

ALASKA

BAR

ASSOC.:

BOARD OF

GOVERNORS



OFFICIAL BUSINESS

# Alaska State Legislature

## Senate

POUCH V  
CAPITOL BUILDING  
JUNEAU, ALASKA 99811

March 5, 1985

MEMORANDUM TO: Senator Rodey, Chairman  
Judiciary Committee

From: Peggy Mulligan *PM*  
Secretary of the Senate

Subject: Sunset Reviews

President Bennett referred the following report to your committee to perform the legislative oversight function:

A PERFORMANCE REPORT ON THE BOARD OF GOVERNORS  
OF THE ALASKA BAR ASSOCIATION, December 15, 1984

# STATE OF ALASKA

## THE LEGISLATURE

BUDGET AND AUDIT COMMITTEE

*Reserved to Judiciary*  
AUDIT DIVISION  
POUCH W  
JUNEAU, ALASKA 99811

MAR 04 1985

March 4, 1985

The Honorable Don Bennett  
President of the Senate  
Pouch V  
Juneau, AK 99811-3100

Dear Senator Bennett:

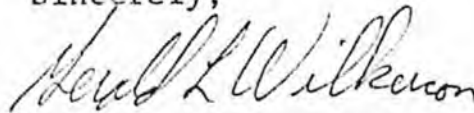
The Legislative Budget and Audit Committee released to the public the last three sunset audit reports of regulatory commissions that will terminate June 30, 1985. I am forwarding these reports to you so that they may be distributed to the appropriate standing committees you will designate to perform the legislative oversight function.

The three entities are:

1. Board of Governors of the Alaska Bar Association (AS 08.08.040)
2. Alaska Code Revision Commission (AS 24.20.075)
3. Alaska Public Utilities Commission (AS 42.05.010)

Please note that AS 08.03.020(a) and AS 44.66.010 provide that upon termination, each board or commission continues in existence until June 30 of the next succeeding year for the purpose of concluding its affairs.

Sincerely,



Gerald L. Wilkerson  
Legislative Auditor  
Division of Legislative Audit

Enclosures

MAR 04 1985

*Referred to: Judiciary*

A PERFORMANCE REPORT ON THE  
BOARD OF GOVERNORS OF THE  
ALASKA BAR ASSOCIATION

December 15, 1984

Audit Control Number

41-1185-85-R

Chief Justice, Alaska  
Supreme Court

Jay A. Rabinowitz

ALASKA BAR ASSOCIATION

Executive Director

Randall P. Burns

Board of Governors:

President  
President-Elect  
Vice President  
Secretary  
Treasurer  
Member  
Member  
Member  
Member  
Member  
Member  
Member

Harold M. Brown  
Harry Branson  
Gail Roy Fraties  
Paul A. Barrett  
Lew M. Williams  
Judith J. Bazeley  
R. Stanley Ditus  
Bruce E. Gagnon  
Andonia Harrison  
Ronald W. Lorensen  
Niesje J. Steinkruger  
Glenda J. Straube

AUDIT DIVISION  
POUCH W  
JUNEAU, ALASKA 99811

**THE LEGISLATURE**

BUDGET AND AUDIT COMMITTEE

December 15, 1984

Members of the Legislative Budget  
and Audit Committee:

In accordance with the provisions of Title 24 of the Alaska  
Statutes, the attached report is submitted for your review.

A PERFORMANCE REPORT ON THE  
BOARD OF GOVERNORS OF THE  
ALASKA BAR ASSOCIATION

December 15, 1984

Audit Control Number

41-1185-85-R



Gerald L. Wilkerson, CPA  
Legislative Auditor  
Division of Legislative Audit

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## PURPOSE OF THE REPORT

In accordance with the intent of Titles 24 and 44 of the Alaska Statutes (sunset legislation), we have examined the activities of the Board of Governors of the Alaska Bar Association to determine if there is a demonstrated public need for its continued existence, and if the Board has been operating in an efficient and effective manner.

Legislative intent requires consideration of this report during the legislative oversight hearings to determine whether the Board of Governors of the Alaska Bar Association should be reestablished. The law now specifies that the Board will terminate June 30, 1985, and have one year from that date to conclude its affairs.

The policy and audit approach utilized by the Division of Legislative Audit for Performance Reports can best be described as "audit by exception."

This methodology focuses audit effort on areas of an auditee's operations that have been identified by a preliminary survey as having a high degree of probability for needing improvements.

Therefore, by design, finite audit resources are used to identify where and how improvement can be made and little time is devoted to reviewing well run operations or programs. Consequently, this report highlights those areas needing improvement and does not emphasize those operations and programs that are properly functioning.

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## ORGANIZATION AND FUNCTION

The practice of law in the State of Alaska is regulated by the Board of Governors of the Alaska Bar Association. The Board consists of twelve members; nine attorneys elected by the active membership of the Association, and three non-attorney, public members appointed by the Governor and confirmed by the Legislature in joint session.

