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Alaska Bar Association

1988 Annual Report

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THE ALASKA BAR ASSOCIATION
Annual Report for the Year 1988

Board of Governors

Larry R. Weeks, President
Jeffrey M. Feldman, President-Elect
Ardith Lynch, Vice President
Andonia Harrison, Secretary
Lew M. Williams, Treasurer
Daniel R. Cooper, Jr.
Kenneth P. Eggers
Elizabeth "Pat" Kennedy
Susan C. Orlansky
Sandra Stringer
Michael A. Thompson
Alex Young

Staff

Deborah O'Regan, Executive Director
Barbara Armstrong, Assistant Director & CLE Director
Virginia Ulmer, Executive Secretary
Geraldine F. Downes, Controller
Debra Roberts, Accounting Clerk
Shaunda H. Hale, Receptionist
Shalese M. Dayton, Lawyer Referral Receptionist

Stephen J. Van Goor, Bar Counsel
C. J. Allen, Assistant Bar Counsel
Mark Woelber, Assistant Bar Counsel
Mary Lou Burris, Discipline & Fee Arbitration Assistant
Norma L. Gammons, Discipline Secretary
Laura Hernandez, Discipline Secretary

INTRODUCTION

On November 4, 1884, some six months after the passage of the Organic Act, three attorneys were admitted to the practice of law in Alaska. In the next two years, the Bar -- practicing before the District Court of the United States in and for the District of Alaska -- increased to thirteen (13) members and, by 1896, there were fifty-nine (59) members. Of that number, approximately twenty-one (21) resided within the State, either in Juneau, Nome, "Wrangle," Sitka, Valdez, "Skaguay," or Berners Bay.

It was those individuals who, in November of 1896, in Juneau, organized the Alaska Bar Association. The governing documents were a Constitution and Bylaws. Its object was "to maintain the dignity of the legal profession, to secure proper legislation for Alaska, to promote the administration of justice, and to cultivate social intercourse among its members."

Membership was voluntary, annual fees were \$1.00 (now they are \$310.00), and six members constituted a quorum. The standing committees were legislation, judiciary, and grievance. The first President was John S. Bugbee.

In 1955, the structure changed somewhat with the passage of the Integrated Bar Act by the Territorial Legislature. Nevertheless, the essential functions and purposes continued, albeit on an expanded, more formal basis.

Currently, the Alaska Bar Association has 2,711 members in the following categories: Active, 2,258; Inactive, 435; Honorary, 1; Retired, 17. Its affairs are governed by a twelve (12) member (attorney and non-attorney) Board currently comprised of the following persons:

Larry R. Weeks, President
Jeffrey M. Feldman, President-Elect
Ardith Lynch, Vice-President
Andonia Harrison, Secretary (public member)
Lew M. Williams, Treasurer (public member)
Daniel R. Cooper, Jr.
Kenneth P. Eggers
Elizabeth "Pat" Kennedy
Susan C. Orlansky
Sandra Stringer (public member)
Michael A. Thomps
Alex Young

Written guidelines for governance are contained in the Integrated Bar Act, the Alaska Bar Rules (promulgated by the Supreme Court of Alaska), the Code of Professional Responsibility, the Association's Bylaws and Regulations, the Board of Governors' Policy Manual, and a Personnel Manual.

The two most important functions of the Bar are the admission and discipline of its members, both of which are carried out under the supervision of the Supreme Court of Alaska.

There are presently 6 standing committees, 15 sections, 4 bar rule committees, and 4 special committees. In addition, the Bar Association participates in a number of adjunct organizations and administers special projects, such as the Statewide Lawyer Referral Service. In excess of half of the membership participates, voluntarily and without remuneration, in the affairs of the Association.

The staff of the Alaska Bar has grown from a part-time, volunteer executive secretary in 1968, to the following 12-1/2 full-time professionals:

Deborah O'Regan, Executive Director
Barbara Armstrong, Assistant Director & CLE Director
Virginia Ulmer, Executive Secretary
Geraldine F. Downes, Controller
Debra Roberts, Accounting Clerk
Shaunda L. Hale, Receptionist
Shalese M. Dayton, Lawyer Referral Receptionist

Stephen J. Van Goor, Bar Counsel
C. J. Allen, Assistant Bar Counsel
Mark Woelber, Assistant Bar Counsel
Mary Lou Burris, Discipline & Fee Arbitration Assistant
Norma L. Gammons, Discipline Secretary
Laura Hernandez, Discipline Secretary

The Association is largely funded through monies garnered from its members through dues, continuing legal education programs, conventions, the Lawyer Referral Service, and interest income. The Association received no public monies in 1988.

I. THE BOARD OF GOVERNORS

The Board of Governors consists of twelve (12) members, nine (9) attorney members and three (3) non-attorney members. The nine active members of the Alaska Bar are elected by their peers to govern the affairs of the Association. Serving three year staggered terms, two attorneys represent the First Judicial District, four are from the Third Judicial District, two serve the Second and Fourth Judicial Districts, and one member is elected at-large. Any vacancy is filled by the Board through appointment until the next election. The three non-attorney members are appointed by the governor and are subject to legislative confirmation. The "public" members also serve staggered three year terms.

The Board generally meets five to six times a year at dates and places designated by the President of the Association; special meetings may be called by the President or three members of the Board of Governors. In 1988 the Board held five (5) meetings (January 8 and 9; March 11 and 12; June 6-8; September 9; and October 21 and 22) and three (3) telephone conference meetings (June 24, October 31 and December 7). The Bar Convention and Annual Business Meeting were held in Anchorage, June 9 through 11. The annual convention held in conjunction with the Annual Judicial Conference had its largest attendance ever, with nearly 300 lawyers and judges attending.

A. Officers

There are five officers (President, President-Elect, Vice President, Secretary and Treasurer), all of whom are elected from among the members of the Board by the active Association members in attendance at the annual meeting held in May or June of each year.

The President of the Bar Association presides at all meetings of the Board and of the Bar Association, and is designated as the official spokesperson for the Association.

The President-Elect of the Alaska Bar Association is required to assist the President in all the President's endeavors and take the place of the President if the President is unable to perform the duties of that office. The President-Elect is also responsible for maintaining good communication with the presidents of the various local bar associations across the State.

The Vice President of the Association acts as liaison to the Bar's fifteen sections and the Secretary is in charge of all of the Association's committee operations. The Treasurer

is responsible for overseeing the fiscal affairs of the Association, including budget preparation, reports to the Board at each meeting, and the annual report to the membership.

B. Purposes, Policies, and Procedures

In order to understand the commitment that each member of the Board of Governors makes, it is appropriate to review the Bylaws and policies of the Association, as well as the Alaska Bar Rules. Article 2, Section 2, of the Bylaws of the Alaska Bar Association sets out the purposes of the Association. They are:

1. To cultivate and advance the science of jurisprudence;
2. To promote reform in the law and in judicial procedure;
3. To facilitate the administration of justice; and
4. To encourage higher and better education for the membership in the profession, and to increase the usefulness and efficiency of the Bar Association.

The workload undertaken by members of the Board of Governors includes admissions, discipline, fiscal responsibility, and service activities. Admissions and discipline are discussed in other sections of this booklet. Illustrative of the other activities of the Board are the following:

1. The Board of Governors is required to approve an annual budget, oversee investment of Association funds, and maintain control of expenditures.
2. The Board approves and publishes all formal ethics opinions which respond to requests for rulings and gives guidance to the membership in the ethical conduct of the profession.
3. The Board of Governors has overall responsibility for defining the powers, duties, and functions of all of the

committees of the Alaska Bar Association. These committees are designated as standing committees, as special committees, and as bar rule committees. The President appoints all members and designates a chairperson for each committee.

The members of all committees serve at the pleasure of the Board and their reports and recommendations must be adopted by the Board of Governors to be binding upon the Association.

4. The Board actively supports education and public relations, including programs in the schools with respect to the justice system, seminars for non-lawyers, institutional advertising, and a statewide lawyer referral service.
5. The Board oversees the administration of the Bar office and its staff, and has developed a personnel manual and job descriptions to guide its employees in the performance of their duties.
6. The Board recommends to the Supreme Court revisions and additions to the Alaska Bar Rules, and reviews and revises the Bylaws of the Association. In addition, the Board has promulgated a Policy Manual which sets forth the guidelines for the operation of the Board in all phases of Association activity.
7. In addition, the Board is directly responsible for all the other projects, programs, and activities described in this booklet.

C. Admissions

The Alaska Bar Rules set forth the responsibilities of the Board of Governors with respect to admissions. They include the following:

1. The Board of Governors shall examine or provide by contract for the examination of all applicants and determine or approve the time, place, scope, form, and content of all bar examinations.
2. The Board of Governors sets the standards for the examinations.
3. Under the Rules, the Board has the power to require the appearance of an applicant before the Board in an instance where there is concern on behalf of the applicant or the Board regarding the application procedure, or to refer the matter to a Master for the purpose of accumulating all of the facts and supplementing the record before a decision is made.
4. Both the Board members and the Master have the power to issue subpoenas, administer oaths and affirmations, and take testimony concerning any application for admission to the Alaska Bar Association.
5. The Board of Governors must develop an appropriate application form requiring the applicant to file the necessary evidence and documents in support of the applicant's eligibility for admission.
6. The Board sets the fees and dates for filing of all documents with the Association.
7. The Board is required to certify the results of each exam to the Supreme Court for the State of Alaska with its recommendations for admission.
8. In the event an applicant is denied an exam permit or is denied certification, the applicant is required to file a verified statement with the Board of Governors and, upon a review of the sufficiency of the verified statement, a hearing may be granted. The burden of proof is upon the applicant to prove material facts that constitute an abuse

of discretion or improper conduct on the part of the Board of Governors, the Executive Director, the Law Examiners Committee, or the Master appointed by the President. Each decision must be supported by findings of fact and conclusions of law, with the Board having the power to adopt the decisions of the Committee or Master in whole or in part, or reject the recommendation and draft its own findings and conclusions of law along with an appropriate order. In each instance, the applicant may appeal the decision of the Board of Governors to the Supreme Court.

D. Discipline

One of the most critical areas of responsibility for the Board of Governors is the discipline of Association members.

Whenever a disciplinary matter is before the Board of Governors, the Board sits as the "Disciplinary Board of the Alaska Bar Association."

In that capacity, it appoints Bar Counsel, supervises the Bar Counsel and Bar Counsel staff, and appoints the Area Discipline Divisions of which there are currently three: one in the First Judicial District, one in the Third Judicial District, and one in the combined Second and Fourth Judicial Districts.

In addition, the Board is charged with overall responsibility for the functioning of the attorney discipline system, and for hearing appeals from the recommendations of the Hearing Committees. The Board administers public and private reprimands and, in the case of disbarment, suspension, probation or public censure, forwards its recommendations to the Supreme Court of Alaska for final action.

The Disciplinary Board generally meets five to six times a year, not including conference telephone calls. Seven (7) members constitute a quorum. Records of disciplinary proceedings are maintained according to the Alaska Bar Rules promulgated by the Supreme Court.

E. The Board of Governors was up for sunset in 1989. the Division of Legislative Audit began conducting the performance audit in November.

II. ADMISSIONS PROCEDURES

In order to practice law in the State of Alaska, membership in the Alaska Bar Association is a necessary prerequisite. In other words, it is an integrated (or unified) bar association.

A. Requirements for Admission

Applicants for admission to the practice of law must 1) be graduates of an accredited law school; 2) pass the Alaska Bar Examination; 3) be determined to be of "good moral character;" and 4) pass the Multistate Professional Responsibility Examination (MPRE). Attorneys who have been admitted in other jurisdictions but who did not graduate from accredited law schools may qualify to take the bar exam if they have been in active practice in another jurisdiction for five years or more.

The Alaska Supreme Court has adopted an admission without examination rule, with reciprocity provisions. (See Part J of this section for details on the amendments to the Alaska Bar Rules.)

The Alaska Bar Examination is intended to assist in the determination of whether applicants possess minimal competence to practice law. This includes the ability to analyze facts, apply the appropriate substantive and procedural law, and to effectively communicate the issues and the proposed solutions.

B. Application Procedure

Information and application forms may be obtained from the Bar office. These include instructions and information on the examination; fingerprint cards; and an application form which includes an affidavit of personal history and an authorization and release form consenting to an investigation of moral character, professional reputation, and fitness for the practice of law. The application fee for first time applicants is \$600.00; for reapplicants (some one who has sat for and failed the Alaska Bar Exam within one year of application), the fee is \$325.00.

The Alaska Bar Association conducts a character investigation on each applicant for admission to the Bar based on information provided by the applicant, contacts initiated by the Bar office with individuals familiar with the applicant, and on other information which may be sought by or come to the attention of the Bar Association. No applicant is certified for admission, regardless of the applicant's score on the

written examination, if he or she is determined not to be of good moral character. The Bar Association may require a formal hearing with the introduction of sworn testimony and other evidence, where it determines that a hearing is necessary or appropriate to assist in its investigation. An applicant may appeal from an adverse determination on character to the Board of Governors and, if necessary, to the Alaska Supreme Court.

C. Bar Examination

The Alaska Bar Examination is conducted twice each year in Anchorage, Fairbanks, Juneau, and Ketchikan and in such other locations as the Board may direct. It consists of: 1) one and one-half days of essay questions on Alaska law prepared by a permanent committee of the Association known as the Alaska Law Examiners; and 2) two half-days of objective, multiple choice questions (the Multistate Bar Examination or "MBE"), prepared by the National Conference of Bar Examiners and administered simultaneously in over forty states.

THE ESSAY EXAMINATION: Essay questions are of the analytical or problem type consisting of a hypothetical case or situation involving one or more principles of law. Answers to essay questions are expected to demonstrate the ability to analyze the facts presented by the questions, to select the material facts, to discern the points upon which the case turns, and to present the response in a logical, well-organized, literate manner.

The essay portion of the Alaska Bar Examination is structured as follows:

One half-day (three hour) session consists of three (3) "long" essay questions which require substantial legal analysis. An answer should reflect an applicant's knowledge and understanding of the pertinent principles and theories of law as applied in Alaska, their relationship to each other, and their qualifications and limitations. Answers should also demonstrate the applicant's ability to apply the law to the facts given and to reason logically -- in a lawyer-like manner -- to a sound conclusion.

One half-day (three hour) session consists of six (6) "short" essays which emphasizes substantive knowledge of the law as applied in Alaska; an answer should reflect an applicant's knowledge and understanding of the pertinent law, but will not require extensive discussion.

The final half-day (three hour) session consists of a research/analysis task (or practicum) which assesses how well an applicant can both evaluate the effect of various facts, statutes, and case law on a client's case and integrate and present the results of that analysis in written form. In this session, the applicant is provided with an array of relevant factual and legal information about the client's case, such as previous cases, statutes, regulations, facts, documents, etc., and is best likened to an "open book" examination in that all the information needed is provided.

All three sessions of the essay examination will consist of essay questions which are to be answered in accordance with principles of law as applied in Alaska and may involve one or more issues on the following subjects:

- Business Organizations
(corporations, partnerships,
associations)
- Civil Procedure
- Constitutional Law
(State and Federal)
- Contracts
(including Chapter 2 of the UCC)
- Criminal Law and Procedure
- Evidence
- Family Law
- Real Property
- Torts
(including Products Liability)

In addition, and if applicable, Remedies may be tested as a part of each of the topics listed above.

The following procedures govern the drafting of the essay questions:

1. At least 2 members of the Law Examiners Committee form a "team" to draft a question.
2. One member of the team is a drafter; the other edits and reviews.

3. A grader's guide must be prepared at the time question is drafted.
4. The team suggests the tentative weights (points) to be assigned to the components of an answer recognized by the grader's guide as pertinent to a minimally competent answer.
5. The entire Law Examiners Committee meets and reviews each question as drafted by the teams.
6. The Committee next reviews each grader's guide to judge whether the Committee agrees that the question raises the same issues identified by the team in its analysis of the question.
7. The Committee reviews and either adopts or revises the tentative weights assigned to the components of each proposed grader's guide on a 100 point scale (no points are left for assignment at the discretion of graders).
8. The questions and proposed grader's guides are finalized and provided to Bar staff seven days prior to exam.

D. Grading of Examinations

All examinations are graded anonymously using a double number coding system. A law examiner who is able to identify a particular applicant's examination paper is required to disqualify himself from the grading of that exam. The following procedures govern the grading of the essay exam:

- (1) A calibration team consisting of at least five members of the Committee is convened for each essay question given on the exam;
- (2) As a group, the team will read two randomly selected applicant answers to that essay question;
- (3) The team will compare and discuss the answers and agree on a ranking of the essay answers they have just read;

(4) The team will then read a third essay answer, compare and discuss this answer with the answers previously ranked, and agree on a ranking of all the answers they have read. The team reads and ranks a total of ten answers;

(5) The team will continue this process for at least 5 more answers and until the team is calibrated and the team selects five benchmarks;

(6) The team reviews the grader's guide and the weights assigned to particular portions of the question to take into account any issues identified during the reading of the applicant answers; the 2 graders are responsible for amending the grader's guide into its final form;

(7) The team selects five benchmark applicant essays; a benchmark is an answer which represents one of the 5 points on the grading scale. ("5" is high, "1" is low.) It is not a model answer, nor a minimally competent answer, but is a representative answer for this particular point on the scale;

(8) From this calibration team, two people, not including any member of the original drafting team, are assigned to independently read and score each applicant's answer to the essay question they have just calibrated;

(9) The two graders submit their scores to the Executive Director;

(10) The Executive Director determines whether a discrepancy of more than one point exists between the rankings given by the two graders to a particular applicant on the question;

(11) If a discrepancy of more than one point is found, the graders must reconcile their differences by reference to the benchmarks and grader's guide. The graders must agree on a score that is the same or no more than one point apart;

(12) The two scores given to a particular applicant's answer are averaged for a final score on that essay;

(13) The scores of the various sections of the essay exam (the short essay, long essay, and research/analysis question) are tabulated, weighted, and combined according to the attached procedures for determining the pass/fail status of applicants; and

(14) A "combined" score of 140 and above shall be passing for the exam.

A passing score on the Alaska Bar Examination is determined by "combining" the scaled score received by the applicant on the MBE with the weighted score he or she received on the essay portion of the bar exam. A combined score of 140 or above is required to pass the Alaska Bar Examination. Applicants who receive a combined score between 139.00 and 139.99 will have appropriate portions of their essay exam reread by the graders before the scores are released. The mathematical procedures by which a combined score for each applicant is derived are performed for the Alaska Bar by the National Conference of Bar Examiner's (NCBE's) Division of Testing and is based on the scaled MBE and weighted essay scores provided to the NCBE by the Alaska Bar for each applicant.

