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FISCAL NOTE

No. 1

Bill Version: SB 234

BILL (S) Publish Date: 4-2-98

**STATE OF ALASKA
1998 LEGISLATIVE SESSION**

Revision Date: _____ Dept. Affected: Alaska Court System
 Title: Extend the term for the Board of BRU: Trial Courts
Governors of the Alaska Bar Association Component: _____
 Sponsor: Senate Labor & Commerce
 Requestor: Senate Finance COMPONENT SERIAL NO. 700

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 98	FY 00	FY 01	FY 02	FY 03	FY 04
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS & CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL EXPENDITURES						
CHANGE IN REVENUES ()						

Fund Source (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	0.0	0.0	0.0	0.0	0.0	0.0
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY 98) cost: \$ None

Positions

Full-Time						
Part-Time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

No fiscal impact.

Prepared by: Doug Wooliver, Administrative Attorney Phone: 264-8228
 Agency: Alaska Court System Date: 01/27/98

Approved by: Stephanie J. Cole, Administrative Director Date: 01/27/98
 Agency: Alaska Court System

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CS FOR SENATE BILL NO. 234(FIN)
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTIETH LEGISLATURE - SECOND SESSION

BY THE SENATE FINANCE COMMITTEE

Offered: 4/2/98
Referred: Rules

Sponsor(s): SENATE LABOR AND COMMERCE COMMITTEE

A BILL

FOR AN ACT ENTITLED

1 "An Act extending the termination date of the Board of Governors of the Alaska
2 Bar Association."

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

4 * Section 1. AS 08.03.010(c)(2) is amended to read:

5 (2) Board of Governors of the Alaska Bar Association (AS 08.08.040)

6 -- June 30, 2000 [1998];

2002

ALASKA BAR ASSOCIATION
APPROVED 1998 BUDGET

	<u>Approved 1997 Budget</u>	<u>12 Month Projection for 1997</u>	<u>Approved 1998 Budget</u>	<u>Over (Under) Difference</u>	<u>Percent of Prior Year</u>
Total INCOME from All Sources	\$1,886,000	\$1,870,000	\$1,900,000	30,000	102%
Total EXPENSE from All Departments	<u>\$1,744,000</u>	<u>\$1,745,000</u>	<u>\$1,796,000</u>	(51,000)	103%
Net Gain (Loss) for the Period	\$ 142,000	\$ 125,000	\$ 104,000		

1996 and prior years total capital = \$1,139,000
 1997 projected gain(loss) = 125,000
 Projected total capital
 as of 12-31-97 = \$1,264,000
 1998 projected gain(loss) = 104,000
 Projected total capital
 as of 12-31-98 = \$1,368,000

Of total capital:

\$ 200,000 has been designated by the Board as Working Capital Reserve. This is the minimum capital balance to be maintained.

\$ 100,000 will be the balance of the Capital Acquisition Reserve at the end of 1998. Each year an amount equal to computer hardware depreciation is transferred from unappropriated capital to this reserve, as a provision for system replacement.

\$ 3,700 is the capital reserve for donated artifacts.

\$1,064,300 is the amount of unappropriated capital remaining at the end of 1998. Unappropriated capital has been used in the past to offset future year deficits, deferring an increase in bar dues.

\$1,368,000 is the projected total capital at the end of 1998.

1998 BUDGET
REVENUE/EXPENSE

OVERALL REVENUE/EXPENSE
YTD Month: 8

Account Name	1997 Budget	Y-T-D Balance	Projected Year End	1998 Budget	% +/-
REVENUE					
Admission Fees - All	181,600	128,952	202,800	205,300	101.2%
ContinuingLegalEducation	117,000	85,824	128,736	128,700	100.0%
Lawyer Referral Fees	104,100	64,745	92,745	95,800	103.3%
The Alaska Bar Rag	34,600	18,019	27,029	27,000	99.9%
Annual Convention	45,000	33,058	33,058	50,000	151.2%
100th Anniversary Projects	0	1,700	1,700	0	0.0%
Substantive Law Sections	7,585	7,805	7,805	7,420	95.1%
Ethics Opinions	2,790	2,045	3,068	3,070	100.1%
Pattern Jury Instructions	3,680	3,415	5,123	5,100	99.6%
ManagementSvc LawLibrary	12,000	8,659	12,989	10,479	80.7%
AccountingSvc Foundation	9,621	6,498	9,747	9,887	101.4%
Special Projects	0	0	0	0	ERR
Membership Dues	1 246,340	817,747	1,230,782	1,241,425	100.9%
Dues Installment Fees	20,000	18,800	18,800	18,800	100.0%
Penalties on Late Dues	18,000	17,425	17,425	17,400	99.9%
Disc Fee & Cost Awards	0	0	0	0	ERR
Labels & Copying	11,800	6,268	9,402	9,400	100.0%
Investment Interest	70,000	50,652	68,000	68,000	100.0%
State of Alaska	0	0	0	0	ERR
Miscellaneous Income	2,000	450	675	2,000	296.3%
SUBTOTAL REVENUE	1,886,116	1,272,062	1,869,880	1,899,781	101.6%
EXPENSE					
Admissions	176,581	113,082	169,687	189,073	111.4%
ContinuingLegalEducation	263,322	185,912	283,323	282,630	99.8%
Lawyer Referral Service	53,339	34,804	52,206	53,707	102.9%
The Alaska Bar Rag	43,000	26,144	39,216	40,642	103.6%
Annual Convention	45,000	56,431	56,431	50,000	88.6%
100th Anniversary Projects	0	67	101	0	0.0%
Substantive Law Sections	12,900	10,416	15,624	15,600	99.8%
Ethics Opinions	1,000	1,033	1,550	1,500	96.8%
Pattern Jury Instructions	1,800	0	400	400	100.0%
ManagementSvc LawLibrary	3,644	2,431	3,647	3,724	102.1%
AccountingSvc Foundation	9,621	6,498	9,747	9,887	101.4%
Special Projects	3,500	3,034	4,551	0	0.0%
Board of Governors	56,161	41,728	54,430	60,101	110.4%
Discipline	559,133	364,381	548,713	578,639	105.5%
Fee Arbitration	47,746	30,014	45,884	49,291	107.4%
Administration	414,966	286,965	416,477	414,039	99.4%
Committees	14,800	5,704	8,556	8,600	100.5%
Duke/Alaska Law Review	36,800	16,985	33,970	34,000	100.1%
Miscellaneous Litigation	0	0	0	0	ERR
Remodeling/Moving Expense	0	0	0	0	ERR
Loan Interest/Loan Fees	0	0	0	0	ERR
Computer System Training	500	0	500	500	100.0%
Lobbyist	0	0	0	3,700	ERR
Other/Miscellaneous	0	0	0	0	ERR
SUBTOTAL EXPENSE	1,743,813	1,185,629	1,745,010	1,796,033	102.9%
NET GAIN/LOSS	142,303	86,433	124,871	103,748	83.1%

