact that we have been able to arrange and procure permanent membership cards of a much better quality than those formerly issued on an annual basis. Although annual dues notices will be sent out and dues collected, each member will now have a permanent card. Arrangements are available through the Association's office in the event your card becomes lost, stolen and/or otherwise misplaced.

During this year, I have attempted to represent your Association both at the national meetings of the American Bar Association, at meetings of the Southern Conference of Bar Presidents, and at the meetings of the State Bars of our Sister States. When assuming this position, I had been forewarned by my predecessors that I would find some difficulty in connection with continuing to practice law and to fulfill my obligations as President. It goes without saying that the forewarnings were not overly exaggerated. I owe a great deal of thanks to my partners who have been in a position to give me the time to fulfill my duties as your President and I must thank the hundreds of volunteers of the Louisiana State Bar Association who have unstintingly and unselfishly given of their time and advice to make this year as effective as it appears to have been. Although I had anticipated cooperation, it was certainly astounding to me the number of busy attorneys who are so willing to give of their time and effort to serve the Association, the Courts, and the Public. Often, much of this time and effort goes unnoticed and receives very

little recognition. I can assure you, however, that absent the hundreds of persons involved, your Bar Association would not accomplish what it hopes it has on your behalf, not only in this year, but in the years past.

I wish to take this opportunity to thank the entire membership for the honor it bestowed upon me by allowing me to serve as its President during these past twelve months. I have already thanked some persons individually and wish I could thank all individually but we know that such is impossible. Special thanks are due to the officers and Board of Governors who have unselfishly supported all my efforts on your behalf and have furnished to me the benefit of their expertise and advice.

As stated before, the Louisiana State Bar Association has been fortunate to have had the services of a dedicated staff, led by Tom Collins, the Executive Counsel, who has now served the Association for some fifteen years. Since the President cannot work alone, neither could the Executive Counsel perform his task without the backup of a stable and loyal staff such as the Association has the good fortune of having. Special thanks are due to Bob Young who has done so much with reference to the improvement of the Bar Journal and has increased the efficiency of the Association in the area of communications and programming. Last, but not least, I would like to add to that, thanks to my wife, Gay, who likewise exhibited patience with a husband upon whose time there seems to have been so many demands.

There is no doubt that it is a singular honor for any individual to be chosen by his professional peers to be their leader. It is even a greater honor and a greater compliment to be able to say after twelve months that those who have chosen you to lead have also chosen to follow. Such has been my happy lot and for this I thank you.

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QUERY Court (La) - Can adjacent* adjoining* abutting* landowner* owner* maintain dam flooding neighbor interfere natural drainage
351 So 2d 1326 Case Ranking # 1

Andrew COLE et al., Plaintiffs Appellees.

v.

Joe MOTT et al., Defendants-Appellants

No. 13370

Court of Appeal of Louisiana, Second Circuit

Oct. 31, 1977

Action was instituted for monetary and injunctive relief against loss of plaintiffs' soybean crops due to flooding that was allegedly caused by defendant's levees. The Fifth Judicial District Court, Parish of Richland, B. I. Berry, J., awarded plaintiffs judgment for damages to crops, but denied injunctive relief, and defendant appealed and plaintiffs answered. The Court of Appeal, Jones, J., held that: (1) record supported findings that defendant's servient or lower estate owed plaintiffs' higher or dominant estates a servitude of drainage and that plaintiffs' soybean crops were damaged because levee's construction by defendant impeded natural drainage; (2) levees which obstructed natural drain and prevented plaintiffs from successfully raising soybeans or other crops on portions of their lands adjacent to levees should have been enjoined despite whether plaintiffs could adequately be compensated in money for any future crop losses attributable to defendant's levees, and (3) award of an expert witness fee of \$600 was not an abuse of discretion.

Amended and affirmed.

352 So 2d 426

Case Ranking # 2

Paul LAFLEUR, Plaintiff and Appellee,

v.

Offert W. TOPP, Defendant and Appellant

No. 6190

Court of Appeal of Louisiana, Third Circuit

Nov. 17, 1977

Landowner brought action against adjoining owner seeking injunction prohibiting the latter from maintaining a dam on his property which flooded plaintiff's property by interfering with a natural drain and to order defendant to lower the dam to the level which existed before defendant raised it in 1974. The 33rd Judicial Court, Allen Parish, Edward M. Mouser, J. granted injunctive relief, and defendant appealed. The Court of Appeal, Culpepper, J., held that plaintiff's right to the unimpeded natural servitude of drainage of waters from his estate through defendant's was violated where raising of the levee resulted in permanent impoundment of water on plaintiff's land.

Amended and affirmed.

Fee Schedule Upon Request.

New Fifth Circuit Practice In Habeas Corpus Cases

by Robert S. Abdalian and Roy E. Lachman



Robert S. Abdalian is a Staff Attorney at the U.S. Court of Appeals for the Fifth Circuit. He received his B.A. from Hiram College and his J.D. from Case Western Reserve. He is a member of the Louisiana State Bar.



Roy E. Lachman is a Staff Attorney at the U.S. Court of Appeals for the Fifth Circuit. He received his B.A. from the University of Pennsylvania, his M.A. and Ph.D. from the University of Michigan, and his J.D. from Boston University. He is a member of the Massachusetts Bar.

In *Galtieri v. Wainwright*¹ the United States Court of Appeals for the Fifth Circuit diverged from all other federal circuits² except the Ninth,³ by requiring that a petitioner for habeas corpus relief under 28 U.S.C. §2254 exhaust available state remedies on every claim in his petition before he could obtain federal relief.⁴ While the federal habeas statute requires exhaustion,⁵ the meaning of "exhaustion" is not statutorily defined. Furthermore, exhaustion exists as a matter of comity and not as a jurisdictional prerequisite to habeas corpus relief.⁶ *Galtieri* may be viewed as a welcome clarification of the Fifth Circuit's policy toward "mixed petitions" — habeas petitions containing both exhausted and unexhausted claims. Prior to *Galtieri*, as will be shown, Fifth Circuit treatment of mixed petitions was not uniform. After *Galtieri*, greater uniformity may be expected, but important questions on the application of *Galtieri* remain to be settled.

Prior Law

The Fifth Circuit appellate practice concerning habeas corpus petitions containing both exhausted and unexhausted claims was to review the exhausted claims and dismiss, without prejudice, the unexhausted claims.⁷ In 1969 the Fifth Circuit decided *Wheeler v. Beto*⁸ and charted a new course for mixed petitions.

In *Wheeler* the Fifth Circuit was presented with a habeas petition that contained four claims for relief. The district court had dismissed the peti-

tion *in toto*. The Fifth Circuit affirmed and, in so doing, announced a new rule requiring exhaustion of *all* claims before a federal court would hear any claim. The *Wheeler* ruling is based on federal/state comity and judicial efficiency. Comity is preserved under the *Wheeler* rule, since the state is given the power to correct any alleged error before federal intervention. Judicial efficiency is encouraged, since the federal courts are not presented with piecemeal petitions. If a federal court were to rule on exhausted claims but not unexhausted ones, the unsuccessful petitioner would be likely later to return to federal court to seek relief on unexhausted claims. *Wheeler* sent a clear message to the habeas corpus petitioner: present all claims to the state courts first or else suffer dismissal in federal court for failure to exhaust all claims. The *Wheeler* rule was often followed,⁹ but not invariably.¹⁰

In *Pebworth v. Beto*¹¹ a prisoner presented a petition containing both exhausted and unexhausted issues. The district court ruled on the exhausted issues, denying relief, but found that four of the six issues presented had not been exhausted. The district court dismissed the four unexhausted issues. The Fifth Circuit affirmed by denying the claims for relief on the exhausted issues and dismissing the unexhausted issues. *Wheeler* and its progeny would have dismissed the entire petition for failure to exhaust. The *Pebworth* approach also was followed in a series of Fifth Circuit decisions decided after *Wheeler*.¹²

The *Wheeler* line of decision and

the *Pebworth* one indicated to some that the Fifth Circuit was not following a steady course, but an anfractuous one;¹³ or that the Fifth Circuit was formulating a more flexible rule.¹⁴ "Pebworth practice" permitted the court to affirm the granting of relief in *Moye v. Highsmith*¹⁵ on the basis of a meritorious exhausted claim, even though the petition also included unexhausted issues. However, in *Galtieri* the panel decision¹⁶ refused to review a mixed petition on the merits, though the district court had found that an exhausted issue merited granting habeas corpus relief. The Court agreed to hear *Galtieri* en banc to formulate a uniform approach to mixed petitions.

Rule of Galtieri

In *Galtieri v. Wainwright* the Fifth Circuit was faced with the habeas corpus petitions of two state prisoners, which contained both exhausted and unexhausted claims. The district court had granted relief on one of the exhausted claims, but a panel of the Fifth Circuit reversed on the ground that *all* claims in the petition had not been exhausted.¹⁷ The Fifth Circuit, en banc, addressed the exhausted claims and denied relief, but only after enunciating the Circuit's rule for mixed petitions.

The Court held that when a district court is faced with a mixed petition it must dismiss it without prejudice, unless an exception to the exhaustion doctrine is present.¹⁸ This holding was based on "[c]onsiderations of comity, avoidance of piecemeal litigation, and the fullest consideration of a petitioner's claims"¹⁹ along with Rule 9(b) of the Rules Governing Section 2254 Cases.²⁰

However, the Court adopted a different rule for appellate consideration of mixed petitions: "In the rare event, however, that a district court erroneously reaches the merits of an exhausted claim in a mixed petition

and an appeal is taken from its dispositive order, we shall review the merits of the claim."²¹ The Court based this result on its desire to avoid federal/state conflict: if a district court addressed exhausted claims in a mixed petition but the appeals court then dismissed the petition for want of complete state exhaustion, a subsequent state ruling could easily conflict with the initial district court ruling.²² In addition, there would be a potential for conflict between the initial and later district court rulings on the exhausted claims.²³

Following discussion of these points, the Court addressed the merits of the exhausted claims, found that they lacked merit, and

remanded the case, presumably for dismissal of the unexhausted claims. One judge, concurring with the majority, suggested that *Galtieri* permitted district court judges some latitude in addressing mixed petitions.²⁴ The six dissenting judges agreed with the majority's appellate disposition of mixed petitions when the district court had reached the merits of the exhausted claims, but sharply criticized the Court's mandate that district courts dismiss without prejudice mixed petitions.²⁵

After Galtieri

The rule of *Galtieri* is simple to state, but may pose difficulties in its

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application. Several actual and possible problems follow.

In *Stinson v. Alabama*,²⁶ the district court had dismissed the habeas petition on the merits, and the Fifth Circuit initially remanded it to determine whether state remedies had been exhausted.²⁷ After *Galtieri*, a panel of the Fifth Circuit, considering *Stinson* on remand from en banc hearing, expressed doubt "whether any of petitioner's claims have been exhausted."²⁸ Nevertheless, the Court considered all the claims — including unexhausted ones — on the merits. It justified this procedure by the non-jurisdictional nature of the exhaustion doctrine, Alabama's failure to raise the issue, and the length of time the case had been pending. This flexibility in considering unexhausted claims at the appellate level goes well beyond *Galtieri*, which only adverted to statutory exceptions to the exhaustion requirement: absence of available state remedies, or circumstances which would render the State process ineffective.²⁹ One could view the disposition of *Stinson* as the Court's indication that, however simple the principles of *Galtieri* may be to state, they do not furnish an ironclad rule; but rather, as Judge Hill suggested in the district court context, "a general rule" that can be relaxed in exceptional circumstances.³⁰ It remains to be seen how flexible district courts can be with mixed petitions.

In *Simmons v. Wainwright*³¹ the Fifth Circuit considered the district court's dismissal of a mixed petition. Although affirming the dismissal, the Court noted that one of the unexhausted claims had not been of constitutional dimensions. Since federal habeas corpus reaches only constitutional issues, exhaustion of the non-constitutional issue would not have been required under *Galtieri*.

In *Devore v. Blackburn*,³² the district court had denied relief on several claims. The Court of Ap-

peals noted an issue that had not been ruled upon, and may not have been exhausted. Rather than addressing the merits of the exhausted and unsuccessful claims,³³ the court remanded the entire case for consideration of the exhaustion issue.

A broader issue, not yet considered, is whether exceptional circumstances may permit a district court to consider a mixed petition's exhausted claims. Judge Hill, concurring in *Galtieri*, believes that they would so permit. The six dissenting judges do not appear to share this view, and the majority opinion is silent on this point. If indeed exceptional circumstances may permit such consideration, is it the strength of the claim that is critical, or other non-legal circumstances such as health; or, as in bail proceedings for unsuccessful habeas petitions, both probability of success and exceptional, non-legal circumstances?³⁴

Yet another problem is likely to confront federal district courts: an ambiguously written *pro se* habeas petition. If the court follows the Supreme Court's mandate of according *pro se* pleadings a liberal reading,³⁵ then it may find many issues in the petition, some of which are not exhausted. Under *Galtieri*, dismissal and exhaustion of state remedies, with attendant delay, will follow. On the other hand, if the court does not give the liberal reading mandated by the Supreme Court, the inchoate unexhausted

claims will not bar federal consideration.

And will the Fifth Circuit be disposed to consider an appeal on the merits, where the district court dismisses for failure to exhaust all issues, but writes an exegesis on the merits of an exhausted issue indicating it would have granted relief but for the unexhausted issue? One wonders how federal/state comity would be served by requiring such a petitioner to exhaust state remedies.

Conclusion

It is expected that *Galtieri* will promote uniformity and predictability in federal decisions on federal habeas petitions containing exhausted and unexhausted claims. However, important questions concerning the reach and flexibility of the *Galtieri* principles have not yet been settled.

FOOTNOTES

¹*Galtieri v. Wainwright*, 582 F.2d 348 (5th Cir. 1978) (en banc).

²*Id.* at 356 n. 16, 367, cf. 376-7.

³*Gonzalez v. Stone*, 546 F.2d 807 (9th Cir. 1976).

⁴Federal relief is available under 28 U.S.C. § 2254.

⁵In special circumstances, the statute does not require exhaustion. See 28 U.S.C. § 2254(b).

⁶*Galtieri* at 351; *Stinson v. State of Alabama*, 585 F.2d 748 (5th Cir. 1978); *Leima v. Estelle*, 585 F.2d 1297, 1299 n. 2 (5th Cir. 1978) (Rubin, J., dissenting); see *Ex Parte Royall*, 117 U.S. 241 (1886).

⁷See, e.g., *Lee v. Wiman*, 280 F.2d 257, 264 (5th Cir. 1960); *Peters v. Rutledge*, 397 F.2d 731 (5th Cir. 1968).

⁸407 F.2d 816 (5th Cir. 1969).

⁹See, e.g., *Harris v. S. Wainwright*, 424 F.2d 633 (5th Cir. 1970); *Green v. Helo*, 460 F.2d 322 (5th Cir. 1972); *T. Merz v. Wainwright*, 550 F.2d 1013 (5th Cir. 1977).

(Continued on page 20)

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New Fifth Circuit Practice In Habeas Corpus Cases

(Continued from page 19)

¹⁰See *Harris v. Estelle*, 487 F.2d 1293, 1296-7 (5th Cir. 1974).

¹¹428 F.2d 789 (5th Cir. 1970).

¹²See, e.g., *Hill v. Dutton*, 440 F.2d 34 (5th Cir. 1971); *Singleton v. Estelle*, 492 F.2d 671 (5th Cir. 1974); *Chenault v. Styncheombe*, 581 F.2d 444 (5th Cir. 1978).

¹³See *Harris*, note 10, *supra*, at 1297.

¹⁴*Miller v. Hall*, 530 F.2d 967 (1st Cir. 1974).

¹⁵460 F.2d 1388 (5th Cir. 1972), *aff'd* *Moye v. Georgia*, 330 F. Supp. 290 (N.D. Ga. 1971).

¹⁶545 F.2d 942 (5th Cir. 1977), *modified en banc*, 582 F.2d 348.

¹⁷*Id.*

¹⁸*Id.* at 355; 28 U.S.C. §2254(b)

¹⁹*Id.* at 356.

²⁰*Id.*

²¹*Id.* at 362.

²²*Id.* at 361-2.

²³*Id.* at 362.

²⁴*Id.* at 365-6.

²⁵*Id.* at 366 ff.

²⁶585 F.2d 748 (5th Cir. 1978).

²⁷545 F.2d 485 (5th Cir. 1977).

²⁸*Sinson*, note 26, *supra*, at 748.

²⁹*Galtieri* at 354; 29 U.S.C. §2254(b)

³⁰*Id.* at 365-6.

³¹585 F.2d 85 (5th Cir. 1978).

³²584 F.2d 52 (5th Cir. 1978).

³³*Galtieri* at 362.

³⁴*Aranson v. May*, 85 S.Ct. 3 (1964) (Douglas, J.); *Calley v. Callaway*, 496 F.2d 701 (5th Cir. 1974).

³⁵*Hames v. Kemmer*, 404 U.S. 519 (1972).

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by Allen L. Durand

Simplified Employee Pensions

Qualified pension and profit sharing plans have long been accurately reputed to be costly to set up. Their administration was made more burdensome and expensive by ERISA. The specifics of their structure and operation is probably incomprehensible to most laymen and non-tax practitioners.

Despite these drawbacks, there has always been great interest in them because of the desire to secure the retirement income of employees and because of their unique three-stage tax advantages: employers get current deduction for contributions to the retirement fund, the earnings of the fund are not taxed, and the employees pay no tax until their retirement benefits are paid out to them (at which time they are usually in a lower bracket).

Congress tried in 1974 to preserve these benefits while doing away with the complexity by creating Individual Retirement Accounts (IRA's). These were enormously popular despite the relatively low (\$1,500 annually) limit on contributions. In response, Congress has tried to expand the appeal of this approach without dragging in the countless number of qualified plan rules.

The 1978 Revenue Act¹ created a new retirement saving device called a "Simplified Employee Pension",² or SEP, in an attempt to grant significant tax benefits to a program which is free of the "more complex and burdensome"³ requirements normally associated with qualified plans.



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Not a Plan Per Se

An SEP is neither a pension nor a profit sharing plan, however. It is an IRA⁴ which is modified to accept employer contributions of up to \$7,500 per employee annually, or 15% of the employee's compensation, whichever is less.⁵ All of the normal IRA requirements will apply, such as requiring contributions in cash only (except for rollover contributions) and prohibiting investments in life insurance.⁶

In addition to the IRA requirements previously in effect, four more have been added for SEP's:⁷

1. The employer must contribute to an SEP for every employee who is at least 25 years old and who has "performed services" for the employer during 3 of the 5 previous years.⁸ Although future regulations may add a "de minimus" rule to this "3 of 5" requirement, a literal reading would now seem to demand that

even the smallest amount of compensable service (an hour?) be sufficient in determining whether an employee "has performed service for the employer".

2. The employer's contributions cannot discriminate in favor of officers, shareholders, highly compensated individuals, or self-employed individuals.⁹ Furthermore, contributions will be considered discriminatory unless they bear a uniform relationship to the employee's total compensation (up to \$100,000),¹⁰ i.e., they must be proportional.

The employer contributions are not exempt from FICA or FUTA taxes, and the employer's share of FICA taxes may be considered as part of the contribution in applying this antidiscrimination rule. Self-employment taxes on contributions for owner-employees (sole proprietors and more-than-10%-interest partners) must be counted as part of the contributions.¹¹

3. The employer can neither prohibit withdrawals from the SEP by an employee nor restrict future employer contributions on account of withdrawals.¹²

4. The employer contributions must be determined under a definite written allocation formula which specifies the manner of computing the allocation and the requirements which an employee must meet in order to share in the allocation.¹³

Additional Deduction

If these requirements are met, then the maximum employer con-

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Simplified Employee Pensions

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tributions per employee is \$7,500 or 15% of the employee's compensation for the taxable year, whichever is less.¹⁴ If the employer contributes less than \$1,500, the employee may contribute the difference necessary to total \$1,500.¹⁵

The contribution will be reported on the employer's tax return as a deduction.¹⁶ Then the employee will add the employer's contribution to his gross income on his tax return,¹⁷ but he will correspondingly deduct the amount as a contribution to an IRA.¹⁸ The employee will also deduct any contributions which he made to bring the total contributed to \$1,500, in those situations in which the employer contributed less than \$1,500.¹⁹

Advantages

There are multiple advantages to any employer who can live with the \$7,500 per employee maximum limit on contributions and deductions. First, the employer and its directors (or partners), principal officers, attorneys, accountants and other advisors who could be "fiduciaries" with regard to the operation of an employer sponsored employee benefit plan should be free from the broad and potentially devastating fiduciary liability sections of ERISA.²⁰ Second, the employer's expense in initiating and administering the SEP's should be significantly less than a conventional employee benefit plan. The structural simplicity of SEP's should lend itself very well to the use of bank prototype "written allocation formulas" and IRA's, thereby obviating the necessity of individually drafted plans and trusts. Third, there should be greater flexibility in determining the amount and timing of employer contributions. SEP's will be similar in operation to a profit

sharing plan, but IRS regulations demand that contributions to a qualified profit sharing plan be "recurring and substantial".²¹ Although an employer might safely forego making a contribution to a qualified profit sharing plan if there are good business reasons to do so, there is a real exposure to plan disqualification for failure to make "substantial and recurring" contributions, or for terminating a qualified plan during its first few years of existence.²²

These requirements do not appear to be applicable to IRA's and therefore should not apply to SEP's.²³ If this assumption is correct, an employer who chooses SEP's instead of a profit sharing plan should be able to choose the years in which he wants to contribute, or even indefinitely or permanently discontinue contributions without the threat of disqualification of the SEP's. Conversely, an employer

who showed no profit for the year but who has both sufficient cash flow and the desire to make a contribution can do so in a loss year.

One limitation on the use of IRA's has been the "active participant" rule, which prohibits any deduction for a contribution to an IRA for any year that the employee was also covered by a qualified plan.²⁴ This prohibition has been partially waived for SEP's²⁵ and a broad reference to this waiver in the Senate Finance Committee Report may erroneously lead to the conclusion that the waiver is broader than it actually is. Code Section 219(b)(7) does waive the active participant rule for SEP's, but only "with respect to the employer contributions". The rules still prohibit deductions for employee contributions if the employee is covered by another qualified plan. Therefore, if an employer made a \$100 contribution to an SEP for an employee who was

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also an active participant in another qualified plan, and the employee contributed \$1,400 (to make a total contributed of \$1,500 as previously discussed), then the allowable deduction will be only \$100. Had these same circumstances occurred under an employer-sponsored IRA before the Revenue Act of 1978, and its partial waiver of the "active participant" rule, there would have been no deduction at all.

Questions

There are important administrative and technical questions left unanswered by both the legislation and the Committee Reports.

An immediate question centers around what changes may have been made in the structure of employer-sponsored IRA's (an SEP is essen-

tially an employer-sponsored IRA). Employer-sponsored IRA's were authorized in the initial IRA legislation²⁶ and regulations,²⁷ but they were to consist of a simple trust, created by the employer, which received the contribution and separately accounted for each employee's share.²⁸ However, the Committee Reports on SEP's speak of accounts "maintained solely by the employee".²⁹ This implies that a separate IRA must be set up for each participating employee, with the former method (of a single trust which accounts for each participant's share separately) no longer authorized as a means of implementing SEP's. It is only suggested that this result may be required, not that it is necessarily undesirable.³⁰

Another major question centers on the interpretation of the requirement for a "definite written

allocation formula which specifies . . . the manner in which the amount allocated is computed".³¹ Since contributions must be proportional among employees, the main purpose of this formula should be to state whether or not the employer's share of FICA will be considered part of the contributions for non-owner-employees, and there is some indication of this in the Senate Finance Committee Report.³² It would be truly unfortunate if this requirement were interpreted to mean much more, such as requiring the employer to bind itself to a contribution of a specific percentage of profits or compensation every year. Although a requirement for such a "definite contribution formula" exists for Keogh plans which cover owner-employees,³³ it should not be extended to SEP's, which are modified IRA's. Such a rule did not apply to employer-sponsored IRA's before the 1978 Act,³⁴ and its application to SEP's could only limit their attractiveness.³⁵

Summary

On the surface, SEP's are intended to combine administrative simplicity with a more appealing contribution and deduction limitation than was previously available for employer-sponsored IRA's. If the regulations and reporting requirements follow the congressional goal of reduced complexity, the many employers who previously feared to venture into the staggering intricacies of qualified plans may attempt to secure the retirement of their employees through the SEP.

The amendments authorizing SEP's are effective for taxable years beginning after December 31, 1978.³⁶

FOOTNOTES

¹Public Law 95-600.

²P.L. 95-600, Section 152.

³Explanatory statement by House and Senate Conferees on H.R. 13511.

(Continued on page 25)



S. Shepherd Tate, President of the American Bar Association (left) and Leonard S. Janofsky, President-Elect of the ABA welcome John C. Combe, Jr., President of the Louisiana State Bar Association to the ABA Leadership Institute held in Chicago recently.

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- ¹¹IRC Section 408(k)(1).
- ¹²IRC Section 219(b)(7).
- ¹³IRC Section 408(a).
- ¹⁴IRC Section 408(k)(2) through (5).
- ¹⁵IRC Section 408(k)(2).
- ¹⁶IRC Section 408(k)(3). Non-resident aliens and employees covered by a collective bargaining agreement may be disregarded for the purposes of this rule. Section 408(k)(3)(B)(i).
- ¹⁷IRC Section 408(z)(3)(C).
- ¹⁸IRC Section 408(k)(3)(D). Contributions to Employer-Sponsored IRA's were not exempt from EICA or FUTA taxes prior to the 1978 Revenue Act.
- ¹⁹IRC Section 408(k)(4).
- ²⁰IRC Section 408(k)(5).
- ²¹IRC Sections 219(a) and (b)(7), and 404(h)(3). The maximum contribution is of course subject to the rule that all contributions be proportioned to compensation.
- ²²IRC Section 219(b)(7)(B)(ii).
- ²³IRC Section 404(h). Carryover of excess contributions and deductions in subsequent years is allowed. IRC Section 404(h)(1)(C).
- ²⁴IRC Section 219(a).
- ²⁵IRC Section 219(b)(7).
- ²⁶Ibid.
- ²⁷If separate IRA's are established for each

- employee, instead of a single employer trust with separate accounting (see discussion in text at footnotes 26-30), then there does not seem to be a plan, fund or program "established or maintained by an employer" ERISA Section 3(2). If this analysis is correct, then there is no employee pension benefit plan under the ERISA definition.
- ²⁸Regulations 1.401-1(b)(2).
- ²⁹Ibid.
- ³⁰IRA's are tax exempt by virtue of IRC Section 408(e), not Section 401(a).
- ³¹IRC Section 219(b)(2).
- ³²IRC Section 219(b)(7).
- ³³Section 2002 of ERISA (P.L. 93-406); IRC Sections 219(a) and 408(c).
- ³⁴Regulations 1.408-2(c).
- ³⁵Regulations 1.408-2(c)(3).
- ³⁶Senate Report No. 95-1263 on H.R. 13511, October 1, 1978, Part IV-G-2.
- ³⁷A single trust established and maintained by the employer would literally fit the definition of an employee benefit pension plan under Section 3(2) of ERISA. Therefore, if an employer desires to avoid coverage by the ERISA fiduciary liability provisions (see footnote 20), it would be mandatory that the single trust method not be used. This assumes that the single trust method is still viable. See discussion in text at footnotes 26 to 30.
- ³⁸IRC Section 408(k)(5).
- ³⁹Supra, at note 29.
- ⁴⁰IRC Section 401(d)(2)(B), see also Rev. Rul. 68-115, 1968-1CB 166.
- ⁴¹See discussion in text at footnote 4.
- ⁴²Regulations 1.408-2(c).
- ⁴³Another question is whether (and how) the IRS will grant determination letters in regard to the qualification of the SEP's. The IRS used Form 5306 for employer-sponsored IRA's and this form is much shorter and simpler than the forms used to seek an advance determination of the qualified status of pension or profit sharing plans. Continued use of the 5306 would be more in line with the expressed legislative intent to simplify this area.
- ⁴⁴P.L. 95-600, Section 152(h).

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Contributory Negligence of the Decedent In a Wrongful Death Action

by James A. Watson

In 1851 the Louisiana Supreme Court held that Civil Code Article 2315 did not grant a cause of action for damages resulting from the death of another party.¹ In 1884 the decision was legislatively overruled by Act 71, which amended Article 2315 to provide for a "wrongful death" action.