The Multistate Bar Examination objective answer sheets are graded by machine by the National Conference of Bar Examiners. These scores are scaled to compensate for any difference in difficulty of the examination from one administration to another, based on a detailed national statistical analysis, a comparison of performance on repeat questions, and other factors.

In reviewing the examination results before certification, the Board of Governors receives a report on the examination, including irregularities (if any), a compilation of scores by applicant number for each portion of the examination, a sampling of "benchmark" papers, copies of the essay questions, and the grader's analysis for each question. Once the examination results are approved, the names of the passing and failing applicants are disclosed and the names of passing applicants are published. Individual scores are not revealed to the applicants or to the Board unless a review of the examination is requested by a failing applicant or a failing applicant files an appeal.

E. Appeals

An applicant will be granted a hearing in either of two circumstances: 1) denial of an examination permit, or 2) denial of certification to the Supreme Court for admission. The applicant has the burden of alleging and proving an abuse of discretion or improper conduct on the part of the Executive Director, the Law Examiners Committee or the Board of Governors. If the applicant is not satisfied with the action taken on his appeal by the Board of Governors, he or she can appeal to the Alaska Supreme Court.

A failing applicant may obtain copies of the essay questions, his or her answers, the "benchmark" essays, a representative sampling of answers of other applicants who

received overall passing and overall failing scores, and the grader's guides for each of the essay questions. Failing applicants are further afforded an opportunity to review their Multistate Bar Examination questions, answers, and correct answers under a supervised policy which provides for the exam's security.

When a appeal is filed which raises factual issues of whether the Association has abused its discretion or acted improperly, the appeal is assigned to a Master for a hearing. The Master hears testimony, considers other evidence, and then prepares in writing a proposed decision supported by findings of fact and conclusions of law. The Master's report is then submitted to both the applicant and the Board. Thereafter, either the applicant or Bar Counsel may file exceptions and briefs and, upon request, may appear and present oral argument to the Board of Governors. The Board may adopt the decision of the Master in whole or in part, or reject it in its entirety and adopt its own findings of fact, conclusions of law, and issue its own decision.

On the other hand, if there are no factual matters in dispute, the Board may decide the appeal without assigning it to a Master. If there are questions concerning the applicable legal principles, the Board will consider written or oral argument from the applicant and from Bar Counsel and will issue a written decision.

The applicant may appeal any adverse decision by the Board of Governors to the Supreme Court, which is the final authority on admissions questions. The Supreme Court reviews the findings of fact, conclusions of law and recommendations concerning procedure, due process, or other matters which are raised by the applicant, and issues its decision, which if published, establishes precedent for future admissions cases.

In December 1988, the Board directed that hearings be held in early 1989 for two unsuccessful applicants who appealed the July 1988 Bar Examination. The Board directed that the hearings be held on an expedited basis so that the Board's ruling on the appeal could be known in time for the applicants to decide whether to take the February 1989 examination.

F. Assistance to Unsuccessful Applicants

The Board has a procedure for review of the MBE by failing applicants (which has also been reviewed and approved by the National Conference of Bar Examiners). The procedure allows failing applicants, upon request, to have a 3 hour period in which to review a copy of their answer sheet, a copy of the

questions and the correct answers. Applicants are not permitted to take notes, copy any part of the test material or to review the MBE with anyone else.

The Board of Governors and NCBE felt that these procedures were a fair compromise between maintaining the security of the MBE and allowing applicants access to their MBE materials.

As a service to failing applicants, the Bar Association offers several alternatives for assistance. A member of the Tutoring Committee will, upon request, accompany the applicant for the purpose of reviewing the essay exams and assist in identifying the individual causes for failing the Bar Exam.

A failing applicant may also request a member of the Tutoring Committee to assist in preparing for the next bar exam. The tutoring emphasis is on how to write essay exams. Six applicants requested a tutor following the results of the February exam, and thirteen applicants requested assistance after the July exam results were released.

G. Statistical Summary

In 1988, 142 individuals applied for admission to the Bar and 94 were admitted.

1988 Alaska Bar Exam pass/fail statistics for the February and July exams are included in Table 1.

H. The Multistate Professional Responsibility Exam (MPRE)

Passage of the MPRE is required as a condition of certification for admission to insure that persons admitted to the Alaska Bar are prepared to cope with ethical problems in the practice of law. The MPRE is not administered as a part of the bar exam, but is given separately three times a year (March, August, November) by the National Conference of Bar Examiners in cooperation with Educational Testing Services. This examination may be taken at any time by an applicant to the Alaska Bar (e.g., while still in law school; before the bar exam; after the bar exam). Receipt of a scaled score of 80 or above on the MPRE has been determined by the Board of Governors as demonstration of adequate awareness of the ethical responsibilities of the Code of Professional Responsibility and the Code of Judicial Conduct.

I. Ongoing Review of the Exam

The Board of Governors retains the assistance of Stephen P. Klein, Ph.D., who is a consultant to the National Conference of Bar Examiners and many state boards of bar examiners on statistical studies of bar examinations. He is a senior research scientist with the Rand Corporation in Santa Monica, California and a nationally recognized authority on bar examinations. Dr. Klein's assistance in the development of the "All Alaska" Bar Exam, necessitated by the withdrawal of the assistance of the California Bar Examiners effective with the July, 1982 Bar Exam, was invaluable. The essay drafting and grading procedures detailed above in "D" of this Section were developed with his advice and counsel, as was the decision to "combine" the essay and MBE scores after "scaling" the weighted essay scores to the MBE scaled scores.

J. Admission Without Examination

Effective January 1, 1985, the Alaska Supreme Court approved an admission without examination rules, with reciprocity provisions. The amendment to Bar Rule 2 removed the requirement that applicants for admission who have practiced law five or more years must take a bar exam prior to admission. Rather, such applicants would be able to apply for admission "upon motion" and without examination, so long as the applicant met certain requirements outlined below.

First, the attorney seeking admission on motion rather than by examination has to meet a number of general standards required of any applicant for admission (i.e., be a graduate of an accredited law school; be at least 18 years of age; and be of good moral character). In addition, the attorney must also have passed a written bar exam administered by another jurisdiction and have engaged in the active practice of law in one or more reciprocal states for five of the seven years preceding application to the Alaska Bar.

A "reciprocal" state or jurisdiction is one which has a rule providing that attorneys admitted in Alaska may be admitted to that jurisdiction without examination and under prerequisites similar (but not more demanding) than those set forth in Bar Rule 2. A total of twenty-five (25) jurisdictions provide for admission without examination.

In 1988, ten applicants applied for and were admitted by admission without examination.

III. DISCIPLINE OF MEMBERS

The activities of attorneys admitted to practice within the State of Alaska are governed by the Rules of Disciplinary Enforcement promulgated by the Alaska Supreme Court. As will be seen below, the substance and procedure of the rules of the Bar Association and the Supreme Court in regulating the practice of law within Alaska are entirely different from those of agencies of the State of Alaska charged with the regulation of legislatively controlled businesses and professions. For example, a ruling as to a permit or license issued by the Alcoholic Beverage Control Board or the Alaska Transportation Commission is final and binding, subject only to the right of a party to appeal questions of law to the Superior Court and, thereafter, if desired, to the Supreme Court. In matters involving public censure, probation, suspension, or disbarment of attorneys, however, the Supreme Court is the decision maker, acting not as an appellate body but as the final forum with authority to make and enforce its disciplinary decisions.

A thorough revision of the Rules of Disciplinary Enforcement was accomplished by the Board in 1984 and made effective by the Supreme Court on January 1, 1985. The most significant change is the opening of attorney discipline proceedings to the public after a Petition for Formal Hearing is filed. Now, the public is able to attend formal discipline hearings conducted before hearing committees and the Disciplinary Board in the same way as they have been able to attend court or other government proceedings. The following discussion reflects the revised procedures in effect.

A. The Supreme Court's Authority

The Supreme Court has held that an attorney's license to practice law is "a continuing proclamation by the Court that the holder is fit to be entrusted with professional and judicial matters...as an officer of the courts."

Attorneys are, therefore, bound to act in conformity with standards adopted or recognized by the Supreme Court of Alaska. The Supreme Court has also declared that any attorney admitted to practice in Alaska, or who appears or participates in legal matters within the State, is subject to the jurisdiction of the Supreme Court of Alaska and the Disciplinary Board which the Court established.

Due to the vastness of the size of the State of Alaska and the great distance between population centers, the Supreme Court has established three disciplinary areas: 1) the First Judicial District; 2) the combined Second and Fourth Judicial

Districts; and 3) the Third Judicial District. Charges of misconduct on the part of a lawyer are assigned to be heard by members of the hearing committee established for the district in which the attorney lives or practices. Such charges may be based upon a violation of the Code of Professional Responsibility, Ethics Opinions adopted by the Board of Governors, criminal convictions, or misconduct within or arising from disciplinary proceedings themselves. Depending on the severity of the misconduct, violations may result in disbarment, suspension, probation, or public censure by the Court or, in less serious cases, in public or private reprimand by the Disciplinary Board or written private admonition by Bar Counsel.

B. The Disciplinary Board

As has been discussed above, the Board of Governors acts as the Disciplinary Board for the Supreme Court. The day-to-day workings of the disciplinary process have been delegated to Bar Counsel and Assistant Bar Counsel, attorneys hired by the Board, whose functions include assisting the public in the grievance process, maintaining records, investigating, processing, and prosecuting grievances and appeals.

The procedures for disciplinary enforcement begin upon the filing of a grievance by any person alleging misconduct on the part of any attorney. During this stage, grievances against attorneys are confidential by court rule. Bar Counsel reviews the grievance to determine whether it is properly completed and contains allegations which, if true, would constitute grounds for discipline. If Bar Counsel determines that the allegations are inadequate or insufficient to warrant an investigation, an investigation will not be opened. If a grievance is accepted for investigation, the attorney involved is required to provide full and fair disclosure in writing of all the facts and circumstances pertaining to the alleged misconduct.

If Bar Counsel determines that probable cause exists to believe that attorney misconduct as occurred, permission may be requested from a Hearing Committee member to issue a written private admonition (in less serious cases) or to file a Petition for Formal Hearing in serious matters. Once the petition is filed, the proceedings are open to the public.

SUMMARY OF PUBLIC DISCIPLINE ACTIONS IN 1988

The Alaska Supreme Court suspended Roger W. Carlson from the practice of law for two years effective October 4, 1988. The Court ordered a one year suspension of David M. Clower but stayed the suspension and placed him on probation subject to conditions for two years effective March 18, 1988 and further ordered that he be publically censured. On January 13, 1988, the Court interimly suspended Bryan E. Schuler pending further disciplinary proceedings because of a misdemeanor conviction. Finally, the Court ordered the reinstatement of Peter T. Walton on April 1, 1988, and Edward W. Tucker on April 14, 1988.

The Disciplinary Board issued a public reprimand to H. John DeNault, III on June 7, 1988.

1988 DISCIPLINE CASE STATISTICS*

Open cases pending as of January 1, 1988	156
New cases opened in 1988	(+) 111
Cases closed in 1988:	
Closed after disbarment by Supreme Court	0
Closed after suspension by Supreme Court	2
Closed after public censure by Supreme Court	0**
Closed after public reprimand by Disciplinary Board	1
Closed after private reprimand by Disciplinary Board	2
Closed after private admonition by Bar Counsel	23
Dismissed by Bar Counsel	74
TOTAL cases closed.	(-) 102
Open cases as of December 31, 1988	165

STATUS OF OPEN CASES AS OF 12-31-88

Pending Supreme Court	5
Pending Disciplinary Board	2
Pending Stipulation	0
Pending Area Hearing Committee	4
Pending Petition Approval	0
Pending Private Admonition	5
Attorney on Probation	8**
In abeyance pending outcome of related fee arbitration proceeding	1
In abeyance pending conciliation	1
In abeyance pending outcome of civil case	4
Under investigation by Bar Counsel	<u>135</u>
	165

*All numbers reflect individual complaints filed and not the number of attorneys under investigation.

**The Supreme Court issued a public censure to David M. Clower but since Mr. Clower is also on probation, the files relating to him are reflected as open files.

***There are three attorneys on probation: one attorney with four complaints, one attorney with three complaints (this attorney also received a public censure by the Supreme Court), and one attorney with one complaint.

C. The Hearing Committee

Investigations which result in the filing of a Petition for Formal Hearing by Bar Counsel are referred to a Hearing Committee in the relevant geographical area. The attorney may thereafter file a written answer admitting or denying the charges, or setting forth a claim of mitigation. Hearings are then held before the Committee. At the hearing, Bar Counsel prosecutes the case on behalf of the Bar Association. The responding attorney may be represented by counsel. Either party may call, examine, and cross-examine witnesses and otherwise request the production of evidence. The burden of proving misconduct by clear and convincing evidence is placed upon Bar Counsel. The Committee may direct the submission of briefs.

At the conclusion of the hearing, the Committee must file a written report to the Board, together with the recorded transcript, briefs, findings, conclusions and recommendations. If either party appeals from the Committee's recommendation, briefs may be filed with the Board. If desired, the matter may be orally argued to the Board. The Board must then conduct a review of the record and briefs and enter its order or recommendation to the Court.

D. The Recommendation

If the Board's decision recommends either public censure, probation, suspension, or disbarment, the recommendation is filed with the Supreme Court, which makes the final decision. The Board must submit a case record, including the hearing transcript, to the Supreme Court. The parties are required to file briefs in accordance with the Supreme Court rules for regular civil and criminal appeals; oral argument is available. It is only after review of this record by the Court that the Court enters its order relating to the attorney's discipline.

The Board may order public reprimand by the Board if it decides the matter can be resolved appropriately without referral to the Court. The Board may also consider stipulations of proposed discipline entered into between Bar Counsel and a respondent attorney and enter an order for a private reprimand by the Board or submit its recommendation on the stipulation to the Supreme Court.

As with civil litigation, many of the above procedures may be lengthy or protracted before the issuance of a Hearing Committee report or a Board order. Thus, a need exists -- and

a procedure has been formulated -- whereby either party can make an interlocutory appeal to the Supreme Court for review of the procedures and evidentiary rulings of the Hearing Committee.

E. Interim Suspension

The Rules of Disciplinary Enforcement anticipate situations requiring immediate action against an attorney for protection of the public pending the completion of the full disciplinary process. One such situation exists when an attorney is convicted of a serious crime, such as a felony or when he is convicted of certain other crimes including those relating to interference with justice, false swearing, fraud, deceit, misappropriation or theft.

Conviction of such a crime is conclusive evidence that disciplinary action is necessary. The sole issue for determination is the nature of the final discipline to be imposed. Such a conviction also requires interim suspension, regardless of whether the conviction is based on a jury verdict or a plea of guilty, and regardless of whether an appeal is pending. In the event the conviction is reversed, the suspension is lifted, but formal disciplinary proceedings may nevertheless continue to final disposition.

Further, if Bar Counsel shows that an attorney's conduct constitutes a substantial threat of irreparable harm to his or her clients or prospective clients or where there is a showing that the attorney's conduct is causing great harm to the public by a continuing course of conduct, the Court may impose interim suspension.

An attorney facing disciplinary charges cannot avoid the consequence of his misdeeds by simply leaving the practice of law, thus leaving open the possibility of a future return to the profession. The Rules of Disciplinary Enforcement do permit discipline by consent of attorneys under disciplinary investigation but only upon the free and voluntary admission by the attorney that he is guilty of the charges, and with the consent of Bar Counsel, the Board and/or the Court.

F. The Court's Order

When either disbarment, suspension or probation is ordered by the Court, more is involved than a simple order to that effect. There are various notification requirements to that attorney's clients, to opposing counsel and other jurisdictions in which the attorney is admitted. Sworn proof that these

notification requirements have been met must be filed with the Supreme Court. Proof of compliance with these requirements is a prerequisite to any subsequent reinstatement.

The Bar Rules, however, do not rely solely on notification by the disbarred, or suspended attorney. They also require the Board to publish notice of disbarment and suspension in a newspaper in Anchorage, Fairbanks and Juneau, the official Bar publication and a newspaper serving the community where the attorney practiced. The Board must also advise the presiding judges of all courts within the State and, through the Attorney General, all administrative agencies.

G. Reinstatement

Disbarred or suspended attorneys can, under certain circumstances and procedures, be reinstated to the practice of law. However, in cases of disbarment, a minimum of five years must pass before the attorney can be reinstated.

Petitions for reinstatement are filed with the Supreme Court and served upon the Executive Director for the initiation of reinstatement proceedings.* As with the imposition of discipline, the findings and recommendations of the Hearing Committee -- and thereafter the Board -- are only advisory, and the final determination on reinstatement is made by the Supreme Court. In order to be reinstated, a disbarred attorney or an attorney suspended for more than one year has the primary burden of establishing that he or she possesses the moral qualifications and legal skills required for re-admission to practice and that his reinstatement will not be detrimental to the integrity and standing of the Bar, the administration of justice, or the public interest.

H. Disability

The Rules of Disciplinary Enforcement also anticipate circumstances where the need for protection of the public arises from an incapacitating illness, addiction to drugs or

*Attorneys who have been suspended for one year or less will be automatically reinstated by the Court unless Bar Counsel files an opposition to automatic reinstatement. Attorneys who have been disbarred or suspended for more than one year must appear before an appropriate Area Hearing Committee.

intoxicants, senility, death, disappearance, or judicially declared incompetence of an attorney, rather than actual misconduct by the attorney. Upon a finding by the Supreme Court that such a disability exists, an order is entered transferring the attorney to disability inactive status until further order of the Court during which time the attorney is prohibited from engaging in the practice of law. As with public discipline, notice of the Court's action must be published. Likewise, presiding judges of all courts and administrative agencies are also notified. However, until the Court issues its order, disability proceedings are confidential.

Reinstatement of the right to practice can thereafter only be granted by the Supreme Court upon a showing by the attorney that the disability no longer exists and that he or she is fit to resume the practice of law.

While the above procedures are designed to remove the disabled attorney from active status, it is essential that the interests of the clients of the disabled, deceased or unavailable attorney are also protected. Thus, the Bar Rules provide for appointment by the Superior Court of Trustee Counsel to protect the interests of this unavailable attorney and his clients. Trustee Counsel, on behalf of the unavailable attorney, exercises powers similar to those of a personal representative of a deceased person, but does so only in those matters specifically provided in the rules and allowed by State law.

SUMMARY OF DISABILITY ACTIONS IN 1988

On July 20, 1988, the Court placed H. John DeNault, III on disability inactive status.

I. Alternative Proceedings

Some grievances do not rise to the level of professional misconduct warranting formal discipline. Nevertheless, two other forums are available to review the reasons for a client's dissatisfaction.

