

INTEGRATED
AND NON-
INTEGRATED
BAR ASSOC.



Alaska State Legislature

House of Representatives

Committee on Judiciary

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Official Business

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

From: Margaret W. Berck, Staff

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Subject: Integrated and Nonintegrated Bar Associations

I. INTRODUCTION

Mechanisms for regulating the legal profession vary from state to state. Thirty states, including the State of Alaska, and the District of Columbia have established integrated bar associations to fulfill certain of these regulatory responsibilities. In order to practice law in an integrated bar state, one must be a member of the bar association. This mandatory membership requirement vests an integrated bar association with certain ¹admission, ²licensing, and ³disciplinary functions. The 20 remaining states have nonintegrated bar associations. In these states membership in the state bar association is voluntary and such associations serve primarily as social clubs. In nonintegrated states, the regulation of the legal profession is generally the responsibility of the supreme court. The court typically establishes a board or commission for this purpose. In a few nonintegrated states, the attorney general's office is responsible for the disciplinary function.

II. THE ALASKA BAR ASSOCIATION

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

Pursuant to Alaska statute, the Alaska Bar Association is governed by a nine-member Board of Governors. The Board of Governors serve without salary and are elected by the membership at large. As statute requires the Board of Governors to be elected from the membership, there are no lay persons on the board. Rules concerning admission, discipline, and definition of the practice of law must be embodied in the Alaska Bar Rules.² Although the Board of Governors is empowered to approve and recommend Alaska Bar Rules, the Alaska Supreme Court is vested with the authority to promulgate those rules. The Board of Governors may adopt bylaws and regulations consistent with the Alaska Bar Rules; however, such bylaws and regulations are specifically exempt from the requirements of the Administrative Procedure Act.

¹See AS 08.08.010, et seq.

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

The scheme for adopting Bar Rules and bylaws and regulations consistent with those Bar Rules reflects the roles of the Alaska Bar Association and the Supreme Court in regulating the legal profession. In essence, ~~the Supreme Court has the ultimate rule-making authority~~ in admissions, licensing, and discipline. The Board of Governors conducts adjudicatory hearings, but is primarily relegated to recommending appropriate action to the Supreme Court.

III. SHOULD THE INTEGRATED STATUS OF THE ALASKA BAR ASSOCIATION BE CONTINUED

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

A. Cost Factor

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

Other professions regulated by state agencies are subject to nominal annual licensing fees. For example, a physician is subject to a \$50 fee, while lawyers, \$180. The extent to which these nominal

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

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.

funding comprises approximately one-half of the association's expenses for disciplinary proceedings.⁵

Obviously, a more detailed cost assessment is needed to determine the weight of this objection to the nonintegrated bar system. However, it appears that the existing state financial support combined with fixing appropriate license and admissions fees may eliminate this tax burden objection.

B. Legislative Authority

The Alaska Supreme Court contends that it has the inherent power to admit, discipline, and disbar Alaskan lawyers. The source of this power is never defined beyond the recitation that it is an exercise of the Supreme Court's inherent power and jurisdiction over attorneys as officers of the court. Under this theory it seems that the Alaska Supreme Court has permitted the delegation of certain of these responsibilities to the Alaska Bar Association. Shortly after the enactment of the Alaska Integrated Bar Act, the Supreme Court held that the act did not detract from its inherent powers to govern the practice of law in Alaska, but the act, on the contrary, merely adds helpful machinery. In upholding the validity of the act, the court noted various provisions deferring to its inherent authority. For example, it cited: that decisions of the Board of Governors are merely recommendatory; that the review of such decisions before the Supreme Court are not limited in scope; and that only final orders of the Supreme Court work disbarment or reinstatement.

In a subsequent decision, the Alaska Supreme Court held that one section of the act, which attempted to mandate that the Supreme Court give full accord to a recommendation of the Board of Governors, was an unconstitutional invasion of its inherent powers.

⁵Initial billings submitted to the court system to obtain these state funds contained the names of those individuals subject to ongoing disciplinary proceedings in violation of the confidentiality required by Bar Rule 31.

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

The Supreme Court's position has prompted the Alaska Bar Association to contend that it is not a state agency. This contention has been raised in two different lawsuits filed against the association. One suit alleges that the Bar Association conducted a meeting in violation of the public meeting law. The lower court found for the Bar Association and currently the matter is before the Alaska Supreme Court. The other suit arose out of an investigation by the Ombudsman pertaining to the adequacy of resolving citizen complaints against lawyers and the propriety of salary and fringe benefits for the Bar Counsel. The Bar Association's refusal to submit to the official jurisdiction of the Ombudsman has resulted in litigation presently pending before the Superior Court in Anchorage.

The Supreme Court's exclusive jurisdiction over Alaskan attorneys impacts the policy considerations before this committee. If the committee determines to sunset or de-integrate the Alaska Bar Association, without establishing any statutory mechanisms for admitting, licensing and disciplining attorneys, the Supreme Court would continue to bear the responsibilities for this regulation. Termination of the Alaska Bar Association would not de-regulate attorneys. On the other hand, should the committee determine to sunset or

de-integrate the Alaska Bar Association and establish statutory mechanisms for regulating attorneys, deference must be made to the Supreme Court's authority. Even should these statutory mechanisms not invade the Supreme Court's jurisdiction, nothing but good faith would require the Supreme Court to abide by them. It was in just such a context that 20 years ago the Supreme Court upheld the validity of the Integrated Bar Act and still abides by much of that act today.