As subsequently amended, Article 2315, provides two separate and distinct remedies: (1) a "survival" action, which is intended to compensate for damages suffered by the deceased prior to his death and for which he himself could have recovered had he lived, and (2) a "wrongful death" action, which is intended to compensate certain designated beneficiaries for the damages they themselves have sustained as the result of the death of the decedent.

The "survival" action is the decedent's own action which, because of his death, is brought by someone else. It logically follows that any defense which could have been raised against the decedent should be available against his beneficiaries.

The same logic does not apply, however, to the "wrongful death" action. The claim for "wrongful death" is not a claim for damages sustained by the decedent. It is the individual claim of the beneficiaries designated by Article 2315 for damages which they have sustained. Damages for "wrongful death" are not intended to compensate for any loss sustained by the decedent. In the "wrongful death" action the damage has occurred directly to the designated class of beneficiaries rather than to the decedent.



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In 1928 the Supreme Court noted these conceptual difficulties in *Vitale v. Checker Cab Co.*,² but nevertheless denied recovery for death caused in part by a decedent's own negligence. Subsequent decisions have not brought about a change despite literary review and criticism.³ Louisiana courts have continued to hold that the contributory negligence of a decedent bars a "wrongful death" action by his survivors, usually citing *Vitale* as authority.

In *Vitale*, a husband was killed and his wife was injured in an accident caused by the negligence of both the husband and another party. The wife sought recovery for her personal injuries as well as damages

for the wrongful death of her husband. The court held that the husband's negligence was not imputed to the wife so as to bar her recovery for her own injuries. However, his negligence did bar her recovery for his death. The court stated that in a "survival" action the husband's contributory negligence would bar recovery by his widow because a beneficiary could not recover what decedent could not have recovered had he lived. The court then went much further and held that the widow could not recover when her husband's death was the result of his contributory negligence.

The court cited a number of cases as authority for its holding that the husband's negligence barred his wife's claim for "wrongful death". It then noted that these cases had not actually discussed the question of imputation of negligence. The court did not reconcile those cases which allowed a non-negligent wife to recover for her personal injuries caused by the contributory negligence of her husband with those which denied a non-negligent widow recovery for her husband's death caused by his contributory negligence. Avoiding any attempt to analyze or resolve the contradiction, the court simply stated that the doctrine was so well settled that it could not be changed.

The weakness of the *Vitale* position is exposed by a careful reading of *Callais v. Allstate Insurance Company*.⁴ In *Callais*, a husband and wife were killed in an automobile accident caused solely by the husband's negligence. Theatrix of the minor child of the mar-

riage instituted suit against the husband's insurer for the damages resulting from the death of the child's parents. The Trial Court granted recovery for the loss of the mother but denied recovery for the loss of the father. The Appellate Court affirmed and the Supreme Court, on original hearing, reversed, granting recovery for the damages sustained because of the death of the father. On rehearing the Supreme Court reversed its original opinion and affirmed the Appellate Court's judgment. The original *Callais* opinion tracks the history of Article 2315. It noted that the article was taken directly from Article 1382 of the Code of Napoleon of 1804, which provided for damages to persons affected by the death of another through fault of a third party.

In *Callais* the defendant argued that Article 2315 created two "rights" of action but only one "cause" of action. Its interpretation of Article 2315 was based upon *Reed vs. Warren*.⁵ The language in *Reed* is somewhat confusing and the case has been justifiably criticized.⁶ The Court rejected defendant's argument and concluded that Article 2315 provides two "causes of action". It held that *Reed* requires all parties to bring the wrongful death and the survivors action at the same time solely as a matter of judicial convenience.

The original *Callais* opinion concluded that *Vitale* had some serious faults. It indicated that vicarious liability and contributory negligence were separate and distinct legal doctrines which should not be applied concurrently. The court specifically overruled *Vitale*.

On rehearing, without mentioning *Reed*, the court concluded that Article 2315 provides two "types" of death actions.⁷ Query: Is a "type" of death action the same as a "cause of action"? The language used seems an invitation to confusion. Perhaps not wishing to be entangled by the semantic web of *Reed*, the

court did not discuss "causes of action". The rehearing opinion then analyzed the facts of the case from the "duty-risk" approach. It concluded that the parent has no general duty to protect a child against the risk of the parent's own death and that a child at home does not fall within the class of persons protected by the parent's duty to operate an automobile safely on the highway. Therefore, there was no negligence or fault as to the daughter and thus the father's death was not "wrongful" within the meaning of Article 2315. Since Article 2315 provides a remedy only for "wrongful" death, there could be no recovery in this case.

The opinion could well have ended at this point, but the court included an intriguing statement essentially upholding the original

opinion's viewpoint as to the validity of the *Vitale* decision:

"The decision in *Vitale v. Checker Cab Company, Inc.*, 166 La. 527, 117 So. 579 (1928), relied on throughout this litigation, is inapposite. That case involved an action by the wife for the wrongful death of her husband. The death was caused by the concurrent negligence of the husband and a third party. The wrongful death action was against the third party. Thus, we hold that a child may not recover damages for a parent's death when the death resulted solely from the deceased parent's lack of care for his own safety."⁸ (Emphasis added)

The quoted paragraphs of the

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opinion indicate that the court might view the situation differently when there is concurrent negligence of a third party. The court might well hold that the contributory negligence of the deceased would not bar the survivor's "wrongful death" recovery if there were concurrent third party negligence. After all, if *Vitale* still stands, why didn't the court simply say that since *Vitale* disallowed recovery when there was third party negligence *a fortiori* there could be no recovery without third party negligence.

The post-*Callais* jurisprudence generally fails to clarify the situation. Two federal cases provide very little in the way of analysis of the subject, each preferring to rest upon a strict reading of *Callais* and containing the statement that *Callais* did not change the rule of the law that a decedent's contributory negligence barred his survivor's recovery in a wrongful death action.⁹

The state court decisions are somewhat more interesting.¹⁰ *Wilder v. Thrower* specifically states that Article 2315 provides for two causes of action, one for wrongful death and the other for the decedent's injuries. As authority it cites *King v. Cancienne*,¹¹ *Callais*, supra, and *J. Wilton Jones v. Liberty Mutual Insurance Company*.¹² Arguably, the *Callais* opinion on rehearing referring to two "types of action" really means two "causes of action".

In *Billiot v. Bourg*, the court was faced with a suit for wrongful death filed by a wife who was a guest passenger in the vehicle in which her husband and son were killed. On original hearing the court held that the husband's contributory negligence barred recovery for damages arising out of his death but that the wife was entitled to recover for her damages. On rehearing, apparently granted to reconsider the legal issues, the court overturned its original opinion and found on the facts that Mr. Billiot was not contributorily negligent. Therefore, no mention

was made of whether Mr. Billiot's contributory negligence would have served as a bar to his wife's recovery for his "wrongful death".

In *Carter v. Salter*, a mother and father sued for damages resulting from the death of their two-year old son, who was killed when a motorcycle fell on him at a neighbor's home. The child was playing with the defendant's children by invitation of the defendant's wife. Mrs. Carter was also present in the defendant's home but Mr. Carter was not. The Trial Court found that there was no negligence on the part of the defendant's wife and that the child's mother was negligent in her supervision of him. The Third Circuit found that the defendant's wife was negligent under the terms of Article 2316 for not taking precautions against the possible falling of the motorcycle and that Mrs. Carter was similarly negligent, thus barring her action for her son's wrongful death. The larger issue was whether Mrs. Carter's negligence should be imputed to her nonnegligent husband so as to bar his claim. The general rule is that a husband's negligence cannot be imputed to his wife.¹³ The court concluded that Mrs. Carter's negligence was imputable to her husband and that his wrongful death action was barred.

Based upon the foregoing cases the law is relatively clear that the contributory negligence of a decedent operates as a bar to any recovery by his survivors for his "wrongful death". However, the issue was clouded by two recent decisions. In

Watson v. Illinois Central Gulf Railroad,¹⁴ Mr. and Mrs. Watson sued for the death of their minor daughter, which resulted from an automobile-train collision. The defendants alleged contributory negligence. The Trial Court ruled, based upon *Callais*, that contributory negligence was unavailable as a defense when the decedent's death occurred as the result of her negligence and the negligence of a third party.¹⁵ On appeal the defendant alleged six errors, the sixth being that the trial court erred in holding that the decedent's parents "could recover damages for her death despite any contributory negligence on her part." In response to this argument, the court simply stated that it did not find that the deceased was contributorily negligent. Therefore, there was no need to discuss the question of whether her contributory negligence would have barred recovery by her parents. However, had the appellate court deemed the trial judge to have committed error in holding that the child's contributory negligence should not bar the parent's recovery, it could have so stated in its opinion. The Supreme Court denied writs without comment.¹⁶

The decision in *Baumgartner v. State Farm Mutual Automobile Insurance Company*¹⁷ throws new light on the subject. In *Baumgartner* a pedestrian died one month after receiving injuries when he was struck by a car driven by the defendant's insured. The plaintiffs were his survivors. It is not clear whether the

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action was one for both "survival" and "wrongful death". The decedent was crossing a street in New Orleans at night when struck by the insured. The trial judge found for the plaintiff.

The Appellate Court reversed.¹⁸ The appellate opinion assumed valid the doctrine that contributory negligence bars recovery. The plaintiffs conceded that the decedent was contributorily negligent and attempted to base their recovery on the doctrine of "last clear chance". The court found that the decedent himself had the "last clear chance" to avoid the collision and, therefore, his contributory negligence precluded any recovery to his survivors.

The Supreme Court reversed. Relying on the dangerous instrumentality doctrine and the lack of "mutuality of risks" approach that was foreshadowed in *Belshe v. Gant*¹⁹ and *Guilbeau v. Liberty Mutual Ins. Co.*,²⁰ the court held that the doctrine of last clear chance could not absolve a motorist from liability where he negligently injured a pedestrian.

Baumgartner can certainly be viewed as a judicial step toward the ultimate elimination of the contributory negligence rule in Louisiana "wrongful death" cases. As is generally the case with a new judicial concept, the *Baumgartner* rule is still in the process of refinement. The decision has caused some difficulty for practitioners and the intermediate Appellate Courts, as is evidenced by the rulings in two Fourth Circuit cases. In *Dufrene v. Dixie Auto Insurance Co.*,²¹ the court specifically refused to extend the *Baumgartner* rule to apply to cyclist-motorist cases. In *Riley v. American Motorists Insurance Co.*,²² the court decided a similar case by emphasizing the doctrine of last clear chance and the high standard of care expected of motorists in motorist-cyclist accidents. *Baumgartner* was not discussed.

There is some academic support for the view that the contributory

negligence of the decedent should not bar the claim of survivors in a "wrongful death" action. Following a critical discussion of *Vitale*, one author specifically states the deceased's contributory negligence should not bar his survivor's wrongful death actions because such action belongs to the survivor and the survivor was not guilty of any negligence.²³ Others have supported this argument.²⁴

Assuming that the Louisiana Supreme Court would agree that the contributory negligence of a decedent should not be a defense to a "wrongful death" action brought by his survivors, the apportionment of the negligence and of the damages presents serious conceptual problems. The difficulties arise because Louisiana recognizes the rule of contributory negligence rather than that of comparative negligence. Perhaps the only way to resolve the matter is by the application of Civil Code Article 2323. The issue of comparative negligence has long haunted Louisiana courts.²⁵

Support for the doctrine of comparative negligence is found in concurring opinions in three relatively recent cases.²⁶ While comparative negligence has generally been ignored by the courts, the doctrine has been well reviewed by various commentators.

If the contributory negligence of a decedent is no longer a bar to recovery by his survivors, the courts will be forced to develop a reasonable system for the allocation of damages. One solution would be to disregard the decedent's negligence in determining the amount of damages. This approach has been followed in products liability cases.²⁸ Another solution is to reduce damages by apportioning negligence under Article 2323.

In summary, when presented with an appropriate case, the Louisiana Supreme Court could logically hold that the contributory negligence of a decedent is not a bar to recovery by his survivors in a "wrongful death"

action. Such a change in the case law would be consistent with current jurisprudential trends mitigating the effects of the harsh rules whereby any amount of negligence on his part, no matter how small, precludes a plaintiff's recovery.

FOOTNOTES

¹⁸*Hugh v. New Orleans & Carrollton Railroad Company*, 6 La. Ann. 495 (1851).

¹⁹166 La. 527, 117 So. 579.

²⁰*Voss, The Recovery of Damages for Wrongful Death at Common Law, at Civil Law and in Louisiana*, 6 Tulane L. Rev. 201 (1932); *Oppenheim, The Survival of Tort Actions and the Action for Wrongful Death - A Survey and a Proposal*, 16 Tulane L. Rev. 386 (1942); *Johnson, Death on the Callais Coach: The Mystery of Louisiana Wrongful Death and Survival Actions*, 37 La. L. Rev. 1 (1976); 22 Loyola L. Rev. 1105 (1977).

²¹334 So. 2d 692 La. (1976).

²²172 La. 3082, 136 So. 59 (1931).

²³*McMahon, Parties Liable in Louisiana*, 13 Tulane L. Rev. 385 (1939).

²⁴*Callais*, at page 700.

²⁵*Id.*, at page 701.

²⁶*Dickerson v. Illinois Central Gulf Railroad Company*, 533 Fed. 2d 423 (5th Cir. 1977); *Morogoblay, Danos & Carole Marine Contractors, Inc.*, 561 Fed. 2d 1149 (5th Cir. 1977).

²⁷*Hudgins v. Travelers Insurance Company*, 336 So. 2d 280 (1st Cir. 1976); *Wilder v. Thrower*, 337 So. 2d 305 (3rd Cir. 1976); *Billon v. Bourg*, 338 So. 2d 1148 (La. Sup. Ct. 1976); *Carter v. Salter*, 351 So. 2d 312 (3rd Cir. 1977).

²⁸316 So. 2d 366 La. (1975).

²⁹248 So. 2d 878 (4th Cir. 1971).

³⁰*Gaspard v. LeMarie*, 245 La. 239, 158 So. 2d 149 (1963).

³¹355 So. 2d 1366 (1st Cir. 1978), writs refused.

³²*Clyde Watson v. Illinois Central Gulf Railway Co.*, et al., No. 24,009, Division "B", 21st Judicial District Court, Parish of Livingston.

³³357 So. 2d 1168, La. (1978).

³⁴356 So. 2d 400, La. (1978).

³⁵346 So. 2d 277, (4th Cir. 1977).

³⁶235 La. 17, 102 So. 2d 477 (1958).

³⁷338 So. 2d 600 La. (1976).

³⁸364 So. 2d 1067 (4th Cir. 1979).

³⁹365 So. 2d 904 (4th Cir., 1979).

⁴⁰*Stone, Tort Doctrine, Louisiana Civil Law Treatise*, Vol. 12, pages 112-113.

⁴¹*Johnson, Death on the Callais Coach: The Mystery of Louisiana Wrongful Death and Survival Actions*, 37 La. Law Review 1, 41-46, and 22 Loyola Law Review 1105, 1109, and 1111.

⁴²See for example *Malone, Comparative Negligence - Louisiana's Forgotten Heritage*, 6 La. Law Review 125 (1945-1946); *Stone, Tort Doctrine in Louisiana: The Concept of Fault*, 27 Tulane Law Review 1, 15-18 (1952); *Hillyer, Comparative Negligence in Louisiana*, 11 Tulane Law Review 112 (1936).

⁴³*Jackson v. Continental Casualty Co.*, 308 So. 2d 438 (3rd Cir. 1975), concurring opinion by Judge *Watson, Eubanks v. Brasscul*, 310 So. 2d 550 (1975), concurring opinion by Justice *Barham, Kontomitrav v. New Orleans Public Service Inc.*, 314 So. 2d 441 (4th Cir. 1975) concurring opinion by Judge *Lennon*.

⁴⁴*Stone, Comparative Negligence*, 17 La. Bar Journal 13 (1969); *Gainsbury, A Brief for Comparative Negligence in Louisiana*, 17 La. Bar Journal 121 (1969); *Beet, Comparative Negligence in a Changing World*, 24 La. Bar Journal 133 (1976); *Stone, Tort Doctrine*, La. Civil Law Treatise Vol. 12 (1977).

⁴⁵*Hastings v. Div Tran Products, Inc.*, 389 F. Supp. 1352, W. D. La. (1975) and *LeBlouef v. Goodyear Tire and Rubber Company*, 451 F. Supp. 253, W. D. La. (1978).

A NEW PRESSURE ON CORPORATE MANAGEMENT



Proxy Confidentiality! It's a subject that's been getting a lot of attention lately. It has been considered by the SEC and by a Congressional committee. It will undoubtedly be raised from the floor at many 1979 shareholders' meetings. You may want to mention it as a possibility to your corporate clients.

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Advertising by Professionals

Should Lawyers, Doctors and Members of Other Professions be Allowed to Advertise their Services, Specialties and Fees in the Media?

by Lory A. Moser

For a great number of years, lawyers, doctors, and other professionals were not permitted to advertise their services. Advertising was considered unethical and prohibited by the professional regulatory agencies. Now, certain professionals are seeking the right to advertise. Hence, the present controversy has arisen:

"SHOULD LAWYERS, DOCTORS AND THE MEMBERS OF OTHER PROFESSIONS BE ALLOWED TO ADVERTISE THEIR SERVICES, SPECIALTIES AND FEES IN THE MEDIA LIKE OTHER BUSINESSES?"

Advertising is an extremely important part of our present day living and I must state that it is my present opinion that any "honest" advertisement addressed to the public should be allowed. By the word "honest," I mean any advertisement that is not "misleading or deceptive." If there is a right to advertise (and under our Constitution there is), then there is a reciprocal right to receive the advertising. Advertising, no matter how tasteless and excessive it sometimes may seem, is nonetheless a dissemination of information as to who is producing and selling what product, at what price, and for what reason. So long as we preserve a predominantly free enterprise economy, the allocation of our resources in great part will be



Lory A. Moser is a 15 year old Junior at the Academy of the Holy Angels in New Orleans. A student of Mrs. Denise Hudson and Mrs. Debbie Kellenring, Lory Moser is the First Place Winner in the American Citizenship Statewide Essay Contest for 1979.

made through many private economic decisions. It is a matter of public interest that those decisions be intelligent and well informed ones. To this end, the free flow of commercial information is almost indispensable.

We have seen where advertising is a necessary part of our system. Why, then, the ban on professional advertising? Well, many people believe there are a number of justified reasons for the advertising ban. These have to do mainly with maintaining a high degree of professionalism. Price advertising, it is argued, will place the professional's expertise in jeopardy, and the aggressive price competition that will result from unlimited advertising will make it impossible to supply the highly professional services needed.

Also, price advertising, it is believed, will reduce the professional's status to that of a *mere retailer*. The qualified professional groups fear that the public will choose the low-cost, low-qualifying service and thus drive the highly qualified people out of business. The prohibitions "serve to reduce the likelihood of overreaching and the exertion of undue influence on lay persons; to protect the privacy of individuals; and to avoid situations where the lawyer's exercise of judgment . . . will be clouded by his own pecuniary self-interest."¹

National advertising is, I believe, more honest than it has ever been because of the increased attention it receives from the government. The Federal Trade Commission is not only looking into advertisements that might be misleading or deceptive, but is also concerned with those that unfairly exploit the very young or other vulnerable consumers.²

Also, even though some professional groups such as lawyers restrict advertising by members in some states, our Supreme Court has said that the public is entitled to honest information about products and services.³

Let us take a look at some cases decided by our Supreme Court. First, the case of *Virginia State Board of Pharmacy, et al v. Virginia Citizens Consumer Council, Inc., et al*,⁴ which was decided in 1976.

(Continued on page 32)

Advertising in the Professions

(Continued from page 31)

However, before getting into the facts of this case, it is important for me to quote part of Section 54-524.35 of the Virginia Code Ann. (1974) which states as follows:

"Any pharmacist shall be considered guilty of unprofessional conduct who (1) is found guilty of any crime involving grave moral turpitude, . . . or (2) issues, publishes, broadcasts by radio, or otherwise, or distributes or uses in any way whatsoever advertising matter in which statements are made about his professional service which have a tendency to deceive or defraud the public, contrary to the public health and welfare; or (3) publishes, advertises or promotes, directly or indirectly, in any manner whatsoever, any amount, price, fee, premium, discount, rebate or credit terms for professional services or for drugs containing narcotics or for any drugs which may be dispensed only by prescription."⁵

In this case, consumers of prescription drugs and two non-profit organizations brought suit against the Virginia State Board of Pharmacy to keep it from enforcing Part (3) of the above quoted statute based on the fact that it violates the First and Fourteenth Amendments of the Constitution. In other words, they challenged the validity of the statute which declared it unprofessional conduct for a licensed pharmacist to advertise the prices of prescription drugs. The original plaintiffs felt that, as users of prescriptions, they were entitled to receive information concerning prices of same. The United States District Court for the Eastern District of Virginia up-

held the complaint and declared the statute void; thus enjoining its enforcement. The Board appealed to the Supreme Court, but the Supreme Court affirmed the decision previously reached by the United States District Court.

The Supreme Court found that:

"Speech is protected even though it may involve solicitation to purchase or otherwise pay or contribute money.

"That advertiser's interest in commercial advertisement does not disqualify him from protection under First and Fourteenth Amendments. U.S.C.A. Const. Amends. 1, 14."⁶

Therefore, the Virginia statute barring the advertisement of prescription drug prices was found to violate the 1st and 14th Amendments and could not be justified on the basis of the state's interest to maintain professionalism of its licensed pharmacists.

Next, we have the first case of attorney solicitation in *Ohralik v. Ohio State Bar Association*.⁷ In this 1978 case, attorney Ohralik literally "chased" a personal injury contingency fee suit (if not an ambulance) when he made the *solicitation* that got him into trouble. Apparently, some eleven days after an automobile accident occurred, he visited the parents of one of the drivers

and saw the driver thereafter in the hospital. During his visit with the 18 year old woman's parents, he recorded the conversations with a tape recorder which was concealed. Thereafter, he also made a visit to an injured passenger from the same car and once again recorded (with a concealed tape recorder) the conversation. When the injured passenger tried to repudiate the oral contract, the attorney sued her. The driver of the vehicle also discharged him as her attorney, but he collected one-third of the settlement she obtained through a second lawyer. The Ohio State Bar Association brought disciplinary proceedings against Ohralik, and the Ohio Supreme Court upheld the decision that such conduct warranted indefinite suspension. An appeal was taken by the attorney.

On May 30, 1978, the United States Supreme Court voted to uphold the indefinite suspension imposed on Albert Ohralik by the Supreme Court of Ohio. The Supreme Court stated that the Bar may discipline a lawyer for soliciting clients "in person for pecuniary gain under circumstances likely to pose dangers that state has a right to prevent."⁸ (at p. 1913)

In this case, I believe the words "in person" and "likely to pose dangers" are extremely important. In my opinion, the decision to indefinitely suspend this attorney was correct in that his solicitation was *de-*

WILLIAM J. FARRELL, JR., M.S.

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ceptive. The information he obtained was used as bait for which he could obtain an agreement to represent the persons.

In *Bates v. State Bar of Arizona*,⁹ the Supreme Court held that "truthful advertising of 'routine' legal services is protected by the First and Fourteenth Amendments against blanket prohibition by a State." There is no comparison with "truthful advertising" and that which was done by *Ohralik*.

Regarding the case of *In re Primus*,¹⁰ however, the Supreme Court rightly struck down a reprimand given to a lawyer from South Carolina who solicited the participation of a black welfare mother in a class action suit against the doctor who sterilized her and other welfare recipients.¹¹ In this case the court held that

"... solicitation of prospective litigants by non-profit organizations that engage in litigation as a form of political expression ... constitutes expressive and associational conduct entitled to First Amendment protection as to which government may regulate only with narrow specificity..." (*In re Primus*, supra, p. 18930)

Unlike *Ohralik*, attorney *Primus*' act of solicitation was not "in-person solicitation for pecuniary gain."

So, as we can see, our Supreme Court has recently held that lawyers have a constitutional right to honestly advertise their services. Also, the Code of the American Bar Association has also recently been revised and liberalized in important respects with regard to this subject. Moreover, all states now permit lawyer advertising, under a variety of regulatory approaches.¹²

For example, California and Massachusetts entered this new year with proposed advertising and solicitation rules pending in their supreme courts. Filed with the Supreme Court in California was a proposal that would permit advertising through any medium. This rule

allows *truthful* advertising that is not misleading and which contains all statements which are necessary to prevent deception. Also, the advertisement cannot indicate any specialties other than those conferred by the California Board of Legal Specialization. However, the rule prohibits "solicitation for pecuniary gain in person" or by telephone or in any form if it is directed at a particular person and seeks to handle a specific legal matter.¹³ These recommendations represent an almost complete turnaround from the proposal that came out of their special state bar committee in August of 1978.

I am certain that the original ban on lawyers advertising came about because of ingrained feelings of tradition, honor and service. For centuries, attorneys have emphasized that their goal is the promotion of justice rather than the earning of fees. Doctors should become doctors because their primary

purpose is to help the sick. Of course, honor and service are indispensable and important traits in professionals. However, I cannot conceive how truthful and honest advertising to the public (observed and scrutinized by regulatory agencies) will destroy the high standards already ingrained in our licensed professionals.

FOOTNOTES

⁹*Ohralik v. Ohio State Bar Assn.*, 98 S.Ct. 1912 (1978) (at page 1921)

¹⁰"Crackdown Ahead on Advertising," *U.S. News & World Report*, October 17, 1977, p. 70.

¹¹*Ibid.* (p. 71)

¹²*Virginia State Board of Pharmacy, et al v. Virginia Citizens Consumer Council, Inc., et al*, 96 S.Ct. 1817 (1976).

¹³*Ibid.* (p. 1819-1820).

¹⁴*Va. State Board v. Virginia Citizens Consumer Council, Inc., et al. supra*, (p. 1818)

¹⁵*Ohralik v. Ohio State Bar Association*, 98 S.Ct. 1912 (1978).

¹⁶*Ohralik v. Ohio State Bar Assn.*, supra, at p. 1913.

¹⁷*Bates v. State Bar of Arizona*, 433 U.S. 350, 97 S.Ct. 2691, 53 L.Ed.2d 810 (1977).

¹⁸*In re Primus*, 98 S.Ct. 1893 (1978).

¹⁹"Barriers Against Solicitation Crumbling," *American Bar Association Journal*, October, 1978, Volume 64, p. 1492.

²⁰"Justice Dept. Dismisses Suit Against ABA," *American Bar Association Journal*, October, 1978, Volume 64, p. 1538.

²¹"Advertising Issues Flare in Courts in Three States," *American Bar Association Journal*, January 1979, Volume 65, p. 36.

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LOUISIANA STATE BAR ASSOCIATION

CALENDAR OF EVENTS

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18-20

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20

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21-22

Society of Louisiana CPA's
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22

**Task Force on Paralegals and Para-
professionals Meeting, LSBA Office,**
9:00 A.M.
New Orleans, Louisiana

25-29

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Criminal Cases**
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Chicago, Illinois
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JULY

9-11

Workshop for Legal Assistants
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Legal Assistants
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\$90.00 Non-Members
Diplomat Resort, Hollywood, Florida
Information: (918) 749-4756

16-18-20

Louisiana State Bar Examinations
Loyola University School of Law
New Orleans, Louisiana
LSU Law School,
Baton Rouge, Louisiana

23

Society of Louisiana CPA's
"Key Concepts in Landmark Tax Cases"
Fee: \$80.00, Baton Rouge Hilton
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25-26

Tulane University
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Companies"
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30-31

Tulane University
"How to Protect the Landowner in Oil
and Gas Transactions"
Monteleone Hotel
9:00 A.M. to 4:30 P.M.
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AUGUST

1-4

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5-11

College of Criminal Justice Advocacy
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9-15

American Bar Association
1979 Annual Meeting
Dallas, Texas



SEPT.

15

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UPDATE

Report on the ABA Mid-Year 1979 Meeting

The Mid-Year Meeting of the ABA House of Delegates took place in Atlanta, Georgia last February and the undersigned delegates were in attendance in your behalf. Messrs. Raggio, Leigh and Boisfontaine were unavoidably absent.

As usual, the meeting was far-ranging in scope of matters discussed but not many issues of general interest were decided.

The delegates voted against a resolution which would open the door for broadcast media coverage of courtroom proceedings. A spirited debate went along with the vote and the vote was 165 to 143.