If the matter involves a dispute concerning the fee charged by an attorney, it is referred to a Fee Arbitration Panel. If the allegations involve a grievance which is not amenable to either discipline or fee arbitration, it is referred to a Conciliation Panel. Both are more fully discussed in Section VIII of this booklet.

J. Discipline Staff and Budget

The Discipline Section is currently staffed by Bar Counsel, Assistant Bar Counsel, a half-time assistant Bar Counsel, one part time Discipline Assistant, and two Bar Counsel Secretaries. Bar Counsel has the overall responsibility for the review, investigation, prosecution and appeal of attorney grievance cases. This level of staffing is a reflection of the continued commitment by the Board to the efficient and thorough processing of grievance matters.

Expenditures for the Discipline Section totalled \$294,600 in 1988, a substantial commitment of Bar Association resources and a reaffirmation of the Bar Association's goal of service to the public and practitioner alike.

K. Bar Rule Changes in 1988

The Supreme Court corrected a typographical error in Bar Rule 15 and added a new subsection (b) which defines the practice of law for disbarred or suspended attorneys who have been prohibited from practicing law.

The Court added a new Bar Rule 44.1 which permits foreign law consultants to provide legal services concerning foreign law matters within the State of Alaska subject to specific conditions.

Finally, the Court added a new Bar Rule 63 which defines the practice of law for the purposes of the unauthorized practice of law misdemeanor statute found at AS §08.08.230.

All of these changes were effective January 15, 1989.

IV. CONTINUING LEGAL EDUCATION

Continuing Legal Education programs and activities are an important part of the work of the Alaska Bar Association and are in furtherance of its goal of serving and assisting the legal profession in the State of Alaska. Programs and activities presented for Continuing Legal Education (CLE) purposes are for the professional development and enhancement of the membership of the Alaska Bar Association. It is of the utmost importance that the Bar Association provide sufficient CLE seminars to allow attorney members to keep abreast of new developments in the field of law.

The supervisory responsibility for presenting and administering all CLE programs and activities is placed upon the Continuing Legal Education Committee and the Association's Director of Continuing Legal Education. The CLE Committee is composed of 13 Bar Association members: 12 attorney members representing the various geographic areas of the state, and 1 judicial representative. All members serve staggered 3-year terms.

The 15 substantive law sections of the Bar Association are responsible for sponsoring one CLE seminar a minimum of every two years. Most sections sponsor one CLE activity per year, in addition to holding regular monthly section meetings and an annual meeting at the yearly Bar convention.

In 1988 the CLE program sponsored 24 live programs in Anchorage and 1 live program in Juneau with a total member attendance for the year of 2,115. Average attendance at a CLE was 71.* Program income exceeded this year's target; however the general CLE budget, which includes indirect costs of staff time and overhead, experienced a shortfall. This shortfall is significantly lower than in past years. The general fund of the Bar Association covers the indirect costs of CLE programs, including staff time. This financial arrangement allows the bar to offer programs at lesser registration fees than if administrative indirect costs had to be covered by direct program income. The Bar also offers a registration fee credit option of up to 50% to members traveling into Anchorage via commercial carrier for a CLE program.

**This figure does not include 1) 1988 Convention CLE Attendance which is normally far higher than that of a regularly scheduled CLE or 2) the 100 non-bar members who attended the "1991" CLE sponsored by the Alaska Native Law Section.*

Group video replays of live programs are regularly scheduled in Juneau, Fairbanks, and, as of 1988, Kodiak, to meet the educational needs of bar members outside Anchorage, the usual venue for live programs. There is an average attendance of 5 bar members at each of these programs. Bar members receive CLE credit for attending a group video replay. A bar member in each city serves as the volunteer coordinator for these programs and handles scheduling, logistics, and registration. Ketchikan is exploring the possibility of doing group video replays in 1989.

The CLE program received for the first time a \$500 grant from the American Bar Association to assist in presenting a "Special Domestic Relations Issues" CLE sponsored by the Family Law Section in November 1988. The Bar CLE program will continue to apply for this type of grant in an effort to assist the CLE budget.

The draft of a CLE Policy Statement and Guidelines was developed in late 1988 for submission to the Board of Governors for adoption in 1989. This Policy Statement and Guidelines will aid the Bar in administering the CLE program and will provide assistance to the CLE Director, CLE Committee, and Sections in developing CLE activities. The CLE Committee reviewed the policy in 1988 and it was placed on the January 1989 Board agenda.

The CLE Library is now administered by the CLE Assistant and has dramatically improved service to bar members. The library contains videotapes (1/2" VHS) of all live programs, copies of course materials for each CLE, copies of Annual Section Updates, and a small number of audiotapes of short CLE programs. The library receives an average of 5 videotape rental requests per day, and normal response time to the request is 24 hours depending on tape availability. Tape rental is normally \$10.00 per person plus \$25 for course materials. Priority is always given to bar members outside of Anchorage. Library materials are also available for purchase including CLE course materials and Section Annual Updates. Work is progressing on the revised CLE Library Catalog, and for the first time this year we have published a video replay schedule. The replay schedule and live schedule are also printed in the Bar Rag.

In an effort to enhance the image of our CLE programs and create a more identifiable "look" for CLE brochures, as well decrease our printing costs, the CLE program now has a standard brochure designed by a graphic artist, and nearly all brochures are photocopied, rather than offset printed. Response to the new format has been excellent.

Over 100 attorney and non-attorney lecturers served as faculty for the 25 CLE programs presented live in 1988:

1988 CONTINUING LEGAL EDUCATION PROGRAMS

DATE	COURSE	LOCATION	CREDITS
January 23	Civil Jury Instructions	Anchorage	3.3
February 10	Broker Liability	Anchorage	1.8
February 26	Drug Testing in the Workplace	Anchorage	7.5
March 3, 10, & 17	Medical Malpractice Litigation	Anchorage	7.5
March 21-27	Deposition Skills	Hawaii	9.9
April 7	Will & Trust Drafting	Anchorage	7.2
April 13, 10 & 27	Corporate Law Mini-Seminars (2.1 credits each)	Anchorage	6.3
April 15	Lawyer Malpractice	Anchorage	6.6
May 20	Listening & Memory Skills for Judges & Lawyers	Anchorage	7.2
June 9	New Wave Litigation	Anchorage	3.0
June 10	Constitutional Issues	Anchorage	3.0
June 11	Unorthodox Trial Techniques	Anchorage	3.0
June 13-14	Tax Conference, Pt. I	Anchorage	14.7
June 24	Off the Record	Fairbanks	3.0
July 27-29	Bankruptcy Law (ALI-ABA)	Anchorage	18.8
September 9	Lender Liability	Anchorage	7.2
September 16	Tax Conference, Pt. II	Anchorage	8.4
September 23	Maritime Liens & Mortgages	Anchorage	3.9
October 14	Hazardous Waste	Anchorage	8.4

November 4-5	Preserving the Settlement: 1991	Anchorage	12
November 10	Special Domestic Relations Issues	Anchorage	5.4
November 17 & 21	Estate Planning (ALI-ABA Video Replay)	Anchorage	4.4
November 30	Retainers & Trust Accounts	Anchorage	2.4
December 8	Lawyer Trust Accounting	Anchorage	7.2
December 7 & 14	Straight Talk for Attorneys	Anchorage	7.4

A small number of CLE programs each year are presented on a cooperative basis with organizations outside the Bar Association, such as Professional Education Group and ALI-ABA. Generally, Bar CLE programs are developed in-house with volunteer faculty from the Bar Association.

V. ALASKA PRO BONO PROGRAM

The Alaska Pro Bono Program (APBP), jointly sponsored by the Alaska Legal Services Corporation (ALSC) and the Alaska Bar Association, is a State-wide, Direct-Service Pro Bono program involving private and public attorneys in the delivery of free legal services to low-income Alaskans. The APBP is the only Private Bar Involvement program in Alaska, a state twice the size of Texas with a population only half the size of Dallas, and is staffed by a full-time coordinator and a part-time support person. All ALSC staff assist the coordinator in administering the APBP.

Clients with civil law problems approach ALSC for free legal representation. Screening of these individuals by ALSC personnel determines if the client meets federal poverty guidelines and ALSC priorities. The case is then forwarded to APBP for referral to an attorney who has volunteered to take one case per year in his/her area of expertise.

Attorneys who volunteer to become members of APBP agree to take cases in at least one of the following areas of law: consumer finance or bankruptcy; public benefits or health or employment issues; domestic relations; housing; Alaska Native issues; wills and/or probate. When a client from a particular region of the State requires legal assistance, an attorney from that region who has volunteered in that specific area of law, is contacted. If no attorneys are available in that region, the Pro Bono Coordinator attempts to make the next best referral which would be most convenient to both client and volunteer attorney.

If an attorney is available, and accepts the case, the client is referred to him/her for full representation. The attorney is then contacted on a regular basis to ensure that the case is progressing satisfactorily. When the case is completed, the attorney provides APBP with a form summarizing the action taken on the case, the outcome of the case, and itemizes the time spent on the case, as well as expenses incurred, which are reimbursed by APBP.

Currently, APBP has a panel of 836 volunteer attorneys throughout Alaska, or 52.4% of the State's available Bar Association membership, with an open case load of 350 - 400 open cases at any one time. These cases can range from the most complex litigation to emergency death-bed wills to issues facing Alaskan Natives. Table 2 shows in which Alaska communities the APBP operates, the number of panel members in each community, and the numbers of cases closed from 1983 to December, 1988.

The APBP provides free CLE training seminars for its volunteer attorneys, as well as malpractice coverage, cost reimbursement, free depositions, free medical testimony in disability and family law cases, free process service, and free computerized research services. Additional services for the client community includes: free monthly classes to provide assistance to clients who wish to obtain uncontested divorces pro se (without representation by an attorney); pro se custody classes for uncontested custody and support orders for unmarried parents; pro se Chapter 7 Bankruptcy class; weekly advice-only question and answer clinics; Elderlaw projects for low-income clients over 60 years old, offering assistance in the areas of wills, public benefits, and housing. These advice-only and pro se clinics, held in numerous cities throughout Alaska, served well over 1,000 people in 1988. More than 250 elderly received assistance through the Elderlaw Projects last year.

In addition, the APBP has developed a set of Rules to govern the appointment of counsel for pro se parties in U.S. District Court. These new procedures, created in cooperation with the U.S. District Court in Alaska, took effect on January 1, 1989. To date, two cases have been referred to volunteer attorneys through these Rules.

The APBP is also proud to boast that many non-attorney professionals (doctors, court reporters, certified public accountants, translators, private investigators) have joined the program. In 1988, the total number of hours donated to the APBP was more than 7,000.

The APBP received the first grant from the Alaska Bar Foundation from the new Interest on Lawyers' Trust Accounts (IOLTA) program. This grant, in the amount of \$20,500 was given to expand 3 areas of service: the Elderlaw Project, the Tuesday Night Bar Advice-Only Clinics and the Pro Se Clinics, and Landlord-Tenant intake.

VI. STATEWIDE LAWYER REFERRAL SERVICE

The Bar Association operates a Lawyer Referral Service for the purpose of providing the general public with names of active members of the Alaska Bar Association who are in good standing and are willing and able to accept referral clients at a reasonable fee.

Enrollment in the Service is voluntary and all active members of the Association are urged to participate. Each participating lawyer pays an enrollment fee of \$25.00 per category selected for listing in up to five panels in any calendar year. Attorneys who are renewing a panel may pay an enrollment fee of \$10.00

Each caller requesting services is given the names of three lawyers in his/her geographical area who are listed in the category requested. Each lawyer pays a surcharge on each referral made regardless of whether the caller actually contacted the lawyer as a result of the referral. The first half-hour conference may be charged at a maximum of \$35.00. Thereafter the fee is agreed upon by the attorney and the client.

In 1988, 174 attorneys from across the State were enrolled in twenty-eight categories in the Lawyer Referral Service. All lawyers participating in the Service must maintain "Errors and Omissions" insurance of at least \$50,000.

In 1983, the Bar Association installed a Zenith number so that callers statewide could call the Lawyer Referral Service at no charge. In 1985, the Association switched the Lawyer Referral Service to an in-state (800) number. This results in increased convenience to callers who can now dial the service directly, without operator assistance. This also results in a savings of approximately \$238.00 a month to the Bar Association since there is no Zenith line charge now, but only the cost of the phone calls.

The annual call summary shows that the referral service has developed into the public service it was first envisioned. In an average month, the Bar receives 738 requests for referrals.

Calls received by the Alaska Bar Association for Lawyer Referrals were as follows:

	<u>1987</u>	<u>1988</u>
Administrative	235	274
Admiralty	32	31
Arts	0	7

Bankruptcy	429	373
Commercial	345	292
Construction	19	14
Consumer	559	632
Discrimination	94	60
Eminent Domain	10	12
Environmental	3	3
Family	2,619	2,705
Felony/Misdemeanor	702	692
Foreign Language	2	10
Immigration	82	20
Insurance	92	89
Labor Relations	464	562
Landlord/Tenant	222	334
Malpractice	158	202
Mining	9	14
Negligence	729	873
Patent/Copyright	162	157
Public Interest	4	0
Real Estate	718	706
SSI Cases	40	22
Tax	102	103
Traffic	183	117
Trust/Wills/Estates	247	285
Workers' Compensation	<u>216</u>	<u>273</u>
	8,577	8,855
	+ 6%	+ 3%
	(Change from 1986)	(Change from 1987)

VII. THE COMMITTEES OF THE ALASKA BAR

A. The Bar Rule Committees

1. The Committee of Law Examiners

The President of the Alaska Bar appoints the thirty (30) members who comprise the Committee of Law Examiners. The terms are staggered, with each person serving for three years.

The Committee is charged with responsibility for preparing and grading the essay portion of the Alaska Bar Examination. Reports are made to the Board at least twice yearly with respect to the results of each examination. Included are a statistical analysis and any recommendations which the Committee might have with respect to the form and content of the examination. (See Part II of the Report for details concerning the Committee's annual work.)

The Committee consists of ten (10) members who draft the essay questions prior to the exam, and twenty (20) members who do the grading of answers after the exam. Carolyn E. Jones currently chairs this committee.

2. The Disciplinary Hearing Committees

There are three area discipline divisions, one in the Third Judicial District, one in the First Judicial District, and one serving the combined Second and Fourth Judicial Districts. The current composition of the discipline divisions includes 10 attorneys and 2 non-attorney or public members in the First District; 8 attorneys and 3 public members in the combined Second and Fourth Districts; and 27 attorneys and 8 public members in the Third District. All serve three year terms which are staggered.

Three members constitute a quorum for a hearing committee. They may only act with the concurrence of a majority of the sitting members. One of those participating must be a public member. Members may be replaced by the President for good cause and they may not represent respondent attorneys during their term.

To insure the fairness of the disciplinary hearing process, committee members are prohibited from acting in matters where they are a party or directly interested, a material witness, related to a respondent by blood or affinity within the third degree, have been a lawyer for a respondent within two years of

the filing of the petition, or for any reason, cannot give a fair and impartial decision. The circumstances and procedures considered by the committee members are almost identical to those which a judge must follow in disqualifying himself in court proceedings.

The hearing committee has the power and duty to swear and examine witnesses and to issue subpoenas; at the conclusion of an evidentiary hearing, the committee may direct the submission of proposed findings, conclusions, recommendations and briefs. Thereafter, the committee is required to submit a written report to the Disciplinary Board, together with its findings, conclusions, recommendations, any briefs submitted, and the record.

Once the Board has acted on the Committee's recommendation, each participating member is advised of the Board's decision. (See also Part III of this Report.)

3. The Conciliation Panels

There are three conciliation panels serving the First, Third and combined Second and Fourth Judicial Districts. Each panel consists of members of the Alaska Bar appointed by the President and subject to ratification by the Board. They serve staggered three year terms.

The conciliation procedure was created to deal with disputes which do not involve ethical misconduct or fee disputes. The conciliator's function is to resolve such disputes between attorneys and their clients in an informal manner.

Although the procedure is informal, the failure of any attorney to participate in good faith in an effort to resolve a dispute submitted to conciliation may constitute independent grounds for disciplinary action.

If a resolution is reached, the Conciliator reduces it to writing for signature by all parties. In any event, the Conciliator submits a written report to Bar Counsel, including a summary of the dispute, its outcome, and the Conciliator's opinion as to the merits and good faith or lack thereto of the attorney party.

4. The Attorney Fee Review Committee

The Bar Association, under the Alaska Bar Rules, maintains an Attorney Fee Review Committee to settle fee disputes between

attorneys and clients where such disputes have not been settled by statute or court rule or decision. Five subcommittees residing in Ketchikan, Juneau, Anchorage, Kenai and Fairbanks comprise the Committee. Each subcommittee consists of a "pool" of attorney and non-attorney members. Each subcommittee member serves for three years. From these subcommittees, a panel of two attorneys and one non-attorney is convened to hear a fee dispute. If the amount in dispute is less than \$2000, a single panel member will hear the matter.

The client initiates a fee arbitration proceeding by filing a petition describing the dispute and the efforts made to resolve the matter directly with the attorney. If Bar Counsel finds that reasonable efforts have been made to resolve the problem directly with the attorney, and that the Association has jurisdiction over the dispute, the petition will be accepted. Notification is sent to the client and the attorney that they have ten days to resolve the matter before it goes to the appropriate panel.

At the hearing, the parties can present both written and oral evidence. The panel has the ability to subpoena witnesses. If the client feels any member of the Committee cannot be fair and impartial, he may request that the member not participate in the hearing. For similar reasons, a member may disqualify himself.

At the hearing, basic rights of due process are followed, with some relaxation of the rules of evidence. Any party may be called to testify. A decision must be rendered by the panel within thirty days after the close of a hearing. An appeal may be taken from the decision to the Superior Court.

Forms and booklets explaining the Fee Review Committee's processes and procedures are available in the Association's office and are provided to the clerks of court in every location in the State.

Arbitrations pending January 1, 1988	47
Arbitrations <u>filed</u> during 1988.	(+) 64
Arbitrations <u>closed</u> in 1988	(-) 63
Arbitrations pending January 1, 1989.	48

5. The Client Security Fund Committee

The Bar Association maintains a 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 dishonest act means an act of embezzlement, wrongful taking, or conversion of money, property, or other things of value. The monies of the Fund come from the membership of the Bar Association, as it is mandated that a portion of the annual dues paid by each member be deposited to the Fund.