The powers and duties of the Board are conferred by the Alaska Integrated Bar Act (AS 08.08) and the Alaska Bar Rules promulgated by the Supreme Court of Alaska.

The two primary functions of the Alaska Bar Association are the admission and discipline of its members. To accomplish these and other functions, the Association has a 1984 operating budget of approximately \$900,000. Funding is provided primarily by membership dues (\$310 per year), admission fees, lawyer referral fees, continuing legal education, and interest income.

The Association's office is located in Anchorage and is staffed with ten full-time employees.

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## REPORT CONCLUSION

This review contains policy issues raised as a result of our evaluation of the Board of Governors of the Alaska Bar Association (ABA). The final policy decisions affecting the ABA are not within the scope of this report, but require legislative consideration. In debating these issues, the oversight committees should take into consideration the findings and recommendations and other information presented in this report so the potential impact of policy changes can be evaluated.

### Report Conclusion

In our opinion, the Board of Governors of the Alaska Bar Association should be reestablished. The regulation and licensing of qualified legal professionals is necessary to protect the public's safety and welfare. The Board provides this protection by reasonably assuring that persons licensed to practice law are qualified and by assuring that those licensed act in a competent and ethical manner through a sophisticated complaint investigation process.

Furthermore, nothing came to our attention during our review, that showed the public's best interest would be better served by any different regulatory method.

Overall, it is our opinion that the Board operates in an effective and economical manner. However, we have made recommendations which, if implemented, will improve the efficiency and effectiveness of the Board's operations (see the Findings and Recommendations section of this report).

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FINDINGS AND RECOMMENDATIONS

Recommendation No. 1

The Board of Governors of the Alaska Bar Association (ABA) should take prompt action to reduce both the number of back-logged disciplinary investigation cases and the length of time it takes to bring an investigation to a conclusion.

As of October 31, 1984, the ABA's discipline section had 41 cases pending disciplinary or other proceedings and an additional 165 cases under investigation.

An analysis of the status and length of time these cases have been open showed the following.

<u>Status</u>	<u>Cases</u>	<u>Avg. Days Open</u>	<u>Range of Days Open</u>
<u>Pending Proceedings:</u>			
Pending Supreme Court	5	636	396 - 853
Pending Discipline Board	6	425	230 - 783
Pending Hearing Comm.	10	720	343 - 1428
Pending Admonition	3	422	333 - 474
Pending Fee Arbitration	12	291	117 - 525
Pending Conciliation	<u>5</u>	332	70 - 405
<u>Total</u>	<u>41</u>		
<u>Under Investigation:</u>			
Investigator on Case	11	606	252 - 1093
Special Counsel	1	1,662	N/A
Investigation - Prelim.	113	188	7 - 607
Investigation-Formal	<u>40</u>	342	13 - 1097
<u>Total</u>	<u>165</u>		

In addition, an analysis of 21 cases recently dismissed showed the average days these cases were open was 317, ranging from 56 to 943 days.

The Board of Governors is well aware of the serious backlog in disciplinary cases. One of the Board's immediate goals is to take action necessary to reduce this backlog. It should be noted that the backlog and its age has resulted primarily from prior years' turnover and vacancies in the disciplinary staff.

We encourage the Board to take prompt action to reduce the case backlog. In addition, we recommend that during the

Board's deliberations of available options, consideration should also be given to the length of time taken to conclude cases. It is in the best interest of the ABA, the complainant, and the attorneys against whom the complaints were filed to take timely action in closing cases.

Therefore, we recommend that the Board's actions not only address the immediate need to reduce the case backlog, but also address the long-term staffing needs of the discipline section.

Recommendation No. 2

The ABA should comply with the public notice requirements of AS 08.08.075.

Chapter 52, SLA 1981 amended the Alaska Integrated Bar Act (AS 08.08) to bring meetings of the Board of Governors under the public meeting statutes, AS 44.62.310 and .312. More specifically, the Bar Act was amended to require that the public shall be given 30 days notice of meetings of the Board, except for emergency meetings.

The ABA has not publicly advertised meetings of the Board since enactment of this statute.

We recommend that the ABA publicly advertise the meetings of the Board in at least three major newspapers in the State.

Recommendation No. 3

The ABA should seek legislation requiring applicants for admission be fingerprinted to determine whether the applicant has a record of criminal convictions.

The standing policies of the Board of Governors require that applicants for admission to the ABA must submit completed sets of fingerprint cards with their application.

In conducting its moral character investigation of the applicants, the ABA submits the fingerprint cards to the Alaska State Troopers for a criminal records check. However, this records check is restricted to information contained in the State's information system. The Federal Bureau of Investigation's (FBI) Identification Division will not accept these fingerprint cards for processing without a specific statute authorizing the ABA to require fingerprinting as an admission requirement.

Effective January 1, 1985, the ABA will institute licensing by reciprocity in Alaska. This process will most likely bring more applicants from other states who have been practicing law for longer periods. To ensure the good moral character of these applicants, the ABA should have access

to the nationwide criminal record information maintained by the FBI.