1998 BUDGET

Dept: ADMISSIONS

YTD Month: 8

Account Name	1997 Budget	Y-T-D Balance	Projected Year End	1998 Budget	% +/-
DEPT REVENUE					
AdmissionFees-Bar Exams	82,600	51,652	88,375	88,300	99.9%
AdmissionFees-MotionAdmit	9,000	7,050	9,050	12,000	132.6%
AdmissionFees-Rule 81s	90,000	70,250	105,375	105,000	99.6%
SUBTOTAL REVENUE	181,600	128,952	202,800	205,300	101.2%
DIRECT EXPENSE					
Exam Grading-MBE	4,440	1,760	4,440	4,600	103.6%
Exam Grading-Essays	21,000	8,160	20,400	20,400	100.0%
Exam Questions	6,000	6,000	6,000	6,000	100.0%
Review/Examiner Training	0	125	125	12,336	9908.4%
Exam Rent/Administration	12,000	12,108	12,608	12,600	99.9%
Admission Litigation	3,300	634	951	3,300	347.0%
Fingerprinting	5,369	5,251	7,877	6,490	82.4%
Certificates/LawSchools	200	23	35	200	579.7%
Law Examiners Committee	2,962	1,555	2,100	2,100	100.0%
Booklets/Rules/Receipts	2,450	163	245	1,000	409.0%
Conference Room Rent	3,450	2,450	3,675	3,450	93.9%
Mandatory Ethics Course	6,750	4,182	5,227	5,200	99.5%
SUBTOTAL DIRECT EXPENSE	67,921	42,411	63,681	77,676	122.0%
GAIN/LOSS AFTER DIRECT	113,679	86,541	139,120	127,624	91.7%
ADMIN EXPENSE					
Staff Salanes	58,148	38,218	57,327	58,468	102.0%
Staff Payroll Taxes	4,432	3,189	4,784	4,456	93.2%
Staff Pension Plan	2,907	1,190	1,785	2,923	163.8%
Staff Insurance	8,410	4,742	7,113	8,017	112.7%
Postage/Freight	7,665	4,482	6,723	6,857	102.0%
Supplies	7,942	6,182	9,273	9,458	102.0%
Telephone	723	900	1,350	1,350	100.0%
Copying	492	653	980	980	100.1%
Office Rent	5,220	3,419	5,129	5,245	102.3%
Depreciation/Amortization	3,722	2,512	3,768	3,647	96.8%
Leased Equipment	1,427	916	1,374	1,510	109.9%
Equipment Maintenance	1,029	364	546	1,108	202.9%
Property/GLAWC Insurance	6,243	3,764	5,646	6,533	115.7%
Miscellaneous	300	140	210	845	402.4%
SUBTOTAL ADMIN EXPENSE	108,660	70,671	106,007	111,397	105.1%
GAIN/LOSS FOR DEPT	5,019	15,870	33,113	16,227	49.0%
DEPARTMENT SUMMARY					
REVENUE	181,600	128,952	202,800	205,300	101.2%
EXPENSE	176,581	113,082	169,687	189,073	111.4%
NET GAIN/LOSS FOR DEPT	5,019	15,870	33,113	16,227	49.0%

1998 BUDGET

Dept: CONTINUING LEGAL EDUCATION
YTD Month: 8

	1997 Budget	Y-T-D Balance	Projected Year End	1998 Budget	% +/-
DEPT REVENUE					
ContinuingLegalEducation	117,000	85,824	128,736	128,700	100.0%
SUBTOTAL REVENUE	117,000	85,824	128,736	128,700	100.0%
DIRECT EXPENSE					
Seminars/Library Costs	109,600	82,715	124,073	124,000	99.9%
ACLEA Travel Midyear	2,268	1,696	1,696	2,560	150.9%
ACLEA Travel Annual	1,991	703	1,991	1,869	93.9%
CLE Committee Expense	4,367	0	4,367	3,361	77.0%
SUBTOTAL DIRECT EXPENSE	118,226	85,114	132,126	131,790	99.7%
GAIN/LOSS AFTER DIRECT	(1,226)	710	(3,390)	(3,090)	91.2%
ADMIN EXPENSE					
Staff Salaries	82,487	57,560	86,340	85,197	98.7%
Staff Payroll Taxes	6,986	4,797	7,196	7,193	100.0%
Staff Pension Plan	4,124	2,875	4,313	4,260	98.8%
Staff Insurance	9,325	6,335	9,503	10,574	111.3%
Postage/Freight	1,506	1,345	2,018	2,058	102.0%
Supplies	2,229	1,630	2,445	2,494	102.0%
Telephone	665	733	1,100	1,100	100.0%
Copying	129	170	255	255	100.0%
Office Rent	16,704	10,939	16,409	16,784	102.3%
Depreciation/Amortization	11,825	8,038	12,057	10,940	90.7%
Leased Equipment	4,282	2,932	4,398	4,529	103.0%
Equipment Maintenance	3,087	2,053	3,080	3,323	107.9%
Property/GLAWC Insurance	1,547	941	1,412	1,633	115.7%
Miscellaneous	200	450	675	500	74.1%
SUBTOTAL ADMIN EXPENSE	145,096	100,798	151,197	150,840	99.8%
GAIN/LOSS FOR DEPT	(146,322)	(100,088)	(154,587)	(153,930)	99.6%
DEPARTMENT SUMMARY					
REVENUE	117,000	85,824	128,736	128,700	100.0%
EXPENSE	263,322	185,912	283,323	282,630	99.8%
NET GAIN/LOSS FOR DEPT	(146,322)	(100,088)	(154,587)	(153,930)	99.6%