One of the items taking a large amount of time was the consideration of the Juvenile Justice Standards that had been proposed by an Institute of Judicial Administration/ABA Joint Commission. Some 23 volumes of Juvenile Justice Standards had been proposed and due to opposition four of those volumes were withdrawn and after lengthy debate the remaining 17 volumes were adopted. It is not possible to describe the net effect of these Juvenile Justice Standards. They now carry the imprimatur of the American Bar Association and will be submitted to the various states for consideration for adoption.

A number of new Criminal Justice Standards were approved by the House but the most controversial proposal dealing with the responsibility of defense counsel in the face of a client's actual or proposed perjury was withdrawn for lack of a consensus.

The House approved a draft of a Federal Securities Code that had been prepared by the American Law Institute. It is hoped that legislation will follow which will simplify and consolidate federal statutory in case law in the securities field.

On the resolution of the Nebraska State Bar Association the House approved a resolution urging repeal of the carry-over basis provisions of the Internal Revenue Code for estate property. This is the law which has been deferred by Congress after adoption and it is reasonably expected that it will be repealed.

A great number of matters relating to the field of criminal law were considered dealing both with crime as ordinarily perceived and also white collar crime.

The delegates approved a resolution advocating legislation to abolish obligatory Supreme Court appellate review in many instances, all as part of a package designed to reduce the caseload on the Supreme Court.

The ABA continues to support the establishment of a federally funded center for defense services in connection with indigent defense. Some of your delegates have misgivings about that but there was a strong majority favoring it.

Each of your delegates continues to urge each member of the Louisiana Bar to express his opinion concerning matters which either are coming before the ABA or should come before the ABA. Your delegates are able to bring matters before the ABA for consideration and should any Louisiana lawyer have a thought in that regard we would each be glad to hear from you.

We urge these particular sections of the bar to follow these matters and to advise us of your positions so that we might express better your views. This report was prepared and submitted by Robert E. Leake, Jr., Ben R. Miller, Robert G. Pugh, M. Truman Woodward, Bob F. Wright, Clarence L. Yancy.

Task Force On Advertising

John C. Combe, Jr., President, has announced the appointment of Richard F. Knight of Bogalusa to head a Task Force for further study of the question of lawyers advertising in the State of Louisiana. Mr. Combe indicated that at the Board of Governors meeting on March 31, 1979, it was the consensus of the members of the Board that the continuing evolution throughout the United States in the area of lawyer advertising required that the Association give this matter further study in order to arrive at a realistic evaluation of the needs of the profession and the public. It is the President's intention in making his appointments to arrive at the broadest possible representation. After the Task Force has completed its work, recommendations will be made to the House of Delegates and all such recommendations must be presented to the Louisiana Supreme Court for final approval. Any member of the Association who would like to furnish to the Task Force written comments, either pro or con, on the

UPDATE

subject of lawyer advertising is invited to do so by writing to the Association's office at 225 Baronne Street, Suite 210, New Orleans, Louisiana 70112.

Federal Election Information Available

The Federal Election Commission, the Federal agency which deals with financing of campaigns for Federal elections has brochures available at no cost to attorneys with questions on election law.

These may be obtained by calling toll-free 800-424-9530 or write to: Public Communications Office, Federal Election Commission, 1325 K. Street, N.W., Washington, D.C. 20463.

Victory on the Court

More than 500 lawyers and friends were present to see the team from the firm of Bernard, Cassisa, Babst and Saporito capture top honors over the firm of Adams and Reese. This was not a courtroom drama but action on the court in the Fourth Annual Lawyer's Basketball Tournament.

Eighteen teams participated in the three day tournament held in New Orleans.

Law firms interested in participating in the tournament next spring should contact John F. Robert, 1304 First National Bank of Commerce Bldg., New Orleans, Louisiana 70112.

Permanent Membership Cards Issued

All LSBA members were issued new plastic permanent membership cards in January, 1979.

Past President Bob F. Wright in-

itiated the change to the permanent card and it has replaced the annual issuance of the former printed version.

Members are reminded that they will still be required to remit payment of annual dues to maintain their active membership. However, with the issuance of the permanent membership card, new cards will not be issued each year.

Should a member's card become lost, stolen or otherwise misplaced that member may apply for the issuance of a replacement card by writing to the Association's office in New Orleans and remitting with said request the sum of \$5.00 to cover the cost of the replacement.

Survey to Form Family Law Section

A special committee of the Louisiana State Bar Association is considering the need of a Family Law Section. Such a section would deal with divorce, separation, adoption, community property, alimony, custody, interdiction adoption and juvenile matters.

Mr. Dudley D. Flanders is chairman of the special committee and members interested in joining such a section are urged to complete the form in this Journal.

Committee to Study the Use of Paralegals and/or Paraprofessionals

The continuing developments in the area of the use of paralegals and paraprofessionals has been brought to the attention of President Combe and has caused him to appoint a Special Committee to explore the use of paralegals or paraprofessionals. It is anticipated that representatives both of the bar association and of those involved in paralegal and paraprofessional organizations will be sought. Definitely the representatives of the Committee on Profes-

sional Economics and Law Office Management and the Committee on the Unauthorized Practice of Law would be appointed in view of the fact that the use of paralegals and/or paraprofessionals closely align to the subject matter of both of these committees.

Women Attorneys Form Organization

The Louisiana Association for Women Attorneys was chartered by formal adoption of the by-laws at a statewide meeting held in Baton Rouge on March 10, 1979.

Goals of the professional organization include providing a statewide network of communication and information for members; affording an opportunity for members to coordinate lobbying and/or legislative activities on issues of concern; providing professional opportunities for members; and promoting the position of women and women attorneys politically, socially and economically.

Membership is open to individuals as well as local associations without regard to sex or race. Associate membership is available for law students.

The Board of Directors include president, Peggy LeBlanc (New Orleans); vice-president, Josette Cassiere (Shreveport); secretary, Trudy Saad (Baton Rouge); treasurer, Kathleen Manning (Lafayette); professional opportunities committee chair, Betsy Bussoff (New Orleans); and law reform committee chair, Carolyn F. Lahr (Denham Springs).

Inquiries concerning information and membership should be directed to Peggy LeBlanc (610 Poydras St., Suite 318, New Orleans, LA 70130); Josette Cassiere (P.O. Box 3931, Shreveport, LA 71103); Kathleen Manning (P.O. Drawer W, Lafayette, LA 70502); Trudy P. Saad (P.O. Box 44261, Capitol Station, Baton Rouge, LA 70804).

SECTION & COMMITTEE ANNUAL REPORTS

LAWYER REFERRAL COMMITTEE

The second and final meeting of the State Lawyer Referral Service Committee was held by conference telephone call on March 30, 1979. Present were Cordell Haymon, Cameron Gamble, Quintin Hardtner, and Michael H. Rubin.

The status of projects around the state were reviewed. Lafayette is still working to set up a Tel-Law program. There has been a delay until scripts of the Tel-Law tapes were made available to the LSU Law School (students at LSU are rewriting the scripts to specifically apply to Louisiana law). It is hoped that the scripts will be ready to be produced by the end of the summer.

New Orleans will also be using the Tel-Law tapes once they are produced. In addition, New Orleans will begin the second section of its publicity campaign. Television and radio public service announcements will be run in an effort to increase calls to the referral service.

Sidney E. Cook, incoming President of the Shreveport Bar Association, is appointing a new committee to try to revitalize their lawyer referral service.

Monroe has still been unable to get enough attorneys signed up to start a lawyer referral service, but will be renewing its efforts in the upcoming year.

Baton Rouge Lawyer Referral Service continues to increase its referrals. During the month of April a set of public service announcements were sent to all area radio stations. The radio stations have been most cooperative in running the announcements, and referrals have increased approximately 100% during the time the announcements were run.

In conjunction with the Judges of the 19th Judicial District Court, the Baton Rouge Bar Association, and the Clerk of Court's Office, the Baton Rouge Lawyer Referral Service has successfully achieved a change in wording of the current citation form. Less "legalistic" than the previous forms, the citation is in layman's language and contains additional information concerning the Lawyer Referral Service and the Legal Aid Society.

Baton Rouge Lawyer Referral Service also continues to produce the "Law Line" television program in cooperation with Louisiana Public Broadcasting. Shown on the second Tuesday of each month at Channel 27, WLPB in Baton Rouge, Channel 13, KLTM in Monroe, and Channel 24, KLIS in Shreveport, the program received national recognition when a video tape of one of the shows was shown during the American Bar Association's Lawyer Referral Service Seminar in Atlanta in February, 1979.

The state committee has again considered, and rejected, at least for the time being, the

concept of setting up a state-wide lawyer referral service telephone number. Committee members feel that additional efforts need to be made to aid Shreveport and Monroe in getting their services operating, and to encourage Lafayette, Lake Charles and Alexandria to form their own local services. The committee hopes that state bar officers will adopt, as one of their projects for the 1979-1980 fiscal year, the encouragement and formation of local lawyer referral services in every major metropolitan area of the state.

Respectfully submitted:
Stephen A. Bernard, Jr.

Glenn R. Ducote
David S. Foster
Cameron C. Gamble
Quintin T. Hardtner, III
Cordell H. Haymon
Henry B. Hoppe, Jr.
Robert P. McLeod
Michael H. Rubin, Chairman

COMMITTEE ON PROFESSIONAL RESPONSIBILITY

The Committee on Professional Responsibility submits the following report of its activities for the period April 1, 1978 through March 31, 1979.

During this twelve-month period, the Committee opened some 502 formal complaint files. Additionally, the Committee received some 1,000 written contacts and approximately 500 verbal contacts, all resolved through other channels than the opening of a formal complaint file. In connection with the 502 formal complaints, the Committee held 22 formal investigatory hearings and issued two public reprimands and 20 private reprimands.

In matters where the subject matter was serious and the indication of possible guilt shown, the Committee pursued the charges through the Supreme Court. Such actions resulted in the following:

- 4 members disbarred by Supreme Court
- 1 member suspended pending further disciplinary action
- 2 members disbarred on consent
- 1 member suspended on consent for 2 years
- 1 member suspended by Supreme Court for 6 months
- 2 members suspended by Supreme Court for 1 year
- 1 member suspended by Supreme Court for 3 years

The Committee handled in the same period 53 formal requests for opinions in writing and approximately 250 informal verbal requests for opinions which were resolved by citing prior opinions or the Code of Professional Responsibility.

As of March 31, 1979, there were twenty cases pending before the Court in various stages of required procedures, including Commissioner's Hearings and Reports. The Committee does note that once the cases are actually before the Court, they are passed upon expeditiously.

It is noted that, except for the \$3,000.00 annually received from the State through the Supreme Court, these activities are totally funded by this Association and made possible by the nine members of the Committee who give substantial time to this work. The Association budgets \$25,000.00 annually to cover expenses connected with Committee work, excluding staff compensation. Taking into consideration staff compensation attributable to this work, and a proportionate share of office rent and expenses, the Association dedicates an additional \$65,000.00 annually, excluding Committee members' time. It is estimated that each of the nine members devotes about an hour each day to handling correspondence and one to two days a month on hearings. Thus, excluding all of the time donated by the members of the Committee, and the Commissioners and Curators appointed by the Court who receive no monetary compensation, the Association dedicates some \$90,000.00 each year in an effort to improve the profession through the proper enforcement of the Canons of Professional Responsibility and the Disciplinary Rules thereunder.

It is hoped that the efforts of the Committee have, to some degree, accomplished their purpose.

Respectfully submitted,
LOUISIANA STATE BAR
ASSOCIATION
COMMITTEE ON PROFESSIONAL
RESPONSIBILITY

Leonard Fuhrer, Chairman
Roland J. Achee
Wood Brown III
Sam J. D'Amico
Harold J. Lamy
Edgar H. Lancaster, Jr.
Alfred S. Landry
A. Russell Roberts
John B. Scofield
Thomas O. Collins, Jr.,
Executive Counsel

COMMITTEE ON LAW REFORM

The most significant function of the Law Reform Committee was again the review of legislation introduced in the 1978 Louisiana legislative session considered of general interest to the bar. With the assistance of Professor H. Alston Johnson III of the L.S.U.

Law School, approximately 10% of about 2,500 bills introduced were selected for review and report to the House of Delegates. The Committee met for two full days on May 5 and May 6, 1978, reviewing the individual reports and compiling its recommendations to the House of Delegates. On Saturday, May 13, the report was reviewed with the House of Delegates and action taken by the House of Delegates and the Board of Governors on the bills.

The schedule followed again enabled the Bar Association to present its position to the Legislature by as early a date as it seemed possible to do considering that the last day for filing of bills was May 2, 1978. The positions taken by the Bar Association were then actively pursued by Mr. Edward F. Glusman throughout the legislative session. Statistics on results achieved fail to reflect what we believe to have become the more significant function of the bar in interacting with the Legislature to formulate modification of proposed legislation to accommodate the position of the bar.

We believe that the overall favorable reaction of the Legislature to the efforts of the Committee was reflected by two resolutions which specifically called upon the Law Reform Committee to participate in the study efforts of the Legislature.

As a result, increased activity of the members of the Law Reform Committee between legislative sessions is required. Present topics being considered by the subcommittees independently, as well as studies of the Legislature being monitored or participated in by the subcommittees, include the following:

Civil Law

- HCR 57 on Condominium law
- Conflict of Civil Code Articles 2251 and 3542
- Modification of Uniform Child Custody Act
- Building restrictions — Civil Code Article 780
- Proposed revision of R.S. 9:2801
- HCR 232 on community of acquets and gains (including effect on R.S. 35:11B and 9:2801)
- Lien law (R.S. 9:4812 and 4819)
- HCR 238 on rights of illegitimate children
- Proposed amendment of Civil Code Article 2893 to change prescriptive period for probate of wills
- Proposed amendment of R.S. 35:11B to clarify *in mstead* declaration
- Monitor Partnership law revision by Louisiana State Law Institute

Conflict of R.S. 9:5141 v. Civil Code Article 3358
R.S. 9:1252 on servitudes on historic buildings

Torts and Civil Procedure

- Judgments N.O.V. (1978 House Bill 50 as amended)
- HCR 204 on governmental liability and SCR 123 on state as self-insurer
- SCR 122 on suits without basis in law and fact
- SCR 114 on product liability
- SCR 108 on uniform rules for courts of limited jurisdiction
- Privilege of psychiatric patients (1978 House Bills 1025 and 1026)
- Bonner v. B-W Utilities, Inc. (executory process)
- Subordination of minor's mortgage

Commercial and Professional

- Prescription of malpractice claims against lawyers
- Directors meetings by telephone
- Act 572 of 1978 on foreign security interest
- Possibility of eliminating values from public record of descriptive lists in successions
- Donations of promissory notes
- Attorneys fees and contingent fees
- Revision of Civil Code Article 446

Criminal Law

- Written pleas in lieu of personal appearance (1978 Senate Bil 45 by Senator Don Kelly)

General

- HCR 209 — Legislative procedure for explaining effect of proposed legislation
- HCR 57 — Merit selection of judges

The Committee is continuing its efforts to work in greater collaboration with the various Sections of the Bar Association in formulating proposed legislation and welcomes suggestions regarding the above or any other proposed legislative changes.

At the meeting of the Committee on March 23, 1979, with regard to the matters pending before the Committee, it was agreed that the Committee would attempt to have the following bills introduced, it being understood

that until the House of Delegates and Board of Governors act, no legislation can be regarded as being sponsored or favored by the Bar Association.

1. Meetings of Directors by Conference Calls.
2. Dual Amendment of Article 446 of Civil Code.
3. Modification of Uniform Child Custody Act.
4. Amendment of Article 2893 relating to prescriptive period for probate of wills.
5. Restatement of Article 3358 to conform with La. R.S. 9:5141.
6. Amendment of La. R.S. 9:1252 pertaining to servitude for charitable or historic purposes.
7. Amendment of lien law (La. R.S. 9:4819) to add clearing and filling to matters which are not commencement of construction.

The following matters were referred back to the subcommittees for further consideration, particularly of the matters indicated:

1. Foreign Security Interests (Act 572 of 1978)
 - To determine specific problems sought to be remedied when bill passed and best way to handle.
2. Donations of Promissory Notes.
 - To ease formalities of donating notes but to provide adequate safeguards against fraud.
3. Amendment of lien law (La. R.S. 9:4812) to clarify acceptance upon substantial completion.
 - To determine present status of law.

It was decided that the following matter should not be pursued as legislation, but should be considered by local bar associations for corrective action wherever the problems exist:

Deletion of Values in Descriptive Lists

The following legislation was approved, but in light of its nature, it should be submitted to the House of Delegates and Board of Governors for concurrence before any legislation is introduced:

Prescription of Legal Malpractice Actions

It was also the consensus that the Bar Association should take a position on proposed revision of the jurisdictions of the Louisiana Supreme Court and Courts of Appeal in criminal matters, but that some guidance or clearance should be obtained from the Board of Governors before this Committee assumes a role in such matters.

Respectfully submitted,
David Contoy
Chairman

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SECTION ON CORPORATION AND BUSINESS LAW

The activities of the Section during 1978-1979 continued to be directed to the continuing legal education of members of the Bar, through the program presented at the Annual Meeting and through the Section's publications.

As of the date of preparation of this report, additional copies of *Basic Forms for Louisiana Corporations* were being distributed to members of the Bar ordering same. The annual *Supplement to Basic Forms* is presently at the printer's and will be dis-

tributed to the members of the Section in the near future. The Section plans to supplement the manual again this fall to incorporate any changes in the corporation law adopted this year by the Legislature and, as pointed out last year, thereafter to supplement the manual each year in the fall.

The Section is indebted to Anthony J. Corro, III, Editor of the Louisiana Corporate Newsletter and Co-Editor of the *Supplement for Basic Forms*, along with Louis Y. Fishman, Co-Editor for the *Supplement of Basic Forms*.

The highlight of the Section's year will be its participation in the joint programs at the Las Vegas Convention. The Section is happy to be able to participate and contribute to such an excellent presentation.

The following Section officers have been elected to serve for 1979-1980:

Anthony J. Corro, III—Chairman

Robert G. Stussi—Vice-Chairman

Paul M. Haygood—Secretary-Treasurer

Anthony M. DiLeo was elected to a three year term on the Section's council, joining council members Charles A. Snyder (term expiring 1980), J. David Forsyth (term expiring 1981), and James S. Holliday, Jr. (immediate past chairman).

The Section's council believes that 1978-1979 has been a successful year for the Section on Corporation and Business Law and we look forward to the 1979-1980 term under Mr. Corro's administration.

Respectfully submitted
James S. Holliday, Jr.
Chairman

PUBLIC RELATIONS COMMITTEE

The Public Relations Committee met on three occasions during the 1978-79 year.

As chairman I am pleased to report on the committee's activities. One of the prime objectives of the committee this year was to continue to update the Association's public education brochures. The following topics were reviewed and new brochures will be published as follows:

1. So You're Getting Married
2. Divorce and Separation in Louisiana
3. How Do Lawyers Charge?
4. Lawyer Referral in Louisiana

The above titles were reviewed, rewritten and edited by your committee.

The Committee also established policy regarding brochures whereby single copy will be provided at no charge upon request. However, additional copies will be available on an order basis and charged at a rate of 10¢ per copy. The small charge enables the Association to realize some return on its investment in printing. It also enables us to reprint brochures after initial design with the revenue paying for reprinting.

During the year approximately 11,872 brochures were distributed. Announcements in the LOUISIANA BAR JOURNAL proved effective in members submitting orders for available brochures and announcements and order forms will continue to appear in the Journal.

Law Day 1979 was highlighted with Chief Justice Frank W. Summers serving as State Chairman. A TV Public Service Announcement was produced with the Chief Justice regarding Law Day and sent statewide to selected TV stations.

Chief Justice Summers wrote to all local bar associations requesting their appointment of local law day chairmen.

The Committee continued to review and release the "Family Lawyer" Series to newspapers in Louisiana. This series was prepared by the ABA but we have been advised that it will be discontinued by them as of June 1, 1979. Robert A. Young, Communications and Program Director reported that Louisiana had one of the highest rates of use of this series in the country. We want to acknowledge and thank Rutledge and Edith Clement for their assistance and review of each of these columns prior to release.

Mr. Young continued to prepare and release to the media press releases regarding Association activities.

During the year the Association or Committee did not undertake any additional institutional advertising. This was based on a lack of funds and the fact that previously prepared T.V. Public Service Announcements were not aired.

Mr. Young was asked to represent the Committee at a national public relations workshop sponsored by the National Association of Bar Executives. He provided the committee with a report on the workshop and with reference to institutional advertising the problems we experienced are not unusual for Bar Associations. The fact that so many other

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Bar Associations are now buying and paying for print space and air time affects the status of other bar's who attempt to get public service announcements on a non-paid basis. This issue will be studied and discussed further by your committee.

Speakers Kits have been prepared. A meeting was held with representatives of the New Orleans Bar Association in an effort to support the establishment of a Speaker's Bureau in New Orleans. Volunteers for this program remain scarce and we again urge members to volunteer. It was determined that Speaker's Bureau's are most viable if coordinated on a local level. The State Bar will provide Speaker's Kits and assist in developing guidelines for workable local speakers bureaus.

The Association continued to maintain a press clipping book and subscribe to a statewide clipping service.

We will continue to market our public information brochures, study and review the production and feasibility of T.V. Public Service Announcements and the Paid vs. Public Service issue; maintain open communication with and a working rapport with the media through our Communications and Program Director.

The Committee drafted media award guidelines and prepared a brochure entry form and sent it to all newspapers and radio and T.V. stations in the State. It is anticipated that this renewed effort to recognize outstanding contributions may take a couple of years to establish as a recognition vehicle, however we feel this last year's effort has alerted the media to our interest and intention to recognize them. A number of entries were

received in various categories and will be judged by your committee.

I want to thank the members of the committee for their support and efforts on the above projects.

Respectfully submitted,
Raymond J. Salassi, Jr.
Chairman

**SPECIAL COMMITTEE
TO STUDY THE NEED
FOR AN ANTITRUST SECTION**

This committee has been charged with the task of determining whether the increased activity in the area of antitrust law warrants the creation of a section within the Louisiana State Bar Association devoted to this area. After an initial determination that an antitrust section could fulfill certain practical needs of the state bar, the committee turned its attention to the question of whether there is sufficient interest among members of the state bar to support an antitrust section. In order to make this determination, the committee undertook a selective mailing to approximately 300 members, asking them whether or not they would be interested in joining such a section if one were formed. The committee obtained a 50% response to its mailing, and those responding favored formation of a section by a 2-1 margin.

On the basis of this strong showing of interest, the committee has decided to move ahead with plans to present a resolution to the House of Delegates calling for the creation of an antitrust section within the state bar. Our

present plans are to present this resolution at the November, 1979 meeting of the House of Delegates.

Respectfully submitted,
Dando B. Cellini
Chairman

**SECTION ON TRUST ESTATES,
PROBATE AND
IMMOVABLE PROPERTY**

During the year 1978-1979, the Section on Trust Estates, Probate and Immovable Property presented a program at the annual meeting of the Louisiana State Bar Association on Thursday, April 20, 1978 in Biloxi, Mississippi. Most interesting presentations were made by Leonard H. Rosenson on recent developments in the law related to real estate transactions and Professor Gerald Le Van on recent developments in the law related to Louisiana estate planning.

At the business meeting of the Section, held following the program, the following officers were elected for the 1978-79 year:

Chairman J. Edgerton Pierson, Jr.
Blanchard, Walker,
O'Quin & Roberts
Shreveport, Louisiana
Vice-Chairman Donald E. Bradford
Sanders, Downing, Keas
& Cazedessus
Baton Rouge, Louisiana
Secretary-Treasurer Robert E. Jeffers, Jr.
Voelker & Jeffers
New Orleans, Louisiana



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Patio
Retaining walls
Surface drainage of the property
Grading around foundation

INTERIOR OF THE STRUCTURE:

Ceilings
Walls
Floors
Windows and doors
Fireplaces

ATTIC:

Ventilation
Insulation
Structural integrity
Water penetration

BASEMENT AND CRAWL SPACE:

Structural integrity of walls & foundation
Ceilings
Indications of water penetration
Supporting members
Doors and windows
Stairways

HEAT AND AIR CONDITIONING:

Equipment
Energy source
Ductwork and piping

MECHANICAL SYSTEMS:

Electrical
Service entrance and ground
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Plumbing
Materials of construction
Bath and kitchen fixtures
Waste piping
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According to the records of the Louisiana State Bar Association, as of March 31, 1979, Section membership was 668 and the Section had on hand \$11,014.40 in its account.

Through the fine and diligent efforts of Jerry D. Williamson and Leonard H. Rosenon, a first Newsletter of the Section was published and distributed to each member. Enough thanks cannot be expressed to Jerry Williamson for preparing the summary of recent jurisprudence which was included in the Newsletter and to Leonard Rosenon and Dudley Flanders for their editing.

The Section has agreed to underwrite part of the cost of preparing a form book for Louisiana estate planning, including current updated forms for wills, trusts and inter vivos donations. That form book will be prepared by Professor Gerald Le Van, with the advance and assistance of Judge Alvin Rubin and David Rubin. It will be made available to Section members at substantially less than its retail price. Target date for the release of the formulary is the 1980 Annual Convention of the Bar Association.

Respectfully submitted,
J. Edgerton Pierson, Jr.
Chairman

REPORT OF THE SPECIAL COMMITTEE ON INSURANCE

The major effort of the Committee was again directed to the matters of Professional Liability Insurance and Risk Management. To that end, Gilsbar representatives and Committee representatives attended numerous meetings sponsored by various groups and conferred with representatives of various companies.

During the year, the Committee and Gilsbar continued to cooperate with and furnish statistical information to the Southern Conference of Bar Presidents.

The Committee entertained numerous proposals covering administration, brokerage, alternative commercial carriers and captive carriers. At its meeting on March 10th, 1979, the Committee voted to recommend that the Association continue the sponsorship of the National Union Fire Insurance Company. This recommendation was conveyed to the Board of Governors, which approved same.

At the same time and for the future, the Committee continues to consider and review the various alternatives of formulating an insurance carrier belonging to the Louisiana State Bar Association, participating with other states in a similar venture, and other methods of organizations for providing liability coverage to and for Louisiana lawyers.

The Committee continues to work with the American Bar Association Special Committee on Professional Liability and to monitor the efforts of other states in the entire field.

At the instruction of the Board of Governors, the Committee requested Gilsbar to formulate the shell of an insurance company to have on a stand-by basis.

It has been gratifying to learn that the sponsored carrier, National Union, has agreed to a rebate to those insureds who qualify by reason of participation in approved legal education courses, also, that National Union is changing their rate structure which will reflect a premium savings. Finally, the Committee considers it beneficial to all Louisiana lawyers that

the market continues to be competitive and that there are several companies, in addition to the sponsored carrier, offering Professional Liability coverage throughout the State, thus not only providing a choice but also serving as a means of control over rates.

The Committee has decided to aggressively pursue risk management. To that end, we will work with the Continuing Legal Education Committee of the Association to incorporate into each topic on its seminar the malpractice implications and preventive measures to be taken by practitioners. In addition, the Committee expects to sponsor state-wide a program for lawyers, para-legals and legal secretaries dealing with malpractice, loss control and management. We presently have available from the American Bar Association audio-visual tapes which can be shown at local Bar meetings upon request.

The Committee reviewed the Appalachian report on experience and reserves and will continue efforts to assert the interest of the Association in these reserves.

Life Insurance

The Pan-American Life Insurance program continues to show favorable experience. Again, a full semi-annual premium was refunded to all insureds who had had coverage for the full policy year, September 1, 1977 through August 31, 1978. The amount of Life Insurance in force as of March 1, 1979 was \$63,575,626.00.

Because of increased limits, up to \$75,000.00, we re-solicited eligible members and through this effort we received over 600 applications.

Accidental Death & Dismemberment, Major Medical, Hospital Pay, Disability Income, and Excess Life

The Fireman's Fund notified us of a proposed 37% rate increase under the Major Medical. The Committee felt this to be unjustified and instructed Gilsbar to canvass the insurance industry. In response, the Prudential Insurance Company of America offered a Major Medical policy which includes the same coverage as presently provided by the Fireman's Fund, with certain additional benefits, at a rate increase of 27%. In addition to the foregoing, Prudential offered a 34% decrease in the Hospital Pay rate and a 5% decrease in the Disability Income rate.

The Committee determined that Prudential's was clearly the best offer. Accordingly, the Committee recommended that the Association sponsor the Major Medical, A.D. & D., Hospital Pay, Disability Income and Excess Life policies with the Prudential, all on a no loss-no gain basis. The Board of Governors approved the Committee's recommendations at its meeting on March 31st, 1979, and the new policies will be in force beginning with the various policy anniversary dates.