A client begins the procedure by filing a form with the office of the Alaska Bar Association. The client may not be a spouse, relative, partner, associate, employee or insurer of the lawyer, a surety or bonding agency, or a governmental entity or agency. The sworn application contains the name and addresses of the lawyer, the amount of the client's alleged loss, the dates of the loss and discovery of the loss, the name and address of the client, a statement as to the facts, an agreement that the client will be bound by the Alaska Bar Rules concerning the Fund, and a statement that the loss was not covered by insurance or bond.

A Client Security Fund Committee of six members is appointed by the President, subject to ratification by the Board. Each member serves for three years, and the Chairperson is appointed by the President. Once an application is filed, an attorney appointed to aid the Committee will determine if, on its face, a legitimate claim for loss has been made. The claim will be denied only if both the appointed attorney and a majority of the Committee agree that the claim is not valid on its face. Otherwise, the claim goes to the Committee for a final hearing.

The Committee hears evidence, administers oaths, issues subpoenas and, with prior approval, hires experts to aid in its investigation. Because the technical rules of evidence are relaxed, the Committee may consider any previous disciplinary proceedings against the attorney, any criminal proceedings and any civil proceedings involving the lawyer. The determination of the Committee is advisory to the Board. The Board makes the final decision as to whether and how payment will be made.

The loss to be paid any one claimant is the lesser of (a) \$10,000 or (b) 10% of the Fund at the time the award is made. The total amount of all claims paid in one year shall not exceed 50% of the total amount in the Fund as of January 1 of that calendar year. The aggregate maximum amount which all claimants may recover arising from an instance or course of dishonest conduct of any one lawyer is \$50,000.

Before funds are paid to the claimant, s/he must assign the amount of the claim to the Bar Association so that the Bar may legally sue the attorney for recovery of all amounts paid to the client from the Fund. If the Bar Association chooses to

sue the lawyer on this assigned claim, it must give written notice of the suit to the claimant in case the claimant wishes to join such an action to recover any loss in excess of the amount awarded to the client from the Fund.

One claim is presently pending before the Committee.

6. Admission Waiver Programs

The Bar Association has three admission waiver programs allowing students and attorneys in special job classifications to perform certain legal services within the State of Alaska. These include:

a. Legal Intern Permit

An applicant for a legal intern permit files for a permit according to provisions set forth in the Bar Rules, stating that he is either 1) a student enrolled in an accredited law school who has completed one-half of his course work, 2) a graduate from an accredited law school who has never failed a bar examination or, 3) a law school graduate who has been admitted to another bar (so long as the person shows good standing has been maintained).

Once a permit is issued, the legal intern may do the following:

1. Appear in any district or superior court proceeding, to the extent permitted by the judge, if the lawyer of the client is present and able to supervise and has filed the necessary form with the court and the Bar Association;
2. Appear in district court in a number of matters, both civil and criminal, without the supervising attorney present, provided the supervising attorney has filed a form and certifies the intern is competent, the client gives written consent, or a governmental body has granted approval, and the judge or magistrate agrees.

The permit is good until one of the following events occur:

1. Six months have passed (the permit is renewable once for six more months);
2. The intern fails to take the first Alaska Bar Examination for which he or she is eligible;

3. The intern fails to pass any bar examination.

b. Alaska Legal Service Corporation Waiver

A person employed by or associated with Alaska Legal Services Corporation may receive permission to practice law in Alaska, for not more than two years, if the attorney is admitted to practice law -- or is eligible to be admitted to practice law -- in another state, territory, or the District of Columbia, and has not failed the Alaska Bar Examination. The permission to practice shall be withdrawn if the person at any time fails the Alaska Bar Examination or leaves the services of the Alaska Legal Services Corporation. The permission is only good for representation of Legal Services clients, and the person is subject to the disciplinary rules of the Alaska Bar Association.

c. United States Armed Forces Expanded Legal Assistance Program

A person who is an active duty member of the United States Armed Forces assigned to the Judge Advocate General Program, or the United States Coast Guard, may receive permission to practice law in Alaska for not more than two years if the attorney is admitted to practice -- or is eligible to be admitted to practice law -- in another state, territory or the District of Columbia, has graduated from an accredited law school, and has not failed the Alaska Bar Examination or does not leave military service.

B. The Substantive Law Sections

The Sections for 1988 are listed below:

Administrative Law
Alaska Native Law
Bankruptcy Law
Business Law
Criminal Defense
Criminal Prosecution
Economics of Law Practice
Estate Planning/Probate Law
Environmental Law
Employment Law

Family Law
Natural Resources Law
Real Estate Law
Taxation Law
Torts Law

The 15 Substantive Law Sections of the Alaska Bar provide a number of opportunities for professional growth and development through:

- o An exchange of information among lawyers with similar legal interests.
- o Continuing legal education programs.
- o Section News, a monthly newsletter of section events and topics of interest.
- o Review of legislative and court actions.
- o A forum to respond to the needs of the community and the profession.

Section membership is open to all active members of the Alaska Bar Association. \$5.00 of a member's bar dues is budgeted to the first section joined by a member. Members may join additional sections for \$10.00 per section. Non-bar members may join a section as a non-voting member for dues of \$10 per year per section. New and renewing section memberships are solicited each April by mail.

Each section is administered by an executive committee composed of at least five members who serve three-year staggered terms. The Chair of each section is elected by the section's membership. The primary responsibilities of the executive committee are to 1) administer the section, 2) publish the annual professional update at each annual meeting, 3) present a CLE seminar at least once every 2 years, and 4) preside at the annual section meeting and election of new executive committee members. Section activities are coordinated by the Bar Assistant Director.

The sections are encouraged to submit articles in their fields of expertise to the Bar Rag, and to Section News, the monthly newsletter published by the Bar office, and to aid the Continuing Legal Education Committee in the presentation of seminars. Over half of the sections have regularly scheduled monthly meetings at which members are briefed on important developments within their area of law, and members outside of Anchorage are encouraged to participate via teleconference. Section chairs also routinely distribute information and case citations to members.

The sections, as necessary, are requested to advise the Board on substantive issues. While the sections cannot speak on behalf of the Alaska Bar Association without prior Board approval, several sections regularly monitor and testify

concerning legislation both in Alaska and in Congress. The Board of Governors has, on occasion, and at the request of some sections, taken positions on certain issues and forwarded those views to the appropriate authorities.

As of December 31, 1988, over 800 bar members were involved in one or more sections. Section activity has increased significantly in 1988. A larger proportion of sections now meet regularly and contribute to the newsletter regarding case citations and legislation of particular interest. Most notably, in 1988, the Tort Law Section, Natural Resources Law Section, Criminal Defense and Criminal Prosecution Sections have increased their membership and activities. At the 1988 Annual Convention, 11 Sections met for their annual meeting and review of updates.

C. The Standing Committees

1. Bar Polls and Elections Committee

The function of this nine member committee is to prepare, at the direction of the Board, polls of the membership on any given number of subjects, e.g., the evaluation of persons seeking judicial appointments.

In addition to formulation of requested polls, the Committee compiles the results of the poll and presents them to the Board.

The other major responsibility of the Committee is to tabulate the results of the yearly elections to membership on the Board of Governors and the Alaska Legal Services Corporation Board of Directors. In addition, it conducts advisory opinion polls for use by the Board in its appointment of lawyer representatives to the Judicial Council, Judicial Conduct Commission, Ninth Circuit Judicial Conference and the ABA Delegate.

2. The Continuing Legal Education Committee

One of the most vital committees of the Alaska Bar is the Continuing Legal Education (CLE) Committee, which is responsible for presenting substantive education programs in order to keep Alaskan lawyers abreast of new developments in the law. The Committee is currently chaired by Bruce A. Bookman. (See Part IV of this Report.)

3. Ethics Committee

Chaired by Kenneth P. Jacobus, the Ethics Committee issues opinions, based on actual circumstances but phrased in hypothetical terms, in order to give guidance to Association members in complying with the Code of Professional Responsibility.

An opinion may be requested by a member in good standing who is concerned about proposed conduct. The Ethics Committee then decides whether the matter may be resolved by issuing an informal opinion or by preparing a formal opinion for consideration by the Board of Governors. Only the Board may issue and publish formal opinions. If a formal opinion is adopted, it is published in the Bar Rag, and circulated to all law libraries. Copies of individual Ethics Opinions are available from the Bar office and a complete set of Ethics Opinions is available in the office for review.

Additionally, Bar Counsel may give informal ethics advice to practitioners who request assistance.

4. Historians of the Alaska Bar

As one of the most unique bar associations, populated through the years by many colorful individuals, it was determined that before the incidents and events become lost, a group would be created to preserve the history of the Alaska Bar. Pamela Cravez chaired this committee in 1988.

5. Law Related Education Committee

The purpose of this fifteen member committee is to present programs to the community and school system which will aid in an understanding of the law and the legal system. The Committee is currently chaired by Philip R. Volland.

A. Bar-School Partnership Program

The Alaska Bar Association and the Alaska Department of Education co-applied and received a grant of over \$3,000 from the American Bar Association to participate in the Bar-School Partnership Program. This program was started by the American Bar Association in 1985 and includes 10 states, with three school districts and three local bar associations participating

in each State. In Alaska, the initial partnerships were established in Anchorage, Mat-Su and Kenai. In 1988, partnerships were established in Fairbanks and Juneau.

A team from the ABA visited Alaska in October to provide orientation and training for lawyers and teachers. They also provided extensive teaching materials for distribution to the lawyers and teachers. Workshops were held in Anchorage, Mat-Su and Kenai, with good attendance by both lawyers and teachers. At the workshops, the participants were shown teaching techniques and ideas, and methods for getting students involved in discussing and analyzing issues.

Kenai and Mat-Su have formed lawyer-teacher committees aimed at getting lawyers into the classroom, and to otherwise act as resources for teachers.. In Anchorage, the Law-Related Education Committee added 4 teachers to the committee. They put together a directory of lawyers, for teachers, which includes what areas of law the lawyers would be willing to cover. The committee developed a credit course for teachers. The course, entitled "Law and Contemporary Issues," was accredited by Alaska Pacific University and held in the fall of 1988. Faculty was comprised of over 30 attorneys knowledgeable in different areas of the law. 101 teachers enrolled in the semester long course.

6. Statutes, Bylaws and Rules Committee

This standing committee of twelve persons is charged with responsibility for drafting proposed revisions of the statutes, bylaws, and rules which govern the Alaska Bar. The Board of Governors requests such proposals when it discovers an area that needs clarification or when new guidelines need to be adopted.

D. Special Committees

1. Model Rules Committee

In its August 1983 meeting, the House of Delegates of the American Bar Association adopted a comprehensive re-codification of the code governing a lawyer's conduct. Known as the Model Rules of Professional Conduct, this new statement of ethical requirements provides a clearer statement of a lawyer's responsibility to clients, the courts and the American legal system. The Model Rules have been adopted by a number of states.

The Board of Governors established an eight person study committee. The committee began regular work sessions in 1985 and presented comprehensive proposals and commentary in 1987 on the Model Rules for the review by the Board of Governors. The Board in turn, appointed a subcommittee of the Board of Governors to review the proposals and make recommendations to the Board. In the fall of 1988, the Board and the Committee started holding joint work sessions at each Board meeting to discuss and vote on the more controversial rules before adopting the rules for publication.

2. Substance Abuse Committee

John Reese chairs this committee which put together a program to assist lawyers who have problems with alcohol or drug abuse. Volunteer attorneys will review cases forwarded to the committee by any referring authority, will provide counselling or information to any person inquiring about the identification and availability of substance abuse programs, and perform interventions upon request by persons having a relationship with a substance abusing attorney.

3. Tutoring Committee

This committee consists of a pool of former law examiners, and other attorneys who have had experience in tutoring applicants to take the Alaska bar exam. An orientation/training session was held for prospective tutors on how to tutor an applicant. Emphasis is placed on how to write essay exams, rather than substantive law.

Any applicant who has failed a bar exam may request tutoring assistance, which will be provided at no cost to the applicant. Nineteen applicants requested tutoring assistance in 1988.

VIII. MEMBERSHIP SERVICES

A. ALPS (Attorney Liability Protection Society)

Due to the increasing fluctuations in the cost and availability of professional liability insurance, this committee, chaired by Keith E. Brown, explored alternatives for lawyers to obtain malpractice insurance.

After reviewing several options, the committee recommended to the Board of Governors that the Alaska Bar Association join a Multi-state lawyer-owned insurance company. Alaska joins in this endeavor with states including Delaware, Idaho, Kansas, Montana, Nevada, North Dakota, South Dakota, West Virginia and Wyoming. A corporation called Attorney's Liability Protection Society (ALPS) has been created to handle the formation functions. The ultimate goal is to increase the availability of coverage to Alaska lawyers at rates that are predictable and which avoid wild fluctuations based on policies and practices over which the lawyers have no control. Michael A. Thompson serves as Alaska's director on the ALPS Board of Directors. ALPS began issuing policies in spring of 1988.

In order to be eligible for coverage by the company, Alaskan lawyers are required to contribute \$2,200 as their capital share. Rates will be computed for each participating state based upon the claims experience in that state.

B. LEXIS

The Bar Association sponsors a group program to provide members with access to LEXIS, a computer-assisted legal research service offered by Mead Data Central, (MDC). Participating firms pay a \$25.00 monthly subscription fee. Additionally, all members' use of LEXIS aggregates to take advantage of volume discounts.

C. Group Insurance

The Bar Association sponsors a life insurance program for Bar members with Continental Insurance Company and its subsidiary, Loyalty Life. All members of the Association and employees of their firms are eligible. Unlike the previous life insurance program, the Bar staff does not administer the plan.

The Bar Association also sponsors a group medical program. Medical, dental, vision, life and disability coverage are available to firms ranging in size from sole practitioners to over one hundred employees. The plan is underwritten by Blue Cross of Washington and Alaska.

In 1988, the Board of Governors voted to sponsor a group Disability Insurance program offered by Crown Life Insurance Company.

D. The Alaska Bar Rag

The official publication of the Bar Association is the Alaska Bar Rag. The editor is Ralph R. Beistline. Beginning in November, 1988, the Bar Rag is now published bi-monthly.

E. Section News

This newsletter, which is compiled by the Assistant Director, is printed monthly and goes to all members of all of the substantive law sections.

IX. ADJUNCT INVOLVEMENT

A. The Alaska Bar Foundation

In October, 1972, the Board of Governors established the Alaska Bar Foundation for the purpose of fostering and maintaining the honor and integrity of the profession, improving and facilitating the administration of justice, promoting the study of law and continuing legal education, administering loans and scholarships, and maintaining a law library and research center.

The Foundation was established, pursuant to Section 501(c) (3) of the Internal Revenue Code, as a Not for Profit Corporation, and was incorporated in accordance with the laws of the State of Alaska.

The current Board of Trustees consists of Mary K. Hughes, Winston S. Burbank, John M. Conway, William B. Rozell and Sandra K. Saville.

The Foundation was originally supported by individual contributions. Since 1985, the dues notices have provided for a voluntary dues add-on contribution of \$9.00 to the Foundation. The voluntary add-on was requested in hopes of strengthening the Foundation's assets so that a sizeable fund could be developed over a period of time to be used for law-related education projects, community service programs and scholarships.

The Foundation currently has an active scholarship program. The first scholarships were offered in 1980; in 1988 eight scholarships were awarded: the George Boney Scholarship in the amount of \$1500, and an additional seven at \$1000 each.

1. IOLTA

The Alaska Supreme Court adopted amendments to DR 9-102 in 1986, effective March 15, 1987, establishing a voluntary IOLTA (Interest on Lawyers Trust Accounts) program for the state of Alaska. Beginning March 15, 1987, lawyers may place client trust money, previously held in co-mingled, noninterest-bearing checking accounts, into interest-bearing accounts. Included are those client funds which are expected to be held for such a short duration or which are so small in amount that they could not as a practical matter produce interest for the client if held in a separate interest-bearing account. Funds which reasonably may be expected to generate in excess of \$100 interest to the client may not be deposited in an IOLTA account.

The interest earned on each account is paid periodically to the Alaska Bar Foundation. Designated by the Alaska Supreme Court as the organization to administer the IOLTA program, the Foundation will use the interest income to make grants to non-profit providers of legal services to the poor.

The amount of funds generated by the IOLTA program in 1988 was approximately \$87,977.

The Foundation solicited Requests for Proposals for the first distribution of grants. The Alaska Pro Bono Program received a grant in the amount of \$20,500 to expand 3 areas of service: the Elderlaw Project, the Tuesday Night Bar Advice-Only Clinic and the Pro Se Clinics, and Landlord-tenant intake.

7. The Alaska Law Review

The Alaska Bar publishes, semi-annually, for the benefit of its members and at no additional cost, the Alaska Law Review. Strong emphasis is placed on topics related to the laws of Alaska and contributions to the Review by members of the Bar are actively solicited.

The Alaska Law Review is edited by law students at Duke University in Durham, North Carolina, and includes articles by practicing attorneys, law professors, and notes and comments by Duke law students.

In March, ten law students on the Review visited Alaska for a week to make contact with attorneys here and to gain a better insight into our state. They were hosted by local attorneys and firms, both in homes and at receptions.

C. Alaska Legal Services Corporation

Nine attorneys serve on the Board of Directors of Alaska Legal Services Corporation (ALSC), two from the First Judicial District, one from the Second Judicial District, three from the Third Judicial District, and one from the Fourth Judicial District. Each serves for a term of three years. The ninth attorney on the Board of Directors is the President of the Alaska Bar (or his/her designee). In addition, there are nine alternate members who serve when a regular attorney member is unable to do so. The attorney members are appointed by the Board of Governors after an advisory poll of the Bar membership is conducted.

The ALSC Board of Directors carries out the purpose of the Corporation, which is to provide legal assistance to persons lacking the financial capability to obtain private counsel. It meets at least four times a year and supervises the staff.

D. Alaska Code Revision Commission

The Alaska Code Revision Commission was established in 1976 to review and recommend revisions to the laws of Alaska. The Board of Governors appointed one attorney, Mary K. Hughes, to the Commission.

E. Alaska Commission on Judicial Conduct

Three attorney members who have practiced law in the State for at least ten years are appointed to the Alaska Commission on Judicial Conduct by the Governor from a list of recommendations submitted by the Board of Governors. These appointments are subject to legislative confirmation. The attorney members in 1987 were Patrick T. Brown, James L. Hanley and Vincent P. Vitale.

The Commission has the power to investigate malfeasance or misfeasance on the part of a member of the judiciary, and to recommend to the Supreme Court impeachment, suspension, removal from office, retirement or censure.

F. American Bar Association

Each state bar association has one representative in the House of Delegates of the American Bar Association. The delegate is elected by the active members of the Alaska Bar to serve a two year term. Alaska's current representative is Donna C. Willard.

Her function is to represent the views of the Alaska Bar on all matters which come before the House of Delegates for consideration.