Recommendation No. 4

The ABA should amend its bylaws to increase the quorum requirements for meetings of the Board of Governors.

In 1981, the Legislature amended the Alaska Integrated Bar Act to increase the membership of the Board of Governors from nine attorney members to twelve members by adding three non-attorney or "public" members.

Article V, Section 9 of the Association's bylaws provides that five members of the Board constitute a quorum at any meeting. This section has not been amended to reflect the statutory increase in the total membership of the Board.

We recommend that the quorum requirement be increased to seven members of the Board of Governors to ensure adequate representation of Association members at all Board meetings.

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## ANALYSIS OF PUBLIC NEED

### Limited Analysis

The following analyses indicate both positive and negative factors as they relate to the public need as defined in the "sunset" law. These analyses are not intended to be comprehensive, but to address those areas we were able to cover during our examination.

I. The extent to which the board, commission or program has operated in the public interest.

- A. Effective January 1, 1985, the ABA will operate under revised Alaska Bar Rules of Disciplinary Enforcement adopted by the Supreme Court. The revised rules resulted from the major undertaking and joint cooperation of the Supreme Court, the Board of Governors, the ABA staff, and a review team from the American Bar Association's Standing Committee on Professional Discipline.

The most dramatic revision is contained in Alaska Bar Rule 21 which provides for public access to disciplinary proceedings. The previous rules provided for confidential proceedings up until proceedings before the Supreme Court. Relatively few cases ever reached that stage.

In order to alleviate public concern that attorney discipline is not taken seriously by the ABA, the Board voted to open disciplinary proceedings to the public. The revised rules provide for public access at a much earlier stage of the discipline process.

The revised rules also establish procedures for a complainant to appeal the decision of the ABA discipline staff to dismiss a complaint.

- B. The ABA provides public notice of any attorney who has been disbarred or suspended.
- C. In addition to the three public members who serve on the Board of Governors, the Board has also appointed a total of 42 non-attorney individuals to serve on disciplinary hearing committees and fee arbitration panels throughout the State.
- D. If a complaint received by the ABA does not constitute misconduct on the part of an attorney, but rather is primarily concerned with a fee dispute, the ABA offers a fee arbitration process.

This process provides for the dispute to be arbitrated by a third party panel consisting of two attorneys and one public member.

Similarly, the ABA offers a conciliation process to attempt to resolve disputes between attorneys and clients where the dispute is neither fee nor misconduct related.

Failure by an attorney to participate in good faith in the conciliation process may be grounds for disciplinary action.

- E. The ABA operates an attorney referral service, funded by subscribing attorneys, whereby anyone from around the State or from outside the State can call a toll-free Zenith number and receive the names of three attorneys who practice law in certain disciplines. Subscribing attorneys agree to provide referred clients the first half hour of consultation at a reduced rate of \$35. (See Appendix D for the number of referral calls received, by discipline.)
- F. Effective January 1, 1985, revised Alaska Bar Rules will permit licensing by reciprocity.
- G. The ABA maintains a Client Security Fund for the purpose of making reimbursement to clients of attorneys who have suffered non-insured losses of money, property, or other things of value as a result of a dishonest act by an attorney. A portion (\$10) of each ABA member's annual dues is deposited in the Fund.
- H. The ABA has actively supported the Conflict Resolution Center in Anchorage and the Alaska Legal Services Corporation.

II. The extent to which the operation of the board, commission, or agency program has been impeded or enhanced by existing statutes, procedures, and practices which it has adopted, and any other matter, including budgetary, resource, and personnel matters.

- A. The ABA is enhanced by an unprecedented involvement of the membership in its operations. A total of 250 members serve on various committees, panels or other adjunct organizations. (See Appendix E for membership and public involvement.)
- B. The operations of the Board are enhanced by a substantial budget funded virtually entirely by

the ABA membership through dues, admission fees, continuing legal education, lawyer referral fees, conventions, and interest income. The 1984 budget totals approximately \$900,000. (See Appendix A for a schedule of ABA revenues and expenditures.)

- C. One of the public member positions of the Board of Governors was vacant from May of 1983 until the Governor made the appointment in June of 1984.
- III. The extent to which the board, commission, or agency has recommended statutory changes which are generally of benefit to the public interest.
- A. In the transmittal letter accompanying its 1982-1983 Annual Report to the Legislature, the Board requested legislative support for statutory authority to require the fingerprinting of ABA applicants. See Recommendation No. 3 of this report.
- IV. The extent to which the board, commission, or agency has encouraged interested persons to report to it concerning the effect of its regulations and decisions on the effectiveness of service, economy of service, and availability of service which it has provided.
- A. The ABA publicly displays information and forms regarding complaint avenues available through ABA's disciplinary section.
- V. The extent to which the board, commission, or agency has encouraged public participation in the making of its regulations and decisions.
- A. The ABA has not publicly advertised meetings of the Board of Governors as required by statute.
- VI. The efficiency with which public inquiries or complaints regarding the activities of the board, commission, or agency filed with it, with the department to which a board or commission is administratively assigned, or with the Office of the Ombudsman have been processed and resolved.
- A. As of October 31, 1984, the ABA's discipline section had 41 cases pending disciplinary or other proceedings and an additional 165 cases under investigation. In addition, an analysis of 21 cases recently dismissed showed the average number of days these cases were open was 317, ranging from 56 to 943 days. (See Recommendation No. 1 of this report.)