The Committee recommends that Association members thoroughly review all insurance policies in the above areas, whether or not Association sponsored, in an effort to obtain the best coverage on the most economical basis. Members are encouraged to direct inquiries to the Committee or Gilsbar for information and explanation as to all insurance programs involved.

The Committee again wishes to recognize Gilsbar, Inc., insurance broker and consultant to the Association, for its efforts on behalf of and its services rendered to the Association.

The Chairman wishes to express his personal appreciation to the Committee members for the opportunity of working with them, for their good record of attendance at meetings, and for the faithful service rendered on behalf of the Bar Association's insurance program.

Respectfully submitted,
Louis D. Smith
Chairman

(Continued on page 43)

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I enclose a check for \$95.00 which covers registration, luncheon, coffee breaks and hand out materials for the September 15, 1979 seminar. I understand that my registration fee is fully refundable provided I give written notice to the Louisiana State Bar Association and said notice is received on or before September 11, 1979.

Signature _____

SECTION & COMMITTEE ANNUAL REPORTS

(Continued from page 45)

CONSUMER PROTECTION COMMITTEE

The first meeting of the year was held on July 28, 1978 at the Louisiana State Bar Association offices in New Orleans at 1:30 P.M.

Those attending the meeting were:

C. James Gelpi, Chairman
Patrick D. Breeden
Cleveland C. Burton
Winston G. DeCuir
Thomas S. Halligan
Stephen M. Irving
Charles L. Patin, Jr.
Paula A. Perrone
John F. Robbert
John Frazier, representing
Charles W. Tapp
Nell Weekley

Bob Young, representing Thomas Collins

Since the meeting was the first meeting with the principle attention being given to organization the emphasis was placed on the establishment of objectives that would be achievable during the current administration. Longer range projects which could be carried on by subsequent committees were not ruled out and were also discussed.

I. In summary the objectives established by the committee which will be discussed in more detail hereafter are as follows:

- A. Determination of the Feasibility of Establishing a Consumer Protection/Antitrust Section.
- B. Development of a Legislative Program.
- C. Development of a Public Education Program.
- D. Establishment of a Periodic Publication on Consumer Developments in the *Louisiana Bar Journal*.
- E. Publication of a Law Review Article pertaining to the Fundamentals of Consumer Protection Law.

II. A Brief Description of the Objectives as established by the Committee.

- A. Determination of the Feasibility of Establishing a Consumer Protection/Antitrust Section.

The committee noted that there is a great deal more interest today in Consumer Protection and Antitrust matters than in years past. It was felt that there may indeed be a need for a Consumer Protection/Antitrust Section and that the members of the Bar Association would possibly be very supportive of such a section.

It was agreed that before the Governing Board could be asked to create a section that the Committee would have to present some clear indication of what the demands or desires of the Bar Association members were pertaining to such a section. Accordingly, it was initially agreed to poll the Bar and subsequently agreed that a selective poll would be more effective. It was further agreed that this poll should be coordinated with the Antitrust Committee who was conducting a poll for similar purposes.

End of Year Report

This poll is currently being conducted by the individual members of the Consumer Protection Committee on a person-to-person basis. Members of the Consumer Protection Committee are making inquiries of individual members of the Bar and obtaining from them written indications of their intentions and desires to become members of a Consumer Protection Section should one be established. There are currently 172 individuals who have indicated that they would join a Consumer Protection Section. The committee feels as though the section should be called the Consumer Law Section instead of the Consumer Protection Section. Further, the Committee feels that the Consumer Law Section should be different from and separate of the Antitrust Section. The Committee is continuing to get names and plans to bring the matter up at the November meeting of the House of Delegates.

B. Development of a Legislative Program.

The Committee felt that it would be in the interest of the overall objective of a Consumer Protection Committee to consider having the Bar Association support certain legislation and oppose other legislation based on merit. Further, it was felt that the Committee should suggest legislation or the repeal of existing legislation based on merit.

To accomplish this objective it was agreed that the first stage of establishing any such program would be to inventory all existing laws, State and Federal, which pertain to consumer protection and to evaluate them. The second stage would be to make proposals for the adoption, amendment, or repeal of consumer protection legislation based on the aforementioned evaluation.

End of Year Report

The Committee has completed the inventory of State and Federal Laws pertaining to Consumer Protection matters and is currently in the process of evaluating same.

The Committee chose to urge support for the Uniform Parish Court Jurisdiction and Procedures Act and other Acts of a similar nature to the extent that they attempt to accomplish the following:

1. Small Claim Court jurisdiction is increased from \$300.00 to \$1,000.00.
2. Time delays for answering the City and Parish Courts are extended from five to ten days.
3. Parish Court jurisdiction is increased to \$10,000.00, concurrent with District Courts.
4. City Courts jurisdiction is increased to \$3,000.00.

C. Development of a Public Education Program.

It was agreed by the Committee that the Bar Association should include public education in the field of consumer protection as one of its objectives. It further felt that education of the judiciary on this emerging field of law was also essential.

The Committee felt that the task of developing a separate public education or judicial education program was both too large and unnecessary for this Committee.

The Committee agreed to collect existing printed data on consumption of legal services and to review same for possible dissemination. The Committee also agreed to make individual members available as volunteer speakers for existing speech programs of the Bar. Further, it was agreed that the Commit-

tee would make its members available for inclusion in programs of education for members of the judiciary.

End of Year Report

Materials are being collected at this time of existing printed material of an informative type designed and aimed at consumers of legal services. This and other material will be made available and suggested for inclusion in the "speakers kits" currently being assembled or already assembled by the Bar Association's standing speaker program.

Further, Committee members, Charles M. (Larry) Samuel, II and John F. Robbert have presented the first Speaker Program on behalf of the Judicial College at the Annual Spring Meeting of Louisiana Judges sponsored by the Louisiana District Judges Association and Louisiana Judicial College held March 30, 1979 in Natchitoches, Louisiana. This writer would like to take the liberty of commending them on their excellent program.

This program was what we hope will be one of a continuing series.

- D. Establishment of a Periodic Publication on Consumer Developments in the *Louisiana Bar Journal*.

The Committee felt that consumer protection law and antitrust law was of a type and nature that was emerging and rapidly changing in such a manner that a regular publication on the recent developments and points of interest in this field would be a benefit to the Bar members and that a regular publication in the *Louisiana Bar Journal* would be appropriate.

(Continued on page 44)

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End of Year Report

The Committee is currently publishing an article called "Consumers Corner" in this journal.

E. Publication of a Law Review Article Pertaining to the Fundamentals of Consumer Protection Law.

One of the most notable aspects of practicing consumer protection law is the lack of understanding and comprehension that most judges have for this area, since their legal training and law practices occurred to a great extent at a time when consumer protection law was considerably less important than it is today.

In an effort to develop some publication that could be comprehensive in nature and also cited as legal authority to uninformed judges, the Committee set the objective of publishing a comprehensive Law Review article which would restate the basic fundamentals of consumer protection law.

End of Year Report

This article is completed by its primary authors but has not been reviewed by the Committee as a whole Committee and will very likely not be completed in time for the current deadline. It is the intention of the Committee to complete the article and update same for inclusion in the next publication.

SUMMARY

At the time of this report we are prepared to report that all objectives have been met or

are so completed as to be easily achieved within the next months.

This Chairman of this Committee would like to thank the individual members of the Committee, Staff of the Bar Association and the Officers for their cooperation, assistance and confidence shown to this Committee and its Chairman.

Respectfully submitted,
C. James Gelpi
Chairman

LABOR LAW SECTION

For the 1978-1979 year, the labor law section's primary concern was a continuing legal education. The labor law section in conjunction with Loyola University Law School and Louisiana State University Law Center sponsored its ninth annual seminar on March 16 and 17, 1979. The seminar was held at Loyola University Law School and featured speakers of national and local prominence including Robert A. Gorman, Professor of Law, University of Pennsylvania and Harold J. Datz, Associate General Counsel, Office of the General Counsel, Division of Advice, National Labor Relations Board. Professor Gorman delivered an informative lecture on recent developments in labor law followed by an in-depth discussion by Harold J. Datz on labor law developments in the construction industry. Panel discussions presented a variety of management, labor, and government viewpoints on such subjects as the impact of federal labor legislation on state and local

governments, the Freedom of Information Act and reverse discrimination under Title VII and Executive Order No. 11246. Of particular interest to seminar participants was a luncheon speech by Mayor Ernest Morial who spoke on the legal, political and social aspects of the recent New Orleans police strike followed by a panel discussion on public employee bargaining in Louisiana, dealing with strikes by public employees, the bargaining rights and obligations of local governments and public sector unions, and impasse resolution procedures. The seminar was well attended by labor law practitioners, management officials and union representatives from various areas throughout the state. Participation was particularly enthusiastic in regard to the panel on public sector collective bargaining. Because of the interest shown in public sector collective bargaining, the section plans to hold an additional seminar on this subject. Details as to the date, time, and place of this seminar will be published in the near future.

The section wishes to express its thanks to Marcel Garsaud, Dean, Loyola University Law School, for the use of the law school facilities and to Gary Boland, Director of Continuing Legal Education, Louisiana State University Law Center, for the excellent assistance rendered by Mr. Boland and his staff in the preparation and presentation of this year's seminar. Mr. Boland has faithfully supported the section's seminar activities over the past years and has been directly responsible for the success accompanying these events.

Respectfully submitted,
Clement J. Kennington
Secretary-Treasurer
Labor Law Section



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THE SECTION ON INSURANCE, NEGLIGENCE, COMPENSATION AND ADMIRALTY LAW

The section on Insurance, Negligence, Compensation and Admiralty Law this past year sponsored and published the "Forum" which we are quite proud of in its presentation. We have also planned for this summer a seminar of nationally recognized speakers. Because the Bar meeting will be in Las Vegas this year and sections will not be sponsoring individual programs, our section will be contributing to the Bar initiated program. Our finances are very good showing a balance as of 3/3/79 of \$25,965.85. We are looking forward to the next year's activities."

Respectfully submitted,
Bernard S. Smith
Chairman

SPECIAL COMMITTEE ON ADVERTISING, SPECIALIZATION AND RECERTIFICATION

The Special Committee on Advertising, Specialization and Recertification has revised the Louisiana Legal Practice Designation Plan and submitted same to the President for consideration by the House of Delegates at

the fall meeting. The Committee is sponsoring a 1 1/2 hour program at the annual meeting in Las Vegas dealing with Specialization in the Practice of Law and will have as guest speakers the Chairman of the American Bar Association Standing Committee on Specialization and the Chairman of the Indiana State Bar Association Special Committee on Specialization, together with the undersigned and Ledoux Provosty of Alexandria, Louisiana, who has served on our Committee this year. We are hopeful that the program will result in further input from members of the Bar Association that will enable us to make any final revisions that are necessary prior to submission of the Louisiana Legal Practice Designation Plan to the House of Delegates.

During the past year, we presented programs to local Bar Associations in Lafayette and Baton Rouge and the response from the local Bar Associations was quite favorable. An overwhelming majority of those attending the Baton Rouge and Lafayette meetings felt that the Committee should continue its work and attempt to submit a basic plan that would recognize the de facto specialization that already exists in the practice of law. As a result of those meetings, changes were made in the Legal Practice Designation Plan in order to achieve broader-based support for its adoption.

The Committee is by no means satisfied that the Plan, as presently drafted, is perfect in all of its aspects. However, by the time of the House of Delegates' meeting next fall, we will have a final document that will represent the work product of some three years of effort and the input of many members of our Bar Association. It is our belief that specialization will become a fact of life in our Bar Association and that the Legal Practice Designation Plan is the first step in that direction.

Respectfully submitted,
Philip A. Wittman,
Chairman

SECTION ON TAXATION

The Section on Taxation enjoyed an extremely busy and profitable 1978-79 fiscal year. The monthly luncheon meetings arranged by Program Chairman Paul Waldman proved extremely valuable to those members who attended. In particular, the series of programs presented on the Revenue Act of 1978 enabled those members in attendance to obtain a better understanding of the new legislation. Also, the presentations of current developments and lectures on specific areas of Federal and Louisiana tax laws as they relate to Louisiana practitioners continued to be of exceptionally high quality. The average attendance at the luncheon meetings ranged between 30 and 40 members. Because not all members were able to attend each monthly luncheon, written outlines prepared by the speakers were mailed to each member with the monthly mailing immediately following the oral presentation.

The Section was particularly fortunate to have as its principal speaker for its annual Mardi Gras luncheon Mr. John S. Nolan, former Deputy Assistant Secretary of the Treasury for Tax Policy. Mr. Nolan spoke on tax planning with life insurance, a topic which has a broad interest among tax practitioners. Approximately 200 persons attended, including members of the Louisiana Society of Certified Public Accountants as invited guests.

In November of 1978 the Section hosted the Internal Revenue Service Southwest Regional Liaison Committee meeting which was held in New Orleans. The Section hosted a cocktail party for all attorneys in attendance and copies of the minutes of that meeting were later distributed to all members of the Section.

Mr. I. Jay Krieger and Mr. Sidney Rothschild co-chaired a series of 15, two-hour tape lectures entitled "Estate Planning in Depth". The lectures were held on various evenings during the fall and winter. This series was prepared by the American Law Institute — American Bar Association Committee on Continuing Legal Education and it contained lectures by well known tax practitioners in the field. The Section is extremely grateful to Messrs. Krieger and Rothschild for their efforts in this regard.

A committee chaired by Mr. Theodore L. Jones of Baton Rouge has been appointed to study the possibility of Louisiana adopting the Model Tax Court Act to create a Louisiana Tax Court in place of the Louisiana Board of Tax Appeals. If any person has any thoughts on this project, we urge him to convey them to Ted Jones.

The following persons were elected as officers of the Section for the 1979-80 fiscal year:

Michael Guariseo, Chairman
Forest E. Arnold, III, Vice Chairman
Paul H. Waldman, Secretary/Treasurer
John J. Weiler, Program Chairman

Respectfully submitted,
Robert R. Casey
Chairman

LONG RANGE PLANNING COMMITTEE

The Long Range Planning Committee met in New Orleans on 29 September 1978. Subsequent to that meeting the committee furthered its activities by phone conferences and correspondence.

Specifically the committee was interested in a projection of current costs of operation over the next five years. Predicated upon that information the committee was interested in determining if, under current income, the Bar Association could fund all of the programs necessary to service properly the members of the Bar and the public.

The committee is in the process of digesting the information on economic projections made by the certified public accountants and also analyzing the projected costs of desirable programs over the next five years. It is anticipated that a recommendation will be made to the House of Delegates setting forth alternatives for future funding of desirable programs and such other Charter changes which may be necessary in order to facilitate the operation of the association.

Respectfully submitted by,
E. A. Little, Jr.,
Chairman

AMERICAN CITIZENSHIP COMMITTEE

The American Citizenship Committee was successful during the school year of 1978-79 to see a program of law related education

become a reality in the Orleans Parish School system. The Orleans Parish School system law related education program became with an Awareness Day Conference on October 14, 1978, which attracted administrators, teachers, attorneys and judges from the Greater New Orleans Area. It is anticipated that this program will accept its first student enrollment in the Fall of 1979. At present teachers in the system are undergoing in service training. The Committee is continuing to assist the program through the development of a Speakers Bureau as well as providing advice and consultation when called upon to do so.

The Orleans Parish School Board program now joins several other ongoing law related education programs that are operating in East Baton Rouge as well as Jefferson Parish. The Orleans program is designed as a pilot program consisting of participation of Federal, LEAA and local funding.

The American Bar Association through its special committee on Youth Education for Citizenship and its Young Lawyer Section is working closely with the Director of the Orleans Parish program and providing excellent source material for in service teacher training.

The topic for this year's annual Louisiana High School Essay Contest sponsored by the Committee was "Should Lawyers, Doctors and Members of Other Professions Be Allowed To Advertise Their Services, Specialties and Fees in the Media Like Other Businesses?"

Through the assistance of Mr. Robert A. Young, Director of Communications and Programs, a new three panel brochure was developed for distribution to announce the contest to the principals of the secondary schools of the State of Louisiana. By letter of December 11, 1978, a copy of the brochure was forwarded to each of our secondary

(Continued on page 46)

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SECTION & COMMITTEE ANNUAL REPORTS

(Continued from page 41)

schools. The brochure was designed and developed for the purpose of increasing the participation of students and the interests of their teachers in the contest.

A total of 115 essays were received and reviewed by the Committee. Although the number was not as great as been received in previous years contest, the student participation represented a wide variety of schools which were represented for the first time in the contest.

The Committee has selected the following winners:

First Place

Lory A. Moser
Academy of the Holy Angels
New Orleans, Louisiana

Second Place

Jeffery Alan Bush
Bogalusa High School
Bogalusa, Louisiana

Third Place

Robyn Nadine Lea
Franklin Academy
Winnsboro, Louisiana

Fourth Place

Mary Ann Strahan
Franklin Academy
Winnsboro, Louisiana

Fifth Place

Rebecca Becker
Salmer High School
Slidell, Louisiana

Under the rules of the Committee, the first place award will be presented to Lory A. Moser at the school awards day program at Academy of the Holy Angels School, New Orleans, by a representative of the Board of Governors and the Committee.

For the last several years, your Chairman has been in close contact with the offices and representatives of the Young Lawyers Section who have shown a great deal of interest in the development of law related education in the State of Louisiana as well as the other activities of the American Citizenship Committee.

I am pleased to announce that our new President, Mr. John C. Combe, Jr., has advised the Chairman that the American Citizenship Committee will be transferred and placed under the supervision of the Young Lawyers Section of the Bar Association beginning with his taking of office.

I personally heartily endorse the change and believe that the younger lawyers of the organization should work to develop interest in the projects of this Committee.

I wish to thank all of the members of the Committee and representatives of the Young

Lawyers Section for their interest and time that they have given toward the accomplishments of the Committee for this and past years.

I particularly wish to express my sincere thanks to Mr. Tom Collins, Mr. Robert Young and Miss Loretta Thomas and the other members of the staff of the Association for their many kindnesses and help and assistance over the years.

The Committee would be pleased to assist with the transition of this Committee to the Young Lawyers Section and provide any advice or information that it may be called upon to give to insure that the activities of this Committee continue to grow and prosper.

Respectfully submitted,
William M. Detweiler,
Chairman

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SHREVEPORT

The Louisiana State Bar Association, Young Lawyers Section, sponsored a workshop on Career Opportunities at the Tulane University Law School on March 2, 1979. The workshop was chaired by Donald R. Wilson, Sixth Board District member, from Marksville, Louisiana. The object of the workshop was to present to students alternative opportunities in the legal profession. The following attorneys contributed their time to review their respective fields of expertise.

Mr. Edward Gay, of New Orleans, discussed the various opportunities available to attorneys in the banking profession in Louisiana and particularly noted such opportunities may be vastly increased if multi-parish banking is approved.

Mr. Charles Broome, of Exxon Company USA, in New Orleans, explored the advantages and disadvantages of attorneys on the legal staffs and in other departments of large multi-national corporations such as Exxon.

Mr. Charles Steen, of New Orleans, contrasted Mr. Broome's discussion by reviewing the practice of attorneys who are members of the staffs of smaller corporations which are not publicly held.

Opportunities available to persons with legal training in the United States Government was reviewed by Mr. Irving Warshauer, Special Attorney, United States Department of Justice in New Orleans.

Mr. Larry C. Hebert, of Lafayette, pointed out the many business possibilities available to attorneys in the oil and gas business, outside of the actual practice of law. Mr. Hebert is an independent petroleum landman and oil operator in Lafayette, Louisiana.

The practice of law in public interest law firms and, additionally, the practice of law on the legal staff of a large metropolitan city such as New Orleans, was discussed by Mr. David Marcello, Chief Deputy City Attorney, City of New Orleans, New Orleans, Louisiana.

Ms. Catherine LaFleur reviewed

in depth the opportunities available in the public interest area of the law. Ms. LaFleur is with the New Orleans Legal Assistance Corporation.

Mr. Donald R. Wilson discussed the opportunities involved as a sole practitioner. Additionally, Mr. Wilson organized the entire program, arranged for speakers on the various topics and introduced the several speakers.

Also present for the workshop were Mr. Lawrence P. Simon, Jr., of Lafayette, Chairman of the Louisiana Young Lawyers Section, and Dean Paul Verkuil of the Tulane University Law School who introduced the program.

The Young Lawyers Section extends its sincere appreciation to each of the speakers for their help in making the program a success and also to the Tulane University Law School for the opportunity to present the program.

The Young Lawyers Section Annual Luncheon is scheduled for May 7, 1979, at Caesar's Palace in Las Vegas. The featured speaker will be Mr. R. William Ide, III, Atlanta, Georgia, who is Past Chairman of the Young Lawyers Section of the American Bar Association.

At the luncheon, the presentation will be made to the Outstanding Young Lawyer of 1978-1979 and immediately after the luncheon, elections will be held for the Council seats from the Second, Fourth, Sixth and Eighth Board Districts. Following the elections, a short meeting of the Council is scheduled with Stewart E. Niles, Chairman, presiding. The Council hopes at that meeting to begin formulation of its objectives for the coming year.

The Council will have a quarterly meeting on the weekend of May 26th and 27th in Monroe, Louisiana. The business meeting and attendant social activities will be hosted by Mr. Charles S. Smith, Seventh Board District Council member, from Monroe, and Mr. Ben R. Hanchey, also from Monroe, Chairman-Elect of the Young Lawyers' Section.

NEW DEVELOPMENTS In The LAW



Consent To Settle Clause Is Invalid

In *Niemann v. Travelers Insurance Company*, ___ So.2d ___ (La. 1979), the Court was presented with the issue of the validity of the "consent to settle clause" in the uninsured motorist provision of an automobile insurance policy. The plaintiff, a guest passenger in a vehicle with UM coverage with Travelers Insurance Company, was injured in a two-car accident caused by the driver of the other vehicle. Plaintiff settled his claim against State Farm, the insurer of the other vehicle, and the other driver. Plaintiff then filed suit against Travelers based on the UM provisions afforded by the policy of his host driver. The district court granted defendant's summary judgment in favor of Travelers on the grounds that plaintiff's settlement with State Farm and the other driver, in violation of the policy's "consent to settle clause," substantially impaired the subrogation rights of Travelers. The Fourth Circuit Court of Appeal affirmed.

The Supreme Court, speaking through Justice Calogero, held that the "consent to settle clause" was invalid. The Court noted that, as a practical matter, no liability insurer will settle without securing the release of its insured. In a situation where an underinsured motorist is involved, the UM coverage provides

"excess" coverage over and above the limits of the tortfeasor's insurance. Thus, the UM insurer should anticipate that he cannot receive reimbursement from the underinsured tortfeasor. In settling the claim with the underinsured tortfeasor and his insurer, plaintiff recovers "proceeds which the UM statute and the UM insurer contemplate will be available to the insured in addition to UM proceeds." Thus, the consent to settle clause served to block the statutorily mandated UM coverage.

Class Action Is Appropriate For GM Motor Switch Cases

This suit arose from the action of General Motors Corporation in installing engines manufactured by its Chevrolet Division into one thousand four hundred sixty-seven Oldsmobile automobiles which were thereafter sold to Louisiana consumers *State of Louisiana v. General Motors Corporation*, ___ So.2d ___ (La. 1979). The Attorney General, the Director of the Governor's Consumer Protection Division and an individual consumer and purchaser of an Oldsmobile brought this action under the Unfair Trade Practices and Consumer Protection Law, La. R.S. 51:1401-1418, alleging that GM failed to disclose the substitution of an essential component, the vehicles' engines. The dis-

trict court certified the case as a class action. The Fourth Circuit affirmed the certification of the class action.

On original hearing, the Supreme Court reversed the lower courts and held that a class action was improper because of the lack of communality between the rights of the representatives and the absent class members. On rehearing, the Court held that the class action was properly maintained by the lower courts.

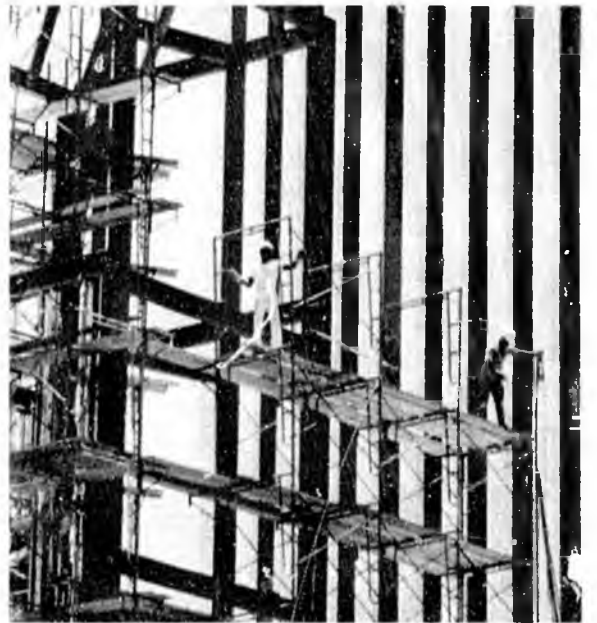
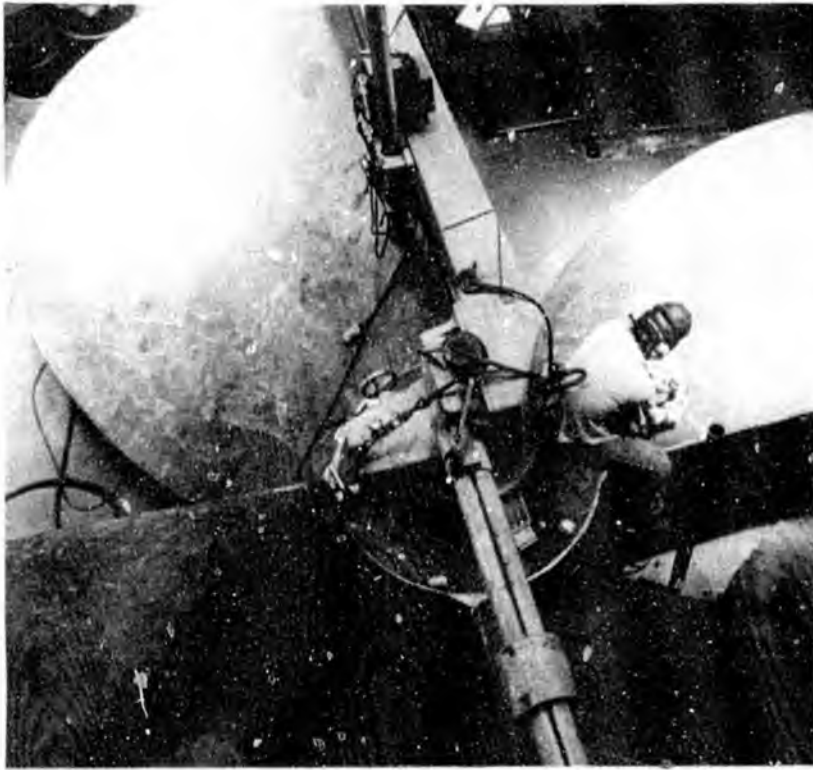
After holding that the Attorney General was an adequate representative, the Court turned to the criteria imposed by Louisiana Code of Civil Procedure articles 591 and 592. With respect to the first criterion, that the class be so numerous that joinder is impossible, the Court noted that the number of potential litigants was so large that the courts would be greatly burdened whether they filed separate suits or joined or intervened in other actions. The second criterion cited by the Court — adequate representation of the class — was also met. Only twelve suits had been filed; thus, over fourteen hundred consumers apparently did not believe their damages were sufficiently great to file separate actions. The third criterion is that questions of law or fact that are common predominate over any questions which affect only individual members. The Court held that the common question of law, the existence of a duty on the part of

(Continued on page 51)

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NEW DEVELOPMENTS

(Continued from page 49)

GM to reveal the sources of the car engines, predominated over any individual questions of law or fact. The Court further held that the class action was a superior procedural vehicle "for the fair and efficient adjudication of the controversy."

Just Compensation Must Be A Price In Money

In *Marathon Pipe Line Co. v. Pitcher*, ___ So.2d ___ (La. 1979), the Supreme Court held that, in an expropriation case, an obligation to pay future damages in case of certain events cannot take the place of the payment of monetary just compensation.