G. Judicial Council

Three attorneys serve staggered six year terms on the Judicial Council. The Council's purpose is to recommend candidates for judicial office and to conduct studies for the improvement of the administration of justice in Alaska.

The attorney members are appointed by the Board of Governors after nominating petitions have been circulated and advisory polls conducted. In 1988, Daniel L. Callahan, William T. Council and James D. Gilmore served as the attorney members.

H. National Conference of Bar Presidents

At the time of their election to office, the President and President Elect of the Alaska Bar become members of the National Conference of Bar Presidents, which meets twice a year in conjunction with the meetings of the American Bar Association. In addition, all past Presidents of the Alaska Bar are members.

Its purpose is to educate and train bar leaders, to keep them abreast of current events, to improve the quality of delivery of legal services, and to improve the administration of justice.

I. Ninth Circuit Judicial Conference

The Ninth Circuit Judicial Conference was established by the Judicial Council of the Ninth Circuit Court of Appeals to consider the business of the courts in the circuit, advise means of improving the administration of justice, and implement decisions regarding the administration of the federal courts.

All the judges in the Ninth Circuit, the president of each state bar association, the United States Attorney, Magistrates, law school representatives, and private practitioners comprise its membership.

In addition to the President of the Bar, Alaska has three other lawyer representatives who are appointed by the presiding judge of the Federal Court in Alaska to serve staggered three year terms. The Bar Association participates in the selection of these three attorney members by soliciting nominations, conducting an advisory poll, and thereafter recommending to the Chief Judge three persons for each vacancy. In 1988, the representatives were Kermit E. Barker, Gary A. Zipkin and Leroy J. Barker.

The lawyer representatives serve without compensation and without reimbursement for expenses.

J. Rocky Mountain Mineral Law Foundation

The Rocky Mountain Mineral Law Foundation, one of the preeminent natural resource organizations in the United States, sponsors continuing legal education programs, publishes books and treatises, provides scholarships and, in general, encourages development of natural resources law.

Its Board of Trustees is comprised of law school representatives, private practitioners, and one appointee from each bar association in the Western states. Joseph J. Perkins, Jr., the Alaska Bar's current representative, serves at the pleasure of the Board of Governors.

K. Western States Bar Conference

Fifteen (15) states are members of the Western States Bar Conference. The conference meets once a year to share the ideas and experiences of the member state bar associations.

The president and president elect of each state bar, as well as all past presidents, are members of the Conference.

X. BUDGET

Table 3 contains the Bar's 1988 audit report. The 1988 report reflects a total revenue of \$1,227,676 with total expenses of \$1,131,603 for a excess of revenues over expenses of \$96,073.

Originally, the Association was budgeted for a loss in 1988 of \$43,028, with projected income of \$1,171,050 and expenses of \$1,214,078. More income than originally anticipated was generated by CLE and the Annual Convention, with each area producing about \$33,000 in revenue above budget. The Board of Governors, Administration, CLE, Discipline, Admissions and Fee Arbitration came in lower than their projected expense.

In 1988, the Board of Governors authorized the purchase of a new computer system. The WANG 2200 had reached the end of its "useful life" and WANG announced it would no longer maintain the system after September, 1989. A loan of \$167,000 was taken out to purchase WANG VS6E hardware and FOCUS software, as well as programming assistance. The equipment arrived in September, with the word processing operational in October. All staff now have a terminal on their desk. The controller is working with the contract programmers to design and code the data processing programs, with a target date of completion summer of 1989.

Table 1

ALASKA BAR

A S S O C I A T I O N

David Mannheimer
1031 W. 4th Avenue, Suite 318
Anchorage, AK 99501
May 25, 1988

Robert H. Wagstaff
President, Board of Governors
Alaska Bar Association
Post Office Box 100279
Anchorage, AK 99510

Dear Mr. Wagstaff:

This letter is written pursuant to Section 3 of Rule 4 of the Alaska Bar Rules and constitutes certification of the results of the Alaska Bar Examination given February 23, 24 and 25, 1988. Attached is a copy of the Bar Examination essay questions, the guides utilized by the graders of those questions, and the essays selected as "benchmarks" (i.e., those essays representative of each of the five possible points on the grading scale for each of the ten essays). A copy of the Multistate Bar Examination (MBE) is not included for your review. This letter shall constitute the written report of the Committee of Law Examiners pursuant to Rule 4.

A total of 58 applicants participated in the February, 1988 Bar Examination. The performance of each examinee is also attached.

The examination consisted of three parts. The first day of the examination consisted of three "long" essay questions given in the morning and six "short" essay questions which were given in the afternoon. The research/analysis portion of the examination consisted of one essay question given on the morning of the third day. The MBE, a multiple-choice examination, was given on the second day of the examination.

In accordance with Alaska Bar Rule 4, Section 6, the Committee submitted the weighted, standardized essay scores of the applicants to the National Conference of Bar Examiners for combining with the MBE scores.

May 25, 1988

The components of the exam were weighted as follows: Essay portion, 50%; MBE, 50%; with the essay portion sub-weighted as follows: the three long essays, 30%; the six short essays, 45%; the research/analysis question, 25%. A combined score of 140 or above was passing.

The Committee read the essay and research answers during the months of March and April, 1988. The results of the February, 1988 examination were certified by the Committee today, May 25, 1988, after the evaluation was completed and the statistics were compiled.

Of the 58 applicants, 42 (72%) received a combined score of 140 or greater. Subject to other eligibility requirements contained in the Alaska Bar Rules, the Committee recommends to the Board of Governors that the 42 applicants achieving passing scores on the February, 1988 Alaska Bar Examination be certified to the Alaska Supreme Court for membership in the Bar and admission to the practice of law in Alaska.

Respectfully submitted,

COMMITTEE OF LAW EXAMINERS



David Mannheimer
Chair

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2/88 EXAM PASS/FAIL RESULT

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Pass/Fail Results

	5	10	15	20	25	30	35	40	45	50
	↑	↑	↑	↑	↑	↑	↑	↑	↑	↑
FAIL	[[[[[[[[[[
(16)	[#####			[[[[[[[
	[[[[[[[[[[
PASS	(42)	[#####							[[
	[[[[[[[[[[
	[[[[[[[[[[
	↑	↑	↑	↑	↑	↑	↑	↑	↑	↑
# of Applicants	5	10	15	20	25	30	35	40	45	50

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2/88 EXAM APPLICANT PROFILE

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GENDER VS./ PASS-FAIL RESULT

		4	8	12	16	20	24	28	32	36	40
		↑	↑	↑	↑	↑	↑	↑	↑	↑	↑
		[[[[[[[[[[
Female	(20)	[#####	[#####	[#####	[#####	[#####	[#####	[#####	[#####	[#####	[#####
		[[[[[[[[[[
Fail	(6)	[#####	[[[[[[[[[
		[[[[[[[[[[
Pass	(14)	[#####	[#####	[#####	[#####	[#####	[#####	[#####	[#####	[#####	[#####
		[[[[[[[[[[
=====											
Male	(38)	[#####	[#####	[#####	[#####	[#####	[#####	[#####	[#####	[#####	[#####
		[[[[[[[[[[
Fail	(10)	[#####	[[[[[[[[[
		[[[[[[[[[[
Pass	(28)	[#####	[#####	[#####	[#####	[#####	[#####	[#####	[#####	[#####	[#####
		[[[[[[[[[[
		[[[[[[[[[[
# of Applicants		↑	↑	↑	↑	↑	↑	↑	↑	↑	↑
		4	8	12	16	20	24	28	32	36	40

2/38 EXAM APPLICANT PROFILE

NO. OF TIMES TAKEN/ PASS-FAIL RESULT

		5	10	15	20	25	30	35	40	45	50
		↑	↑	↑	↑	↑	↑	↑	↑	↑	↑
1st Time Taken	(41)	[#####	[#####	[#####	[#####	[#####	[#####	[#####	[#####	[#####	[#####
Fail	(6)	[#####	[#####	[#####	[#####	[#####	[#####	[#####	[#####	[#####	[#####
Pass	(35)	[#####	[#####	[#####	[#####	[#####	[#####	[#####	[#####	[#####	[#####
2nd Time Taken	(12)	[#####	[#####	[#####	[#####	[#####	[#####	[#####	[#####	[#####	[#####
Fail	(7)	[#####	[#####	[#####	[#####	[#####	[#####	[#####	[#####	[#####	[#####
Pass	(5)	[#####	[#####	[#####	[#####	[#####	[#####	[#####	[#####	[#####	[#####
3rd Time Taken	(1)	[#	[#####	[#####	[#####	[#####	[#####	[#####	[#####	[#####	[#####
Pass	(1)	[#	[#####	[#####	[#####	[#####	[#####	[#####	[#####	[#####	[#####
6th Time Taken	(2)	[##	[#####	[#####	[#####	[#####	[#####	[#####	[#####	[#####	[#####
Fail	(2)	[##	[#####	[#####	[#####	[#####	[#####	[#####	[#####	[#####	[#####
7th Time Taken	(1)	[#	[#####	[#####	[#####	[#####	[#####	[#####	[#####	[#####	[#####
Fail	(1)	[#	[#####	[#####	[#####	[#####	[#####	[#####	[#####	[#####	[#####
8th Time Taken	(1)	[#	[#####	[#####	[#####	[#####	[#####	[#####	[#####	[#####	[#####
Pass	(1)	[#	[#####	[#####	[#####	[#####	[#####	[#####	[#####	[#####	[#####
# of Applicants		5	10	15	20	25	30	35	40	45	50

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2/88 EXAM APPLICANT PROFILE

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Law School vs./ Pass-Fail Result

		1	2	3	4	5	6	7	8	9	10
		↑	↑	↑	↑	↑	↑	↑	↑	↑	↑
Antioch School of Law	(1)[#####]	[[[[[[[[[[
F	(1)[#####]	[[[[[[[[[[
Arizona State University	(1)[#####]	[[[[[[[[[[
P	(1)[#####]	[[[[[[[[[[
California Western	(1)[#####]	[[[[[[[[[[
F	(1)[#####]	[[[[[[[[[[
Cornell Law School	(1)[#####]	[[[[[[[[[[
F	(1)[#####]	[[[[[[[[[[
Drake University Law School	(1)[#####]	[[[[[[[[[[
P	(1)[#####]	[[[[[[[[[[
George Washington	(2)[#####]	[[[[[[[[[[
F	(1)[#####]	[[[[[[[[[[
P	(1)[#####]	[[[[[[[[[[
Golden Gate University	(2)[#####]	[[[[[[[[[[
P	(2)[#####]	[[[[[[[[[[
Gonzaga University	(2)[#####]	[[[[[[[[[[
F	(1)[#####]	[[[[[[[[[[
P	(1)[#####]	[[[[[[[[[[
Harvard University	(1)[#####]	[[[[[[[[[[
P	(1)[#####]	[[[[[[[[[[
Marquette University	(1)[#####]	[[[[[[[[[[
P	(1)[#####]	[[[[[[[[[[
Memphis State University	(1)[#####]	[[[[[[[[[[
P	(1)[#####]	[[[[[[[[[[
Northeastern University	(2)[#####]	[[[[[[[[[[
P	(2)[#####]	[[[[[[[[[[
Northwestern University	(1)[#####]	[[[[[[[[[[
P	(1)[#####]	[[[[[[[[[[
Pepperdine University	(2)[#####]	[[[[[[[[[[
P	(2)[#####]	[[[[[[[[[[
Southern Illinois	(1)[#####]	[[[[[[[[[[
F	(1)[#####]	[[[[[[[[[[
		[[[[[[[[[[
# of Applicants		↑	↑	↑	↑	↑	↑	↑	↑	↑	↑
		1	2	3	4	5	6	7	8	9	10

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2/88 EXAM APPLICANT PROFILE

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Law School vs./ Pass-Fail Result

		1	2	3	4	5	6	7	8	9	10
		↑	↑	↑	↑	↑	↑	↑	↑	↑	↑
		[[[[[[[[[[
The University of	(1)[#####	[[[[[[[[[[
P Kansas	(1)[#####	[[[[[[[[[[
University of Arizona	(1)[#####	[[[[[[[[[[
P	(1)[#####	[[[[[[[[[[
University of Arkansas	(1)[#####	[[[[[[[[[[
F	(1)[#####	[[[[[[[[[[
University of California	(2)[#####	[[[[[[[[[[
P	(2)[#####	[[[[[[[[[[
University of Chicago	(1)[#####	[[[[[[[[[[
P	(1)[#####	[[[[[[[[[[
University of Denver	(2)[#####	[[[[[[[[[[
P	(2)[#####	[[[[[[[[[[
University of Houston	(1)[#####	[[[[[[[[[[
F	(1)[#####	[[[[[[[[[[
University of Idaho	(1)[#####	[[[[[[[[[[
F	(1)[#####	[[[[[[[[[[
University of Kentucky	(1)[#####	[[[[[[[[[[
P	(1)[#####	[[[[[[[[[[
University of Maine	(1)[#####	[[[[[[[[[[
P	(1)[#####	[[[[[[[[[[
University of Maryland	(1)[#####	[[[[[[[[[[
P	(1)[#####	[[[[[[[[[[
University of Michigan	(1)[#####	[[[[[[[[[[
P	(1)[#####	[[[[[[[[[[
University of New Mexico	(1)[#####	[[[[[[[[[[
P	(1)[#####	[[[[[[[[[[
University of North	(1)[#####	[[[[[[[[[[
P Dakota	(1)[#####	[[[[[[[[[[
University of Notre	(3)[#####	[[[[[[[[[[
P Dame	(3)[#####	[[[[[[[[[[
University of Oregon	(2)[#####	[[[[[[[[[[
	[[[[[[[[[[[
# of Applicants		↑	↑	↑	↑	↑	↑	↑	↑	↑	↑
		1	2	3	4	5	6	7	8	9	10

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2/88 EXAM APPLICANT PROFILE

=====

Law School vs./ Pass-Fail Result

		1	2	3	4	5	6	7	8	9	10
		↑	↑	↑	↑	↑	↑	↑	↑	↑	↑
P	(2)	[#####	[[[[[[[[[
University of Oregon	(2)	[#####	[[[[[[[[[
P	(2)	[#####	[[[[[[[[[
University of Puget Sound	(5)	[#####	[[[[[[[[[
F	(3)	[#####	[[[[[[[[[
P	(2)	[#####	[[[[[[[[[
University of Texas	(1)	[#####	[[[[[[[[[
P	(1)	[#####	[[[[[[[[[
University of Wisconsin	(1)	[#####	[[[[[[[[[
P	(1)	[#####	[[[[[[[[[
University of Wyoming	(2)	[#####	[[[[[[[[[
F	(1)	[#####	[[[[[[[[[
P	(1)	[#####	[[[[[[[[[
Valparaiso University	(1)	[#####	[[[[[[[[[
F	(1)	[#####	[[[[[[[[[
Vermont Law School	(1)	[#####	[[[[[[[[[
P	(1)	[#####	[[[[[[[[[
Whittier College School of Law	(1)	[#####	[[[[[[[[[
F	(1)	[#####	[[[[[[[[[
Willamette University	(5)	[#####	[[[[[[[[[
F	(1)	[#####	[[[[[[[[[
P	(4)	[#####	[[[[[[[[[
		[[[[[[[[[[
# of Applicants		↑	↑	↑	↑	↑	↑	↑	↑	↑	↑
		1	2	3	4	5	6	7	8	9	10

ALASKA BAR ASSOCIATION

Carolyn Jones
1031 W. 4th Avenue, Suite 200
Anchorage, AK 99501
October 20, 1988

Larry R. Weeks
President, Board of Governors
Alaska Bar Association
Post Office Box 100279
Anchorage, AK 99510

Dear Mr. Weeks:

This letter is written pursuant to Section 3 of Rule 4 of the Alaska Bar Rules and constitutes certification of the results of the Alaska Bar Examination given July 26, 27 and 28, 1988. Attached is a copy of the Bar Examination essay questions, the guides utilized by the graders of those questions, and the essays selected as "benchmarks" (i.e., those essays representative of each of the five possible points on the grading scale for each of the ten essays). A copy of the Multistate Bar Examination (MBE) is not included for your review. This letter shall constitute the written report of the Committee of Law Examiners pursuant to Rule 4.

A total of 84 applicants participated in the July, 1988 Bar Examination. The performance of each examinee is also attached.

The examination consisted of three parts. The first day of the examination consisted of three "long" essay questions given in the morning and six "short" essay questions which were given in the afternoon. The research/analysis portion of the examination consisted of one essay question given on the morning of the third day. The MBE, a multiple-choice examination, was given on the second day of the examination.

In accordance with Alaska Bar Rule 4, Section 6, the Committee submitted the weighted, standardized essay scores of the applicants to the National Conference of Bar Examiners for combining with the MBE scores.

October 20, 1988

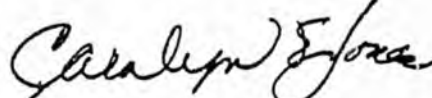
The components of the exam were weighted as follows: Essay portion, 50%; MBE, 50%; with the essay portion sub-weighted as follows: the three long essays, 30%; the six short essays, 45%; the research/analysis question, 25%. A combined score of 140 or above was passing.

The Committee read the essay and research answers during the months of August and September, 1988. The results of the July, 1988 examination were certified by the Committee today, October 20, 1988, after the evaluation was completed and the statistics were compiled.

Of the 84 applicants, 52 (62%) received a combined score of 140 or greater. Subject to other eligibility requirements contained in the Alaska Bar Rules, the Committee recommends to the Board of Governors that the 52 applicants achieving passing scores on the July, 1988 Alaska Bar Examination be certified to the Alaska Supreme Court for membership in the Bar and admission to the practice of law in Alaska.