VII. The extent to which a board or commission which regulates entry into an occupation or profession has presented qualified applicants to serve the public.

- A. We found no instances where the Board had licensed unqualified applicants.
- B. Although many complaints are filed against attorneys, few have been found to be misconduct resulting in formal disciplinary action. (See Appendix B for a summary of disciplinary statistics.)
- C. The ABA offers a continuing legal education program to its membership and also maintains an education library.

VIII. The extent to which State personnel practices, including affirmative action requirements, have been complied with by the board, commission, or agency to its own activities and the area of activity of interest.

- A. Nothing came to our attention that showed the Board was in violation of any affirmative action or hiring requirements.

IX. The extent to which statutory, regulatory, budgeting, or other changes are necessary to enable the agency, board, or commission to better serve the interests of the public and to comply with the factors enumerated in this subsection.

Please refer to the previous section, Findings and Recommendation.

APPENDIXES

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APPENDIX A

BOARD OF GOVERNORS  
ALASKA BAR ASSOCIATION  
REVENUES COMPARED WITH EXPENSES  
For the Calendar Years 1982, 1983, and 1984  
(Note 1)

	<u>1982</u>	<u>1983</u>	<u>1984</u> (Note 2)
<u>Revenues</u>			
Membership Dues	\$481,834	\$515,281	\$506,239
Admission Fees	89,595	88,883	96,664
Continuing Legal Education	113,188	58,205	27,476
Lawyer Referral Fees	47,703	52,203	49,869
Interest on Investments	51,979	45,746	45,135
Annual Meeting	37,105	34,157	43,686
Other	<u>31,344</u>	<u>38,314</u>	<u>58,940</u>
<u>Total Revenues</u>	<u>852,748</u>	<u>832,789</u>	<u>828,009</u>
<u>Expenses</u>			
Admissions	77,632	109,983	106,895
Board of Governors	18,376	22,513	28,996
Discipline/Bar Counsel	110,439	132,875	208,939
Administration	226,343	243,607	248,204
Lawyer Referral Service	28,459	37,987	31,300
Continuing Legal Education	146,975	101,063	54,376
Annual Meeting	37,533	28,350	41,238
The Bar Rag	14,505	13,330	10,259
Alaska Law Review	9,774	11,198	10,000
Other	<u>15,886</u>	<u>13,323</u>	<u>43,478</u>
<u>Total Expenses</u>	<u>685,922</u>	<u>714,229</u>	<u>783,685</u>
<u>Excess of Revenue over Expenses</u>	<u>\$166,826</u>	<u>\$118,560</u>	<u>\$ 44,324</u>

Note 1: The 1982 and 1983 revenue and expense information was taken from audited financial statements of the ABA. The 1984 information was obtained from the accounting records of the ABA and has not been audited.

Note 2: The 1984 amounts are as of November 30, 1984.

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APPENDIX B

BOARD OF GOVERNORS  
ALASKA BAR ASSOCIATION  
DISCIPLINE STATISTICS  
(Note 1)

Disposition of Cases Closed  
during 1982, 1983, and 1984

<u>Disposition</u>	<u>1982</u>	<u>1983</u>	<u>1984</u> (Note 2)
Disbarment by Supreme Court	0	0	1
Suspension by Supreme Court	0	2	1
Public Censure by Supreme Court	1	3	0
Private Informal Admonition	7	6	15
Dismissed by Disciplinary Counsel	<u>61</u>	<u>72</u>	<u>130</u>
<u>Total Cases Closed</u>	<u>69</u>	<u>83</u>	<u>147</u>

Status of Cases Open  
as of October 31, 1984

<u>Status</u>	<u>Cases</u>
Suspension in Effect	4
Pending Supreme Court	5
Pending Disciplinary Board	6
Pending Hearing Committee	10
Pending Informal Admonition	3
Pending Fee Arbitration	12
Pending Conciliation	5
Held in Abeyance	3
Investigator on Case	11
Special Counsel	1
Preliminary Investigation	113
Formal Investigation	<u>40</u>
<u>Total Open Cases</u>	<u>213</u>

Note 1: The information in this Appendix was obtained from statistical summaries prepared by the ABA's discipline section.

Note 2: The 1984 statistics are as of October 31, 1984.