Marathon filed an expropriation suit condemning a pipeline servitude over defendant's property. The highest and best use of the tract of land was found to be for development of a residential subdivision. The defendant sought additional compensation because the pipeline, as proposed, would interfere with the construction of a street for the subdivision. Instead of awarding additional monetary compensation, the district court imposed upon Marathon the obligation to encase or otherwise protect the pipeline to permit construction of the street. The district court conditioned this obligation on the construction of the street at some future time. The district court reduced the market value of defendant's property by the amount required for the encasement instead of awarding that amount as part of the compensation. The Court of Appeal affirmed.

The Supreme Court held that La. R.S. 19:1-19:14 requires that the compensation for taking property be a price in money. The Court noted that property could not be taken for public purposes until *after* just compensation is paid. The imposition of a conditional obligation on the con-

demner did not meet these requirements.

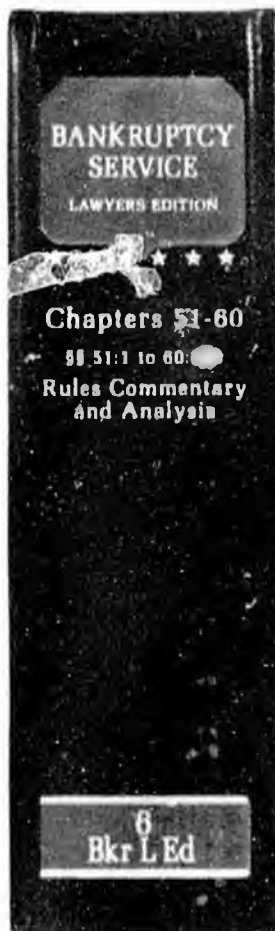
Cross-Employee Exclusion Inapplicable Where Co-Employee Is Named Insured

In *Credeur v. Luke*, ___ So.2d ___ (La. 1979), the Supreme Court was faced with the issue of whether the cross-employee exclusion of an automobile liability policy precludes coverage where the named individual insured injures a fellow employee in the course of employment.

Luke was a named insured, along with two corporations that he owned, under a comprehensive automobile liability policy. Plaintiff, while working for one of the insured companies, was injured in the course and scope of his employment. The district court held that the comprehensive automobile liability policy did not provide coverage because

of the cross-employee exclusion. The Court of Appeal affirmed.

In reversing, the Supreme Court noted that it may make sense, where the corporate employer is the sole named insured, to exclude as insureds all employees of the company because "injured co-employees are designedly restricted in the policy's contemplation to recovery of workmen's compensation benefits when injured in the course and scope of employment through the negligence of another employee . . ." An individual co-employee, who happens to also be a named insured, in the automobile liability policy, though, is not exposed to a workmen's compensation obligation. Thus, the cross-employee exclusion arguably is not designed to apply in such a case. The Court further held that, because the policy was ambiguous, it would be construed liberally in favor of the insured and in favor of coverage.



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There is no question that the field of consumer litigation is emerging as a predominant area of the law. With the advent of such statutes as Consumer Credit Protection Act, and their corresponding regulations (Regulation Z, Regulation B, etc.) more and more attorneys are recognizing the importance of keeping up to date on new areas in the field.

The following is a listing of federal statutes, together with annotations reflecting major refinements.

II. STATE CONSUMER LAW

UNFAIR TRADE PRACTICES AND CONSUMER PROTECTION ACT

R.S. 51:1400

- a) This Act declares unlawful any unfair method of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce.
- b) Jurisdiction to enforce the Act is conferred on the Attorney General and all District Attorneys and a private right of action is provided under §1409.
- c) Under §1406(4) the Act incorporates more than 50 years of jurisprudence established by interpretations and rules of the Federal Trade Commission. See 10 La.B.J. 307 (1973) by Lovett and Breeden.
- d) 1) *Guste v. Demars*, 330 So.2d 123 (La. App. 1976)
2) *Moore v. Goodyear Tire and Rubber Co.*, 364 So.2d 630 (La. App. 1978)

LOUISIANA CONSUMER CREDIT ACT

L.S.A. — R.S. 9:3510, et seq.

- a) This Act sets the maximum rates for consumer loans, sales and credit cards and it restricts certain practices, e.g., referral sales, door to door selling, balloon payments, etc.
- b) Penalties are three times the amount of the finance charge plus attorney's fees.

LOUISIANA MOTOR VEHICLE SALES FINANCE ACT

L.S.A. — R.S. 6:950

- a) This law governs all aspects of an automobile purchase including maximum interest rates.
- b) Where a witness was not present when the consumer signed the chattel mortgage, the seller cannot proceed against the consumer by executory process. *General Investment, Inc. v. Thomas*, 311 So. 2d 95 (4th Cir. 1975); *General Investment, Inc. v. Gaudet*, 303 So.2d 624 (4th Cir. 1974).

LESSEE DEPOSIT ACT

L.S.A. — R.S. 9:3251

- a) Where a Lessee has made written demand for the return of a deposit, the landlord must respond within 30 days. If he fails he is liable for an additional \$200.00 in damages plus attorney's fees. *Cantelli v. Tomi*, 297 So.2d 766 (4th Cir. 1974).
- b) If the landlord's response is just a sham, this is the same as no response at all. *Caly v. Whitson*, 306 So.2d 62 (4th Cir. 1974).

CLASS ACTIONS

Code of Civil Procedure Arts. 591-597

- a) *Stevens v. Board of Trustees of Police Pension Fund*, 309 So.2d 144 (La. 1975) sets forth the criteria or guidelines for affording class actions. Exception to the use of the class action is a peremptory

objection which may be pleaded at any stage of the proceedings prior to the submission to the trial court.

- b) All identifiable prospective members of the class must be given reasonable notice of the pendency of litigation and an opportunity to opt out. *Williams v. State of Louisiana*, 350 So.2d 131 (La. 1977).
- c) Define the class narrowly. *Louette v. Securix Industrial, Insurance Co.*, 364 So.2d 564 (La. 1978)
- d) Common violations:
 - 1) Where the creditor maintains a contractual right to retain more unearned interest in the event of accelerated payment pursuant to default than in the event of voluntary prepayment, then the existence of that contractual right must be disclosed. *McDaniel vs. Fulton National Bank of Atlanta*, 571 F.2d 948 rehearing denied 576 F.2d 1156 (5th Cir. 1978) (en banc).
 - 2) A creditor's right to apply returned or unearned insurance premiums toward payment of the indebtedness confers on the creditor an interest in property which helps to secure payment or performance of contractual obligations and, therefore, must be disclosed. *Edmondson vs. Allen-Russell Ford, Inc.*, 577 F.2d 291 (5th Cir. 1978).
 - 3) All of the elements of the finance charge and amount financed must be disclosed in a meaningful sequence such that the consumer knows exactly how much money he is to receive. *Pollock vs. General Finance Corporation*, 535 F.2d 295 (5th Cir. 1976); *Allen vs. Beneficial Finance Company*, 531 F.2d 797 (7th Cir. 1976); *Cenance vs. Bohn Ford*, 430 F.Supp. 1064 (E.D. La. 1977).
 - 4) Except in real estate transactions, a Notary fee is a finance charge and should be disclosed as such. *Buford vs. American Finance Company*, 333 F.Supp. 1243 (N.D. Ga. 1971). Contra: *George vs. General Finance*, 414 F.Supp. 33 (E.D. La. 1976).
 - 5) Identity of the creditor and arranger of credit must appear on the disclosure statement. *Laudetta vs. Valley Buick, Inc.*, 421 F.Supp. 1036 (W. D. Penn. 1976).
 - 6) Creditors cannot escape liability because their violations were merely technical ones; thus a creditor's failure to use the specific words prescribed by the regulations is a violation of the Act. *Pennino vs. Kirschman and Company, Inc.*, 526 F.2d 367 (5th Cir. 1976).
 - 7) Once a court finds a violation, no matter how technical it has no discretion with respect to the imposition of liability. *Grant vs. Imperial Motors*, 539 F.2d 506, 510 (5th Cir. 1976).

FAIR CREDIT BILLING ACT AND REGULATION Z AS AMENDED

15 U.S.C.A. 1666, 12 C.F.R. 226.7, 226.13 and 226.14 effective October 28, 1975

- a) Provides consumers with the means to contest a "billing error" on a credit account.
- b) Creditor must respond to consumer complaint with either appropriate correction or written explanation.
- c) Creditor cannot take any action to collect disputed amount until he has complied with his obligation.
- d) Cardholders may withhold payments if they have defective merchandise and assert claims and defenses.
- e) Card issuers may not offset customers debts by using other funds held in deposit accounts.
- f) Merchants that use a card or honor cards may offer cash discounts.

CONSUMER LEASING ACT

15 U.S.C.A. 1667; 12 C.F.R. 226.15 effective March 23, 1977

- a) Similar requirements as TIL for consumer leases (except real estate) exceeding four months duration.
- b) Section 226.15 of Reg. "Z" sets out the specific disclosures.

FAIR CREDIT REPORTING ACT

15 U.S.C.A. 1681 et seq.; 16 C.F.R. 600.6, effective April 24, 1971

- a) Three different disclosure requirements are included in the statute:
 - 1) A person must disclose in writing to the consumer that an *investigative consumer report* is being made on him and that he has a right to know the nature and scope of the investigation.
 - 2) Whenever a person takes *adverse action* against a consumer based on a report by a consumer reporting agency, the user of the consumer report must advise the consumer of the adverse action and must disclose the name and address of the consumer reporting agency.
 - 3) Upon request and proper identification of the consumer, the consumer reporting agency shall disclose the nature and substance of this information, the sources of its information, and the recipients of the report.
 - 4) These disclosures must be made whether or not the consumer requests them. *Carroll vs. Exxon Company, U.S.A.* 434 F.Supp. 557 (E.D. La. 1977).
- b) The penalty for negligent non-compliance with the Act is actual damages. In addition to actual damages the penalty for willful failure to comply includes punitive damages. See *Millstone vs. O'Hanlon Reports, Inc.*, 528 F.2d 829 (8th Cir. 1976); *Ackerley vs. Credit Bureau of Sheridan, Inc.* 385 F.Supp. 658 (D. Wyo. 1974).

EQUAL CREDIT OPPORTUNITY ACT AND REGULATION B OF THE FEDERAL RESERVE BOARD

15 U.S.C.A. 1691; 12 C.F.R. 202, effective October 28, 1975

- a) This Act prohibits discrimination against any applicant on the basis of race, color, religion, national origin, sex or marital status, or age with respect to any aspect of a credit transaction.
- b) Within thirty (30) days after receipt of a completed application for credit, a creditor shall notify the applicant of its action on the application.
- c) Each applicant against whom adverse action is taken is entitled to either: 1) a written statement of reasons for the adverse action; or, 2) a written notification of the right to request a statement of reasons.
- d) See 12 C.F.R. 202.5 for those questions that cannot be asked on a credit application, e.g., questions about birth control practices or child bearing intentions.
- e) If adverse action is taken a creditor must disclose all of its reasons for the adverse action and not just the primary reason. Willful violations entitle the applicant to actual and punitive damages. *Carroll v. Exxon Company, U.S.A.*, 434 F.Supp. 557 (E.D. La. 1977).
- f) See also the Louisiana Equal Credit Opportunity Law, Act 705 of 1975, R.S. 9:3581-3585.

FAIR DEBT COLLECTION PRACTICES ACT

15 U.S.C.A. 1692 effective March 20, 1978

- a) Applies only to those who collect debts for others; it does not apply to creditors collecting for themselves.
- b) The law generally prohibits unfair and deceptive practices in the collection of debts but also specifically prohibits certain communications with the consumer and third parties such as employers.

INTERSTATE LAND SALES FULL DISCLOSURE ACT

15 U.S.C.A. 1701 et seq.; 24 C.F.R. 1700

- a) This Act requires any developer selling or leasing any lot in a subdivision to provide a disclosure statement to the purchaser in advance of the signing of any contract or agreement.

- b) The Act does not apply unless at least fifty lots in a subdivision are for sale nor does it apply if the lots are more than five acres.
- c) Federal jurisdiction is applicable to transactions wholly within one state if the mails were used to effect the sale in question. *Gaudet vs. Woodlake Development Company*, 399 F.Supp. 1005 (E.D. La. 1975).
- d) Depending on the nature of the violation, penalties under this act may be the return of the purchase price or damages. *Gaudet vs. Woodlake Development Company*, 413 F.Supp. 486 (E.D. La. 1976).
- e) The Act provides for a cause of action on several grounds each with a different statute of limitations. For a summary of cases on this issue see *Fogel vs. Sellamerica, Ltd.*, 445 F.Supp. 1269 (S.D. N.Y. 1978).
- f) A subsequently provided property report will not cure the violation of having failed to provide one in advance of a sale and therefore the purchaser can rescind. The purpose is to insure that a buyer, prior to sale, is informed of facts which will enable him to make an informed decision about purchasing the property. *Law vs. Royal Palm Beach Colony, Inc.*, 578 F.2d 98 (5th Cir. 1978).

THE MOTOR VEHICLE INFORMATION AND COST SAVINGS ACT (ODOMETER)

15 U.S.C.A. 1981; 48 C.F.R. 580.1, effective January 18, 1973

- a) Transferor of a motor vehicle must disclose odometer reading, make specific reference to the Act, and state that incorrect information may result in a civil liability.
- b) Penalty for violation is three times the actual damages or \$1,500.00 minimum plus attorney's fees and costs.
- c) In order to recover the plaintiff must prove that the defendant violated the Act with an *intent to defraud*. *Birdwell vs. Hartsville Motors*, 404 F.Supp. 625 (M.D. Tenn. 1975).
- d) Where there has been improper disclosure and a roll-back of the odometer, the rollback itself may supply the intent. *Delay vs. Hearn Ford*, 373 F.Supp. 791 (D. S.C. 1974); *Ster vs. Park Pontiac, Inc.*, 391 F.Supp. 397 (S.D. W.Va. 1975); *Shore vs. J. C. Phillips Motor Company*, 567 F.2d 1364 (5th Cir. 1978).
- e) It is not necessary to show actual knowledge on the part of the transferor. It is sufficient to show that the automobile dealer or its agent should have known of a defective odometer and either failed to disclose it or to adequately alert the purchaser. *Jones vs. Fenton Ford*, 427 F.Supp. 1328 (D. Conn. 1977).
- f) If a transferor reasonably should have known (i.e., constructive knowledge) that a vehicle's odometer reading was incorrect, although he did not know to a certainty the transferee would be defrauded, a court may infer that he understood the risk of such an occurrence. *Nieto vs. Pence*, 578 F.2d 640 (5th Cir. 1978).

MAGNUSON-MOSS WARRANTY ACT

15 U.S.C.A. 2301; 16 C.F.R. 701

- a) Applies to goods manufactured after July 4, 1975.
- b) Sellers and manufacturers are not required to make any express warranties at all; but, if they do, the warranty must comply with the disclosure requirements of the Act.

OTHER FEDERAL CONSUMER STATUTES

- a) Real Estate Settlement Procedure Act
12 U.S.C.A. 2601 et seq.; 24 C.F.R. 82.1
- b) Unauthorized Use of Credit Cards
15 U.S.C.A. 1643
- c) Garnishment
15 U.S.C.A. 1671 et seq.
—1674 (a): No employer may discharge any employee by reason of the fact that his earnings have been subjected to garnishment for any one indebtedness.
- d) Consumer Product Safety Commission
15 U.S.C.A. 2051 et seq.
- e) FTC Act
15 U.S.C.A. 41 et seq.
—16 C.F.R. 433.1: Preservation of Consumer Claims and Defenses
- f) Financial Institutions Regulatory and Interest Rate Control Act P.L. 95-630 (signed by President 11/10/78)
—Title XI Right to Financial Privacy
—Title XX Electronic Funds Transfers
- g) Community Investment Act
12 U.S.C.A. 2901

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Federal Tax Developments

Pending Tax Legislation

No major tax legislation has been passed in the early months of the 96th Congress. Taking advantage of the slow pace, various officials and tax committee staff members have presented their views of needed legislation and their predictions of what future legislation will bring. Senator Russell Long has announced that he would like to see the top capital gains tax rate reduced to 21% instead of the current maximum of 28%. Senator Long also wants the top rate for individual income taxes, even from passive sources such as dividends and interest, reduced to 50%. Senator Long has continued to urge elimination of double taxation of corporate income. According to Senator Long the high tax rates and the double tax on corporate income cause a net loss of Treasury revenue by discouraging capital investment. Senator Long also believes tax rates for low-income taxpayers should be cut by a large margin. To make up for the lost revenue from the many tax cuts, he would enact a value-added tax (VAT).

Congressman Al Ullman, chairman of the House Ways and Means Committee, endorses Senator Long's position on VAT, but prefers to see VAT used to offset some of the Social Security payroll tax. He does believe, however, that VAT may permit reduction of some corporate income taxes as well. Congressman Ullman has long advocated the need to eliminate double taxation of corporate income as one way to encourage saving and capital formation.



by George M. Foote, Jr.

Windfall Profits

The Carter Administration has proposed a windfall profits tax to recover some of the profits oil producers will realize from decontrol of domestic crude oil prices. Senator Long wants the President to decontrol oil at a pace slow enough to avoid the need for a windfall profits tax. He has informed the Administration that he prefers to see national energy policy encourage more domestic production. production is the "plowback" credit against the windfall profits tax. The plowback would permit companies to reduce their windfall profit taxes by the amount they spent on exploration or development of new domestic production.

According to Congressman Ullman a windfall profits tax is a "small price to pay" for decontrol. Congressman Ullman wants the windfall profits tax revenue to go into an energy trust fund to be spent on energy research and development. The Administration proposes to dedicate windfall profits tax revenue

to mass transit programs and grants to low-income persons," as well as some research.

Bob Shapiro, Chief of Staff of the Congressional Joint Committee on Taxation, has predicted that the House will approve a windfall profits tax before July 4. The Ways and Means Committee may follow a procedure whereby the windfall profits tax and simple creation of an energy trust fund will be considered first. Under the proposed procedure, the proposals for spending the revenue from the windfall profits tax will be considered later in the year. Shapiro has predicted that the tax will be approved in Congress but is uncertain whether the plowback credit will be part of the final bill.

Fringe Benefits

The question of proper tax treatment of fringe benefits provided to employees by their employers will receive close attention in both houses of Congress later this year. According to Donald Lubick, Assistant Secretary of the Treasury for Tax Policy, the Treasury Department probably will complete work on a proposal this summer. Lubick would prefer the Administration's position to take the form of a proposed regulation rather than legislation. The fringe benefit issue, however, is so important that the matter will receive Congressional attention anyway. Earlier this year a special task force of the Ways and Means Committee submitted a report on the proper treatment of fringe benefits and presented a discussion draft bill.

Federal Tax Developments

Tuition Tax Credit

Senators Abraham Ribicoff and William Roth have reintroduced legislation to provide tax credits for college tuition. The Senators plan to introduce separate legislation to provide for elementary and secondary school costs. Last year both Houses of Congress approved a college tuition tax credit, but the Senate would not accept the House bill giving credits for elementary and secondary tuition costs. As a result, no credits were enacted, and Congress will consider the issue again this year.

Carryover Basis Repeal

Senator Long has predicted that the Senate Finance Committee, with his support, will vote to repeal the carryover basis provisions enacted

as part of the Tax Reform Act of 1976. The effective date of the provisions has been delayed until January 1, 1980, and there have been many demands to further postpone the effective date or repeal carryover basis altogether. Despite the Treasury Department's strong opposition to the repeal effort and its claim that the law can be "cleaned up," most Congressional staff members believe Congress will repeal the provisions.

IRS Issues Regulations on Exclusion of \$100,000 in Gain From Sale of Principal Residence

On April 26, 1979, the Department of the Treasury issued final regulations relating to the one-time exclusion of gain from the sale of a principal residence by an individual who has attained age 55. The exclusion, enacted with the Revenue Act of 1978, substantially liberalizes the tax treatment of certain sales of residences.

Under prior law, a taxpayer who had attained age 65 was permitted to exclude from his gross income the

entire gain realized on the sale of his or her principal residence if the adjusted sales price was \$35,000 or less. If the adjusted sales price exceeded \$35,000 the amount excludable was reduced according to a formula. Under the new law, the age requirement has been lowered to 55 years, and the ceiling on the amount of gain excludable from gross income has been increased to \$100,000 (\$50,000 in the case of a separate return by a married individual). The formula for reducing the amount excludable has been dropped. The new law also reduces the amount of time for which a taxpayer must have owned and used the property as his or her principal place of residence from five of the eight preceding years to three of the five preceding years.

Although the \$100,000 exclusion is available only once to each taxpayer, the rule of prior law permitting "rollover" of gain from the sale of one residence into a higher-priced residence remains unchanged. The rollover provision may be used in conjunction with the \$100,000 exclusion.

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Heard Around the Districts

LAW FIRM ANNOUNCEMENTS

Max M. Ainsworth, Attorney at Law, takes pleasure in announcing that his new office is located at Suite 4600 One Shell Square, New Orleans, Louisiana.

Margaret W. Berck announces that she is currently serving as Counsel to the House Judiciary Committee of the Alaska State Legislature.

John C. Blackman, Forrest E. Arnold III and James R. Pettway are pleased to announce the formation of the law firm of **Blackman, Arnold & Pettway** at Number Three, Hudson Place, 1107 Hudson Lane, Monroe, Louisiana.

William R. Boles announces the reassociation of **Charles H. Ryan** in the practice of law and the change of the firm name to **Boles & Mounger** with offices located at 1805 Tower Drive, Monroe, Louisiana and 2714 Canal Street, Suite 308, New Orleans, Louisiana.

Patrick D. Breeden and Robert Hugh Matthews are pleased to announce their association as **Matthews & Breeden**, limited to the practice of Consumer and Anti-trust Law, at the Third Floor, 830 Union Street, New Orleans, Louisiana.

Chaffe, McCall, Phillips, Toler and Sarpy and Roos and Roos announce that **Mr. Sidney Roos** has retired and that **Mr. Leo S. Roos** will continue the practice of law as a partner in the firm of **Chaffe, McCall, Phillips, Toler and Sarpy**, 1500 First National Bank of Commerce Building, New Orleans, Louisiana.

Silas B. Cooper, Jr. and Charles R. Sonnier are pleased to announce that **John E. Ortego, Paul Hebert**

and **Calvin E. Woodruff, Jr.** are now members of the firm and that the firm name has been changed to **Cooper, Sonnier, Ortego, Hebert & Woodruff**, a Professional Law Corporation. Offices for the firm are located at 121 East St. Victor, Abbeville, Louisiana and at 109 East Fourth Street, Kaplan, Louisiana.

John E. Demoruelle and Douglas L. Hebert, Jr. are pleased to announce their association in the general practice of law under the firm name of **Hebert and Demoruelle**, a professional law corporation with offices on Ninth Street in Kinder, Louisiana.

Thomas J. Dubos is pleased to announce that he has joined **Mobile Corporation** in New York as Tax Legislative Counsel. He was formerly with the Tax Department of **Exxon Corporation** in New York.

Michael A. Duplantier announces the removal of his office for the practice of law at 631 St. Charles Avenue, New Orleans, Louisiana.

The law firm of **Freyer and Freyer** takes pleasure in announcing the association of **Gary L. Fox** in the practice of law and also announce that the firm name has been changed to **Freyer and Fox** with offices located at 409 Slattery Building, Shreveport, Louisiana.

Gerard T. Gelpi, Norman C. Sullivan, Jr., James K. Carroll and Cliffe F. Laborde wish to announce the formation of a partnership to engage in the practice of law under the firm name of **Gelpi, Sullivan, Carroll & Laborde**, Suite 934, One Shell Square, New Orleans, Louisiana.

George & George, Ltd., a Professional Law Corporation, announce that they have moved their offices to 8110 Summa Drive, Baton Rouge, Louisiana.

The law firm of **Gill and Bankston**

is pleased to announce that **Jerry G. Jones and H. Wayne Valentine** have become associates of the firm at 5615 Corporate Boulevard, Fifth Floor, Baton Rouge, Louisiana.

Grant, Scott and Dean, Attorneys at Law, are pleased to announce the association of **Donald L. Kneipp** and the opening of their new offices at Number Two, Hudson Place, 1105 Hudson Lane, Monroe, Louisiana.

Ronald K. Gurley and Tony B. Jobe are pleased to announce their merger and the formation of a Professional Law Corporation under the name of **Jobe & Gurley** and their new offices at Suite 300, 830 Union Street, New Orleans, Louisiana.

Michael E. Katz, Attorney at Law, proudly announces the opening of his new law office located at 1440 Canal Street, Suite 1919, New Orleans, Louisiana.

Frank W. Lagarde, Jr., formerly of **Connolly and Lagarde**, announces the opening of his offices for the practice of law at Suite 200, 3637 Canal Street, New Orleans, Louisiana.

James B. Lake, Jr., Attorney at Law, announces the new location of his office at 824 Orleans Street, New Orleans, Louisiana.

Jonathan M. Lake takes pleasure in announcing the opening of his office for the practice of law at 755 Carondelet Street, New Orleans, Louisiana.

Lambert, Nowalsky & Lambert announce the removal of their law offices to 631 St. Charles Avenue, New Orleans, Louisiana.

Margaret (Peggy) LeBlanc announces the relocation of her office for the general practice of law to Suite 318, 610 Poydras Street, New Orleans, Louisiana.

James H. Looney is pleased to announce the opening of a new office

for the practice of law at 7100 Read Boulevard, Suite 202, New Orleans, Louisiana.

McGlinchey, Stafford, Mintz & Hoffman (A Professional Law Corporation) is pleased to announce the relocation of their firm to its building, Lafayette Place, Camp and Capdevielle Streets, New Orleans, Louisiana and the admission to the firm of **William F. Bologna, J. Michael Johnson, Lawrence J. Centola, Jr., Frederick R. Campbell, James M. Tompkins, B. Franklin Martin III** and the association of **Michael J. Maginnis, Donald J. Anzelmo, Frank Sloan, Michael O. Waguespack, Suzanne P. Keevers** and **Scott E. Silbert**.

Gunther R. Michaelis announces his withdrawal as a partner from the firm of **Cox, Osborne & Michaelis** and the continuation of his practice at 225 Baronne Street, Suite 1401, New Orleans, Louisiana.

Charles R. Moore and Edward J. Walters, Jr. of the law firm of **Moore and Walters** announce the relocation of their office to 850 North Boulevard, Baton Rouge, Louisiana.

Robert L. Picou, Jr. and William F. Dodd are pleased to announce the formation of a Partnership for the general practice of law under the firm name of **Dodd & Picou** at 724 Belanger Street, P.O. Box 950, Houma, Louisiana.

Pravel, Gambrell, Hewitt, Kirk, Kimball & Dodge takes pleasure in announcing that **Harold J. Delhommer**, a graduate of Louisiana State University Law Center, will be associated with them in the specialized practice of patent, trademark and copyright law at 600 Jefferson, Suite 2010, Houston, Texas 77002.

C. Joseph Roberts III, Attorney at Law, announces the opening of his

new office at 314 Mill Street, West Monroe, Louisiana.

Michael J. Samanie takes pleasure in announcing the relocation of his law offices to 525 East Park Avenue, Houma, Louisiana.

Louis L. Sherman, Jr., Attorney at Law, announces the opening of his new office for the general practice of law at 611 First Street, Suite B, Kentwood, Louisiana.

H. F. Sockrider, Jr. and James E. Bolin, Jr. announce their withdrawal from the firm of **Booth, Lockard, Jack, Pleasant & LeSage**, and the formation of **Sockrider & Bolin** (A Professional Law Corporation) at Suite 1205 Slattery Building, 509 Marshall Street, Shreveport, Louisiana.

Oliver "Jackson" Schrupf and Dennis R. Sumpter are pleased to announce the association of **Don J. Degabrielle, Jr.** with **Sumpter & Schrupf** (A Professional Law Cor-

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poration) at 605 South Huntington Street, Sulphur, Louisiana.

Harold E. Theard, Jr., formerly associate general counsel with **Chart House, Inc.** takes pleasure in announcing the establishment of his private practice of law at Suite 202, Fidelity Building, 3829 Veterans Memorial Blvd., Metairie, Louisiana 70002.

Terry E. Theriot announces the opening of his office for the practice of law at 1000 Lafayette Street, Lafayette, Louisiana.

Jesse L. Wimberly III and **William M. Magee** announce the formation of **Wimberly & Magee, Ltd.** (A Professional Law Corporation) for the general practice of law at 2107 North Causeway Boulevard, Suite A, Mandeville, Louisiana 70048.