1998 BUDGET

Dept. LAWYER REFERRAL SERVICE
YTD Month: 8

	1997 Budget	Y-T-D Balance	Projected Year End	1998 Budget	% +/-
DEPT REVENUE					
Lawyer Referral Fees	104,100	64,745	92,745	95,800	103.3%
SUBTOTAL REVENUE	104,100	64,745	92,745	95,800	103.3%
DIRECT EXPENSE					
Advertising - ANC	2,974	1,992	2,988	3,048	102.0%
Advertising - Other	6,772	4,486	6,729	6,864	102.0%
Telephone - LD, 800	2,502	1,914	2,871	2,871	100.0%
SUBTOTAL DIRECT EXPENSE	12,248	8,392	12,588	12,783	101.5%
GAIN/LOSS AFTER DIRECT	91,852	56,353	80,157	83,017	103.6%
ADMIN EXPENSE					
Staff Salaries	23,230	15,034	22,551	21,629	95.9%
Staff Payroll Taxes	2,036	1,293	1,940	1,897	97.8%
Staff Pension Plan	1,162	360	540	1,081	200.2%
Staff Insurance	2,800	1,948	2,922	3,179	108.8%
Postage/Freight	1,473	866	1,299	1,325	102.0%
Supplies	1,971	1,546	2,319	2,365	102.0%
Copying	20	96	144	144	100.0%
Office Rent	3,132	2,051	3,077	3,147	102.3%
Depreciation/Amortization	2,233	1,507	2,261	2,188	96.8%
Leased Equipment	856	550	825	906	109.8%
Equipment Maintenance	617	220	330	665	201.5%
Property/GLAWC Insurance	1,561	941	1,412	1,633	115.7%
Miscellaneous	0	0	0	765	ERR
SUBTOTAL ADMIN EXPENSE	41,091	26,412	39,618	40,924	103.3%
GAIN/LOSS FOR DEPT	50,761	29,941	40,539	42,093	103.8%
DEPARTMENT SUMMARY					
REVENUE	104,100	64,745	92,745	95,800	103.3%
EXPENSE	53,339	34,804	52,206	53,707	102.9%
NET GAIN/LOSS FOR DEPT	50,761	29,941	40,539	42,093	103.8%

1998 BUDGET

Dept THE BAR RAG

YTD Month: 8

	1997 Budget	Y-T-D Balance	Projected Year End	1998 Budget	% +/-
DEPT REVENUE					
Alaska Bar Rag - Ads, Subs	34,600	18,019	27,029	27,000	99.9%
SUBTOTAL REVENUE	34,600	18,019	27,029	27,000	99.9%
DIRECT EXPENSE					
Typeset/Layout	20,500	13,378	20,067	20,468	102.0%
Printing	7,400	4,692	7,038	7,179	102.0%
Distribution	4,200	2,792	4,188	4,272	102.0%
Ad Commissions	9,900	5,048	7,572	7,723	102.0%
Promotion/Consulting	0	0	0	0	ERR
Miscellaneous	1,000	234	351	1,000	284.9%
SUBTOTAL DIRECT EXPENSE	43,000	26,144	39,216	40,642	103.6%
GAIN/LOSS AFTER DIRECT	(8,400)	(8,125)	(12,188)	(13,642)	111.9%
GAIN/LOSS FOR DEPT	(8,400)	(8,125)	(12,188)	(13,642)	111.9%
DEPARTMENT SUMMARY					
REVENUE	34,600	18,019	27,029	27,000	99.9%
EXPENSE	43,000	26,144	39,216	40,642	103.6%
NET GAIN/LOSS FOR DEPT	(8,400)	(8,125)	(12,188)	(13,642)	111.9%

1998 BUDGET

Dept BOARD OF GOVERNORS
YTD Month: 8

	1997 Budget	Y-T-D Balance	Projected Year End	1998 Budget	% +/-
DIRECT EXPENSE					
Meeting Travel-Anchorage	6,800	2,592	5,184	5,200	100.3%
Meeting Travel-Convention	11,632	8,216	8,216	9,698	118.0%
Travel-Miscellaneous	0	1,184	1,184	0	0.0%
Travel NCBP Midyear - Feb	3,589	1,705	1,705	3,952	231.9%
Travel Bar Leader - Mar	1,897	1,615	1,615	2,056	127.3%
Travel NCBP Annual - Aug	2,906	3,797	3,797	3,740	98.5%
Travel Western States	4,956	1,224	1,224	7,429	606.9%
N/ATNY Meeting Travel-Anc	4,800	1,538	3,076	3,100	100.8%
N/ATNY Meeting Travel-Con	3,052	2,312	2,312	2,141	92.6%
Special Board Committees	300	0	300	300	100.0%
Conference Room Rent	400	150	350	500	142.9%
Meeting Notices	1,946	1,985	2,713	2,713	100.0%
Printing	1,010	530	795	795	100.0%
Meeting Expense-Other	2,304	2,889	3,975	3,975	100.0%
SUBTOTAL DIRECT EXPENSE	45,592	29,737	36,444	45,599	125.1%
ADMIN EXPENSE					
Postage/Freight	3,091	3,636	5,454	5,563	102.0%
Supplies	2,659	1,780	2,670	2,723	102.0%
Telephone	300	960	1,440	1,440	100.0%
Copying	798	606	909	909	100.0%
Property/GLAWC Insurance	3,121	1,882	2,923	3,267	115.7%
Miscellaneous	600	3,127	4,691	600	12.8%
SUBTOTAL ADMIN EXPENSE	10,569	11,991	17,987	14,502	80.6%
TOTAL DEPARTMENT EXPENSE	56,161	41,728	54,430	60,101	110.4%

1998 BUDGET

Dept: DISCIPLINE

YTD Month: 8

	1997 Budget	Y-T-D Balance	Projected Year End	1998 Budget	% +/-
DIRECT EXPENSE					
Travel NOBC Midyear - Feb	4,510	1,705	1,705	4,716	276.7%
Travel NOBC Annual - Aug	3,742	3,358	3,358	4,700	140.0%
Travel Convention	4,641	1,173	1,167	2,274	194.9%
Travel - In/Area Hearngs	1,000	0	333	1,000	300.3%
Litigation Support Svcs	1,568	552	828	845	102.1%
Contract/Conflict Cases	0	0	0	0	ERR
Area Hearing Committees	1,000	0	333	1,000	300.3%
Bar Rule 31 Trustee Atny	5,000	0	4,600	5,000	108.7%
Public Notice/Information	8,555	5,169	7,754	8,141	105.0%
Law Books/Manuals	2,791	2,770	4,155	4,321	104.0%
SUBTOTAL DIRECT EXPENSE	32,807	14,727	24,232	31,997	132.0%
ADMIN EXPENSE					
Staff Salaries	327,647	219,896	329,844	333,456	101.1%
Staff Payroll Taxes	25,299	18,221	27,332	25,793	94.4%
Staff Pension Plan	16,382	5,313	7,970	16,673	209.2%
Staff Insurance	31,738	24,253	36,380	41,225	113.3%
Postage/Freight	7,587	4,769	7,154	7,297	102.0%
Supplies	9,853	7,728	11,592	11,824	102.0%
Telephone	2,208	2,049	3,074	3,074	100.0%
Copying	2,795	1,941	2,912	2,912	100.0%
Office Rent	46,525	31,446	47,169	46,862	99.3%
Depreciation/Amortization	29,028	19,090	28,635	28,443	99.3%
Leased Equipment	11,133	6,964	10,446	11,776	112.7%
Equipment Maintenance	8,027	2,762	4,143	8,640	208.5%
Property/GLA/WC Insurance	7,804	4,787	7,181	8,167	113.7%
Miscellaneous	300	435	653	500	76.6%
SUBTOTAL ADMIN EXPENSE	526,326	349,654	524,481	546,642	104.2%
TOTAL DEPARTMENT EXPENSE	559,133	364,381	548,713	578,639	105.5%