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APPENDIX C

BOARD OF GOVERNORS  
ALASKA BAR ASSOCIATION  
BAR EXAMINATION STATISTICS  
For Calendar Years 1982, 1983, and 1984

	<u>Number Taking Exam</u>	<u>Number Passing Exam</u>	<u>Percent Passing Exam</u>
<u>February 1982 Exam</u>			
General Applicants	126	89	70.6%
Attorney Applicants	<u>10</u>	<u>5</u>	<u>50.0%</u>
<u>Total</u>	<u>136</u>	<u>94</u>	<u>69.1%</u>
<u>July 1982 Exam</u>			
General Applicants	119	83	69.7%
Attorney Applicants	<u>7</u>	<u>5</u>	<u>71.4%</u>
<u>Total</u>	<u>126</u>	<u>88</u>	<u>69.8%</u>
<u>February 1983 Exam</u>			
General Applicants	106	80	75.5%
Attorney Applicants	<u>15</u>	<u>10</u>	<u>66.7%</u>
<u>Total</u>	<u>121</u>	<u>90</u>	<u>74.4%</u>
<u>July 1983 Exam</u>			
General Applicants	122	86	70.5%
Attorney Applicants	<u>9</u>	<u>6</u>	<u>66.7%</u>
<u>Total</u>	<u>131</u>	<u>92</u>	<u>70.2%</u>
<u>February 1984 Exam</u>			
General Applicants	108	72	66.7%
Attorney Applicants	<u>16</u>	<u>8</u>	<u>50.0%</u>
<u>Total</u>	<u>124</u>	<u>80</u>	<u>64.5%</u>
<u>July 1984 Exam</u>			
General Applicants	118	73	61.9%
Attorney Applicants	<u>8</u>	<u>6</u>	<u>75.0%</u>
<u>Total</u>	<u>126</u>	<u>79</u>	<u>62.7%</u>
<u>Total 1982 through 1984</u>	<u>764</u>	<u>523</u>	<u>68.5%</u>

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APPENDIX D

BOARD OF GOVERNORS  
ALASKA BAR ASSOCIATION  
ATTORNEY REFERRAL CALLS RECEIVED  
For Calendar Years 1982, 1983, and 1984  
(Note 1)

<u>Discipline</u>	<u>1982</u>	<u>1983</u>	<u>1984</u> (Note 2)
Administrative	232	368	278
Admiralty	30	40	37
Arts	30	14	5
Bankruptcy	153	167	174
Commercial	1,254	1,389	1,126
Consumer	47	184	212
Community Legal Asst.	7	7	-0-
Criminal	498	751	549
Discrimination	51	59	61
Eminent Domain	11	17	22
Environmental	1	2	1
Family	1,987	2,295	1,962
Foreign Speaking	8	12	3
Immigration	74	85	50
Labor Relations	154	243	170
Landlord/Tenant	239	295	251
Mining	17	23	16
Negligence	971	1,241	601
Patent/Copyright	50	92	103
Public Interest	-0-	-0-	2
Tax	54	103	70
Traffic	427	273	398
Trust/Wills/Estates	274	265	215
Worker's Compensation	N/A	N/A	135
<u>Total</u>	<u>6,569</u>	<u>7,924</u>	<u>6,441</u>
<u>Total Projected for 1984:</u>			<u>8,600</u>

Note 1: The information in this Appendix was obtained from statistical summaries prepared by the ABA.

Note 2: The 1984 statistics are as of September 30, 1984.

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APPENDIX E

BOARD OF GOVERNORS  
ALASKA BAR ASSOCIATION  
MEMBERSHIP ON ABA COMMITTEES  
December 15, 1984

<u>Committee</u>	<u>Attorney Members</u>	<u>Public Members</u>	<u>Total Members</u>
<u>Board of Governors</u>	<u>9</u>	<u>3</u>	<u>12</u>
<u>Standing Committees</u>			
Bar Polls and Elections	9	-	9
Continuing Legal Education	12	-	12
Ethics	9	-	9
Historians	13	-	13
Law Related Education	15	-	15
Legal Education Opportunities	10	-	10
Status, Bylaws & Rules	12	-	12
<u>Total Standing Committees</u>	<u>80</u>	<u>-</u>	<u>80</u>
<u>Bar Rule Committees</u>			
<u>Conciliation Panels:</u>			
First District	3	-	3
Second & Fourth Districts	3	-	3
Third District	6	-	6
<u>Discipline Hearing:</u>			
First District	8	3	11
Second & Fourth Districts	8	4	12
Third District	24	12	36
<u>Fee Arbitration:</u>			
First District	14	5	19
Second & Fourth Districts	12	6	18
Third District	28	12	40
Law Examiners	20	-	20
<u>Total Bar Rule Committees</u>	<u>126</u>	<u>42</u>	<u>168</u>
<u>Other Adjunct Involvement</u>			
American Bar Assoc. Delegate	1	-	1
AK Assoc. of Legal Assistance	1	-	1
AK Bar Foundation	3	-	3
AK Code Revision Commission	1	-	1
AK Judicial Council	3	-	3
AK Comm. on Judicial Conduct	3	-	3
AK Law Review	3	-	3
AK Legal Services Corp.			
Board of Directors	17	-	17
Ninth Circuit Judicial Conf.	2	-	2
Rocky Mountain Mineral			
Law Foundation	1	-	1
<u>Total Other Adjunct Involvement</u>	<u>35</u>	<u>-</u>	<u>35</u>
<u>Total Committee Membership</u>	<u>250</u>	<u>45</u>	<u>295</u>