The members of the law firm of **Woodley & Fenet** are pleased to announce that **Edgar F. Barnett, J. L. Cox, Jr.** and **James E. Williams** will join them in the formation of a new partnership for the general practice of law and admiralty law under the name of **Woodley, Barnett, Cox, Williams & Fenet**. The firm is located on the Sixth Floor, Lakeside National Bank Building, Lake Charles, Louisiana.

The **Kisatchie Legal Services Corporation**, serving the parishes of **DeSoto, Grant, Natchitoches, Red River, Sabine** and **Winn**, is pleased to announce that it has retained **John B. Fontenot, LSU '75** as its Executive Director. **Dowell Fontenot, LSU '76** has been employed as Deputy Director. 1976 officers of the corporation are **D. A. Ronald Martin** of Natchitoches, Chairman; **Johnny Evans** of Mansfield, Vice Chairman; **Daniel T. Merchison** of Natchitoches, Treasurer and **Mrs. Ernestine Scott** of Natchitoches, Secretary. The offices for the corporation are located at 720 Second Street, Natchitoches, Louisiana.

Acadiana Legal Services Corporation is pleased to announce that **Henry C. Remm, Jr., S. Gary McGoffin** and **Michael D. Skinner** have joined the firm as Senior At-

torneys and that **Sister Joan Ridley, George R. Privat, William H. Whitaker, R. Dean Bouillion, Marcia Finkelstein** and **Benjamin O. Burns** have become associates. The Central Office is located at 219 West Third Street in Lafayette, Louisiana; the New Iberia office is located at 452 Charles Street.

MEMBERS IN THE NEWS

Judge Jesse S. Heard (retired) of West Monroe, Louisiana, Second Court of Appeals, was recently honored for his many years of loyal service to his community when he received the coveted A. O. Evans Award, the most prestigious award given to anyone by the West Monroe Chamber of Commerce. The award was presented at the Chamber's annual banquet on March 22, 1979.

Charles A. Saunders, President of **The American College of Probate Counsel**, announces that **Stephen P. Dart** of the law firm of **Kilbourne, Dart & Jackson**, St. Francisville has been elected to membership in The College.

Michael O. Read, New Orleans, has been elected to the national board of directors of the University of Notre Dame Alumni Association. Mr. Read is a member of the law firm of **Montgomery, Barnett, Brown and Read**, New Orleans.

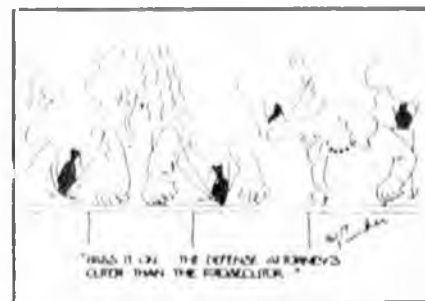
LOCAL BARS ELECT

Baton Rouge Bar Association: **Carey J. Guglielmo**, President; **Robert L. Roland**, Vice President; **Fred H. Belcher, Jr.**, Secretary and **Anthony J. Clesi, Jr.**, Treasurer.

Jefferson Bar Association: **Richard M. Michalczyk**, President; **Don Dupepe**, First Vice President; **Steve Little**, Second Vice President; **Gary Breedlove**, Secretary and **Harold Buchler, Jr.**, Treasurer.

DeSoto Parish Bar Association: **William T. Pegues**, Mansfield, President; **D. Scott Brown**, Mansfield, Vice President; and **Jack R. Gamble, Jr.**, Mansfield, Secretary-Treasurer.

Lafourche Parish Bar Association: **David L. Landry**, Thibodaux, President; **Leslie J. Clement, Jr.**, Thibodaux, Vice President; and **Sidney A. Ordoyne, Jr.**, Thibodaux, Secretary-Treasurer.



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INDEPENDENT CERTIFIED PUBLIC ACCOUNTANTS' REPORT

Board of Governors
Louisiana State Bar Association
New Orleans, Louisiana

We have examined the statements of assets, liabilities and fund balances of the General Fund, the Special Annual Meeting Account, the Sections of: Insurance, Negligence, Compensation and Admiralty Law; Taxation; Trust Estates, Probate and Immovable Property Law; Mineral Law; Labor Relations Law; Corporation and Business Law; Civil Law; and Criminal Law; the Clients' Security Fund and the Louisiana State Bar Foundation of the Louisiana State Bar Association as of March 31, 1979 and 1978, and the statements of changes in fund balances for the years then ended. We also examined the statements of revenues and expenses and changes in financial position of the General Fund for the years then ended. Our examinations were made in accordance with generally accepted auditing standards, and accordingly included such tests of the accounting records and such other auditing procedures as we consider necessary in the circumstances.

In our opinion, the aforementioned financial statements present fairly the financial position of each of the funds identified above as of March 31, 1979 and 1978, and the changes in fund balances for the years then ended, and for the General Fund results of its operations and changes in financial position for the years then ended, in conformity with generally accepted accounting principles applied on a basis consistent with that of the preceding year.

NEUBURGER & COERVER & GOINS
Certified Public Accountants

**STATEMENTS OF ASSETS, LIABILITIES AND FUND BALANCES
LOUISIANA STATE BAR ASSOCIATION**

	<u>MARCH 31,</u>	
	<u>1979</u>	<u>1978</u>
ASSETS		
Cash:		
In banks including certificates of deposit	\$681,925	\$690,419
In savings and loan associations	101,175	96,589
Petty cash	100	100
Interest receivable	5,243	—
Furniture, equipment and leasehold improvements	28,453	31,600
	<u>\$816,896</u>	<u>\$818,708</u>
LIABILITIES AND FUND BALANCES		
Dues collected in advance	\$210,740	\$260,160
Fund balances:		
General Fund:	336,101	330,306
Other funds:		
Special Annual Meeting Account	85,396	66,142
Sections of:		
Insurance, Negligence, Compensation and Admiralty Law	25,966	22,833
Taxation	1,341	1,972
Trust Estates, Probate and Immovable Property Law	11,014	10,407
Mineral Law	6,876	5,957
Labor Relations Law	2,775	3,126
Corporation and Business Law	11,891	13,440
Civil Law	5,316	4,115
Criminal Law	5,546	3,512
Clients' Security Fund	102,274	85,592
Louisiana State Bar Foundation	11,660	11,148
	<u>\$816,896</u>	<u>\$818,708</u>

The accompanying Notes to Financial Statements are an integral part of this statement.

**STATEMENTS OF CHANGES IN FUND BALANCES
LOUISIANA STATE BAR ASSOCIATION**

	<u>YEAR ENDED MARCH 31,</u>	
	<u>1979</u>	<u>1978</u>
GENERAL FUND		
Appropriated for special purposes:		
Lawyer's Desk Book:		
Balance at beginning of year		\$ 7,762
Transferred from unappropriated balance		—
Revenues in excess of or (less than) expenses		7,762
		<u>\$ —</u>
Balance at end of year		
Amendments to Charter:		
Balance at beginning of year		\$ 2,974
Revenues in excess of expenses		—
Transferred to unappropriated surplus		(2,974)
		<u>\$ —</u>
Balance at end of year		
Unappropriated:		
Balance at beginning of year	\$330,306	\$341,018
Revenues in excess of or (less than) expenses	5,795	(13,686)
Transferred from appropriated for Amendments to Charter		2,974
	<u>\$336,101</u>	<u>\$330,306</u>
Balance at end of year		
	<u>\$336,101</u>	<u>\$330,306</u>
TOTAL GENERAL FUND BALANCE AT END OF YEAR		
	<u>\$336,101</u>	<u>\$330,306</u>

	BALANCES 3-31-79	REVENUES IN EXCESS OF (LESS THAN) EXPENSES	BALANCES 3-31-78	REVENUES IN EXCESS OF (LESS THAN) EXPENSES	BALANCES 3-31-77
OTHER FUNDS					
Special Annual Meeting Account	\$ 85,396	\$ 19,254	\$ 66,142	\$ 23,246	\$ 42,896
Sections of:					
Insurance, Negligence, Compensation and Admiralty Law	25,966	3,133	22,833	5,932	16,901
Taxation	1,341	(631)	1,972	(244)	2,216
Trust Estates, Probate and Immovable Property Law	11,014	607	10,407	1,034	9,373
Mineral Law	6,876	921	5,955	1,444	4,511
Labor Relations Law	2,775	(351)	3,126	253	2,873
Corporation and Business Law	11,891	(1,549)	13,440	2,869	10,571
Civil Law	5,316	1,201	4,115	1,048	3,067
Criminal Law	5,546	2,034	3,512	1,955	1,557
Clients' Security Fund	102,274	16,682	85,592	13,949	71,643
Louisiana State Bar Foundation	11,660	512	11,148	585	10,563
	<u>\$270,055</u>	<u>\$ 41,813</u>	<u>\$228,242</u>	<u>\$ 52,071</u>	<u>\$176,171</u>

The accompanying Notes to Financial Statements are an integral part of this statement.

**STATEMENT OF REVENUE AND EXPENSES — GENERAL FUND
LOUISIANA STATE BAR ASSOCIATION**

	YEAR ENDED MARCH 31,	
	1979	1978
REVENUES		
Due for current and prior years	\$361,435	\$337,735
Penalties	870	980
Examination fees	42,550	43,650
Interest income	15,987	11,794
Royalties — Louisiana Formulary Annotated	21	1,710
Advertising sales — Louisiana Bar Journal	16,346	6,305
Registration fees for seminars and sales of seminar tapes	40,292	31,253
	<u>\$477,501</u>	<u>\$433,427</u>
	TOTAL REVENUES	
EXPENSES		
For officials, sections, and committees:		
Travel and per diem allowances	\$ 39,869	\$ 46,927*
Luncheon meetings	11,719	15,394*
Stationery, printing, and other supplies	43,443	57,969
Telephone and telegraph	2,981	4,609
Registration fees and dues	1,385	338*
Legislative liaison, investigative, and reporting	22,710	16,296
Administering bar examination	15,030	16,346
Publication costs of Louisiana Bar Journal	54,122	39,643
Awards, gifts, film, tabulating, etc.	19,357	19,522
	<u>\$210,616</u>	<u>\$217,044*</u>
	TOTAL FOR OFFICIALS, SECTIONS, AND COMMITTEES	
General purposes:		
Compensation of staff	\$156,886	\$136,430
Accounting services	1,200	1,100
Dues, subscriptions and registrations	709	752*
Employees retirement and retirement plan	17,731	12,490
Insurance	8,517	5,644
Equipment rental and maintenance	5,910	5,619
Office supplies, stationery and printing	11,262	13,855
Pay roll taxes	7,329	6,276
Postage	9,768	3,274
Rent and office maintenance	23,662	23,625
Telephone and telegraph	6,080	7,526
Travel and per diem	1,650	3,285*
Automobile allowance and parking	4,527	4,098
Depreciation of furniture and equipment	5,859	4,792
Moving expense	—	1,303
	<u>\$261,090</u>	<u>\$230,069*</u>
	TOTAL FOR GENERAL PURPOSES	
	<u>\$471,706</u>	<u>\$447,113</u>
	TOTAL EXPENSES	
	<u>\$ 5,795</u>	<u>(\$ 13,686)</u>
	REVENUES IN EXCESS OF OR (LESS THAN) EXPENSES	

The accompanying Notes to Financial Statements are an integral part of this statement.

*Certain amounts totaling \$4,037 have been reclassified to conform to 1979 classifications; there was no effect on total expenses.

SUMMARY OF EXPENSES BY ACTIVITY — GENERAL FUND
LOUISIANA STATE BAR ASSOCIATION
Year ended March 31, 1979

ACTIVITY	ACTUAL IS OVER (UNDER) BUDGET	1978/1979 BUDGET	TOTAL INCURRED 1978/79
OFFICERS, BOARD OF GOVERNORS AND HOUSE OF DELEGATES			
President	(\$ 796)	\$ 8,000	\$ 7,204
President-Elect	(1,870)	5,000	3,130
Secretary-Treasurer	37	250	287
Board of Governors	(3,011)	5,000	1,989
House of Delegates	(4,573)	12,000	7,427
STAFF	(5,925)	170,000	164,075
SECTIONS, COMMITTEES, MEETINGS AND PROJECTS			
American Citizenship	(1,567)	3,000	1,433
Annual Meeting	(278)	1,000	722
Bar Admissions	11	16,000	16,011
Bar Journal, Less Advertising Sales	8,730	30,000	38,730
Clients' Security Fund Operating Expenses	(776)	2,000	1,224
Continuing Legal Education, Less Registration Fees	(12,280)	5,000	(7,280)
Law Reform	(2,072)	12,000	9,928
Legislative Liaison Representative	—0—	15,000	15,000
Memorial Exercises	18	500	518
Newsletter	(6,337)	8,000	1,663
Nominations and Elections	(214)	12,000	11,786
Professional Responsibility	38	25,000	25,038
Public Relations	(362)	5,000	4,638
Young Lawyers	(479)	9,000	8,521
Bridging the Gap, Less Registration Fees	(3,923)	1,000	(2,923)
Unauthorized Practice of the Law	(864)	1,000	136
Other Sections and Committees	(5,691)	10,000	4,309
Permanent Membership Cards	(3,513)	8,000	4,487
GENERAL EXPENSES	9,533	87,482	97,015
TOTALS	(\$ 36,164)	\$451,232	\$415,068
RECONCILING ITEMS — amounts deducted from above expenses:			
Advertising sales — Louisiana Bar Journal	16,346		
Registration fees for seminars and sales of seminar tapes:			
Continuing Legal Education	26,322		
Bridging the Gap	11,595		
Fifth Circuit Judicial Conference	2,375		
TOTAL EXPENSES PER STATEMENT OF REVENUES AND EXPENSES	\$471,706		

The accompanying Notes to Financial Statements are an integral part of this statement.

STATEMENT OF CHANGES IN FINANCIAL POSITION
LOUISIANA STATE BAR ASSOCIATION

	YEAR ENDED MARCH 31,	
	1979	1978
Cash and interest receivable at beginning of year	\$787,108	\$747,511
GENERAL FUND		
Sources of funds:		
From operations — excess of revenues over expenses	\$ 5,795	
Add back expenses not requiring outlays of funds in the current period — depreciation	5,859	
Increase in dues collected in advance		\$ 30,375
	\$ 11,654	\$ 30,375
Use of funds:		
Excess of expenses over revenues		(\$ 13,686)
Less expenses not requiring outlays of funds in the current period — depreciation		4,792
		(\$ 8,894)
Binders and printing of Lawyer's Desk Book		(7,762)
Acquisition of furniture, equipment and law books, less basis of disposals	(2,712)	(26,193)
Decrease in dues collected in advance	(49,420)	
INCREASE (DECREASE) IN CASH AND INTEREST RECEIVABLE — GENERAL FUND	(\$ 40,478)	(\$ 12,474)

OTHER FUNDS

Revenues in excess of or (less than) expenses	\$ 41,813	\$ 52,071
INCREASE IN CASH AND INTEREST RECEIVABLE — ALL FUNDS	\$ 1,335	\$ 39,597
Cash and interest receivable at end of period	\$788,443	\$787,108
Increase (decrease) in funds:		
Cash	(\$ 3,908)	\$ 39,597
Interest receivable	5,243	—0—
	\$ 1,335	\$ 39,597

**NOTES TO FINANCIAL STATEMENTS
LOUISIANA STATE BAR ASSOCIATION
March 31, 1979 and 1978**

Note A — Summary of Significant Accounting Policies

Assets and liabilities, and revenues and expenses of the General Fund are recognized on the accrual basis of accounting. Assets and revenues of the other funds are recognized when received; expenses are recognized when paid. Furniture, equipment and leasehold improvements are stated at cost, less accumulated depreciation and amortization computed on a straight-line basis using a ten-year life. Dues of the General Fund are recognized as revenues in the period to which applicable. Contributions to other funds, dues for membership in sections, and earnings on assets of these other funds are treated as additions to fund balances as received. Payments out of other funds are treated as reductions of fund balances at time of payment. The Association has a retirement plan covering all eligible employees. The plan is a money-purchase plan sponsored by the American Bar Association. Current costs are based upon employees' compensation. No prior service costs are involved.

Note B — Furniture, equipment and leasehold improvements

Cost and accumulated depreciation of furniture, equipment and leasehold improvements as of March 31, 1979 and 1978 were as follows:

	1979	1978
Cost	\$ 63,906	\$ 61,193
Accumulated depreciation	35,453	29,593
	\$ 28,453	\$ 31,600

Note C — Lease commitments

The Association occupies premises under a lease expiring March 31, 1982, requiring rental payments totaling \$23,521 per year.

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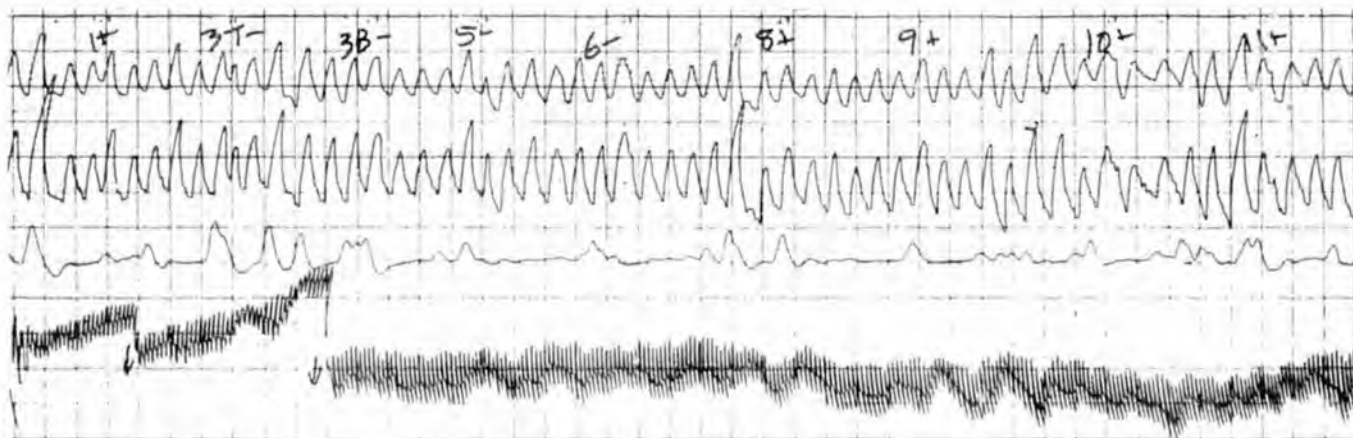
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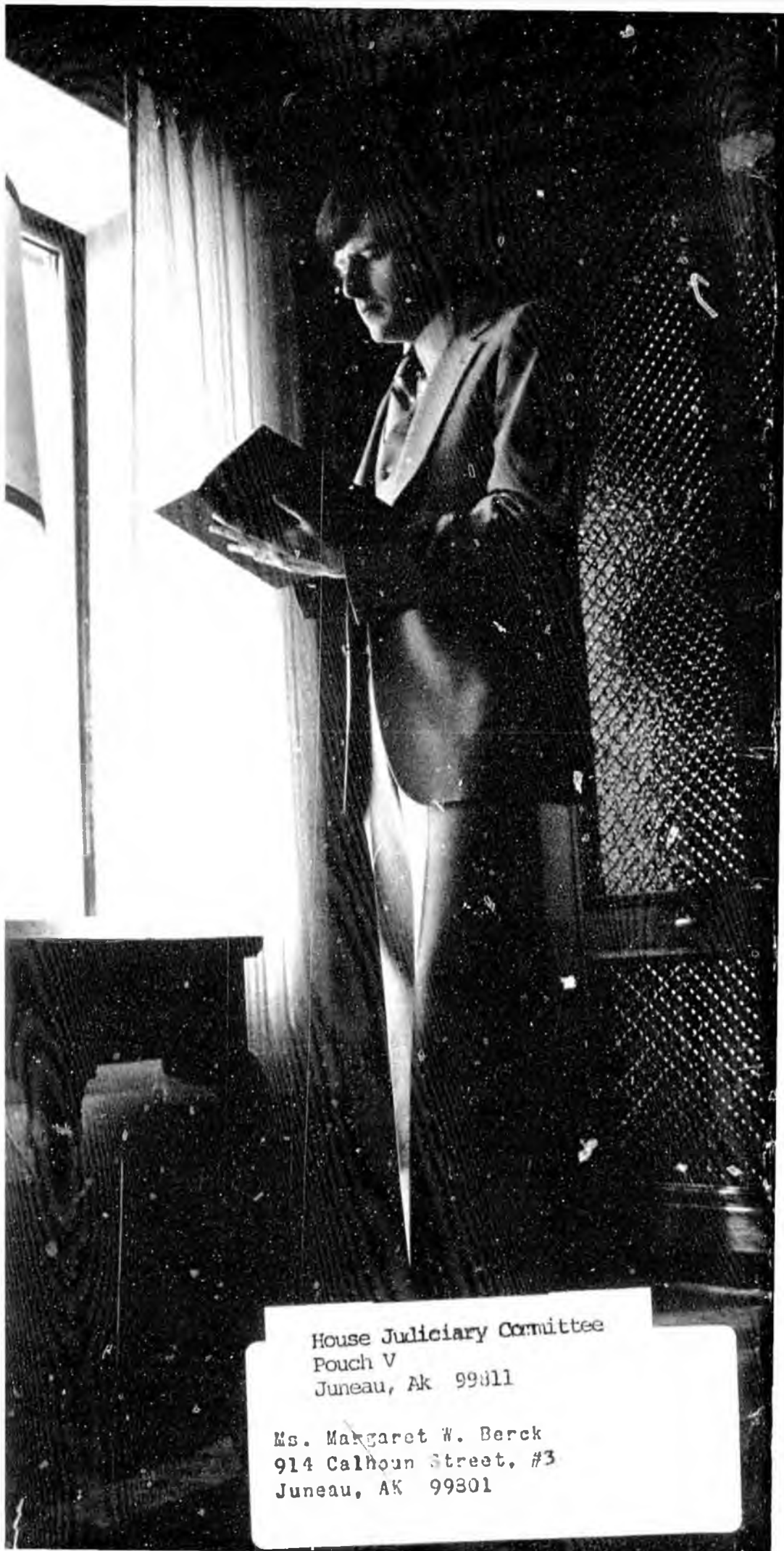
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House Judiciary Committee
Pouch V
Juneau, Ak 99811

Ms. Margaret W. Berck
914 Calhoun Street, #3
Juneau, AK 99801



Alaska State Legislature

House of Representatives

Committee on Judiciary

Pouch V
State Capitol
Juneau, Alaska 99811

Official Business

TO: Charlie Parr, Chairman, and Members of the Committee

FROM: Margaret W. Berck, Staff

DATE: February 14, 1980

Attached for your information are: 3 sample quarterly discipline reports (First Quarter of 1977, First Quarter 1978, and Fourth Quarter 1979) and the Year-End Reports for 1977 and 1978.

Should you desire to review additional quarterly reports during the period of 1976-1979, please let me know.

Alaska Bar Association's Discipline Report
for the First Quarter of 1977

April 28, 1977

Honorable Robert Boochever
Chief Justice
Alaska Supreme Court
Pouch U.
Juneau, Alaska 99801

RE: Quarterly Discipline Report.

Dear Bob:

I'm happy to report that the disciplinary "back log" is dwindling and that it should be almost entirely eliminated by the end of June if not sooner. This does not mean that all active files will be closed on that date but it does mean that all of the active files over six months old will have been either disposed of in the investigative stage or referred for formal hearing. (The average number of complaints filed and the fact that all investigations must necessarily be conducted after a complaint is filed, suggest that at least 30-40 active files will always be under investigation.)

As shown by the attached report, by the end of April, all but 3 of the complaints filed prior to September, 1976 will have been either assigned to contract bar counsel, disposed of by dismissal or informal admonition, or referred for formal hearing. The three exceptions require additional investigation which will be completed by A. B. Clark as soon as he returns to work on or about May 2. Some of the other files presently assigned to bar counsel may be referred back to the Bar Office for additional investigation before completion of Reports and Recommendations, but we should be able to complete these investigations and reports by June 30.

Of the fourteen cases before the Hearing Committees, three are scheduled for hearing on May 5. One has been ordered held in abeyance pending the U.S. Supreme Court decision in Bates v. Arizona. Four probably will be disposed of either by stipulation or orders vacating the orders for referrals to the trial committee. Hearings in three others should be scheduled and heard in June or around the first of July. Hopefully, the remaining three can be heard this summer, along with others now in the investigative stage which will be referred for hearing.

At the present time, Dick Felton is the only attorney representing the Bar on a regular basis who has trial experience and will prosecute these matters. Because Felton had a conflict, two pending matters recently had to be referred to another attorney. None of the other attorneys presently working for the Bar could or would handle these cases and it was quite difficult to locate anyone willing to represent the Bar. Mark Moderow has now been retained in these matters. The hearings in the other matters will not only have to await the convenience of the members of the Trial Committees but will, also, have to be adjusted to fit Felton's schedule which

includes work for private clients, as well as the Bar.

The Board of Governors will act on the case now pending before it at its next meeting in May.

Of the three matters pending before the Court on March 31, one was disposed of in April by an Order transferring the member to inactive status. An Order for medical examination has been entered in a second case. These exams will be completed by May 5 and hopefully, the hearing can be completed by mid-May. I have no information concerning the disposition of the third matter involving temporary suspension upon certification of conviction of a "serious crime".

We now have two applications for the full time staff attorney position. The applicants will be interviewed by the Board at its May meeting, assuming these applicants are seriously interested in the position. The Senate has cut our request for funding for this position from \$40,000.00 to \$20,000.00 but we are hopeful that the full amount will be restored by the Free Conference Committee.

At the request of Stan Ditus, I have obtained copies of the Michigan and Minnesota Disciplinary Rules which will be considered by the Bar's Committee in drafting amendments to the present disciplinary rules. At least some of these amendments should be presented to the Board for approval at the June Meeting.

Please contact me if you have questions concerning the above.

Sincerely,

Mary F. LaFollette
Executive Director

cc: Board of Governors
Disciplinary Comm. Members
Supreme Court Justices

P.S. I'm enclosing a copy of the American Bar Foundation report on discipline.

QUARTERLY DISCIPLINE REPORT

January 1, 1977 to March 31, 1977

I. CASELOAD:

1. Cases pending & carried forward on Dec. 31, 1976.....	90	
2. Complaints filed or reactivated since Dec. 31, 1976..	<u>18</u>	
TOTAL CASELOAD FOR PERIOD		108
3. Cases closed or ordered held in abeyance:		
(a) Dismissed.....	22	
(b) Informal Admonitions.....	3	
(c) Abeyance status.....	<u>5</u>	
TOTAL		<u>30</u>
4. Total Pending Cases on March 31, 1977		<u><u>78</u></u>

II. STATUS OF PENDING ACTIVE FILES

1. Investigative Stage:		
(a) Reviewing Committee Members.....	3	
(b) Bar Counsel.....	<u>57</u>	
Total.		60
2. Before Hearing Committees.....		14
3. Before Board of Governors.....		1
4. Before Supreme Court.....		<u>3</u>
TOTAL ACTIVE FILES ON MARCH 31, 1977		<u><u>78</u></u>

III. CASELOAD FOR SIX MONTH PERIOD (Oct. 12, 1976 to March 31, 1977)

1. Cases Pending & Carried Forward on 10-12-76.....	135	
Less: Files in Abeyance status.....	<u>14</u>	
Total Active Files.....		121
2. Complaints Filed since 10-12-76.....		<u>40</u>
TOTAL CASELOAD FOR PERIOD		161
3. Cases Closed or Ordered held in Abeyance		
(a) Dismissed.....	64	
(b) Informal Admonitions....	9	
(c) Members transferred to Inactive status.....	3	
(d) Abeyance Status.....	7	
TOTAL.....		<u>83</u>
TOTAL ACTIVE FILES AT END OF PERIOD.....		<u><u>78</u></u>

ACTIVE DISCIPLINARY FILES

March 31, 1977

CASES IN INVESTIGATIVE STAGE

Original Docket #	Date Filed	Complainant's Relationship to Respondent	Most Serious Charge	Status
1. 1	11/71	Client	Funds - Failure to Account	Inv. Committee rec. dismissal-Bar Counsel completed inv.-\$3,200 refund to client. 3/31/77 LaFollette (Referred to Johnson in April for completion of report.)
2. 13	9/14/73	Client	Perf.-delay in dep. trust funds to interest bearing account	Review Committee Member returned file for further inv. Inv. completed 3/31/77-Bar Office (April file assigned to B.Shute)
3. 17	11/9/73	Client	Fees-in excess of agreement	Investigation Committee rec. dismissal-Bar Counsel completed investigation-Settlement with client for reduced fees. 3/31/77-LaFollette (April-report completed)
4. 23	1/8/74	Client	Perf-conflict of interest	Investigation incomplete 3/31/77-Bar Office
5. 26	2/19/74	Client	Perf-neglect & improper withdrawal	Investigation complete 3/31/77-Johnson (April-report completed and forwarded to Rev.Comm.)
6. 39	5/20/74	Client	Perf-neglect	Review. Comm. Member returned file for inv. Inv. completed. 3/31/77-LaFollette (April-report completed and referred to R.C.)
7. 45	7/19/74	Alaska Bar Assn.	Int. with Justice Communication with jurors	Report completed & forwarded to Irv Bertram on 3/31/77
8. 49	8/8/74	Client	Perf-neglect & improper withdrawal	Ready for report. 3/31/77-Bar Office (April-assigned to Johnson-report completed & forwarded to R.C.)
9. 57	10/17/74	Client	Funds-failure to repay loans	Inv. complete & ready for report. 3/31/77-DeLisio
10. 65	1/9/75	Client	Funds-failure to account	Inv. incomplete. 3/31/77-Bar Office
11. 72	2/3/75	Client	Perf-neglect delay & failure to communicate	Inv. incomplete. Ross on 3/2/77 (April to John Conway.)