Respectfully submitted,

COMMITTEE OF LAW EXAMINERS


Carolyn Jones
Chair

vu

=====

7/88 EXAM PASS/FAIL RESULT

=====

Pass/Fail Results

	6	12	18	24	30	36	42	48	54	60
	↑	↑	↑	↑	↑	↑	↑	↑	↑	↑
Fail	[[[[[[[[[[
(32)	#####	#####	#####	#####	#####	#####	#####	#####	#####	#####
Pass	[[[[[[[[[[
(52)	#####	#####	#####	#####	#####	#####	#####	#####	#####	#####
	↑	↑	↑	↑	↑	↑	↑	↑	↑	↑
# of occurrences	6	12	18	24	30	36	42	48	54	60

JULY 1988

GENDER VS./ PASS-FAIL RESULT

		6	12	18	24	30	36	42	48	54	60
		↑	↑	↑	↑	↑	↑	↑	↑	↑	↑
Female	(31)	[[[[[[[[[[
Fail	(14)	[[[[[[[[[[
Pass	(17)	[[[[[[[[[[
Male	(53)	[[[[[[[[[[
Fail	(18)	[[[[[[[[[[
Pass	(35)	[[[[[[[[[[
# of occurrence		↑	↑	↑	↑	↑	↑	↑	↑	↑	↑

JULY 1988

NO. OF TIMES TAKEN/ PASS-FAIL RESULT

		7	14	21	28	35	42	49	56	63	70
		↑	↑	↑	↑	↑	↑	↑	↑	↑	↑
1st time taken	(68)	[#####	[#####	[#####	[#####	[#####	[#####	[#####	[#####	[#####	[#####
Fail	(20)	[#####	[#####	[#####	[#####	[#####	[#####	[#####	[#####	[#####	[#####
Pass	(48)	[#####	[#####	[#####	[#####	[#####	[#####	[#####	[#####	[#####	[#####
2nd	(7)	[#####	[#####	[#####	[#####	[#####	[#####	[#####	[#####	[#####	[#####
Fail	(5)	[#####	[#####	[#####	[#####	[#####	[#####	[#####	[#####	[#####	[#####
Pass	(2)	[#####	[#####	[#####	[#####	[#####	[#####	[#####	[#####	[#####	[#####
3rd	(3)	[#####	[#####	[#####	[#####	[#####	[#####	[#####	[#####	[#####	[#####
Fail	(2)	[#####	[#####	[#####	[#####	[#####	[#####	[#####	[#####	[#####	[#####
Pass	(1)	[#####	[#####	[#####	[#####	[#####	[#####	[#####	[#####	[#####	[#####
4th	(2)	[#####	[#####	[#####	[#####	[#####	[#####	[#####	[#####	[#####	[#####
Fail	(1)	[#####	[#####	[#####	[#####	[#####	[#####	[#####	[#####	[#####	[#####
Pass	(1)	[#####	[#####	[#####	[#####	[#####	[#####	[#####	[#####	[#####	[#####
5th	(1)	[#####	[#####	[#####	[#####	[#####	[#####	[#####	[#####	[#####	[#####
Fail	(1)	[#####	[#####	[#####	[#####	[#####	[#####	[#####	[#####	[#####	[#####
6th	(1)	[#####	[#####	[#####	[#####	[#####	[#####	[#####	[#####	[#####	[#####
Fail	(1)	[#####	[#####	[#####	[#####	[#####	[#####	[#####	[#####	[#####	[#####
8th	(1)	[#####	[#####	[#####	[#####	[#####	[#####	[#####	[#####	[#####	[#####
Fail	(1)	[#####	[#####	[#####	[#####	[#####	[#####	[#####	[#####	[#####	[#####
9th	(1)	[#####	[#####	[#####	[#####	[#####	[#####	[#####	[#####	[#####	[#####
Fail	(1)	[#####	[#####	[#####	[#####	[#####	[#####	[#####	[#####	[#####	[#####
# of occurrence		7	14	21	28	35	42	49	56	63	70

JULY APPLICANT ROSTER

LAW SCHOOL/ EXAM-P/F?

		2	4	6	8	10	12	14	16	18	20
		↑	↑	↑	↑	↑	↑	↑	↑	↑	↑
Arizona State University	(2) [#####	[[[[[[[[[[
P	(2) [#####	[[[[[[[[[[
Boston University	(1) [##	[[[[[[[[[[
F	(1) [##	[[[[[[[[[[
Brigham Young University	(1) [##	[[[[[[[[[[
P	(1) [##	[[[[[[[[[[
California Western	(2) [#####	[[[[[[[[[[
F	(1) [##	[[[[[[[[[[
P	(1) [##	[[[[[[[[[[
Case Western Reserve	(1) [##	[[[[[[[[[[
F	(1) [##	[[[[[[[[[[
Franklin Pierce Law	(1) [##	[[[[[[[[[[
F	(1) [##	[[[[[[[[[[
Georgetown University	(1) [##	[[[[[[[[[[
F	(1) [##	[[[[[[[[[[
Gonzaga University	(3) [#####	[[[[[[[[[[
F	(1) [##	[[[[[[[[[[
P	(2) [#####	[[[[[[[[[[
Harvard University	(3) [#####	[[[[[[[[[[
F	(1) [##	[[[[[[[[[[
P	(2) [#####	[[[[[[[[[[
Lewis & Clark College	(3) [#####	[[[[[[[[[[
F	(1) [##	[[[[[[[[[[
P	(2) [#####	[[[[[[[[[[
McGeorge School of Law	(3) [#####	[[[[[[[[[[
P	(3) [#####	[[[[[[[[[[
Northeastern University	(1) [##	[[[[[[[[[[
P	(1) [##	[[[[[[[[[[
O.W. Coburn School	(1) [##	[[[[[[[[[[
F	(1) [##	[[[[[[[[[[
Ohio State University	(1) [##	[[[[[[[[[[
F	(1) [##	[[[[[[[[[[
Southern Illinois	(3) [#####	[[[[[[[[[[
		[[[[[[[[[[

of occurrence

JULY APPLICANT ROSTER

LAW SCHOOL/ EXAM-P/F?

		2	4	6	8	10	12	14	16	18	20
		↑	↑	↑	↑	↑	↑	↑	↑	↑	↑
F	(2)[#####	[[[[[[[[[[
P	(1)[##	[[[[[[[[[[
Touro College School	(1)[##	[[[[[[[[[[
F	(1)[##	[[[[[[[[[[
University of Arizona	(1)[##	[[[[[[[[[[
F	(1)[##	[[[[[[[[[[
University of Arkansas	(1)[##	[[[[[[[[[[
P	(1)[##	[[[[[[[[[[
University of California	(3)[#####	[[[[[[[[[[
P	(3)[#####	[[[[[[[[[[
University of Colorado	(1)[##	[[[[[[[[[[
P	(1)[##	[[[[[[[[[[
University of Denver	(4)[#####	[[[[[[[[[[
F	(2)[#####	[[[[[[[[[[
P	(2)[#####	[[[[[[[[[[
University of Idaho	(2)[#####	[[[[[[[[[[
P	(2)[#####	[[[[[[[[[[
University of Illinois	(1)[##	[[[[[[[[[[
P	(1)[##	[[[[[[[[[[
University of Iowa	(1)[##	[[[[[[[[[[
P	(1)[##	[[[[[[[[[[
University of Michigan	(1)[##	[[[[[[[[[[
P	(1)[##	[[[[[[[[[[
University of New Mexico	(1)[##	[[[[[[[[[[
P	(1)[##	[[[[[[[[[[
University of Oregon	(9)[#####	[[[[[[[[[[
F	(2)[#####	[[[[[[[[[[
P	(7)[#####	[[[[[[[[[[
University of Puget Sound	(13)[#####	[[[[[[[[[[
F	(5)[#####	[[[[[[[[[[
P	(8)[#####	[[[[[[[[[[
University of South Dakota	(1)[##	[[[[[[[[[[
		[[[[[[[[[[
# of occurrence		↑	↑	↑	↑	↑	↑	↑	↑	↑	↑
		2	4	6	8	10	12	14	16	18	20

JULY APPLICANT ROSTER

LAW SCHOOL/ EXAM-P/F?

			2	4	6	8	10	12	14	16	18	20
			↑	↑	↑	↑	↑	↑	↑	↑	↑	↑
P	(1)	[##	[[[[[[[[[[
University of Tennessee	(1)	[##	[[[[[[[[[[
F	(1)	[##	[[[[[[[[[[
University of Utah	(1)	[##	[[[[[[[[[[
P	(1)	[##	[[[[[[[[[[
University of Washington	(5)	[#####	[[[[[[[[[[
F	(1)	[##	[[[[[[[[[[
P	(4)	[#####	[[[[[[[[[[
Vermont Law School	(1)	[##	[[[[[[[[[[
F	(1)	[##	[[[[[[[[[[
Villanova University	(1)	[##	[[[[[[[[[[
P	(1)	[##	[[[[[[[[[[
Whittier College School	(2)	[#####	[[[[[[[[[[
F	(1)	[##	[[[[[[[[[[
P	(1)	[##	[[[[[[[[[[
Willamette University	(5)	[#####	[[[[[[[[[[
F	(4)	[#####	[[[[[[[[[[
P	(1)	[##	[[[[[[[[[[
William Mitchell College	(1)	[##	[[[[[[[[[[
F	(1)	[##	[[[[[[[[[[
			↑	↑	↑	↑	↑	↑	↑	↑	↑	↑
# of occurrence			2	4	6	8	10	12	14	16	18	20

Table 2

-73-

City	Available Attorneys (1988)	Registered in 1987	Registered in 1988	Plus/ Minus	Number 1983	of 1984	cases 1985	closed 1986	by year 1987	1988	Cases Pending
Haines	1	1	1			3	3				3
Juneau	135	126	111	-15	7	22	102	180	239	147	38
Ketchikan	32	18	19	1		2	2	14	19	12	11
Petersburg	3	2	2					1	1		1
Sitka	14	11	10	-1		3	3	3	3	9	5
Wrangell	3	1	1								1
Barrow	10	5	10	5			1	1	2	8	6
Kotzebue	6	2	1	-1		1	1	1	2	78	0
Nome	7	5	5				1	3	1	3	8
Aniak	1	0	1	1							0
Anchorage	1050	444	471	27	26	125	452	850	1167	1142	147
Cordova	1	2	1	-1		1		1		2	1
Dillingham	4	3	3	0				2			1
Eagle River	1	2	3	1			4	2			4
Homer	10	5	7	2			2	7	11	37	9
King Salmon	1	1	1	0				1			0
Kodiak	18	5	11	6		2	3	2	6	26	8
Palmer	15	5	5				1	5	9	4	3
Sold/Kenai	30	11	10	-1		1	4	7	15	27	7
Valdez	2	1	2	1				1	2	2	2
Wasilla	15	10	10			1	3	8	26	65	8
Willow	1	1	1				1		1		0
Bethel	5	7	2	-5				1	5		4
Fairbanks	132	102	100	-2		25	143	137	165	135	39
Kipnuk	1	0	1	1					2		0
OUT OF STATE		7	12	5			1	3	2	2	5
TOTALS:	1500	777	801	24	33	185	727	1223	1778	1711	311
		\$47.5	\$53.4								

Number of	Volunteers in past	In 1986:	In 1985:	In 1984:	In 1983:	:	Doctors:	Court Reps.:	C.P.A.'s:	P.Invest.:	Paralegals:
		683	563	405	259	:	116	37	7	7	10

Table 3

ALASKA BAR ASSOCIATION

BALANCE SHEETS
December 31, 1988

ASSETS	<u>General Fund</u>	<u>Client Security Fund</u>	<u>Total All Funds</u>
CURRENT ASSETS			
Cash	\$ 205,465	\$ 16,984	\$ 222,449
Time certificates of deposit, at cost			
Unrestricted	444,367	274,283	718,650
Restricted (Note 4)	167,000	-	167,000
Accounts receivable	529,318	-	529,318
Note receivable	10,000	-	10,000
Accrued interest receivable	21,256	7,000	28,256
Due from general fund	-	22,991	22,991
Prepaid expenses	23,851	-	23,851
	<u>1,401,257</u>	<u>321,258</u>	<u>1,722,515</u>
PROPERTY AND EQUIPMENT, at cost			
Video tape library and equipment	12,645	-	12,645
Office furniture, equipment and leasehold improvements	320,898	-	320,898
	333,543	-	333,543
Less accumulated depreciation and amortization	(167,525)	-	(167,525)
	<u>166,018</u>	<u>-</u>	<u>166,018</u>
OTHER ASSET, deposit	6,312	-	6,312
	<u>\$1,573,587</u>	<u>\$ 321,258</u>	<u>\$1,894,845</u>

The Notes to Financial Statements are an integral part of this statement.

	<u>General Fund</u>	<u>Client Security Fund</u>	<u>Total All Funds</u>
LIABILITIES AND FUND BALANCES			
CURRENT LIABILITIES			
Current portion of long term debt (Note 4)	\$ 43,845	\$ -	\$ 43,845
Accounts payable and accrued expenses	21,101	-	21,101
Due to Bar Foundation	3,033	-	3,033
Due to other funds	22,991	-	22,991
Deferred revenue	<u>749,373</u>	<u>22,990</u>	<u>772,363</u>
Total current liabilities	<u>840,343</u>	<u>22,990</u>	<u>863,333</u>
 LONG TERM DEBT, net of current maturities (Note 4)	 <u>44,435</u>	 <u>-</u>	 <u>44,435</u>
 COMMITMENTS (Note 3)			
 FUND BALANCES			
Unrestricted			
Designated by the Board for:			
Working capital	200,000	-	200,000
Asset acquisition	57,491	-	57,491
Undesignated	<u>431,318</u>	<u>298,268</u>	<u>729,586</u>
	<u>688,809</u>	<u>298,268</u>	<u>987,077</u>
	<u>\$1,573,587</u>	<u>\$ 321,258</u>	<u>\$1,894,845</u>

ALASKA BAR ASSOCIATION

STATEMENT OF REVENUES AND EXPENSES
For the Year Ended December 31, 1988

	General Fund	Client Security Fund	Total All Funds
Revenue			
Dues	\$ 697,310	\$ 22,470	\$ 719,780
Admission fees	114,775	-	114,775
Continuing legal education	139,535	-	139,535
Lawyer referral fees	55,883	-	55,883
Annual meeting	73,415	-	73,415
Interest on investments	58,368	19,392	77,760
Lexis service	15,637	-	15,637
Other	72,753	-	72,753
	<u>1,227,676</u>	<u>41,862</u>	<u>1,269,538</u>
Total revenue			
Expenses			
Admissions	136,905	-	136,905
Board of Governors	26,732	-	26,732
Discipline	295,584	-	295,584
Administration	256,660	-	256,660
Referrals	33,992	-	33,992
Continuing legal education	172,993	-	172,993
Fee arbitration	38,897	-	38,897
Lexis service	19,487	-	19,487
Newsletter	35,557	-	35,557
Annual meeting	58,825	-	58,825
Other	55,971	-	55,971
	<u>1,131,603</u>	<u>-</u>	<u>1,131,603</u>
Total expenses			
Excess of revenues over expenses	<u>\$ 96,073</u>	<u>\$ 41,862</u>	<u>\$ 137,935</u>

The Notes to Financial Statements are an integral part of this statement.

ALASKA BAR ASSOCIATION

STATEMENT OF CHANGES IN FUND BALANCES
For the Year Ended December 31, 1988

	General Fund			Total
	Designated for Working Capital	Designated For Asset Acquisition	Undesignated	
Fund balances, beginning	\$200,000	\$ 50,451	\$342,285	\$592,736
Excess of revenue over expenses	-	-	96,073	96,073
Transfer of designated funds	-	7,040	(7,040)	-
Fund balances, ending	<u>\$200,000</u>	<u>\$ 57,491</u>	<u>\$431,718</u>	<u>\$688,809</u>

The Notes to Financial Statements are an integral part of this statement.

<u>Client Security Fund</u>	<u>Total All Funds</u>
\$256,406	\$849,142
41,862	137,935
-	-
<u>\$298,268</u>	<u>\$987,077</u>

ALASKA BAR ASSOCIATION

STATEMENT OF CASH FLOWS
For the Year Ended December 31, 1988

	General Fund	Client Security Fund	Total All Funds
CASH FLOWS FROM OPERATING ACTIVITIES:			
Cash receipts from:			
Member dues and program fees	\$1,176,923	\$ 22,470	\$1,199,393
Interest income	51,371	15,420	66,791
Cash payments for:			
Program expenses	(247,935)	-	(247,935)
Salaries and related expenses	(513,749)	-	(513,749)
Other general and administrative expenses	(336,363)	-	(336,363)
Interest expense	(3,207)	-	(3,207)
Net cash provided by operations	127,040	37,890	164,930
CASH FLOWS FROM INVESTING ACTIVITIES:			
Cash receipts from sale and redemption of certificates of deposit			
	786,452	216,400	1,002,852
Cash payments for:			
Purchase of certificates of deposit	(897,708)	(281,039)	(1,178,747)
Note receivable proceeds	(10,000)	-	(10,000)
Purchase of furniture and equipment	(131,190)	-	(131,190)
Net cash applied to investing activities	(252,446)	(64,639)	(317,085)
CASH FLOWS FROM FINANCING ACTIVITIES:			
Proceeds from long term debt			
	106,887	-	106,887
Principal payments on long term debt			
	(18,607)	-	(18,607)
Net cash provided by financing activities	88,280	-	88,280
Net decrease in cash and cash equivalents	(37,126)	(26,749)	(63,875)
Cash and cash equivalents at beginning of period	242,591	43,733	286,324
Cash and cash equivalents at end of period	<u>\$ 205,465</u>	<u>\$ 16,984</u>	<u>\$ 222,449</u>

(Continued)

The Notes to Financial Statements are an integral part of this statement.

ALASKA BAR ASSOCIATION

STATEMENT OF CASH FLOWS, Continued
For the Year Ended December 31, 1988

	<u>General Fund</u>	<u>Client Security Fund</u>	<u>Total All Funds</u>
RECONCILIATION OF NET INCOME TO NET CASH PROVIDED BY OPERATIONS:			
Net income	\$ 96,073	\$ 41,862	\$ 137,935
Adjustments to reconcile net income to net cash provided by operating activities:			
Depreciation	30,709	-	30,709
Decrease (increase) in accounts receivable	524	(250)	274
Increase in accrued interest receivable	(6,997)	(3,972)	(10,969)
Decrease in prepaid expenses	4,307	-	4,307
Decrease in accounts payable and accrued expenses	(7,310)	-	(7,310)
Increase in due to Bar Foundation	2,394	-	2,394
Increase in due to other funds	249	-	249
Increase in deferred revenue	7,091	250	7,341
Total adjustments	<u>30,967</u>	<u>(3,972)</u>	<u>26,995</u>
Net cash provided by operations	<u>\$ 127,040</u>	<u>\$ 37,890</u>	<u>\$ 164,930</u>

The Notes to Financial Statements are an integral part of this statement.

NOTES TO FINANCIAL STATEMENTS

Note 1. Significant Accounting policies

The accounting policies relative to the carrying value of the time certificates of deposit and property and equipment are indicated in the captions on the balance sheet. Other significant accounting policies are as follows:

Depreciation:

Depreciation is computed using the straight-line method which amortizes the costs of assets evenly over their estimated useful lives.

Income Taxes:

The Association is an instrumentality of the State of Alaska whose activities are exempt from taxation under the Internal Revenue Code.

Cash Flows

For purposes of the statement of cash flows, the Association considers all highly liquid debt instruments purchased with a maturity of three months or less to be cash equivalents.