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CHIEF JUSTICE  
JAY A. RABINOWITZ

ROOM 418, 604 BARNETTE ST  
FARBANKS, ALASKA 99701  
(907) 452-9300

JUSTICES  
EDMOND W. BURKE  
WARREN W. MATTHEWS JR.  
ALLEN T. COMPTON  
DANIEL A. MOORE

## Supreme Court State of Alaska

January 28, 1985

**R E C E I V E D**  
FEB 1 - 1985  
LEGISLATIVE  
ADMIN

Gerald L. Wilkerson  
Legislative Auditor  
Division of Legislative Audit  
Pouch W  
Juneau, Alaska 99811

Dear Mr. Wilkerson:

This letter is written to respond to the recommendations contained in the Division of Legislative Audit's preliminary performance report on the Board of Governors of the Alaska Bar Association. It is my understanding that the Division's recommendations and this response will be contained in your final report to the Alaska Legislature's Budget and Audit Committee. The Supreme Court appreciates the opportunity to respond on behalf of the Alaska Bar Association.

As you are aware, the powers and duties of the Board of Governors of the Alaska Bar are conferred by both statute and Court rule. The Supreme Court works actively to provide guidance to the Bar Association through the on-going administrative process of the adoption of and amendment to Alaska Bar Rules. In addition, through published opinions, this Court also provides "guidance" to the Bar when lawsuits against the Bar or Association discipline matters come before us for decision.

Not surprisingly, the Supreme Court's major areas of supervision involve the Alaska Bar's two most important public functions: the admission of attorneys to the practice of law in Alaska and the discipline of those attorneys who are admitted to the Bar. Since 1981, in part as a response to issues raised by the Bar's first sunset review, the Board of Governors, with the support of this Court, has been actively engaged in implementing improvements in both of those areas.

In 1982, after two years of study (and the further prod of California's withdrawal of support), the Bar instituted the "All-Alaska" Bar Exam, which included substantially revised essay drafting and grading procedures, revised score computation procedures, and the first essay practicum in the country. Having created what many consider a model exam, the Board of Governors turned its attention in 1983 to the Bar's discipline process.

At the joint invitation of the Alaska Supreme Court and the Bar Association, a three member evaluation team from the Center for Professional Responsibility of the American Bar Association's Standing Committee on Professional Discipline came to Anchorage in June of 1983. The team was here for a week interviewing the Bar's staff, attorney and non-attorney members of area discipline hearing committees, members of the Board of Governors, judges, and Justice Edmond Burke of this Court. The discipline team's final report was issued in late December of 1983 and the Board and the Court, in a special session in mid-January of 1984, met to discuss implementation of the many recommendations for improvements contained in that report.

It was during that mid-January meeting, just over a year ago now, that the Board instructed the staff of the Association's discipline section to focus its attention on the backlogged disciplinary investigation cases. The staff was asked to review all pre-1983 cases and determine their status by the Board's mid-March (1983) meeting. This staff review was to specifically address which cases should be dismissed; which cases required additional investigation prior to a determination as to the appropriate action; and which cases could be immediately filed as petitions for formal hearing. The Board also gave authority for the employment of a part-time investigator to assist discipline counsel in their efforts.

In addition, Bar staff was asked to prepare an entire rewrite of the Rules of Disciplinary Enforcement (Alaska Bar Rules 9 - 33), incorporating both the recommendations for change contained in the study done by the ABA's discipline evaluation team and the many suggestions for improvements to the procedures recommended by the discipline staff and the Board itself.

The Board of Governors acknowledges that its current staff has, for the most part, inherited a backlog resulting from two years of significant personnel changes within the Bar's discipline section. Although the Board, recognizing the growing backlog, had doubled the number of staff assigned to the discipline section beginning in 1983, it was not until late

1983, after the resignation of both of the discipline counsel on staff at the outset of the year, that the Bar Association was actually able to fully track its caseload. I know the Board of Governors appreciates the reference in the preliminary report to the fact that the backlog was primarily an inherited problem. As the Bar's quarterly discipline reports additionally indicate, coupled with the unfortunate and somewhat debilitating discipline personnel changes, there has been a significant increase in the number of complaints filed by the public in the last few years. Taken together, the personnel matters and the increased filings go far in explaining the existence of the backlog.

The Board's decision in January of 1984 to request a full review of the discipline caseload therefore resulted from a desire to have a comprehensive picture of the problem it faced. The Board also requested that the reports prepared by staff for both the Board and this Court be presented in a far more comprehensible format. A comparison of reports prepared prior to this year and the reports now presented to this Court shows that the new format makes clear the status of each discipline case, the age of each case, the person to whom each case is assigned, and the age of the case at each particular stage of its movement through the discipline process. The new report is now a very useable tool for effective case management.