1998 BUDGET

Dept: FEE ARBITRATION
YTD Month: 8

	1997 Budget	Y-T-D Balance	Projected Year End	1998 Budget	% +/-
DIRECT EXPENSE					
Fee Arbitration Committee	900	69	935	900	96.3%
Conference Room Rent	4,700	1,950	2,925	4,700	160.7%
Support Services	32	0	32	32	ERR
SUBTOTAL DIRECT EXPENSE	5,632	2,019	3,892	5,632	144.7%
ADMIN EXPENSE					
Staff Salaries	22,723	15,884	23,826	23,184	97.3%
Staff Payroll Taxes	1,877	1,228	1,842	1,913	103.9%
Staff Pension Plan	1,136	791	1,187	1,159	97.7%
Staff Insurance	4,064	2,781	4,172	4,641	111.3%
Postage/Freight	1,473	958	1,437	1,466	102.0%
Supplies	1,971	1,545	2,318	2,364	102.0%
Telephone	1,050	489	734	734	100.1%
Copying	465	472	708	708	100.0%
Office Rent	2,088	1,198	1,797	2,098	116.8%
Depreciation/Amortization	2,233	1,005	1,508	2,188	145.1%
Leased Equipment	856	367	551	906	164.6%
Equipment Maintenance	617	315	473	665	140.7%
Property/GLAWC Insurance	1,561	941	1,412	1,633	115.7%
Miscellaneous	0	21	32	0	0.0%
SUBTOTAL ADMIN EXPENSE	42,114	27,995	41,993	43,659	104.0%
TOTAL DEPARTMENT EXPENSE	47,746	30,014	45,884	49,291	107.4%

1998 BUDGET

Dept ADMINISTRATION
YTD Month: 8

	1997 Budget	Y-T-D Balance	Projected Year End	1998 Budget	% +/-
DIRECT EXPENSE					
Travel NABE Midyear - Feb	2,225	1,868	1,868	2,328	124.6%
Travel NABE Annual - Jul	1,841	0	0	0	ERR
Travel Convention	4,641	2,694	2,694	2,274	84.4%
Travel Conference	1,718	0	0	2,385	ERR
Travel Finance/Computer	2,325	1,829	1,829	2,812	153.8%
Annual Audit	8,743	8,575	8,575	8,746	102.0%
MemberCards, Notices, AnRpt	11,325	4,130	10,460	10,983	105.0%
Dues, Subscription, Seminar	2,550	1,453	2,180	2,180	100.0%
BarPolls, Survey, Delegates	6,518	2,704	2,704	2,785	103.0%
Communications/PubRelations	10,000	7,000	7,000	10,000	142.9%
Pension Fund Admin	6,100	13,949	15,024	7,000	46.6%
SUBTOTAL DIRECT EXPENSE	57,986	44,202	52,332	51,493	98.4%
ADMIN EXPENSE					
Staff Salaries	188,432	130,000	195,000	190,450	97.7%
Staff Payroll Taxes	14,872	11,368	17,052	15,024	88.1%
Staff Pension Plan	9,422	5,416	8,124	9,523	117.2%
Staff Insurance	25,271	16,642	24,963	27,150	108.8%
Postage/Freight	13,992	8,694	13,041	13,302	102.0%
Supplies	13,794	10,819	16,229	16,553	102.0%
Telephone	1,980	1,575	2,363	2,363	100.0%
Copying	12,782	6,491	9,737	9,737	100.0%
Office Rent	20,909	16,077	24,116	20,989	87.0%
Depreciation/Amortization	26,051	18,085	27,128	25,526	94.1%
Leased Equipment	9,991	6,608	9,912	10,568	106.6%
Equipment Maintenance	7,204	2,722	4,083	7,754	189.9%
Property/GLAWC Insurance	9,364	5,728	8,592	9,800	114.1%
Miscellaneous	2,916	2,538	3,807	3,807	100.0%
SUBTOTAL ADMIN EXPENSE	356,980	242,763	364,145	362,546	99.6%
TOTAL DEPARTMENT EXPENSE	414,966	286,965	416,477	414,039	99.4%

ALASKA BAR
A S S O C I A T I O N

February 9, 1998

Pat Davidson
Acting Legislative Auditor
Division of Legislative Audit
P.O. Box 113300
Juneau, Alaska 99811-3300

Dear Ms. Davidson:

Thank you for the opportunity to respond to the Division's Audit Report regarding the Board of Governors of the Alaska Bar Association.

Let me first express the Board's appreciation for the auditor's work. Like any governing body, the Board relies on periodic review to insure that it performs its responsibilities. We were pleased to see that the audit concluded that the Board of Governors meets its statutory responsibilities and public need in an effective and economical manner. Our comments principally concern those recommendations where the Board has already taken steps or where we do not think such recommendations would necessarily improve the effectiveness of the Bar Association.

Summary of Response

The Board concurs with the audit conclusion that the termination date of the Alaska Bar Association Board of Governors be extended until June 30, 2004. We are pleased that the audit found that the Board addresses public interest in an effective and economical manner through its licensing, complaint investigation and discipline process.

There is no fiscal note attached to SB 234. As pointed out by the audit, the Alaska Bar Association did not receive any state funding within the audit period. In fact, the only state funds which the Bar Association ever received were between 1981 and 1986 for the per diem and travel expenses of the three public members who sit on the Board. For the past 12 years, the Bar Association has paid those expenses

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As noted in the audit, the operations of the Board are funded entirely by Bar members through bar dues, admission fees, Continuing Legal Education seminar fees, Lawyer Referral Service charges, convention fees and interest income.

Response to Recommendation No. 1: The Alaska Bar Association's Lawyer Referral Service differs from most Lawyer Referral Service systems in the country and the callers could be advised at the time of referral that the Alaska Bar Association is not endorsing any particular lawyer.

Recommendation No. 1 of the Audit proposed that the Board of Governors establish screening and oversight procedures for lawyers wishing to participate in the Lawyer Referral Service. Alaska's Lawyer Referral Service differs from most lawyer referral services around the country. Most services refer the client to one particular lawyer at a time and set up the appointment. As noted in the audit, Alaska's referral service gives the caller the names of three lawyers who practice in the particular area of law and lets the caller contact the lawyers referred.