Note 2. Employee Pension Plan

The Association established an Employee Pension Plan in April 1983, effective January 1, 1983. The plan is a defined contribution plan and covers all employees who have completed one year of service and who are twenty-one years of age. The Association's contributions are 5 percent of the compensation of each participant; contributions for 1988 totaled \$13,169.

Note 3. Lease Commitments

The Association leases its office facilities and certain office equipment under noncancellable long-term leases. The office lease expires December 31, 1990 and the equipment lease expires in July, 1989. The minimum future lease payments under these operating leases are as follows:

	1989	76,918
	1990	<u>78,965</u>
Total future minimum lease payments		<u>\$155,883</u>

NOTES TO FINANCIAL STATEMENTS, Continued

Note 4. Long Term Debt

Long term debt consists of a note payable to Rainier Bank Alaska, secured by time certificates of deposits. The note is payable in monthly installments of \$4,196, including 9.5 percent interest. The note balance at December 31, 1988 is as follows:

Loan balance	\$ 88,280
Less current maturities	<u>43,845</u>
	<u>\$ 44,435</u>

Required principal payments on the note are as follows:

1989	43,845
1990	<u>44,435</u>
	<u>\$88,280</u>

ALASKA BAR ASSOCIATION

REVENUE AND EXPENSE STATEMENT DETAIL

GENERAL FUND EXPENSES

Year Ended December 31, 1988

	<u>Admissions</u>	<u>Board of Governors</u>	<u>Discipline</u>	<u>Adminis- tration</u>	<u>Referrals</u>
Salaries and related expenses	\$ 64,074	\$ -	\$ 205,782	\$ 149,886	\$ 14,316
Rent	17,926	800	25,789	16,598	2,993
Grading	25,039	-	-	-	-
Litigation	-	-	1,917	-	-
Office supplies and expense	8,060	8,352	14,358	17,420	1,246
Telephone	1,256	764	3,600	2,842	4,392
Travel	-	16,816	7,442	6,234	-
Contract services	-	-	5,158	-	-
Equipment lease	2,962	-	9,916	3,015	1,481
Postage	-	-	-	19,130	-
Accounting fees	-	-	-	8,271	-
Insurance	-	-	-	16,088	-
Repairs and maintenance	1,750	-	5,832	4,163	875
Depreciation and amortization	3,473	-	11,578	8,244	1,737
Advertising	-	-	-	-	6,952
Miscellaneous	4,365	-	4,212	4,769	-
Bar exam questions	8,000	-	-	-	-
Seminar costs	-	-	-	-	-
Lexis service	-	-	-	-	-
Consultant review	-	-	-	-	-
Computer system training	-	-	-	-	-
Committee expenses	-	-	-	-	-
Duke/Alaska Law Review	-	-	-	-	-
Annual meeting expense	-	-	-	-	-
Substantive law sections	-	-	-	-	-
Loan interest and fees	-	-	-	-	-
	<u>\$ 136,905</u>	<u>\$ 26,732</u>	<u>\$ 295,584</u>	<u>\$ 256,660</u>	<u>\$ 33,992</u>

<u>Continuing Education</u>	<u>Fee Arbit- tration</u>	<u>Lexis Service</u>	<u>Newsletter</u>	<u>Other</u>	<u>Total</u>
\$ 49,771	\$ 26,336	\$ 3,220	\$ -	\$ -	\$ 513,385
14,217	4,643	645	-	-	83,611
-	-	-	-	-	25,039
-	-	-	-	-	1,917
2,389	3,052	623	-	-	55,500
1,180	773	-	-	-	14,807
2,756	-	-	-	-	33,248
-	-	-	35,557	-	40,715
1,728	1,481	267	-	-	20,850
-	-	-	-	-	19,130
-	-	-	-	-	8,271
-	-	-	-	-	16,088
1,021	875	158	-	-	14,674
3,703	1,737	237	-	-	30,709
-	-	-	-	-	6,952
-	-	-	-	1,262	14,608
-	-	-	-	-	8,000
94,229	-	-	-	-	94,229
-	-	14,337	-	-	14,337
-	-	-	-	2,067	2,067
-	-	-	-	6,690	6,690
1,999	-	-	-	4,537	6,536
-	-	-	-	26,500	26,500
-	-	-	-	58,825	58,825
-	-	-	-	11,708	11,708
-	-	-	-	3,207	3,207
<u>\$ 172,993</u>	<u>\$ 38,897</u>	<u>\$ 19,487</u>	<u>\$ 35,557</u>	<u>\$ 114,796</u>	<u>\$1,131,603</u>

Yes

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

February 3, 1989

Audit Control Number

41-1352-89-R

Chief Justice, Alaska
Supreme Court

Warren W. Matthews

Alaska Bar Association

Executive Director

Deborah O'Regan

Board of Governors

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

Larry R. Weeks
Jeffrey M. Feldman
Ardith Lynch
Andonia Harrison
Lew M. Williams
Daniel R. Cooper, Jr.
Kenneth P. Eggers
Elizabeth Kennedy
Susan C. Orlansky
Sandra Stringer
Michael A. Thompson
Alex Young



OFFICIAL BUSINESS

Alaska State Legislature

Senate

Office of the Secretary

PO BOX V
CAPITOL BUILDING
JUNEAU, ALASKA 99811

April 13, 1989

MEMORANDUM

TO: Senator Jan Faiks, Chair
Judiciary Committee

FROM: Nancy Quinton *NQ*
Secretary of the Senate

RE: Budget & Audit Report

President Kelly has referred "A PERFORMANCE REPORT ON THE BOARD OF GOVERNORS OF THE ALASKA BAR ASSOCIATION" (Sunset Legislation) to your committee for review.

NQ/hc

Enclosure

STATE OF ALASKA

THE LEGISLATURE
BUDGET AND AUDIT COMMITTEE

AUDIT DIVISION
P.O. BOX W
JUNEAU, ALASKA 99811-3300

February 3, 1989

Members of the Legislative Budget
and Audit Committee:

In accordance with the provisions of Titles 24 and 44 of the Alaska Statutes (sunset legislation), the attached report is submitted for your review.

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

February 3, 1989

Audit Control Number

41-1352-89-R

The purpose of this audit is to examine the activities of the Board of Governors of the Alaska Bar Association (ABA, the Bar, or the 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.

The audit was conducted in accordance with generally accepted governmental performance auditing standards. Audit scope and methodology will be discussed in the Report Objectives, Scope, and Methodology section of this report. Audit results may be found in the Report Conclusion, Findings and Recommendations, and Analysis of Public Need sections of this report.



Randy S. Welker, CPA
Legislative Auditor
Division of Legislative Audit

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REPORT OBJECTIVES, SCOPE, AND METHODOLOGY

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, 1989 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 operation 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.

Discussion of the objectives, scope, and methodology of our review follows.

Objectives

The Alaska Bar Association was created in 1955 as an instrumentality of the State to ensure that only qualified members of the legal profession of good moral character are allowed to practice in this State. The primary objective of this audit, therefore, is to determine whether that need for protection of the public continues to exist today.

The secondary objective is to review the major processes instituted by the Alaska Bar, namely the examination of prospective members, admission, and discipline procedures, for effectiveness in meeting the public need. The tertiary objective is to evaluate those processes in particular, and Bar operations in general, for economy and efficiency of operation.

Scope and Methodology

Recent state and national trends in the legal profession (i.e., increases/decreases in numbers of: students attending law school, applicants for admission to practice, cases litigated, etc.) were analyzed to determine public need. Resources utilized to determine these trends included statistical information obtained from the Alaska Bar Association, the Alaska Court System, the American Bar Association, and assorted trade publications and HALT (an Organization of Americans for Legal Reform).

The review of Alaska Bar Association operations included all activities for calendar years 1986, 1987, and 1988. Examination and admission statistics (i.e., pass/fail rates, required passing scores, multi-state bar exam (MBE) scores, etc.) were obtained, reviewed, and compared with national statistics for consistency. Individual applicant records were reviewed for compliance with established Bar rules and procedures, accuracy of reporting, and timeliness of processing.

The attorney discipline process was analyzed for conformance with standards recommended by the American Bar Association and compared with procedures adopted by other states in the Pacific Northwest. A sample of individual discipline files were reviewed for compliance with established Bar rules and procedures, and timeliness. Current discipline statistics produced by the Alaska Bar were reviewed against historical data to determine trends in caseload and processing time.

Activities of the Board of Governors were examined through a review of meeting minutes and discussion with Association staff. Board composition and appointments were also reviewed for conformance with statutory requirements.

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 1989 operating budget of \$1,277,501. 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 twelve full-time employees and one temporary part-time employee.

REPORT CONCLUSION

This review contains policy issues raised as a result of our evaluation of the Board of Governors of the Alaska Bar Association. The final policy decisions affecting 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. Since the first three attorneys were admitted to the practice of law in Alaska in 1884 membership has grown to the current level of 2,707. In addition to the number of applicants seeking admission to practice, court statistics indicate increasing numbers of lawsuits being filed annually. It would appear that more members of the general public are interacting with the legal profession and that financial resources both expended on and resulting from those interactions have greatly increased. These factors result in a greater potential for harm to the general public, thereby indicating a need for continuing governance of the profession.

The public interest requires that the public be secure in its expectation that those who are admitted to the bar are worthy of the trust and confidence clients may reasonably place in their attorneys. The Board of Governors 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).

FINDINGS AND RECOMMENDATIONS

Recommendation No. 1

The Board of Governors of the Alaska Bar Association should comply with Alaska Bar Rules governing appropriate sanctions in attorney discipline cases and public access to disciplinary proceedings.

In January 1988 the Board of Governors acting as the formal disciplinary board of the Bar violated several Alaska Bar Rules governing disciplinary enforcement. In concluding a disciplinary matter before them which had been heard in formal public hearing, the Board imposed a sanction of private reprimand for a violation of Alaska Bar Rule 15(4) (failure to respond to a grievance).

The disciplinary rules which the Board is currently operating under became effective January 1985. These rules were changed upon recommendation of the American Bar Association evaluation of Alaska procedures. Pertinent changes included Rule 21 which states that after the filing of a petition for formal hearing, hearings held before either a hearing committee or the Board will be open to the public. Under the new Rule 16, private reprimands are no longer possible at the Board level except in cases where the respondent and discipline counsel agree by stipulation to that sanction. Since the stipulation precludes the need for a petition for formal hearing, the proceeding remains confidential.

Subsequent to the Board's decision which was reaffirmed after discipline counsel's appeal, proposed changes to Bar Rule 16 allowing private reprimand by the disciplinary board were forwarded to the Supreme Court. Those proposed changes were recently referred back to the Association for reconsideration with the following comment. "It seems somewhat incongruous to have the hearing process open to the public but to allow a private reprimand following such a hearing."

This Board action was indeed incongruous and has generated confusion among Association staff as to public access to the outcome of this proceeding. Since private reprimands are maintained as confidential documents which the public does not have access to, it appears the intent of the Board was to seal these records as confidential after they became public under current Bar rules.

We recommend that in all future proceedings the Board of Governors strictly conform with adopted Rules of Court applicable to disciplinary proceedings.

Recommendation No. 2

The Board of Governors of the Alaska Bar Association should recommend a proposed change to Alaska Bar Rules clarifying and limiting the Board's authority to engage in lobbying and other political activities.

The Alaska Bar Association is a mandatory bar in that in order to practice law in Alaska a lawyer must be a member in good standing of the Association. This requirement makes it difficult for an attorney to disassociate himself/herself from a political stance adopted by the Board of Governors or the Association. In light of this fact, the appropriateness of lobbying and other political activities by the Board or Association is questioned.

Some of the actions taken by the Board and Association which would be considered questionable include a decision to lobby in support of the continuation of the Alaska Women's Commission and a resolution to cease all business dealings with the Republic of South Africa and Libya in protest of current political conditions.

The lobbying issue has been debated nationally by other mandatory bar associations and has been the subject of court proceedings in other states. The Wisconsin Supreme Court has responded to the concern by permitting attorneys who object to the bar's legislative activities to reduce their membership dues by a certain percentage. The Washington State Supreme Court recently took a more direct approach by amending general Bar Rule 12 governing Washington State Bar Association general purposes to include the following.

(c) Activities Not Authorized. Among the specific actions which this rule and these Purposes do not authorize are:

(1) Taking positions on issues concerning the politics or social positions of foreign nations;

(2) Taking positions on political or social issues which do not relate to or affect the practice of law or the administration of justice;

(3) Supporting or opposing, in an election, candidates for public office.

We recommend the Board of Governors propose a similar amendment to Alaska's bar rules to clarify and limit activities of the Board to those appropriate to a mandatory bar.

Recommendation No. 3

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

At the time of our last audit (October 31, 1984) the Alaska Bar Association had 41 cases pending disciplinary or other proceedings and an additional 165 cases under investigation. As of December 31, 1988, the Alaska Bar Association's discipline section had 18 cases pending disciplinary or other proceedings and an additional 160 cases under investigation. Although the actual number of open cases has decreased slightly, the average number of days open has increased.

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

<u>Status</u>	-----1984-----		-----1988-----	
	<u>Cases</u>	<u>Avg. Days Open</u>	<u>Cases</u>	<u>Avg. Days Open</u>
<u>Pending Proceedings:</u>				
Pending Supreme Court	5	636	5	1,082
Pending Disc. Board	6	425	2	787
Pending Hearing Comm.	10	720	4	771
Pending Admonition	3	422	5	618
Pending Fee Arb.	12	291	1	985
Pending Conciliation	<u>5</u>	<u>332</u>	<u>1</u>	<u>219</u>
<u>Total</u>	<u>41</u>	<u>471</u>	<u>18</u>	<u>769</u>
<u>Under Investigation:</u>				
Investigator on Case	11	606	--	--
Special Counsel	1	1,662	1	871
Under Review (Prelim.)	113	188	25	85
Investigation (Formal)	<u>40</u>	<u>342</u>	<u>134</u>	<u>375</u>
<u>Total</u>	<u>165</u>	<u>261</u>	<u>160</u>	<u>333</u>

In addition, an analysis of cases closed during 1986, 1987, and 1988 was made. The information presented was produced by Association staff and includes grievances not accepted, closed by admonition, closed by reprimand, closed by suspension, closed by disbarment, and dismissed. The overall processing time represents the average time from the date a grievance is filed until either a determination is made to decline an investigation or the case is completed. The results follow.

Analysis of Closed Cases

<u>Year</u>	<u>Number of Cases Closed</u>	<u>Overall Processing Time (Avg. Days Open)</u>
1986	251	207
1987	277	169
1988	244	187

Significant improvement was noted in reduction of case backlog during 1985, 1986, and 1987. During 1988, however, the backlog began to return to previous levels.

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 be given to the length of time taken to conclude cases. It is in the best interest of ABA, the complainant, and the attorneys against whom the grievances were filed to take timely action in closing cases. The deterioration in processing time on open cases reflects, in part, the increase in complexity of cases coming before the Bar. However, a review of discipline files did reveal significant "dead" time in several proceedings. In one proceeding the dead time caused the investigation trail to become cold and resulted in the case being dismissed.

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. 4

The Alaska Bar Association 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.

Legislative Audit's 1984 audit of the Bar found that ABA had not publicly advertised meetings of the Board. Our current review found that the Board has properly noticed all face-to-face meetings of the Board, but has not publicly advertised teleconferenced meetings. A review of the minutes of these meetings demonstrated that these meetings were for the purpose of carrying out Board business which, in some cases, included discussion and voting on resolutions before that body.

We recommend that the Alaska Bar Association publicly advertise all meetings of the Board in conformance with applicable statutes and regulations.

Recommendation No. 5

The Alaska Bar Association should elect members of the Board of Governors in conformance with statutory guidelines.

AS 08.08.040-050 requires that members elected to the Board of Governors serve three-year terms subject to a specified triennial rotation. The purpose of this requirement is to maintain a level of experience on the Board which would be lost were a majority of members to rotate on any given year.

In recent years the Board of Governors has had several mid-term resignations. Statute allows the Board to appoint a replacement until the next annual election. The current rotation problem has arisen by election of a new Board member for a full three-year term rather than for the balance of the existing term.

We recommend that at the next annual meeting of the Alaska Bar Association those terms currently out of rotation be adjusted and, in the future, members elected to replace a resigning member be elected for the balance of the existing term.

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. ABA admits applicants to practice law through a sophisticated examination process which was designed under consultation with a national expert. The exam has withstood a court challenge as to its adequacy as a test of competence. Admission is also contingent on the passage of the Multi-state Professional Responsibility Examination and a character investigation to determine if the applicant is of good moral character.

The Alaska Bar Association has recently developed proposed changes to the Alaska Bar Rules which will facilitate the determination of "good moral character." At this time those rules changes have not been adopted by the Supreme Court of the State of Alaska.

- B. Effective January 1, 1985 the Alaska Bar began admitting members under motion for reciprocity. That option is limited to attorneys in the active practice of law for five years in states with which Alaska has a reciprocal agreement.
- C. ABA has a lawyer discipline process for the investigation of complaints of ethical misconduct. Sanctions are imposed on those found to be in violation of the rules of conduct. This process was developed through a cooperative effort 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.

In response to the American Bar Association's recommendation, and to alleviate public concern that attorney discipline is not taken seriously by ABA, discipline rules provide that once a petition for formal hearing is filed, the disciplinary proceedings become open to the public.

- D. ABA provides public notice of any attorney who has been disbarred or suspended.
- E. In addition to the three public members who serve on the Board of Governors, the Board has also appointed a total of 34 non-attorney individuals to serve on disciplinary hearing committees and fee arbitration panels throughout the State.
- F. If a complaint received by ABA does not constitute misconduct on the part of an attorney, but rather is primarily concerned with a fee dispute, 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, 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.

- G. 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 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.)
 - H. 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.
 - I. ABA jointly sponsors with the Alaska Legal Services Corporation the Alaska Pro Bono Program which involves attorneys in the delivery of free legal services to low-income Alaskans.
- 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. ABA has been impeded by the absence of Bar Rules governing the degree to which the Board of Governors may be involved in lobbying and other political activities (see Recommendation No. 2). They have also been impeded by the absence of guidelines as to "good moral character" which, as noted in I.A. above, proposed changes to the Bar Rules have been drafted, but have not yet been adopted.
- 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 1989 budget totals \$1,277,501. (See Appendix A for a schedule of ABA revenues and expenditures.)

III. The extent to which the board, commission, or agency has recommended statutory changes which are generally of benefit to the public interest.

- A. The Board has not recommended any statutory changes during our three-year audit test period. However, the Board's involvement in the process of evaluating and revising the Alaska Bar Rules governing Bar Association policies and procedures has been a dynamic one.