The result of all these efforts by the Bar Association to solve its backlog problem is demonstrable. At the beginning of 1982 there were sixty-seven (67) cases pending and carried forward from 1981. During 1982 new Requests for Investigation (i.e., complaints) totalled 121, for a total caseload of 188 cases in 1982. Of those cases, 61 were dismissed, 7 were closed after the administration of a private informal admonition (PIA) by discipline counsel, and 8 petitions for formal hearing were filed.

At the beginning of 1983 there were 120 cases pending and carried forward. There were 148 complaints filed during 1983, for a total load of 268 cases for 1983. Of those cases, 72 were dismissed; 6 were closed after administration of a PIA; 3 were closed after this Court publicly censured the attorneys involved; and 2 cases were closed after this Court suspended the attorneys involved from the practice of law for varying lengths of time. In addition, 4 petitions for formal hearing were filed.

At the beginning of 1984, there were 185 cases pending and carried forward. As of December 31, 1984, 206 complaints were filed during 1984, for a total caseload of 391. Of those cases, 170 were dismissed; 18 were closed after administration of a

PIA; 1 was closed after the attorney was reprimanded by the Disciplinary Board; 3 were closed after this Court suspended the attorneys involved; and 9 cases involving a single attorney were closed after the attorney was disbarred. At the end of 1984, there were 170 open cases. During 1984, 19 cases were moved to formal hearing. A copy of the Bar's fourth quarter 1984 report is enclosed for your review.

As you can see, even though the number of grievances filed has substantially increased each year, in 1984 the Bar finally turned the corner on its backlog. In 1984 incoming cases were handled as expeditiously as possible, and discipline staff attempted, where possible, to see that complaints that had no merit were dismissed promptly, so that such cases were not simply put at the bottom of the stack, to be held for a number of months and then closed. At the same time, the staff worked hard to process its oldest cases.

At the beginning of 1984, 78 complaints which had been filed prior to 1983 were still pending before the Bar Association [19 of those cases were pre-1981, the rest (59) were 1982 cases], and the other 116 open cases were complaints filed during 1983. At the beginning of 1984, 39% of the cases under investigation were more than one year old. That figure was reduced by the end of 1984 to 18%. At the end of 1984, only 7 cases filed prior to 1983 were still under investigation. The Bar's reduction in that serious backlog of pre-1983 cases, not to mention its actions in processing so many of the 1983 and 1984 cases, speaks well of its desire to conquer its backlog.

As a further note, the Bar, which employed a part-time investigator throughout most of 1984, has made that position full-time beginning January 1 of this year. This third attorney position will handle both in-take and investigations.

The Board, as you point out in your audit findings, is well aware of the backlog and has clearly made real and substantial progress towards solving that problem. By mid-March of this year, the Board has directed staff to have again reviewed each case and to have dismissed every case that should be dismissed so that the Association can focus its efforts on investigating those complaints filed that the Bar believes contain allegations that an attorney acted unethically.

As the record reflects, in 1984 more hearings were held before the Disciplinary Board and area discipline hearing committees than in any previous year. Currently, this Court has 8 matters under consideration. In the last three years the Alaska Bar Association, with the agreement of this Court, has publicly censured, suspended or disbarred a total of 9

attorneys; issued 31 admonitions; and reprimanded 4 attorneys. Through advertisements in this State's major newspapers, Alaska's citizenry has been apprised of the Bar's disciplinary actions. It does without saying that the Bar's membership is certainly aware of the Board's and this Court's increased attention in the area of discipline. All of this attention focused by the Bar Association on disciplinary enforcement is to the good and done in the public interest.

The public's interest has been further served by the Board of Governor's request for, and this Court's recent approval of, totally revised discipline rules. Of prime importance is the opening up of the discipline process to the public. Until recently the process was entirely confidential unless this Court was asked to take action upon a recommendation for public discipline by the Board. Under the new rules, which took effect January 1 of this year, the entire procedure becomes public once a petition for formal hearing is filed. The hearings before the area discipline committees and the Disciplinary Board itself, which used to be held in closed session, are now open to the public, so that the public -- if it so chooses -- may observe the process at first hand.

The decision by the Board and this Court to implement open hearings goes to the heart of the Association's goal to improve the discipline process. The Bar takes very seriously its responsibility to protect the public from the unethical acts of its members, and it sincerely believes its hard work to this end deserves public scrutiny. If it believed it had any skeletons in the closet, I sincerely doubt the Bar Association would have come forward with a request that this Court approve open discipline hearings.

In addition, the new rules provide for an appeal process for complainants. Previously, the rules did not provide for recourse, should a complainant disagree with a decision by discipline counsel to dismiss his or her complaint. The new rules provide for a review of counsel's decision, should a complainant so request.

What I think the above demonstrates is an evolving, highly competent discipline system that has resulted from over two years of study and constant vigilance by the Association. The Board of Governors, during its upcoming March, 1985 meeting, based on the result of the discipline staff's work to dispose of all cases not involving unethical conduct, will then evaluate the remaining caseload. If, after staff's concentrated work, it appears that a serious backlog problem remains, then the Board will at that time evaluate staffing needs. With this Court's willing support, additional staff will be hired, if necessary, to bring an end to the problem.