ACTIVE DISCIPLINARY FILES

March 31, 1977

CASES IN INVESTIGATIVE STAGE

Original Docket #	Date Filed	Complainant's Relationship to Respondent	Most Serious Charge	Status
12. 79	3/31/75	Opposing Attorney	Int. with Justice Lack of compliance w/agreement	Inv. complete and ready for report 3/31/77-Bar Office (April-assigned to DeLisio)
13. 80	4/10/75	Client	Perf-incompetence resulting in unsatisfactory result & excessive fees	Forwarded to Millard Ingraham for Review 3/11/77
14. 87	5/1/75	Client	Perf-Neglect Refusal to communicate	Forwarded to Monroe Clayton for Review 3/25/77
15. 88	5/9/75	Alaska Bar Assn. (2 Resp.)	Int. with Justice Harassment, claim not warranted	Inv. incomplete 3/31/77-Bar Office (April-assigned to DeLisio)
16. 89	5/9/75	Client	Perf-inadequate, resulting in excessive fees	Further inv. needed 3/31/77-Bar Office
17. 93	5/29/75	Judge	Solicitation: self-laudation, publicity	Inv. incomplete Assigned to Ross 3/2/77
18. 94	6/2/75	Client	Perf-neglect	Review Comm. Member remanded for further inv. on 3/28/77 3/28/77 file returned to Ross (April-returned to R.C.)
19. 96	6/4/75	Client	Perf-bad advice on failure to advise	Inv. incomplete Assigned to Ross 2/10/77
20. 99	7/8/75	Attorney for heir	Perf-Neglect & failure to communicate	Inv. incomplete Assigned to DeLisio 1/5/76
21. 104	7/75	Alaska Bar Assn.	Perf-Rep. of conflicting interests & Numerous charges	More investigation needed. (Involves 12 charges) Assigned to Johnson 12/10/76
22. 119	9/15/75	Client	Funds - failure to pay out	Inv. complete & ready for report. Further inv. required. 3/31/77-Bar Office April-Forwarded to R
23. 124	10/14/75	Judge & Adverse Party	Int. w/Justice slanderous accusation	Inv. complete & ready for report 3-31-77-Bar Office (April-assigned to DeLisio)

ACTIVE DISCIPLINARY FILES

March 31, 1977

CASES IN INVESTIGATIVE STAGE

Original Docket #	Date Filed	Complainant's Relationship to Respondent	Most Serious Charge	Status
24. 130	10/20/75	Opposing Attorney	Perf-Neglect (delay & improper withdrawal-neg.)	Inv. Incomplete Assigned to Ross 3/2/77
25. 133	11/25/75	Client	Perf-neglect/poor representation	Inv. incomplete Assigned to DeLisio 1/14/77
26. 134	11/25/75	Client (2 Respondents)	Perf - neglect (delay and excessive fees for inadequate svc.)	Inv incomplete Assigned to DeLisio 1/15/77
27. 139	12/12/75	Client (4 Respondents)	Perf- abandonment & bad advice; improper withdrawal	Inv. complete & ready for report 3/31/77-Bar Office (April-assigned to Johnson)
28. 147	3/10/76	Client (3 Respondents)	Int. w/justice: misrep. to court & abuse of process.	Inv. complete & ready for report. Assigned to DeLisio 2/10/77
29. 150	3/76	Client & adverse party (2 Respondents)	Perf - etc.- numerous charges including negligence	Inv. incomplete 3/31/77-Bar Office (April-assigned to Brian Shute)
30. 154	4/10/76	Adverse Party	Int. w/justice: extra judicial statements about pending case	Inv. incomplete Assigned to DeLisio 2/77 (April-report filed)
31. 163	8/4/76	Client	Perf. Neglect (Delay)	Inv. incomplete, (absence pending closing estate) Assigned to DeLisio 1/15/77 (April-report complete)
32. 176	9/24/76	Client	Perf. Neglect (delay & refusal to communicate)	Investigation incomplete 3/31/77-Bar Office
33. 178	9/21/76	Fee Arb Panel	Perf. adverse business interest	Review Comm. Member returned file for further inv. 3/31/77-Bar Office
34. 187	11/9/76	client	Fees	Inv complete, ready for report. Assigned to DeLisio 2/2/77
35. 188	11/15/76	opposing attorney	Solicitation: contacted complainant's client about representation	Under investigation. 3/31/77-Bar Office (April-assigned to Shute & report forwarded to R. C.)

ACTIVE DISCIPLINARY FILES

March 31, 1977

CASES IN INVESTIGATIVE STAGE

Original Docket #	Date Filed	Complainant's Relationship to Respondent	Most Serious Charge	Status
36. 189	11/23/76	Co-counsel	Performance	Under investigation Assigned to DeLisio 2/20/77
37. 193	11/16/76	Client's wife	Funds-withheld property	Under investigation 3/31/77-Bar Office
38. 194	11/30/76	Business Associate	Other-DR 1-101A	Under Investigation 3/31/77-Bar Office
39. 195	11/29/76	Co-Counsel	Perf-Neglect, failure to communicate	Under investigation 3/31/77-Bar Office
40. 196	11/30/76	Opposing attorney	Int. w/justice conflict	Inv. completed. 3/31/77-Bar Office DeLisio (Apr to R.C)
41. 198	11/30/76	Alaska Bar Assn.	Felony charges	Under investigation 3/31/77-Bar Office
42. 200	12/8/76	Client	Perf - failure to follow instructions	Under investigation 3/31/77-Bar Office
43. 201	12/20/76	Opposing Attorney	Int. w/Justice, contacted client	Investigation complete ready for report Assigned to DeLisio 2/20/77
44. 203	1/10/77	Attorney	Solicitation	Under Investigation 3/31/77-Bar Office
45. 204	1/17/77	Opposing attorney	Performance	Under Investigation 3/31/77-Bar Office
46. 205	1/19/77	Client	Perf.-improper withdrawal	Under investigation 3/31/77-Bar Office
47. 206	1/24/77	Client	Funds	Under investigation 3/31/77
48. 207	1/28/77	Adverse Party	Perf.-contacting client rep. by attorney	Under investigation 3/31/77-Bar Office
49. 209	2/8/77	Client	Unclear	Complainant requests to furnish information concerning charges 3/31/77-Bar Office
50. 210	2/16/77	Client	Performance	Complainant asked to furnish additional information about nature of charges 3/31/77-Bar Office
51. 211	2/21/77	Client	Perf.-negligence	Under investigation 3/31/77-Bar Office

ACTIVE DISCIPLINARY FILES

March 31, 1977

CASES IN INVESTIGATIVE STAGE

Original Docket #	Date Filed	Complainant's Relationship to Respondent	Most Serious Charge	Status
52. 212	2/25/77.	Adverse Party	Performance	Under investigation 3/31/77-Bar Office
53. 213	2/28/77	Client	Perf-negligence	Under investigation 3/31/77-Bar Office
54. 214	3/7/77	Opposing Attorney	Perf-Improper statement during trial	Investigation completed 3/31/77-Bar Office (Apr-Johnson-report forwarded to R.C.)
55. 215	3/8/77	Client	Perf-Unauthorized settlement	Under investigation 3/31/77-Bar Office
56. 216	3/9/77	Opposing Attorney	Perf.-threatening crim. prosecution	Under investigation 3/31/77-Bar Office
57. 217	3/9/77	Opposing Attorney	Interference with Justice	Under investigation 3/31/77-Bar Office
58. 218	3/11/77	Client	Performance	Under investigation 3/31/77-Bar Office
59. 219	3/14/77	Opposing Attorney	Perf. improper trial conduct	Under investigation 3/31/77-Bar Office
60. 220	3/22/77		Perf.-neglect	Under investigation 3/31/77-Bar Office

ACTIVE DISCIPLINARY FILES

March 31, 1977

CASES BEFORE HEARING COMMITTEE

	Original Docket #	Date Filed	Complainant's Relationship to Respondent	Most Serious Charge	Status
1.	5	4/11/73	Adverse Party	Interference with Justice-aiding dis- obedience of Court Order	Referred to Trial Comm. Assigned to Felton, 2/18/77
2.	7	5/17/73	Client	Funds-failure to deposit in Trust Acct. & to refund unearned portion on withdrawal	1-75 hearing before trial comm/open for comm. report. (\$300 refund to client). Trial Comm. Members: Pete Bartlett, Chairman, Jack Hendr son, Alan McGrath
3.	8	6/4/73	Client	Perf-representa- tion of conflic- ting interests	Order for referral to trial comm. 3-31/77 LaFollette (Apr. Referred to Felton)
4.	19	11/19/73	Client	Perf-failure to perform	Order for referral to trial comm. 3/31/77-LaFollette (Apr. referred to Felton)
5.	35	4/8/74	Client	Perf-business int. adverse to client	Order for referral to trial comm. Assigned to Ross 10/4/76. Tran ferred to Bar Office 3/30/77. (Apr.: Retain ed Moderow to rep. Ba
6.	48	8/2/74	Client	Funds - delay in release	Order for referral to trial comm. Assigned to Ross 10/4/76. Transferred to Bar Of 3/30/77. (Apr.: Re- tained Moderow to rep Bar)
7.	70	2/18/75	Opposing Attorney	Perf.-slander & communication with adverse party rep. by counsel	Referred to trial comm. Ross trans- ferred to Felton. See for hearing 5/15/77
8.	102	7/75	Alaska Bar Assn.	Perf. Conflict of int. & several other charges	Informal admonishment vacated at request of respondent & hearing before trial comm. pending.. Assigned to Ross 10/4/76. Trans- ferred to Felton on 2/10/77.
9.	123	10/10/75	Judge	Int. w/Justice Misrep. to court	Referred to Trial Com Assigned to Ross 10/21/76. Transferr to Felton 2/10/77

ACTIVE DISCIPLINARY FILES

March 31, 1977

CASES BEFORE HEARING COMMITTEE

Original Docket #	Date Filed	Complainant's Relationship to Respondent	Most Serious Charge	Status
10. 132	11/75	Third Party	Solicitation-Ambulance Chasing	Order for referral to trial comm. Hearing scheduled 5/5/77. Assigned to Ross 10/29/77. Transferred to Felton 2/10/77
11. 148	3/5/76	Third Person (attorney)	Solicitation-sign & Name	Order for referral to trial comm. Reviewing Comm. member ordered file held in abeyance pending decision in Bates v Ariz. Assigned to Ross 9/21/76, transferred to Felton 2/10/77
12. 151	4/5/76	Client	Funds-Failure to Account	Referred to trial comm. Assigned to Ross 12/10/76, transferred to Felton 2/10/77
13. 156	5/25/76	Adverse Party	Int. w/Justice: intimidation	Referred to trial comm. Hearing scheduled 5/5/77. Assigned to Ross 12/31/76. Transferred to Felton 2/10/77.
14. 159	5/6/76	Client	Funds-conversion of property	Referred to trial Comm. Assigned to Felton 2/18/77

ACTIVE DISCIPLINARY FILES

March 31, 1977

CASES BEFORE BOARD OF GOVERNORS

Original Docket #	Date Filed	Complainant's Relationship to Respondent	Most Serious Charge	Status
1. 59	11/9/74	Client	Perf-neglect	Hearing Committee Proposed Decision finalized 3/30/77. Board hearing at May meeting

ACTIVE DISCIPLINARY FILES

March 31, 1977

Original Docket #	Date Filed	Complainant's Relationship to Respondent	Most Serious Charge	Status
1. 192	10/20/76	Alaska Bar	Other-Disab. Petition to Supreme Court	Consent signed by Respondent 3/31/77 LaFollette & DeLisio (April - Order for Transfer)
2. 199	11/30/76	Alaska Bar	Conviction-Felony	Certificate of conviction forwarded to Supreme Court. 3/31/77: LaFollette
3. 208	2/25/77	Alaska Bar	Other-Disab. Petition	Petition filed, 3/31/77: DeLisio (April - answer filed Order for medical exam entered.)

Alaska Bar Association's Discipline Report
for the Fourth Quarter of 1977
or, the Year-End Report

March 17, 1978

Hon. Robert Boochever,
Chief Justice
Alaska Supreme Court
Pouch U
Juneau, Alaska 99801

Dear Chief Justice Boochever:

In following up our phone conversation of February 17th, please find enclosed a revised grievance report for the last calendar year along with information on fee arbitration matters.

By way of explanation, please note the incorrect copy. The circled figures in the far right hand column do not accurately reflect the number of cases handled during the past year. While you may not be able to appreciate my ignorance in preparing this report, hopefully, you can understand how the error came about.

While the totals are not necessarily incorrect they are not in any way meaningful.

Thank you for your patience in this matter.

Respectfully,

William W. Garrison
State Bar Counsel

WWG/lms

cc: Justices
Board of Governors
John Hughes & members
of Trial Committee
David Wolf
John Conway
Monroe Clayton
Pete Ellis

STATISTICAL REPORT FOR 12 MONTH PERIOD
January 1, 1977 to December 31, 1977

	Totals 1/1/77 to 3/31/77 (1)	Totals 4/1/77 to 6/30/77 (2)	Totals 6/30/77 to 9/30/77 (3)	Totals 9/30/77 to 12/31/77 (4)	Totals 12 Month Period
Active cases pending & carried forward at beginning of period:	90	78	61	62	90
Complaints filed or reactivated during period:	<u>18</u>	<u>12</u>	<u>11</u>	<u>5</u>	<u>46</u>
TOTAL CASELOAD FOR PERIOD:	108	90	72	67	136
Less: Cases closed or ordered held in abeyance:					
	(1)	(2)	(3)	(4)	
(a) Dismissed	22	20	8	11	
(b) Informal Admonitions	3	8	2	7	
(c) Members transferred to inactive status	2	1	0	0	
(d) Abeyance Status	3	0	0	1	
(e) Suspension	<u>0</u>	<u>0</u>	<u>0</u>	<u>1</u>	
TOTALS	<u>30</u>	<u>29</u>	<u>10</u>	<u>20</u>	<u>89</u>
TOTAL PENDING CASES AT END OF PERIOD:	<u>78</u>	<u>61</u>	<u>62</u>	<u>47</u>	<u>47</u>
<u>STATUS OF PENDING ACTIVE FILES:</u>					
1. Investigative stage:					
(a) Review Committees	3	11	12	3	
(b) Bar Counsel	57	30	30	31	
2. Before Hearing Committee	14	16	13	7	
3. Before Board of Governors	1	2	4	4	
4. Before Supreme Court	<u>3</u>	<u>2</u>	<u>3</u>	<u>2</u>	
TOTAL ACTIVE FILES AT END OF EACH PERIOD	<u>78</u>	<u>61</u>	<u>62</u>	<u>47</u>	

STATISTICAL REPORT FOR 12 MONTH PERIOD
January 1, 1977 to December 31, 1977

	Totals 1/1/77 to 3/31/77 (1)	Totals 4/1/77 to 6/30/77 (2)	Totals 6/30/77 to 9/30/77 (3)	Totals 9/30/77 to 12/31/77 (4)	Totals
Active cases pending & carried forward at beginning of period:	90	78	61	62	291
Complaints filed or reactivated during period:	18	12 <i>these figures</i>	11	5	46
TOTAL CASELOAD FOR PERIOD:	108	90 <i>NOT THESE</i>	72	67	337
Less: Cases closed or ordered held in abeyance:					
(a) Dismissed	22	20	8	11	
(b) Informal Admonitions	3	8	2	7	
(c) Members transferred to inactive status	2	1	0	0	
(d) Abeyance Status	3	0	0	1	
(e) Suspension	0	0	0	1	
TOTALS	30	29	10	20	89
TOTAL PENDING CASES AT END OF PERIOD:	78	61	62	47	248
<u>STATUS OF PENDING ACTIVE FILES:</u>					
1. Investigative stage:					
(a) Review Committees	3	11	12	3	29
(b) Bar Counsel	57	30	30	31	148
2. Before Hearing Committee	14	16	13	7	50
3. Before Board of Governors	1	2	4	4	11
4. Before Supreme Court	3	2	3	2	10
TOTAL ACTIVE FILES AT END OF EACH PERIOD	78	61	62	47	248

FEE ARBITRATION REPORT FOR 1977

Cases pending on January 1, 1977:	12	
Petitions filed during year:	<u>20</u>	
Total Caseload for Year:		<u>32</u>
Cases disposed of during year:	<u>22</u>	
Total cases still pending at end of year:		10
Decisions pending:	4	
Abeyance:	1	
Scheduled for Hearing:	<u>5</u>	
	10	

Alaska Bar Association's Discipline Report
for the First Quarter of 1978

BOARD OF GOVERNORS

ALASKA BAR ASSOCIATION

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April 12, 1978

Hon. Robert Boochever,
Chief Justice
Alaska Supreme Court
Pouch U
Juneau, Alaska 99801

Dear Chief Justice Boochever:

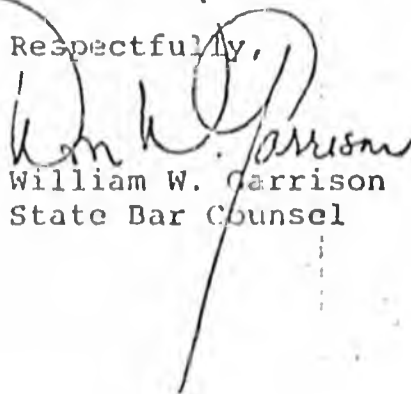
Please find enclosed the Quarterly Report for the period covering January 1, 1978 - March 31, 1978. Due to the loss of key personnel and the consequent necessity to under take additional administrative functions I could not devote the amount of time I would have wished solely to disciplinary matters. Nevertheless the present pending case-load is less than last quarter. While 6 grievances were opened approximately 39 matters were handled informally.

Additional statistics which you may find of interest are as follows:

Admission appeals	101.4 hours
Miscellaneous & administration	126.9 hours
Fee arbitration - does not include time at hearings	13.9 hours
Matters in Federal Court	.9 hours
TOTAL	243.1 hours

If you have any questions, please feel free to contact me.

Respectfully,


William W. Garrison
State Bar Counsel

Enc.

cc: Justices
Board of Governors
John Hughes & members
of Trial Committee
David Wolf
John Conway
Monroe Clayton
Pete Ellis

WWG/lms

QUARTERLY DISCIPLINE REPORT

January 1, 1978 - March 31, 1978

I. CASELOAD

1.	Cases pending & carried forward on January 1, 1978.....	47	
2.	Cases filed or reactivated since January 1, 1978.....	<u>6</u>	
	TOTAL CASELOAD FOR PERIOD		53
3.	Cases closed or ordered held in abeyance since January 1, 1978:		
	(a) Dismissed by Review Committee Member.....	5	
	(b) Informal admonitions by Review Committee Member....	1	
	(c) Abeyance status.....	<u>4</u>	
	TOTAL		10
4.	Total Pending Cases on March 31, 1978:		<u>43</u>

II. STATUS OF PENDING ACTIVE CASES:

1.	Investigative Stage		
	(a) Review Committee Members.....	3	
	(b) Bar Counsel.....	28	
	TOTAL		31
2.	Before Hearing Committees		7
3.	Before Board of Governors		3
4.	Before Supreme Court		<u>2</u>
	TOTAL PENDING ACTIVE CASES ON March 31, 1978		<u>43</u>

	Totals 4/1/77 to 6/30/77 (1)	Totals 7/1/77 to 9/30/77 (2)	Totals 10/1/77 to 12/31/77 (3)	Totals 1/1/78 to 3/31/78 (4)	Totals 12 Month Period
Active cases pending & carried forward at beginning of period:	78	61	62	47	78
Complaints filed or reactivated during period:	<u>12</u>	<u>11</u>	<u>5</u>	<u>6</u>	<u>34</u>
TOTAL CASELOAD FOR PERIOD:	90	72	67	53	112

Class: Cases closed or ordered held in abeyance:

	(1)	(2)	(3)	(4)
(a) Dismissed	20	8	11	5
(b) Informal Admonitions	8	2	7	1
(c) Members transferred to inactive status	1	0	0	0
(d) Abeyance Status	0	0	1	4
(e) Suspension	<u>0</u>	<u>0</u>	<u>1</u>	<u>0</u>

TOTALS	<u>29</u>	<u>10</u>	<u>20</u>	<u>10</u>	<u>69</u>
TOTAL PENDING CASES AT END OF PERIOD:	<u>61</u>	<u>62</u>	<u>47</u>	<u>43</u>	<u>43</u>

STATUS OF PENDING ACTIVE FILES:

1. Investigative stage:					
(a) Review Committees	11	12	3	3	
(b) Bar Counsel	30	30	31	28	
2. Before Hearing Committee	16	13	7	7	
3. Before Board of Governors	2	4	4	3	
4. Before Supreme Court	<u>2</u>	<u>3</u>	<u>2</u>	<u>2</u>	
TOTAL ACTIVE FILES AT END OF EACH PERIOD	<u>61</u>	<u>62</u>	<u>47</u>	<u>43</u>	

	Original Docket #	Date Filed	Complainant's Relationship to Respondent	Most Serious Charge	Status
1.	94	6/2/75	Client	Performance: Neglect	Informal admonition conditioned on re- fund of \$1,250 2/15/78 on recommenda- tion to review committee member.
2.	104	7/75	Alaska Bar Assn.	Performance: Rep. of conflicting interests and numerous charges	Send to review committee member 3/28/78.
3.	139	12/12/75	Client	Performance: Abandonment and bad advice; improper withdrawal	Dismissed 3/3/78 on recommendation to review committee member.
4.	147	3/10/76	Client (3 Resp- ondents)	Interference with justice: Misrepresentation to court and abuse	Returned from review committee member, pending compliance with refund.
5.	196	11/30/76	Opposing Atty.	Interference with justice - conflict	Dismissed 3/31/78 on recommendation to review committee member.
6.	198	11/30/76	Alaska Bar Assn.	Interference with justice - (felony charges)	Under investigation.
7.	200	12/8/76	Client	Performance: Failure to follow instructions	Under investigation.
8.	203	1/10/77	Attorney	Solicitation	Dismissed 1/20/78 on recommendation to review committee member with stipula- tion that file could be re-opened.
9.	215	3/8/77	Client	Performance: Unauthorized settlement	Dismissed 3/29/78 on recommendation to review committee member.
10.	217	3/9/77	Opposing Atty.	Interference with justice	Under investigation.
11.	218	3/11/77	Client	Performance	Under investigation.
12.	219	3/14/77	Opposing Atty.	Performance: Improper trial conduct	Sent to review committee member 3/10/78.
13.	220	3/22/77		Performance: Neglect	Under investigation.

	Original Docket #	Date Filed	Complainant's Relationship to Respondent	Most Serious Charge	Status
14.	223	5/17/77	3rd Party	Fees	Under investigation.
15.	225	5/17/77	Opposing Atty.	Funds	Under investigation.
16.	226	5/20/77	Client & adverse party (Involves 2 attorneys)	Funds	Under investigation.
17.	227	6/2/77	Alaska Bar Assn.	Solicitation	Under investigation.
18.	228	6/28/77	Alaska Bar Assn.	Interference with justice	Under investigation.
19.	229	6/28/77	Client	Performance	Under investigation.
20.	230	?	Client	Performance	Under investigation.
21.	231	6/30/77	Alaska Bar Assn.	Performance	Under investigation.
22.	234	7/11/77	Client	Performance and funds	Under investigation.
23.	235	8/1/77	Client	Performance	Under investigation.
24.	236	7/28/77	Fee Arb Panel	Interference with justice	Under investigation.
25.	237	8/3/77	Opposing Party	Interference with justice	Under investigation.
26.	238	7/26/77	3rd Party	Performance	Abeyance ordered by Board of Governors 1/21/78.
27.	239	7/26/77	3rd Party	Performance	Abeyance ordered by Board of Governors 1/21/78.
28.	240	8/24/77	Client	Performance	Under investigation.
29.	241	9/16/77	Client	Funds	Under investigation.
30.	242	9/28/77	Opposing Party	Performance	Under investigation.

CASES IN INVESTIGATIVE STAGE

	Original Docket #	Date Filed	Complainant's Relationship to Respondent	Most Serious Charge	Status
31.	245	10/21/77	Client	Conflict of interest	Abeyance ordered by Board of Governors 1/21/78.
32.	246	11/8/77	Client	Performance - delay	Under investigation.
33.	248	11/18/77	Opposing Atty.	Conflict of interest	Under investigation.
34.	249	2/15/78	Client	Performance	Under investigation.
35.	250	2/15/78	Client	Performance	Under investigation.
36.	251	3/8/78	3rd Party	Performance	Under investigation.
37.	252	3/8/78	Fee Arb Panel	Performance	Under investigation.
38.	253	3/24/78	3rd Party	Conflict of interest	Under investigation.
39.	254	3/30/78	3rd Party	Performance	Under investigation.

CASES IN INVESTIGATIVE STAGE

	Original Docket #	Date Filed	Complainant's Relationship to Respondent	Most Serious Charge	Status
31.	245	10/21/77	Client	Conflict of interest	Abeyance ordered by Board of Governors 1/21/78.
32.	246	11/8/77	Client	Performance - delay	Under investigation.
33.	248	11/18/77	Opposing Atty.	Conflict of interest	Under investigation.
34.	249	2/15/78	Client	Performance	Under investigation.
35.	250	2/15/78	Client	Performance	Under investigation.
36.	251	3/8/78	3rd Party	Performance	Under investigation.
37.	252	3/8/78	Fee Arb Panel	Performance	Under investigation.
38.	253	3/24/78	3rd Party	Conflict of interest	Under investigation.
39.	254	3/30/78	3rd Party	Performance	Under investigation.

MARCH 31, 1978
 CASES BEFORE BOARD OF GOVERNORS

	Original Docket #	Date Filed	Complainant's Relationship to Respondent	Most Serious Charge	Status
1.	35	4/8/74	Client	Performance -- Business interest adverse to client	To be informally admonished.
2.	48	8/2/74	Client	Funds - Delay in release	To be informally admonished.
3.	154	4/10/76	Adverse Party	Interference with justice -- Extra-judicial statements about pending case	To be informally admonished.

MARCH 31, 1976
CASES BEFORE BOARD OF GOVERNORS

	Original Doc. et #	Date Filed	Complainant's Relationship to Respondent	Most Serious Charge	Status
1.	35	4/8,'74	Client	Performance -- Business interest adverse to client	To be informally admonished.
2.	48	8/2/74	Client	Funds - Delay in release	To be informally admonished.
3.	154	4/10/76	Adverse Party	Interference with justice -- Extra-judicial statements about pending case	To be informally admonished.

Alaska Bar Association's Discipline Report
for the Fourth Quarter of 1978
or, the Year-End Report

January 2, 1978

Hon. Jay A. Rabinowitz
Chief Justice
Alaska Supreme Court
604 Barnette Street
Fairbanks, Alaska 99701

Dear Chief Justice Rabinowitz:

Please find enclosed the Quarterly Report for the period covering October 1, 1978 - December 31, 1978. While 6 grievances were opened this quarter approximately 73 matters were disposed of informally.