The system in most states implies a closer relationship between the Bar and the lawyer. By referring the caller to three lawyers, the Alaska Bar gives the client the option of contacting any or all of the lawyers referred.

For the Bar to make sure that lawyers on referral service lists have "meaningful experience" in any substantive law area would be burdensome, unless the Bar simply announces the requirements and accepts a lawyer's word that he/she meets them. No lawyer referral program to our knowledge expects lawyers on the program to be certified as specialists, nor would we expect qualified specialists to accept "walk-in" referrals to any great extent. But for the Bar to establish experience requirements and police compliance with them will require additional staff and consequent expense. It will require further bureaucracy as lawyers appeal their exclusion from the panel or litigate the reasonableness of the "experience" requirement. The expense would have to be recovered through higher charges to the participating lawyers, which might well reduce participation. In addition, adding an experience requirement would inhibit referrals to newer lawyers, even if those lawyers can be adequately supervised by more senior attorneys with whom they work.

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The Bar is not aware of significant problems in this area. That is, there is no record of complaints by clients who were given a referral to an inexperienced or incompetent lawyer. Contrary to the audit's conclusions, the Bar does remove from referral any lawyer who is subject to formal disciplinary proceedings, until the proceedings are concluded. This policy is stated in the participation agreement:

In event that a petition is filed for removal to inactive status for disability and/or if formal disciplinary proceedings are initiated against me, or if a criminal complaint is filed or an indictment returned alleging a serious crime [as defined in Alaska Bar Rule 26(b)], I hereby agree to a suspension of referrals until final resolution of the matter.

The Board will consider ways in which this issue can be addressed so that the public does not have an unrealistic expectation of lawyer competence simply by receiving names from the referral service. For instance, referral staff can simply advise the callers that attorneys are self-selected for cases in the referred area and the Bar is not vouching for their competence. Staff already give this caution if a caller inquires about the competence of the lawyers whose names are provided. Ultimately, however, we believe that the public is protected by the attorney's ethical obligations. Rule 1.1 of the Alaska Rules of Professional Conduct:

A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

Response to Recommendation No. 2: The Alaska Bar Association is currently addressing the issue of a Mandatory CLE requirement.

A committee was appointed by the Bar President in October, 1997, to revisit the issue of mandatory CLE (MCLE). The committee is comprised of Board members and members of the CLE committee. The committee's approach is to educate members about MCLE and revitalize what is currently a dormant issue for them. There will be 6-8 short pieces in the March Alaska Bar Rag, expressing views on all sides of the issue.

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The Board spent considerable time discussing MCLE at their January meeting, and will most likely be publishing a proposed MCLE rule in the March Alaska Bar Rag. Publication is the first step before a rule could be recommended to the Alaska Supreme Court for adoption. Only the Supreme Court could adopt a rule providing for MCLE. There is sentiment on the Board for MCLE even if Bar members are reluctant.

The MCLE rule, as discussed by the Board, would provide that active Bar members complete 24 hours of CLE, including 2 hours of ethics, in each two year period.

The Board believes that its present CLE program is effective and has significant participation by Bar members, particularly for a non-mandatory state. More than half of our members attend Alaska Bar CLE programs and many others attend programs offered by other providers. Many more Bar members rent or purchase videotapes of the Bar Association programs for self-study.

The audit suggests that MCLE may "cause a slight increase in administration costs." The audit does not reflect the basis for this conclusion. A study the Bar conducted in 1990, when MCLE was proposed, showed that MCLE would have significant administrative and financial impact on the Bar Association.

MCLE will require at least one more Bar staff person, and the Bar would need to offer more CLE programs than the 30-40 live programs currently offered annually. In addition, programs must be offered to reach lawyers in small rural communities so that they are not unfairly penalized by travel expenses to meet MCLE requirements.

Moreover, the Bar would be responsible for the administration of MCLE, which includes verification of the CLE credits of nearly 3,000 members, as well as the approval of courses presented by other CLE providers.

Nevertheless, it is probable that the Board will approve an MCLE rule.

Response to Recommendation No. 3: The Bar Association is currently addressing disclosure requirements.

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As noted in the audit, the Bar Association had formed a subcommittee to study the issue of mandatory malpractice insurance disclosure. The Board will be publishing a proposed rule in the March Alaska Bar Rag which provides that lawyers would have to advise their clients in writing if they do not carry malpractice insurance.

The audit also recommended that lawyers should be required to disclose to clients the existence and function of the discipline system. The Board believes that this suggestion is without precedent in any other profession and that lawyers should not be expected to provide this information unasked.

However, the Board agrees that such notification could be done by the Bar Association through such avenues as display ads in the Yellow Pages. The Bar Association pamphlet on the discipline process and these ads could also advise the public that they can contact the Bar office to inquire whether an lawyer has had any public discipline imposed against him or her.

Concluding Comments: Lawyer self-regulation has been effective in Alaska.

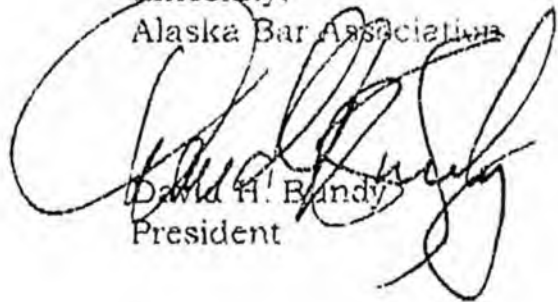
The overall conclusion of the audit is that the Board effectively serves the public interest through its lawyer admission and discipline process. We also believe that lawyer self-regulation is working very effectively in Alaska. Greater governmental involvement in the legal profession, as with any other profession or business, should not be warranted unless the present system of regulation is failing. To its credit, the Alaska Bar Association has one of the most aggressive and effective discipline systems in the country.

It is also our belief that the present management system of the Bar provides a blend of private and governmental functions which insure both accountability and good management. The Bar is an instrumentality of the state and subject to legislative audits. Its meetings are open to the public. Members of the public sit on discipline hearings and fee arbitration panels as well as the Board of Governors. Its discipline functions are overseen by the Supreme Court which assures a sound investigative and judicial process of discipline. Finally, the statewide lawyer membership on the Board also insures that the Bar Association is both responsive to the needs of its members as well as qualified to address such issues as admission standards and peer review.

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Again, thank you for the opportunity to comment on the audit report. We trust that our response has been helpful, and that it demonstrates the Board's continuing commitment to improving the profession and its service to the public.

Sincerely,
Alaska Bar Association



David H. Bandy
President

ALASKA BAR ASSOCIATION

MEMORANDUM

To: Members of the Senate Finance Committee

From: David H. Bundy
President, Alaska Bar Association

Date: February 27, 1998

Re: Questions in connection with "Sunset" legislation

INTRODUCTION

At the Committee hearing on February 26 the Committee asked the Bar Association to respond to the questions submitted by Senator Donley and appointed a subcommittee to review the responses and make a report. While some of the questions are apparently leading, the answers are nevertheless provided in a good faith effort to be responsive.