Clearly, this Court and the Bar do not take exception to your audit finding as concerns the discipline case backlog. We are aware of the problem. The above lengthy response is provided only to place in context the evolution of the problem and the Alaska Bar Association's obvious actions to successfully manage its caseload.

Recommendations No. 2 and No. 3 will be implemented immediately. As you are aware, meetings of the Board of Governors are open to the public and are often attended. The recent controversy over the nomination of Stephen Cooper of Fairbanks to a U. S. District Court judgeship in Alaska, for instance, saw many members of the public, Bar, and press present during a Board meeting, so it is clearly not the intent of the Association to preclude attendance at its meetings. Rather, the Executive Director simply failed to fully comply with this statutory requirement. The Board obviously has no difficulty in advertising its meetings in advance. The Board's schedule of meetings is generally published in the Alaska Bar Rag, and notices of the Board's regularly scheduled meetings will from here on in be published in the State's major newspapers.

I wish to reassure you, however, that the Board of Governors has not acted in a vacuum over the past several years. Since 1981, through lengthy newsletters and in the Alaska Bar Rag, the staff of the Association has kept the membership well apprised of the activities, decisions, and policies of the Board. In addition, whenever a bar rule or bylaw change was being considered, in accordance with Bar Rule 62, the Board published the proposed rule or bylaw amendment for comment by the Association's membership. And, for instance, when the Board sought guidance from the membership on the specific issues of reciprocity and mandatory malpractice insurance, a special letter from the Bar's President was sent to every member. Further, the membership meets annually during the Alaska Bar Convention. During that business meeting reports are presented, the Bar's financial position discussed, and votes taken on resolutions placed in front of the membership for its action.

Notice of proposed rule changes, the annual business meeting agenda, and all items of general interest concerning Board activities have been published well in advance for the sole purpose of hearing the membership's viewpoint on relevant issues. I know the Board believes it has basically complied with the spirit and intent of the publication requirement.

The recommendation that the bylaws of the Association be amended to reflect a seven member quorum is also not a problem. The Board of Governors currently considers seven members to be its necessary quorum. Indeed, the recently revised discipline

rules which this Court just approved make it clear that a quorum of the Board is a "majority of the appointed and elected members of the Board." The old rules had set five as the quorum.

The Bar's bylaws have been in need of serious review and revision for some time now, and it is my understanding that this project has been assigned to the Bar's "Statute, Bylaws and Rules" Committee. One of the many recommendations by the Board for revision of the Bar's bylaws includes the matter of the quorum. In the meantime, please be assured that the Board is aware that it cannot meet and conduct business with less than a quorum of seven members.

Recommendation No. 3 parallels a request made of the Legislature by the Bar Association during the last session of the Alaska Legislature. In filing its 1982 and 1983 Annual Report in the spring of 1984, the Bar requested the support of the Legislature for statutory authority to require the fingerprinting of Bar applicants. The matter was not taken up by the Legislature during its last session, and it is my understanding that the Bar Association does in fact intend to again ask for such legislation from the upcoming Fourteenth Legislature. The bar obviously supports this recommendation, and hopes this audit finding by the Division of Legislative Audit will assist the Bar in finding legislative support for such an amendment to the Integrated Bar Act.

In closing, on behalf of the Alaska Supreme Court and the Board of Governors of the Alaska Bar Association, let me take this opportunity to express my appreciation for the manner in which your Division conducted the performance audit. Randall Burns, the Bar's former Executive Director, has reported to both myself and the members of the Board that he believed the audit went well and that Randy Welker, the Anchorage office Audit Manager and the individual who actually conducted the performance audit, asked the kinds of questions about the same areas that he would have asked had the roles been reversed! I hope your Division has found the Bar's staff cooperative and that you were provided ready access to all that you requested.

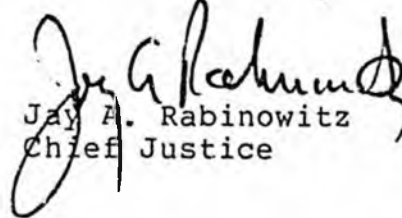
Gerald L. Wilkerson

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January 28, 1985

Should you have any questions concerning this response, please do not hesitate to contact me or the Bar Association directly.

Sincerely yours,



Jay A. Rabinowitz  
Chief Justice

cc: Harold M. Brown  
President  
Alaska Bar Association

Deborah O'Regan  
Acting Executive Director  
Alaska Bar Association

Randy Welker  
Anchorage Audit Manager  
Division of Legislative Audit

JAR/th

ALASKA BAR ASSOCIATION

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PUBLIC BOARD MEMBER EXPENSE/REIMBURSEMENT FROM STATE

Received from State 1982		\$ 9,447.00
1982 Public Member Expense		(2,356.50)
	Balance	\$ 7,090.50
1983 Public Member Expense		(2,457.50)
	Balance	4,633.00
1984 Public Member Expense		(5,834.77)
	Balance due from State (ABA to invoice)	\$ 1,201.77