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. ABA is enhanced by an unprecedented involvement of the membership (in excess of one half) in its operations. That involvement may take the form of service on one of the eight standing committees or four bar rules committees. It may also take the form of participation in a section (group of members with similar specialization (i.e., bankruptcy law, criminal defense, etc). Each section is responsible for monitoring the law, suggesting revisions, and reporting annually to the membership. It may also take the form of participation in adjunct organizations (such as the Alaska Pro Bono Program) or special projects (such as the Statewide Lawyer Referral Service).
- B. ABA publishes all proposed changes to the Alaska Bar Rules in its quarterly publication The Alaska Bar Rag which is distributed to all members of the Association. Members are asked to submit any and all comments on those proposed rule changes for review by the Board.

- V. The extent to which the board, commission, or agency has encouraged public participation in the making of its regulations and decisions.
- A. As previously noted, 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.
 - B. ABA has publicly advertised face-to-face meetings of the Board of Governors in major newspapers and the Alaska Bar Rag. They have not advertised teleconferenced meetings at Association business has been conducted (see Recommendation No. 4).
- 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. ABA is an instrumentality of the State and not administratively assigned to any department. Five complaints have been filed against it with the Office of the Ombudsman during the last three years. Investigation into complaints filed with the Ombudsman have been somewhat stymied by a disagreement with ABA as to whether they have jurisdiction over it.
 - B. ABA has adopted rules governing appeal procedures for both the disciplinary and examination/admission processes. As noted in Recommendation No. 3, resolution of disciplinary proceedings in 1988 averaged a processing time of 187 days. ABA received two appeals of the July 1988 bar exam results which were released in November of that year. Both appeals were heard at the January 1989 meeting of the Board of Governors.
- VII. The extent to which a board or commission which regulated 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, approximately fifteen percent result in sanctions against those attorneys. This represents sanctions against approximately one percent of the active membership of the Alaska Bar Association annually.
- C. The Alaska Bar Association offers a continuing legal education program to its membership and also maintains an education library.
- D. ABA sponsors and promotes the LEXIS program, a computer-assisted legal research service.

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.
- B. The Board has on several occasions voiced concern over the low minority pass rate of the Alaska Bar Exam. A national consultant on bar examinations was asked to review the exam in 1986 and found it not to be unusually biased. He recommended the problem be corrected through tutoring and remedial programs. At their June 1988 meeting the Board of Governors resolved to ask the Alaska Bar Foundation to develop a scholarship program for minorities; and to resurrect the Continuing Legal Education Opportunities Committee to tutor minority applicants.

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 Recommendations.

APPENDIXES

APPENDIX A

BOARD OF GOVERNORS
ALASKA BAR ASSOCIATION
REVENUES COMPARED WITH EXPENSES
For the Calendar Years 1986, 1987, and 1988
(Note 1)

	<u>1986</u>	<u>1987</u>	<u>1988</u>
<u>Revenues</u>			
Membership Dues	\$ 677,753	\$ 705,347	\$ 697,310
Admission Fees	148,575	105,675	94,875
Cont. Legal Ed.	122,549	112,596	140,318
Lawyer Refer. Fees	53,361	51,836	55,883
Annual Meeting	33,635	31,633	73,415
Interest on Invest.	82,399	75,687	59,772
Lexis Service	-0-	46,072	15,637
Other	<u>100,332</u>	<u>65,606</u>	<u>92,653</u>
<u>Total Revenues</u>	<u>1,218,604</u>	<u>1,194,452</u>	<u>1,229,863</u>
<u>Expenses</u>			
Admissions	150,832	151,686	136,905
Board of Governors	43,766	34,382	25,923
Discipline	286,714	281,488	294,600
Administration	251,004	253,791	255,241
Lawyer Referral Svc.	31,715	31,740	33,993
Cont. Legal Ed.	144,126	168,345	171,077
Annual Meeting	34,750	38,045	58,875
Fee Arbitration	30,888	41,002	38,896
The Bar Rag	36,468	39,688	35,335
Alaska Law Review	22,000	25,000	26,500
Lexis Service	-0-	58,074	19,488
Other	<u>76,002</u>	<u>29,274</u>	<u>28,780</u>
<u>Total Expenses</u>	<u>1,108,265</u>	<u>1,152,515</u>	<u>1,125,563</u>
<u>Other Financing Sources (Uses):</u>			
Loss on Sale of Investments		<u>(47,553)</u>	
<u>Excess (deficit) of Revenues over Expenses and Other Financing Uses</u>			
	<u>\$ 110,339</u>	<u>\$ (5,616)</u>	<u>\$ 104,300</u>

Note 1: The 1986 and 1987 revenue and expense information was taken from audited financial statements of ABA. The 1988 information was obtained from the accounting records of ABA and has not been audited.

APPENDIX B

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

Disposition of Cases Closed
During 1986, 1987, and 1988

<u>Disposition</u>	<u>1986</u>	<u>1987</u>	<u>1988</u>
Disbarment by Supreme Court	2	1	0
Suspension by Supreme Court	2	0	2
Public Censure by Supreme Court	0	0	0
Public Reprimand by Disciplinary Board	-	-	1
Private Reprimand by Disciplinary Board	9	0	2
Private Admonition by Discipline Counsel	17	9	23
Dismissed	<u>109</u>	<u>111</u>	<u>74</u>
<u>Total Closed Cases</u>	<u>139</u>	<u>121</u>	<u>102</u>

Status of Cases Open
as of December 31, 1988

<u>Status</u>	<u>Cases</u>
Attorney on Probation	8
Short Term Suspension	0
Pending Supreme Court	5
Pending Disciplinary Board	2
Pending Hearing Committee	4
Pending Admonition	5
Pending Fee Arbitration	1
Pending Conciliation	1
Held in Abeyance	4
Special Counsel Investigation	1
Filed/Under Review	25
Under Investigation	<u>134</u>
<u>Total Open Cases</u>	<u>190</u>

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

Note 2: All numbers reflect individual complaints filed and not the number of attorneys under investigation.

APPENDIX C

BOARD OF GOVERNORS
ALASKA BAR ASSOCIATION
BAR EXAMINATION AND ADMISSION STATISTICS
For Calendar Years 1986, 1987, and 1988
(Note 1)

Bar Examination

	<u>Number Taking Exam</u>	<u>Number Passing Exam</u>	<u>Percent Passing Exam</u>
February 1986 Exam	102	70	68%
July 1986 Exam	106	66	62%
February 1987 Exam	78	58	74%
July 1987 Exam	76	48	63%
February 1988 Exam	58	42	72%
July 1988 Exam	84	52	61%

Admission Under Motion for Reciprocity

<u>Year</u>	<u>Number Admitted</u>
1986	16
1987	8
1988	10

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

APPENDIX D

BOARD OF GOVERNORS
ALASKA BAR ASSOCIATION
ATTORNEY REFERRAL CALLS RECEIVED
For Calendar Years 1986, 1987, and 1988
(Note 1)

<u>Area of Discipline</u>	<u>1986</u>	<u>1987</u>	<u>1988</u>
Administrative	214	235	274
Admiralty	33	32	31
Arts	1	0	7
Bankruptcy	505	429	373
Commercial	505	345	292
Construction	29	19	14
Consumer	383	559	632
Discrimination	100	94	60
Eminent Domain	9	10	12
Environmental	6	3	2
Family	2,213	2,619	2,705
Felony/Misdemeanor	808	702	692
Foreign Language	1	2	10
Immigration	70	82	20
Insurance	122	92	89
Labor Relations	461	464	562
Landlord/Tenant	286	322	334
Malpractice	155	158	202
Mining	6	9	14
Negligence	732	729	873
Patent/Copyright	128	162	157
Public Interest	1	4	-
Real Estate	504	718	706
SSI Cases	2	40	22
Tax	89	102	103
Traffic	289	183	117
Trust/Wills/Estates	230	247	285
Workers' Compensation	189	216	273
<u>Total</u>	<u>8,071</u>	<u>8,577</u>	<u>8,855</u>

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

APPENDIX E

BOARD OF GOVERNORS
ALASKA BAR ASSOCIATION
MEMBERSHIP ON ABA COMMITTEES
February 3, 1989

<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	8	-	8
Continuing Legal Education	12	-	12
Ethics	12	-	12
Historians	10	-	10
Law Related Education	17	4	21
Statutes, Bylaws & Rules	12	-	12
<u>Total Standing Committees</u>	<u>71</u>	<u>4</u>	<u>75</u>
<u>Bar Rule Committees</u>			
Law Examiners	29	-	29
Disciplinary Hearing:			
First District	10	2	12
Second & Fourth Districts	8	3	11
Third District	25	8	33
Conciliation Panels:			
First District	4	-	4
Second & Fourth Districts	4	-	4
Third District	8	-	8
Attorney Fee Review:			
First District	15	6	21
Second & Fourth District	10	2	12
Third District	36	13	49
Client Security Fund	6	-	6
<u>Total Bar Rule Committees</u>	<u>155</u>	<u>34</u>	<u>189</u>
<u>Other Adjunct Involvement</u>			
American Bar Assoc. Delegate	1	-	1
AK Assoc. of Legal Assistance	1	-	1
AK Bar Foundation	5	-	5
AK Code Revision Commission	1	-	1
AK Comm. on Jud. Conduct	3	-	3
AK Judicial Council	3	-	3
AK Law Review	3	-	3
AK Legal Service Corp.	17	-	17
Ninth Circuit Judicial Conf.	5	-	5
Rocky Mountain Mineral Law Foundation	1	-	1
Bar Rag	16	-	16
Tutors	11	-	11
<u>Total Other Involvement</u>	<u>67</u>	<u>-</u>	<u>67</u>
<u>Total Committee Membership</u>	<u>302</u>	<u>41</u>	<u>343</u>

APPENDIX F

BOARD OF GOVERNORS
ALASKA BAR ASSOCIATION
GRIEVANCES FILED BY CATEGORY
For Calendar Years 1986, 1987, and 1988

<u>Grievance Category</u>	<u>1986</u>	<u>1987</u>	<u>1988</u>
Trust violations (embezzlement, conversion, withholding client's property)	6	11	9
Conflict of Interest	13	15	9
Neglect (failure to perform, delay)	39	44	35
Relationship with client (disclosing confidential information, improper withdrawal, abandonment, failure to protect interest of client).	24	23	7
Misrepresentation/Fraud	10	13	11
Excessive Fees	1	1	3
Interference with justice	32	35	34
Improper advertising and solicitation	6	2	0
Criminal conviction	0	0	1
Personal behavior	1	0	2
Willful failure to cooperate with discipline authorities	0	0	0
Medical incapacity	0	0	0
Incompetence	0	0	0
Other	<u>1</u>	<u>0</u>	<u>1</u>
<u>Total Grievances by Category</u>	<u>133</u>	<u>144</u>	<u>112</u>

ALASKA BAR
ASSOCIATION

RECEIVED
March 9, 1989

MAR 13 1989

LEGISLATIVE
AUDIT

Randy S. Welker
Legislative Auditor
Division of Legislative Audit
Pouch W
Juneau, AK 99811

Dear Mr. Welker:

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.

Let me say that I appreciate the positive comments about the Bar's lawyer referral, pro bono and CLE programs. We have worked hard to have increased member participation and public access and it is gratifying to have you acknowledge those improved aspects. We understand that it is your function to point out ways that we can improve and accept your report in that spirit. In response to your specific recommendations:

Recommendation No. 1: The Legislative Auditor has questioned the Board of Governor's action in a disciplinary matter in which the Board imposed a private reprimand following a public hearing. The Board subsequently recommended to the Alaska Supreme Court proposed changes to Alaska Bar Rules 10(c) and 16(a) which would allow a private reprimand to be imposed by the Board. The court referred the matter back to the Board for reconsideration before they discussed the proposal.

Currently the Bar Rules provide that the Board can issue a private reprimand only if discipline counsel and the attorney stipulate to that discipline and that once imposed, this information is not released to the public. In their decision to issue a private reprimand in the referenced matter, the Board recognized the incongruity of allowing a private reprimand following a public hearing. However, their desire was to make a distinction in the severity of discipline imposed. The Board's position was that the public would have access to the outcome of this discipline matter, but the Board would not publish a notice regarding the imposition of discipline.

Randy S. Welker
March 9, 1989
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At the January 19-21, 1989 Board of Governors meeting, the Board discussed the proposed rule changes and is attempting to work out a tenable solution. The Board directed discipline counsel to review the Discipline Rules and submit proposed rule changes which would delete the terms "public" and "private" wherever the rules refer to reprimands. The result of this proposal would give the Board the authority to impose a reprimand either after hearing or by stipulation of discipline counsel and the attorney. This would give the Board the flexibility when they issue a reprimand to determine the level of severity of the discipline imposed. After a public hearing the Board could impose a reprimand that would be public, without requiring publishing a notice in the Bar Rag.

The Board does recognize that this is an area which needs to be worked out and they will most likely be recommending proposed changes to the Bar Rules following the March Board meeting.

Recommendation No. 2: The Board has recognized for several years the problems associated with a mandatory bar association taking a formal position on political issues, with which members of the Association may disagree. In 1986, this matter arose with the issue of tort reform. The Board of Governors decided that it was not appropriate for them as a Board to take a position on tort reform. Instead, the Board sponsored a public hearing and invited speakers from various sides of the issue to make presentations.

The Association has, in the past couple of years, occasionally taken positions on political issues. In 1988 the Board voted to support the continuation of the Alaska Women's Commission, and the membership voted at the annual business meeting in 1986 to cease doing business with South Africa and Libya. While the South Africa/Libya resolution was done somewhat tongue-in-cheek, the resolution supporting the Women's Commission was serious and adopted after some discussion of the appropriateness of the action.

The court cases around the country which have considered the question of lobbying by mandatory bar associations have generally stated that bars may lobby or take positions on political issues, provided they make some provisions for not spending or refunding that portion of the dues of a member who may disagree with the bar's position. Several bar associations will refund, upon request and on a pro rata basis, that portion of bar dues spent by the bar on lobbying.

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The Alaska Bar Board of Governors has not gone beyond passing a resolution on political issues and has no plans to actively lobby on such issues. The Bar is aware that the Washington State Bar Association has a provision which lists appropriate lobbying areas for them (Washington is also a mandatory bar association.) The Board agrees that it is a good idea to focus on this question and determine appropriate areas on which the Board could take positions. The Board of Governors will be reviewing the provisions listed by Washington and may recommend changes to the bylaws which would cover the question of lobbying and taking positions on political issues.

Recommendation No. 3: The Board of Governors has regularly focused its attention on the discipline process and taken steps to reduce the number of backlogged discipline cases and the amount of time it takes to bring cases to a conclusion.

In the winter of 1985, the Board of Governors directed discipline counsel to review their caseload and determine the status of and probable disposition of each case and report to the Board at the mid-March meeting. The staff was specifically instructed to concentrate on those cases, especially the older cases, and resolve those cases which could be resolved. By the end of the first quarter of 1986, the discipline caseload was at its lowest point of 125 open cases.

By the end of the second quarter of 1987, the discipline caseload had edged up to 156. The Board analyzed the caseload to determine why the caseload was gradually increasing and to look for possible solutions. In August of that year, the Board contracted with a former discipline counsel to handle some of the more routine discipline cases on a part-time basis. With the assistance of the contract discipline counsel, the caseload level through the first half of 1988 remained about the same, even though the total number of new cases initiated and total grievances went up.

In October 1988, the Board of Governors hired an additional half time assistant discipline counsel. The hiring of this staff person is an indication of the Board's commitment of the Bar's resources to reduce the caseload and processing time.

In 1988, in addition to its regular monitoring of the discipline process, the Board requested an analysis of the discipline caseload which reflected the average processing time for cases closed, cases dismissed, and cases not accepted for investigation after screening for the years 1986 and 1987. This analysis, which is reported on page 10 of the preliminary

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report, reflected an average time (date filed to disposition) of 207 days for 1986 and 169 days for 1987. The analysis for 1988 shows an average of 187 days.

In reviewing the processing time, discipline counsel believes that the Bar is dealing with a greater number of more complex and more serious cases than several years ago. There have been an increased number of hearings over the past four years. The formal hearing process requires a considerable investment of time by discipline counsel and staff in preparing for hearing, conducting the hearing itself, and then preparing the necessary record and briefing for the Board and the Supreme Court. Thus, the average time to process a case is significantly increased with more cases going to hearing and on to the Board and to the Court.

Another factor which increases the processing time is the failure of attorneys to respond to grievances opened by discipline counsel for investigation. An attorney's non-response is itself a grievable offense, which must be dealt with either before or with the underlying grievance itself. There seem to be more of these non-responses as economic times get hard. Finally, once the case is filed with the Court, the case comes within exclusive control and processing guidelines of the Court.

The Board of Governors recognizes that the discipline caseload is an ongoing priority, as demonstrated by the Board's efforts over the years to take action to manage the caseload. We believe the recent hirings to be a positive step to meet this continuing problem.

Recommendation No. 4: The Board of Governors has conscientiously complied with the statutory requirement to give 30 days public notice of its regularly scheduled meetings. The Board has generally found it necessary to call one or two unscheduled conference call meetings a year. Conference call meetings are usually called to deal with matters which cannot wait until the next regularly scheduled Board meeting. For example, in 1988 the Board called conference call meetings to arrange hearings in two admission appeals and to decide on the purchase of a new computer system before the manufacturer's deadline.

The statute does grant exemptions to the notice requirement in the case of emergency meetings. In the case of the admissions appeals, the applicants were operating under tight time constraints and since the matters were confidential, the Board met in executive session.

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March 9, 1989
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The Board will make every effort to publish notice of conference call meetings. The Board's schedule of meetings is currently published in the Bar Rag, as well as the notice being published in the State's major newspapers.

Recommendation No. 5: The Board of Governors is now aware that several of the Board seats are "out of sync" due to the mid-term resignation of several Board members. The Board has, as required by statute, appointed attorney members to the vacant seats until the next general election. Rather than having a election for a three year term, the Board will treat these as elections for the remainder of the terms of that Board seat.

A notice recently went out to the active members of the association soliciting nominations for the vacant seats on the Board. This gave notice that one of the seats was for a two year term and one of the seats was for a one year term. With the election to these seats, the Board seats will be back in sync according to the rotation set out in the statute.

In closing, let me take this opportunity to express my appreciation for the manner in which your Division conducted the performance audit. I hope your Division found the Bar's staff cooperative. If you have any questions concerning this response, please contact me or the Bar Association staff directly.

Sincerely,



Larry R. Weeks
President

cc: Deborah Ricker
Division of Legislative Audit
Deborah O'Regan
Executive Director

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