Most of the questions can be answered by reference to the Alaska Bar Act, the Alaska Bar Rules and By-laws, and annual reports or the financial records of the Bar Association, all of which are and always have been available to all members of the association and the public. In addition, the Board of Governors meetings are public and we routinely provide the opportunity for public comment. In my years on the Board, very few Bar members have attended meetings or made comment unless they had specific business with the Board. This suggests to me that the membership is not generally unhappy with the management of the Association.

1. *Would the Bar consider surveying all Bar members regarding their thoughts on Bar budget and expenditures?*

When I became Bar President last year I included this subject in my first President's column in the Alaska Bar Rag. I observed that some members (about three a year) have complained to the Board of Governors over the expense of membership. I urged all members who are concerned about the issue to review the Bar's budget and tell the Board which programs or line

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items they think should be reduced or eliminated. I received zero responses to this request.

In addition, the Board appointed a committee to review the 1998 budget before it was approved. The committee included several Board members who were quite skeptical of the need to maintain expenses at their current level. After extensive review, the committee did not recommend any significant reductions. However, this should not be taken to mean that the Board is not concerned about ongoing expenses. Every item in the budget is scrutinized by members and has to be justified by staff. We have made a major effort to ensure that salary levels do not exceed those paid for comparable State employment and we also monitor salaries paid by comparable mandatory bars in other states.

A Bar-wide survey was conducted in 1991. The functions of the Bar were supported by a substantial majority of members who responded. Nevertheless, I will ask the Board if there is a desire to survey the membership again. That would best be done in conjunction with the preparation of the 1999 budget in the third quarter of 1998. Based on past experience I do not believe that such a survey will develop a consensus in favor of major reductions in the Association's annual budget.

2. *Do you view the Bar's role as one of necessity or as a sort of service-oriented "extra" for lawyers?*

The Alaska Bar Association is an "instrumentality of the State" created by statute (AS 08.08.010-.230). As in most states, it is a "mandatory" bar and all licensed attorneys are required to belong. The Association, under the authority of the Supreme Court, handles admission and discipline of attorneys as well as continuing legal education. Clearly admissions and discipline, being required by Alaska Statutes and Bar Rules, are necessities and I do not know anyone who seriously believes otherwise. I do not regard continuing legal education as "extra" as it is the obligation of every professional to stay current with developments in his/her field and a professional association should assist in this endeavor to the extent possible. The Legislative Auditors have recommended that the Bar Association increase its efforts in this area. As the Bar is mandatory, the Board is careful not to incur expenses for purely social activities. There are a number of voluntary local bar associations which fill this need.

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The Association's functions in the areas of discipline and fee arbitration provide important public benefits as well, in protecting consumers from dishonest and unethical attorneys and in providing an efficient and inexpensive method for resolving disputes between attorneys and clients. I believe the Bar's services in these areas are far superior to any analogous remedies available against members of other licensed professions in this state.

3. *Where are CLE's conducted? (answer: Captain Cook Hotel, Centennial Hall, etc.)? Why not consider exploring no-charge alternatives, like firm conference rooms, courthouse jury selection rooms, etc.?*

Alaska Bar CLEs are normally scheduled in hotel or convention meeting spaces. The majority of live CLEs are presented in Anchorage and are videotaped for replay in areas outside Anchorage and for purchase or rental by Bar members.

Live programs are also scheduled in Fairbanks and Juneau at hotel or convention facilities or court rooms.

CLE registration fees cover all the direct costs of CLE programs including meeting space, refreshments, materials, audio-visual equipment, etc.

Approximately one-half of all active Alaska Bar members attend one or more CLEs in a given year. This is a high CLE attendance rate for a non-mandatory jurisdiction.

Scheduling programs in spaces designed for meetings allows us:

a) to provide more comfortable seating and writing surfaces,
b) to increase or decrease room size or setup fairly quickly. Often members do not register in advance and we must respond quickly to an increase in attendees.

c) to contract for audio-visual equipment, flip charts, and other instructional aids.

In 1994 the Alaska Bar Association conducted a CLE Survey. Surveys were sent to all 2,229 active members in Alaska, and the response rate to the survey was 619 (27% -- which is considered extremely high for a survey).

When asked about preferred sites for CLE, 71% of the respondents indicated a downtown hotel as their first choice. Reasons listed were ease of access, convenience and availability of parking.

The Alaska Bar has from time to time looked at what lower cost space might be available. However, these facilities do not offer us the flexibility of hotel and convention center space.

As presentations become more sophisticated, we have found that we often need to provide a setting for computer presentations, such as Powerpoint, and that rooms with lights that dim, and have strong electrical power sources are required.

Average attendance at a CLE is 30-40 registrants, but, for example, we had a program on February 27 with 138 registrants. When we did our first mailing for this program, we anticipated 75 attendees.

No law firm that I am aware of currently has a conference room that would comfortably accommodate 30-40 persons. It would be very difficult to schedule space with a law firm for such varying numbers of registrants as we have. We do often schedule other Bar meetings in law firm conference space, but many times there are scheduling conflicts.

From time to time, we have scheduled programs in courthouse space, but again, we have found that the limitations of availability of a/v equipment, and scheduling conflicts are problems. Those programs that we have scheduled in court rooms are usually related to actual trial or court room practice. With court room space, however, there is also the issue of lack of flexibility of seating and no writing surfaces.

The Bar has also explored the possibility of using space at UAA; however, parking is a major stumbling block.

4. *Did the Bar hold CLE's on things like: "meet Judge Hunt"; "tour the courthouse"; "meet the new Clerk of court" etc? Why? Is that a good use of Bar members' money?*

It would appear that the above references are to our ongoing CLE programs entitled, "Off the Record." These yearly programs are informal

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bench/bar exchanges done in cooperation with local bar associations and provide an opportunity for lawyers and judges to discuss issues of mutual concern in trial and legal practice. These programs are extremely well received and well attended by Bar members, many of whom do not frequently have opportunities to speak with the judiciary face-to-face.

It is unclear what the "meet Judge Hunt" topic refers to. Judge Hunt has been a faculty member for numerous "Off the Records" over the years, for our "Mandatory Ethics for New Admittees: Professionalism in Alaska" programs, and for a number of other CLE topics. The Alaska Bar did schedule an "Off the Record" in Anchorage entitled, "Off the Record: Meet and Greet the New Judges," on December 11, 1997.