Additional statistics which you may find of interest are as follows:

Admission appeals	47.2 hours
Informal complaints & administration	180.6 hours
Fee arbitration	15.3 hours
Fee arbitration hearings	17.5 hours
Matters in Federal Court	2.4 hours
Board of Governors law suit	1.3 hours
Election investigation	45.3 hours
TOTAL	309.6 hours

If you have any questions, please feel free to contact me.

Sincerely,

William W. Garrison
State Bar Counsel

Enc.

cc: Justices
Board of Governors
John Hughes & members
of Trial Committee
Bob Richmond
Bill Ruddy
Monroe Clayton

WWG/lms

QUARTERLY DISCIPLINE REPORT

October 1, 1978 - December 31, 1978

I. CASELOAD

1.	Cases pending & carried forward on October 1, 1978.....	36	
2.	Cases filed or reactivated since October 1, 1978.....	<u>6</u>	
	TOTAL CASELOAD FOR PERIOD		42
3.	Cases closed since October 1, 1978:		
	(a) Dismissed by Review Committee Member.....	8	
	(b) Informal Admonitions by Review Committee Member....	2	
	(c) Dismissed with prejudice by Hearing Committee.....	1	
	(d) Ordered held in abeyance by Board of Governors.....	1	
	(e) Files combined for hearing.....	2	
	TOTAL		14
4.	Total Pending Cases on December 31, 1978:		<u>28</u>

II. STATUS OF PENDING ACTIVE CASES:

1.	Investigative Stage		
	(a) Review Committee Members.....	1	
	(b) Bar Counsel.....	20	
	TOTAL		21
2.	Before Hearing Committees		5
3.	Before Board of Governors		0
4.	Before Supreme Court		<u>2</u>
	TOTAL PENDING ACTIVE CASES ON DECEMBER 31, 1978:		<u>28</u>

	TOTALS 1/1/78 to 3/31/78 (1)	TOTALS 4/1/78 to 6/30/78 (2)	TOTALS 7/1/78 to 9/30/78 (3)	TOTALS 10/1/78 to 12/31/78 (4)	TOTALS 12 Month Period
Active cases pending & carried forward at beginning of period:	47	43	43	36	47
Complaints filed or reactivated during period:	<u>6</u>	<u>8</u>	<u>13</u>	<u>6</u>	<u>33</u>
TOTAL CASELOAD FOR PERIOD:	53	51	56	42	80

Less: Cases closed or ordered held in abeyance:

	(1)	(2)	(3)	(4)
(a) Dismissed	5	6	15	9
(b) Informal Admonitions	1	0	1	2
(c) Members transferred to inactive status	0	1	0	0
(d) Abeyance Status	4	0	0	1
(e) Files combined for hearing	0	0	0	2
(f) Private Reprimand	0	1	2	0
(g) Public Censure	0	0	1	0
(h) Reinstated	<u>0</u>	<u>0</u>	<u>1</u>	<u>0</u>

TOTALS	<u>10</u>	<u>8</u>	<u>20</u>	<u>14</u>	<u>52</u>
TOTAL PENDING CASES AT END OF PERIOD:	<u>43</u>	<u>43</u>	<u>36</u>	<u>28</u>	<u>28</u>

STATUS OF PENDING ACTIVE FILES:

1. Investigative stage:					
(a) Review Committees	3	2	6	1	
(b) Bar Counsel	28	30	20	20	
2. Before Hearing Committee	7	6	9	5	
3. Before Board of Governors	3	2	1	0	
4. Before Supreme Court	<u>2</u>	<u>3</u>	<u>0</u>	<u>2</u>	
TOTAL ACTIVE FILES AT END OF EACH PERIOD:	<u>43</u>	<u>43</u>	<u>36</u>	<u>28</u>	

FEE ARBITRATION REPORT FOR 1978

Cases pending on January 1, 1978:	10	
Petitions filed during year:	<u>27</u>	
Total Caseload for Year:		<u>37</u>
Cases disposed of during year:	<u>19</u>	
Total cases still pending at end of year:		
Decisions pending:	5	
Scheduled for Hearing:	3	
* Needs non-attorney signature on Decision:	<u>4</u>	
	<u>12</u>	

* Non-attorney member was transferred suddenly to Chicago, then shortly thereafter to Washington, D.C. He has the Decisions and should be returning them shortly.

	Original Docket #	Date Filed	Complainant's Relationship to Respondent	Most Serious Charge	Status
1.	217	3/9/77	Opposing Atty.	Interference with justice	Informal admonition 11/24/78 on recommendation to review committee member.
2.	225	5/17/77	Opposing Atty.	Funds	Informal admonition 10/25/78 on recommendation to review committee member.
3.	229	6/28/77	Client	Performance	Dismissed 12/18/78 on recommendation to review committee member.
4.	231	6/20/77	Alaska Bar Assn.	Performance	Under investigation.
5.	237	8/3/77	Opposing Party	Interference with justice	Dismissed 10/25/78 on recommendation to review committee member.
6.	246	11/8/77	Client	Performance - delay	Sent to review committee member 9/28/78.
7.	249	2/15/78	Client	Performance	Under investigation.
8.	250	2/15/78	Client	Performance	Under investigation.
9.	252	3/8/78	Fee Arb Panel	Performance	Under investigation.
10.	253	3/24/78	3rd Party	Conflict of interest	Dismissed 12/11/78 on recommendation to review committee member.
11.	254	3/30/78	3rd Party	Performance	Under investigation.
12.	255	4/4/78	Attorney	Interference with justice	Dismissed 12/4/78 on recommendation to review committee member.
13.	256	4/5/78	Attorney	Performance	Under investigation.
14.	257	4/24/78	Client	Performance	Under investigation.
15.	258	4/25/78	Client	Conflict of interest	Under investigation.
16.	259	5/23/78	Client	Performance	Under investigation.

	Original Docket #	Date Filed	Complainant's Relationship to Respondent	Most Serious Charge	Status
17.	261	6/2/78	Alaska Bar Assn.	Interference with justice	Under investigation.
18.	263	6/19/78	Attorney	Performance - misrepresentation	Under investigation.
19.	264	7/5/78	3rd Party	Performance	Dismissed 12/26/78 on recommendation to review committee member.
20.	265	7/5/78	3rd Party	Performance	Dismissed 12/26/78 on recommendation to review committee member.
21.	267	7/24/78	Client	Performance	Under investigation.
22.	269	7/24/78	Client	Conflict of interest	Dismissed 12/18/78 on recommendation to review committee member.
23.	270	8/3/78	Client	Conflict of interest	Under investigation.
24.	271	8/9/78	Client	Performance - delay	Dismissed 12/20/78 on recommendation to review committee member.
25.	272	8/28/78	3rd Party	Conflict of interest	Under investigation.
26.	273	10/4/78	Attorney	Interference with attorney/ client relationship	Under investigation.
27.	274	11/6/78	Judge	Contempt of court	Under investigation.
28.	275	4/28/78	Attorney	Performance	Under investigation.
29.	276	11/20/78	3rd Party	Performance	Under investigation.
30.	277	11/20/78	Client	Performance	Under investigation.
31.	278	11/14/78	3rd Party	Conflict of interest	Under investigation.

	Original Docket #	Date Filed	Complainant's Relationship to Respondent	Most Serious Charge	Status
1.	123	10/10/75	Judge	Interference with justice misrepresentation to court	Held in abeyance pending decision of matters in Supreme Court.
2.	133	11/25/75	Client	Performance -- Neglect/poor representation	Dismissed with prejudice 11/24/78.
3.	151	4/5/78	Client	Funds -- Failure to account	By Board of Governors order of 12/11/78 to be held in abeyance.
4.	220	3/22/77	3rd Party	Performance -- Neglect	Combined with docket number 178. Ready for hearing.
5.	228	6/28/77	Alaska Bar Assn.	Interference with justice	Ready for hearing.
6.	234	7/11/77	Client	Performance and funds	Combined with docket number 23. Ready for hearing.
7.	268	7/19/78	Alaska Bar Assn.	Performance	Ready for hearing.

	Original Docket #	Date Filed	Complainant's Relationship to Respondent	Most Serious Charge	Status
1.	46	10/7/76	Alaska Bar Assn.	Conviction of felony	Waiting for briefing schedule.
2.	102	7/75	Alaska Bar Assn.	Performance -- Conflict of interest and several other charges	Waiting for briefing schedule.

Alaska Bar Association's Discipline Report
Fourth Quarter of 1979

ALASKA BAR ASSOCIATION
 SURVEY OF GRIEVANCES
 Closed from 10-1-79 to 12-31-79

In an effort to better inform the court, bar and public of the source and nature of grievances, and the areas of practice from which grievances arise, the following is a sample based on the files closed in the Bar Association office from October 1, to December 31, 1979.

In describing the nature of the grievance, only the most serious allegation is reflected. In fact, more grievances allege various acts of misconduct. It is not practical to attempt to reflect all allegations.

I. NATURE OF GRIEVANCE	#	%
1. Trust violations (embezzlement/ conversion/withholding client's property)	0	0
2. Conflict of Interest	1	.9
3. Neglect (Failure to perform, delay abandonment)	0	0
4. Relationship with client	0	0
5. Misrepresentation/Fraud	1	.9
6. Excessive Fees	0	0
7. Interference with justice	6	54.5
8. Improper advertising & solicitation	2	18.1
9. Criminal conviction	0	0
10. Personal Behavior	1	.9
11. Failure to cooperate with investigation	0	0
12. Medical incapacity	0	0
13. Incompetence	0	0
14. Other	0	0
TOTAL	11	

An additional 77 matters were handled which did not involve violations of the Code of Professional Responsibility, but did involve an interview, require a response on the rendering of assistance to resolve the matter.

FEE ARBITRATION REPORT

October 1, 1979 - December 31, 1979

CASELOAD

1. Cases pending & carried forward on October 1, 1979 .	12
2. Cases filed since October 1, 1979	13
TOTAL CASELOAD FOR PERIOD	25
3. Cases Closed since October 1, 1979	10
 TOTAL PENDING CASES ON December 31, 1979	 15

DISCIPLINE REPORT
 October 1, 1979 - December 31, 1979

I. CASELOAD

1. Cases pending & carried forward on October 1, 1979	32
2. Cases filed or reactivated since October 1, 1979	17
TOTAL CASELOAD FOR PERIOD	49
3. Cases closed since October 1, 1979:	
(a) Dismissed by Bar Counsel	9
(b) Informal Admonitions	2
(c) Disbarred	0
TOTAL	11
4. Total Pending Cases on December 31, 1979	38

II. STATUS OF PENDING ACTIVE CASES:

1. Investigative Stage:	
(a) To Committee Member for Advisory Opinion	0
(b) Bar Counsel	35
(c) Special Prosecutor	1
(d) Matters held in abeyance	1
(e) Conciliation Panel	1
TOTAL	36
2. Before Hearing Committee	0
3. Before Board of Governors	0
4. Before Supreme Court	2
TOTAL PENDING ACTIVE CASES ON DECEMBER 31, 1979	38

III. MATTERS NOT CONSTITUTING VIOLATION OF RULES

Investigator:	77
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DISCIPLINARY REPORT
4th Quarter
October 1, 1979 - December 31, 1979

FILE NO.	DATE FILED	COMPLAINANT'S RELATIONSHIP TO RESPONDENT	MOST SERIOUS CHARGE	STATUS	DISPOSITION	DATE CLOSED
73/74-33	1/18/74	Client	Conflict of Interest 2A-3a	In Abeyance pending Respondent's resignation from practice of law		
77-18	3/22/77	Third Party	Neglect--3 A & E	Petition for formal Hrg. held pending malpractice action	Investigation initially delayed because of absence of witness	
77-25	6/28/77	Client	Misrepresentation, Fraud 5-B	Petition for formal Hearing filed 10/16/78	Hearing delayed due to absence of witnesses	
78-4	3/8/78	Fee Arb. Panel	Interference with Justice 7-T-1	Under Investigation- Malpractice suit pending		
78-10	4/25/78	Client	Conflict of Interest 2-A-5a	Dismissal pending prepara- tion of notice and service of same -- Closed	Dismissed	10/22/79
78-13	6/2/78	Alaska Bar Assn.	Interference w/justice 7-B -1-f	Held in abeyance pending disposition of criminal prosecution--Criminal Prosecution Dismissed Investigation in Progress		
78-15	6/19/78	Opposing Counsel	Interference w/justice 7-B-1-h	Referred back to atty. complainant for review and clarification of issues		

FILE NO.	DATE FILED	COMPLAINANT'S RELATIONSHIP TO RESPONDENT	MOST SERIOUS CHARGE	STATUS	DISPOSITION	DATE CLOSED
78-20	7/11/78	Alaska Bar Assn.	Misrep./Fraud 5-B		To Review Committee Member 9/27/78--To Hearing Committee 6/12/79--To BOG 10/10/79 To Supreme Court 10/31/79	
78-22	8/3/78	Opposing Counsel	Relationship w/client 4-A-2		Investigation delayed pending civil action in process	
78-25	10/4/78	Opposing Counsel	Interference w/justice 7-D-1		Atty v. Atty complaint Parties instructed to attempt to come to some agreement	
78-29	11/20/78	Client	Incompetence 13		Investigation pending resolution of civil malpractice suit	
79-1-F	2/9/79	Opposing Counsel	Interference w/justice 7-D-1--Personal Behavior 10-B Failure to co-operate with Disciplinary Authorities 11-C-2		Petition for formal Hearing sent to Resp. 9/20/79. Answer received Investigation continuing on affirmative defenses	
79-2	3/6/79	Alaska Bar Assn.	Trust Violation 1-A 1,2c		Accounting in Process	
79-4	3/22/79	Alaska Bar Assn.	Criminal Conviction 9		Pet. for Formal Hrg. 4/24/79--Set for formal Hrg. 6/12/79-Rescheduled 7/12/79- To BOG 9/8/79-- To Supreme Court 9/17/79	

FILE NO.	DATE FILED	COMPLAINANT'S RELATIONSHIP TO RESPONDENT	MOST SERIOUS CHARGE	STATUS	DISPOSITION	DATE CLOSED
79-5	4/24/79	Attorney	Interference w/justice 7-G-2	Sent to Committee member for advisory opinion 8/29/79 Closed	Dismissed	10/31/79
79-6	5/3/79	Alaska Bar Assn.	Criminal Conviction 9	Supreme Court order Suspending Resp. issued 6/18/79--Resp. previously suspended for non- payment of dues--Present address unknown		
79-7	5/6/79	Alaska Bar Assn.	Interference w/justice 7-T-1	BOG assigned matter to special prosecutor--under investigation		
79-8	5/18/79	Alaska Bar Assn. Client	Relationship w/client 4-B-2,3 12 Complaints	ABR-29 Petition filed and granted--9/28/79--Attorney appointed--9/28/79--Motion to suspend for failure to pay dues filed 9/28/79 Mtn. to Suspend granted 10/4/79		
79-9	7/17/79	Fee Arb. Panel	Conflict of Interest 2-A-1	Under Investigation		
79-13	5/19/79	Client	Neglect 3A,E	Under investigation Investigation delayed pending resolution of probate matter		
79-16	6/13/79	Judge	Incompetence 13	Under Investigation		
79-17	9/5/79	Third Party	Interference w/justice	Under Investigation		
79-18	9/4/79	Opposing Counsel	Conflict of Interest 2-A-5b	Investigation delayed pending resolution of civil action		

FILE NO.	DATE FILED	COMPLAINANT'S RELATIONSHIP TO RESPONDENT	MOST SERIOUS CHARGE	STATUS	DISPOSITION	DATE CLOSED
79-20	9/6/79	Opposing Counsel	Interference w/justice T-2	Under investigation		
79-21	9/12/79	Alaska Bar Assn.	Improper Advertising 8-2	Closed	Dismissed	10/8/79
79-22	9/12/79	Alaska Bar Assn.	Improper Advertising 8-2	Closed	Dismissed	10/10/79
79-23	9/12/79	Client	Neglect--3 A,B	Under investigation		
79-24	9/19/79	Alaska Bar Assn.	Interference w/justice 7-J-2	Closed	Informal Admonition	11/28/79
79-25	9/24/79	Alaska Bar Assn.	Improper Advertising 8-2	Under investigation		
79-26	9/24/79	Client	Relationship w/ client 4-B-2,3	See 79-8 Consolidated		
79-27	9/24/79	Third Party	Interference w/justice 7-C	Closed	Dismissed	11/28/79
79-28	9/27/79	Alaska Bar Assn.	Interference w/justice 7-T-2	Closed	Dismissed	10/22/79
79-29	8/2/79	Opposing Counsel	Personal Behavior 10 B	Closed	Dismissed	12/13/79
79-30	6/1/79	Third Party	Interference w/justice 7-A	Closed	Dismissed	10/17/79

FILE NO.	DATE FILED	COMPLAINANT'S RELATIONSHIP TO RESPONDENT	MOST SERIOUS CHARGE	STATUS	DISPOSITION	DATE CLOSED
79-31	6/1/79	Judge	Interference w/justice 7-D-1	Under investigation		
79-32	10/11/79	Client	Relationship w/Client 4 B 2	Under investigation		
79-33	9/27/79	Third Party	Interference w/justice 7 G 2	Under investigation		
79-34	10/11/79	Opposing Counsel	Interference w/justice 7N	Under investigation		
79-35	11/8/79	Opposing Counsel	Interference w/justice 7-D-1	Closed	Informal Admonition	11/8/79
79-36	11/30/79	Third Party	Misrepresentation/Fraud 5 B	Under investigation		
79-37	10/26/79	Third Party	Misrepresentation/Fraud 5B	Closed	Dismissed	12/13/79
79-38	10/30/79	Client	Relationship w/client 4 E	Under investigation		
79-39	11/2/78	Alaska Bar Assn	Improper advertising 8 A 2	Under investigation		
79-40	11/6/79	Client	Relationship w/client 4 B 2	Under investigation		
79-41	11/8/79	Client	Relationship w/client 4 B 1	Under investigation		
79-42	9/26/79	Third Party	Solicitation 8 C 1	Under investigation		

FILE NO.	DATE FILED	COMPLAINANT'S RELATIONSHIP TO RESPONDENT	MOST SERIOUS CHARGE	STATUS	DEFINITION	CLOSED
79-43	11/28/79	Attorney	Relationship w/client 4 B 3	Referred to Conciliation Panel--Suggested Resolution issued 12/19/79		
79-44	11/29/79	Opposing Counsel	Interference w/justice 7 D 1	Under Investigation		
79-45	12/10/79	Third Party	Interference w/justice 7 0	Under investigation		



Official Business

Alaska State Legislature

House of Representatives

Committee on Judiciary

Pouch V
State Capitol
Juneau, Alaska 99811

March 12, 1980

The Honorable Terry Gardiner
Speaker of the House
Alaska State Legislature
Pouch Y, State Capitol
Juneau, Alaska 99811

Dear Mr. Speaker:

In compliance with AS 44.66.010 - 060 and referral by the Speaker of the House on January 15, 1980, the House Judiciary Committee has conducted a review of the Alaska Bar Association. By letter of July 31, 1979, the Speaker had notified the Committee of the forthcoming referral, thereby permitting advance work to be done during the interim between legislative sessions.

The Alaska Bar Association has taken the position "that it is not a State agency, and that it is not subject to the Sunset review process." The Association refused the Legislative Auditor access to some of its records; therefore, no performance audit has been conducted.

On November 7, 1979 the Committee requested information on 87 points; by letter of January 30, 1980 and a 71-page booklet, The Alaska Bar Association, February 1980, the Association answered completely 73 of the 87 points. Another 13 points were addressed by the Alaska Bar Association, but were not answered completely because of stated lack of adequate or feasibly retrievable information. On one point, a request for a copy of the card index on discipline, the Alaska Bar Association refused to reply, stating that it could not release this confidential information to the House Judiciary Committee.

In addition to receiving testimony during interim hearings, the Committee held 2 hearings to receive public testimony in Juneau. Also, 2 teleconference hearings were held to obtain testimony from Anchorage, Fairbanks, Kodiak, Valdez, Ketchikan, Sitka and Nome. Written testimony was received from 6 persons and the Kenai Peninsula

Bar Association. Oral testimony was received from about 15 persons. Witnesses included the president, president-elect, two former presidents, and three members of the present Board of Governors of the Association; the Ombudsman, and a number of attorneys.

The Alaska Supreme Court has delegated to the Association the responsibility for admissions and discipline, and by statute the Association may propose court rules or rule changes. All attorneys practicing in Alaska are required to be members of the Association, and to pay dues (now \$180.00 per year). Statutory authority is AS 08.08.010 - 250, commonly called the Integrated Bar Act, and some members of the Bar seem to feel that authority also resides in the inherent power of the Alaska Supreme Court.

The Committee found that the Association is conducting a number of worthwhile activities. Unfortunately, it is not clear that most of these are benefiting the general public, as opposed to Association members. (If, as it claims, the Association is not a State agency, it would be under no obligation to benefit the general public.)

In some ways one of the most disturbing revelations was the extent to which attorneys form a closed corporation. The Association comprises all attorneys in the State, only its members may practice law, it is in charge of admissions to the Bar and of discipline of its members, it nominates the three attorneys who sit on the Judicial Council, which in turn sends judgeship nominees to the Governor, judges must themselves be attorneys, and the Association furnishes nine members of the Board of Directors of Alaska Legal Services Corporation. Only in the disciplinary hearing and attorney fee review committees is there any lay presence. There seems to be at present no provision for the exercise of supervisory responsibility by the elected representatives of the people. The position of the Court System on the Alaska Bar Association sunset is included as an appendix to this report.

The Committee received more complaints and more testimony on the subject of Bar examinations than on any other subject related to the Alaska Bar Association. A major defect in the administration of the Alaska examination is that it is prepared and graded by persons who, while skilled attorneys, are amateurs in testing. Professionalism is needed in both the preparation and grading of the

examination to ensure that the examination will score persons only on relevant factors. The training of the preparers and graders should be financed by the income derived each year from the administration of the bar examination (about \$16,000 anticipated in 1980, not including the costs of any litigation which may arise from the examination).

There appears to be no discrimination against women in the Alaska Bar Association. Alaska has one of the highest percentages of women lawyers in the United States and, specifically, the highest percentage of women on its Board of Governors. In fact, the president of the Alaska Bar Association is a woman.

Although no apparent preference for non-minorities is shown, there is a disparity in the numbers of minorities versus non-minorities in the Alaska Bar Association. Ethnic minorities are poorly represented in the Alaska Bar Association. Present membership from these ethnic groups is as follows:

Alaska Native	5.
Black	4
Asian-American	2
Hispanic	1

To the best of our knowledge, 12 Native people have been admitted to the Alaska Bar since Statehood. The only reliable statistics available are those reflecting current membership. Because the problem of low representation of minorities in the Alaska Bar Association has not been addressed adequately in the past, reasons for this situation cannot be determined at this time.

The Judiciary Committee recognizes that the percentage of minorities failing the Alaska bar examination, compared with the percentage of non-minority persons failing, is disproportionately high. The Committee believes that this disparity may be caused in part by cultural factors.

The Committee does not believe that the Alaska Bar Association intends to discriminate against minorities. The Committee commends the Board of Governors' Legal Educational Opportunities Committee for its work in gathering statistics regarding minorities in the Alaska Bar Association. The Committee urges the Board of Governors to

continue this work so that accurate minority pass rates may be established.

The Committee urges the Board of Governors to develop a program which will speak to the statistics reflecting minority representation in the Alaska Bar Association and the apparently low percentage of minority and non-minority individuals who pass the bar examination.

The Committee urges the Board of Governors to be aware of the disparity in minority participation in the bar and to direct its Committee of Bar Examiners to continually scrutinize the preparation and grading of the examination for possible cultural biases.

The Committee urges the Board of Governors to look into establishing some other criteria for evaluating an individual's competency to practice law in the State.

When, after completion of testimony, the Committee began its deliberations, the diversity of opinion was clearly evident. Apparently no one believed that the Alaska Bar Association should be extended for the maximum four years. Some members wanted to treat attorneys like other professionals, with a board to handle admissions and discipline; others preferred to make the Supreme Court directly responsible for those functions; and a third group preferred a short extension together with appropriate statute changes. The last viewpoint was finally adopted.

Findings required by AS 44.66.050(d) follow:

(1) an identification of the problems or the needs that the programs and activities of the board, commission or agency are intended to address;

Finding: The Alaska Bar Association is intended to address the need for admission and discipline of attorneys in the State.

(2) a statement, to the extent practicable, of the objectives of the program of the board, commission, or agency program, and its anticipated accomplishments;

Finding: The objectives are to upgrade the Bar in terms of education, competence, and

professionalism of its members, and to perform some services for the general public.

(3) an identification of any other programs having similar, conflicting or duplicate objectives;

Finding: There are no other programs having similar or conflicting objectives.

(4) an assessment of alternative methods of achieving the purposes of the program;

Finding: The responsibilities could be turned over to the Supreme Court or to a professional board in the Division of Occupational Licensing. The Committee has considered these alternatives but believes that they are not feasible at this time.

(5) an assessment of the consequences of eliminating the board, commission or program and consolidating its activities with another program, or of funding it at a lower level;

Finding: The Association could not be eliminated unless some other agency were responsible for the functions.

(6) a justification for the recommended continuation or extension of the board, commission or program, and an explanation of the manner in which it avoids duplication of or conflict with other efforts;

Finding: The extension of the Association for one year will permit time for a more thorough review and there is no duplication of other efforts.

(7) any other information which, in the opinion of the committee, would improve the performance of the board, commission or agency with respect to its representation of and responsiveness to the public interest;

Finding: Information which would improve the performance of the Association is included in

other portions of this report or in legislation to be introduced by the House Judiciary Committee.

The House Judiciary Committee finds that:

- (1) The Alaska Bar Association should be extended until June 30, 1981.
- (2) Statutory changes are needed in the public interest. The Committee will propose a bill incorporating these changes.

Charles H. Parr, Chairman

Nels A. Anderson, Jr.

Ramona L. Barnes

Fred E. Brown

Thelma Buchholdt

Hugh Malone

Terry Martin

Patrick M. O'Connell

Randy Phillips



Alaska Court System

State of Alaska

303 "K" STREET
ANCHORAGE, ALASKA
99501

ARTHUR H. SNOWDEN II
ADMINISTRATIVE DIRECTOR

(907) 274-8611

March 4, 1980

Representative Charles H. Parr
Pouch V
Juneau, Alaska 99811

Dear Representative Parr:

You have asked that I comment on behalf of the Court System concerning the sunset legislation of the Alaska Bar Association currently pending before your committee.

I have conferred with the Supreme Court with regard to your request and they asked me to comment as follows.

The Court strongly supports continued existence of the Alaska Bar Association as an integrated bar. The Court further suggests that the Bar Association and the Legislative Audit Committee reach a reasonable accommodation of the current dispute.

The Court has not given me brief to comment further on the subject. I hope these comments will help the committee.

Cordially,

Arthur H. Snowden, II
Administrative Director

AHS:cm

cc: Donna Willard, Esq.
President, Alaska Bar Association



Alaska Court System

State of Alaska

303 "K" STREET
ANCHORAGE, ALASKA
99501

ARTHUR H. SNOWDEN II
ADMINISTRATIVE DIRECTOR

(907) 274-8611

March 12, 1980

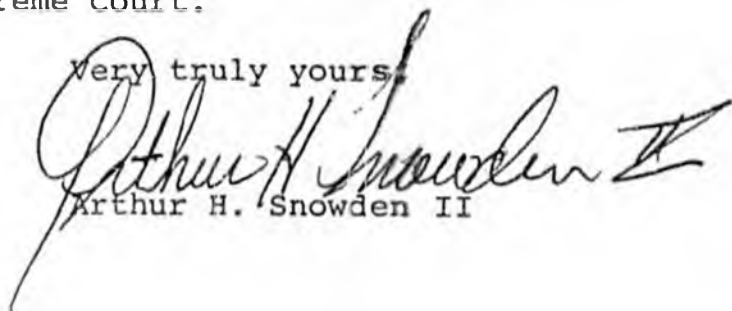
The Hon. Charles Parr, Chairman
House Judiciary Committee
Room 126, State Capitol Building
Juneau, Alaska 99811

Dear Representative Parr:

In my letter of March 4, 1980, with reference to the sunset of the Alaska Bar Association, I stated in the last sentence that the Court hopes that the Bar Association and the Legislative Budget and Audit Committee can reach a reasonable accommodation of their present dispute.

I wish to make it clear that in commenting on this subject, in no way did I intend to comment or convey any information on the merits of the controversy between the Legislative Budget and Audit Committee and the Alaska Bar Association before the Supreme Court.

Very truly yours,



Arthur H. Snowden II