Presiding Judge Andrews suggested that our annual "Off the Record" in 1997 might be a good opportunity for exchange between the new judges and the bar. The topics specifically to be addressed were administrative concerns, case processing concerns, bottlenecks (in the system), new personnel and the Judicial Council reporting form.

The event was not a social mixer. The faculty were seated at a head table and Ken Legacki, President of the Anchorage Bar Association, acted as moderator, directing questions (some prepared, some from the floor) to the various judges regarding court processing and procedures. This type of exchange is administrative, but invaluable in assuring that cases are processed appropriately and in a timely fashion in order to meet clients' needs.

"Tour the courthouse" may be a reference to our program "Off the Record with the Alaska Court System Administration," held in February 1996. This program included Chief Justice Compton, Presiding Judge Johnstone, Presiding Judge Murphy, Arthur Snowden, Stephanie Cole, Cynthia Petumenos, Kit Duke, Al Szal, Charlene Dolphin and Cindy Marshall.

During the December 1, 1995 "Off the Record" a number of questions had been posed by Bar members concerning changes in court procedures and administration and the new courthouse. In response to this, the February 1996 program was planned to address issues of court administration, court security, the new courthouse, court facilities, and records. Jeff Feldman served as moderator for this program. Attendees were not taken on a tour of the new courthouse, but did receive a map of the courthouse as part of the course materials.

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"Meet the new clerk of court" appears to be a reference to an upcoming CLE in Juneau on March 10. This program was requested by Presiding Judge Larry Weeks as part of our annual "Off the Record" series in Juneau. The timing of the CLE happened to coincide with the hiring of the new clerk of court for Juneau. Presiding Judge Weeks thought it would be appropriate to let bar members know that the new clerk of court would be at the program. The faculty includes U.S. Magistrate Judge David Walker, Presiding Judge Larry Weeks, Judge Walter Carpeneti, Judge Peter Froehlich, Magistrate John Sivertsen, and Adam Fleischman, Clerk of Court for the First Judicial District. This CLE will focus on issues of concern to the local bench and bar.

"Off the Records" outside of Anchorage are presented at no charge to Alaska Bar members. This is part of the Board of Governors' recognition of the difficulty of presenting live CLE in every location in Alaska, and it is their desire that Bar members have at least this one opportunity to receive CLE credit and meet with the local judiciary. "Off the Records" in Anchorage have a \$25 registration fee.

Similar "Off the Records" have been held in Kenai and Kodiak at no charge.

Past topics for "Off the Records" have included Advocacy in Mediation, Gender Equality, and New Civil Discovery Rules. An "Off the Record with the Supreme Court" held on June 27, 1997 included discussion on appellate practice: motions, petition for review, brief writing, oral argument, excerpts of record, court caseload and processing, case assignment, per curiam opinions, MOJ's, stare decisis, and changes in the Supreme Court.

5. *Why does the Bar not implement a user-pay system for CLEs, fee arbitrations and disciplinary actions? If the answer is that they've begun, shouldn't that result in a lower budget and lower dues payments? Note that in years past the data shows that a few lawyers account for most of the fee arbitrations — why make everyone else pay for them? Also, 30% of lawyers account for 100% of CLE attendance — why make everyone else pay for that? Also, if and when CLEs become mandatory, if only 30% of attorneys are using them now, won't they have to be expanded significantly when 100% start attending? How much will Bar dues be then?*

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As indicated above, CLE programs are generally on a user-pay basis. The charge is intended to cover the direct costs of the meeting room, course materials, etc. Most of the CLE faculty are volunteer Bar members. Some CLEs lose money, if there is low attendance, while others are profitable. However, direct CLE program revenue does not cover all of CLE indirect costs. Experience has shown that increasing fees significantly will result in lower attendance, and not produce a gain in revenue. Eliminating CLEs outside of Anchorage might reduce some costs, but would not be in the interests of the membership as a whole. The suggestion that only 30% of attorneys participate in CLE is misleading. Approximately 50% of all active Bar members attend one or more CLEs in a given year. There are already a number of commercial CLE providers who are quite active in Anchorage and to a lesser extent in Fairbanks, and all attorneys are free to participate in Bar-sponsored CLE if they believe they are not getting their money's worth from their dues as it is.

An analogy can be made to public education. Taxpayers without children in school, and taxpayers who choose private schools, must still pay to support the public school system because society has determined that the school system provides an important public benefit. Lawyers all benefit from the availability of CLE and providing a subsidy from the Bar as a whole helps keep the cost of attendance reasonable for newer members whose income may be lower.

Projecting the effect of mandatory CLE is not straightforward. Experience in other states shows that commercial CLE providers will meet much of the added demand, but the Association will have to provide the service to the rural areas of the State where the commercial providers will not go. With the options of video and internet CLE the added costs should not be great as they can be offset by added CLE revenue. This is not a guarantee that there will be no net expenditure, but we do not believe that any dues increase will be needed for several years.

Fee arbitrations are not expensive as all the arbitrators (including the lay arbitrators) are uncompensated volunteers except in rare complex matters and meetings take place at the bar office or at the office of one of the arbitrators. This is a service to the public (only clients can file an arbitration but the attorney is required to submit to the process) but we do not think that the public should be charged for initiating an arbitration. Should the lawyer be charged for the process, considering that in at least half of the cases the lawyer's position is sustained and in many others the parties reach a

settlement? The Board does not believe a fair system for charging can be developed which would provide meaningful revenue to the Association and still leave the arbitration system intact. Note that except for a modest filing fee, the Court System does not assess its operating costs to civil litigants, even when the losing party is found to be in bad faith. Many other state bars require fee arbitration if the client requests.

Discipline is a major expense of the Association and it is not revenue producing. The Bar Rules do permit costs and attorneys fees to be assessed as part of a sanction, but this option has not been available for very long and the effect has been minimal. Whether costs are assessed is a judgment to be imposed by the Supreme Court, which has final authority in this area. Realistically, the budget for discipline cannot be covered through charges to the lawyers on whom discipline is imposed. Full recovery would require about \$50,000 from each case concluded with public discipline. It is worth noting that in many cases discipline of a lawyer is caused by problems in the lawyer's life (divorce, substance abuse, illness, other financial problems) which have already devastated the lawyer's ability to pay any meaningful amount in sanctions and if the discipline results in disbarment or suspension from practice the lawyer's ability to make a living and pay sanctions will be further impaired.

The criminal justice system does not recover its costs from the convicted, most of whom are without means to pay their own lawyers never mind the costs of prosecution and correction. Suspended and disbarred lawyers are not much better able to pay, in many cases. Attorney discipline, like fire and police protection, is a cost which has to be borne by the entire protected population; I pay for law enforcement even if I never have a need to summon the police.

6. When an attorney pays his dues in one payment, it costs \$450. When he splits them into two payments, it costs \$475. Where precisely, meaning accounting for each of the extra 25 dollars, does the excess charge go?

The \$25 service fee goes into the general fund of the Bar Association and is not segregated for specific expenses. The Bar must send twice the number of dues notices, certified letters (as required by Alaska Bar 6i for delinquent payments) and process payments twice for every lawyer who splits the

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payment. This fee also compensates for lost interest income when half of the dues are paid mid-year.

7. *Is there any oversight besides the Board over where the millions in Bar dues are spent?*

By statute (AS 08.08.080 (c)) the Board is authorized to set dues and establish the budget. Dues revenue is about \$1.3 million annually. Authority over the budget is held by the nine attorney members, elected by the membership, and the three lay members appointed by the Governor. In this sense the Association budget is controlled in the same way the State's budget is set, by the elected representatives of the voters. The Board is answerable directly to the membership, as Legislators are answerable to their constituents. If a voter thinks the Legislature is not controlling spending, he or she can offer suggestions or run for office and try to do better. If an attorney wants to control the Bar's budget, he or she can offer suggestions or run for the Board and try to do better. Ultimate authority in each instance resides with the people whose money is being spent.

8. *Why don't Bar dues ever decrease when year after year more attorneys are admitted, thus adding more and more to the Bar "pot"? (e.g., in 1997, 75 people passed the bar exam, which equals roughly \$23,000 more than last year in Bar dues.)*

During 1997, 53 members transferred from active to inactive membership, which resulted in a decrease in dues payments of \$300 each, or nearly \$16,000. In addition, members may resign or be suspended from the Bar for nonpayment of dues. The Bar's total membership has only increased from 3,285 at the end of 1996, to 3,333 today, a total of 48 members. At the end of 1996, there were 628 inactive members; today there are 681.

Active membership actually decreased from 2,611 at the end of 1996, to 2,608 today. Yet operational expenses such as paper, postage, etc. continue to increase.

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9. *Are there any social events sponsored by the Bar? Which ones? Why? (Young lawyers, Anchorage Bar, new admittees, etc. all have some Bar-sponsored events.)*

The only "social" events co-sponsored by the Alaska Bar Association are receptions for the retirement or investiture of statewide Supreme Court justices or Court of Appeals judges. On the average, these occur once every couple of years. Any receptions for trial court judges are sponsored by the local bar associations. The Anchorage Bar Association, which is a voluntary bar, pays for events for new admittees, Young Lawyers, etc., and receives no funds at all from the Alaska Bar.

10. *How much of budget goes to travel for Board members?*

\$26,572 (or 1½%) was spent in 1997. Travel for 9 attorney Board members and the New Lawyer Liaison to attend 5 Board meetings (including the meeting in Juneau prior to the convention) was \$12,987; travel for the 3 public members to attend those meetings was \$3850. Travel for the president and president-elect to attend the 2 meetings of the National Conference of Bar Presidents and the Western States Bar Conference and the Bar Leadership Institute (president-elect only) was \$9,735 (this also included travel for the President of the Western States Bar Conference, who is a Fairbanks attorney, an office which rotates to Alaska once every 15 years.)

11. *How many fee arbitrations last year? How much was arbitrator paid? Why can't volunteer Bar members perform the same function? What is itemized per hour cost for arbitrations? How many lawyers account for all of the fee arbitrations? (i.e. In 1994, 7 lawyers accounted for 28 fee arbitrations)*

The Bar Association Fee Arbitration program processed 87 fee arbitrations to conclusion in 1997. Of that number, 46 resulted in a panel decision, 29 were settled by the parties, 3 petitions were withdrawn, 1 petition was dismissed because of bankruptcy proceedings and 8 petitions were not accepted for arbitration under the arbitration rules.

The public and attorney members sitting on fee arbitration panels are all non-compensated volunteers except in rare cases where a fee dispute has been declared "complex arbitration" by the Fee Arbitration Executive Committee. A

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matter is declared "complex" generally where complex legal or factual issues are presented, the hearing is reasonably expected to or does last 8 hours and the amount in controversy exceeds \$50,000. At that point, the parties will generally be ordered to split the costs of arbitration and administration. The Bar does not pay the arbitrators.

There were no complex arbitrations in 1997. However, there were 2 complex arbitrations in 1996. In one matter involving an attorney's interest in subsurface rights, the three arbitrators spent a combined total of 557 hours and have been paid by the parties a combined total of \$28,104.85 including expenses with a unpaid balance of \$437.14. In the other matter involving \$90,000 in dispute, two arbitrators spent 109 hours (one attorney arbitrator did not request payment) and have been paid by the parties a combined total of \$5,479.91 including expenses.

In 1994, 77 lawyers accounted for 87 fee arbitrations.
In 1995, 92 lawyers accounted for 99 fee arbitrations.
In 1996, 82 lawyers accounted for 87 fee arbitrations.
In 1997, 77 lawyers accounted for 87 fee arbitrations.

12. How many disciplinary actions? Costs associated? Any fees assessed against those sanction? Why not?

As reflected in the 1994, 1995, 1996 (1997 to be finalized) Alaska Bar Association annual reports to the Legislature, the following disciplinary cases were concluded:

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Disposition	1994	1995	1996	1997
Disbarment by Supreme Court	10	3	1	16
Suspension by Supreme Court	2	7	10	7
Probation Ended	1	0	0	0
Public Censure by Supreme Court	4	2	4	0
Public Reprimand by Disciplinary Board	1	1	5	4
Private Reprimand by Disciplinary Board	2	1	1	3
Written Private Admonition by Bar Counsel	2	2	2	2
Dismissed by Bar Counsel after Investigation	54	46	31	32
TOTALS	76	62	54	64

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

The complaint or grievance volume for these years is reflected by adding these numbers to the grievances not accepted for investigation:

Grievance Volume*	1994	1995	1996	1997
Cases Concluded	76	62	54	64
Cases Not Accepted for Investigation	165	180	189	194
TOTALS	241	242	243	258

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

The Bar Association currently has 84 open cases.

Again, as reflected in the 1994, 1995, 1996 (1997 to be finalized) annual reports to the Legislature, the total expenditures for the disciplinary section of the Alaska Bar Association were:

\$472,790 in 1994.
 \$521,714 in 1995.
 \$525,366 in 1996.
 \$543,503 in 1997.

The imposition of costs and attorneys fees against a respondent attorney in a disciplinary case is within the discretion of the Disciplinary Board and the

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Alaska Supreme Court and decided in their deliberations depending on the factual circumstances of individual cases. The following cost/attorneys fee orders were entered:

\$4,381.34 in 1994.
\$0 in 1995.
\$0 in 1996.
\$0 in 1997.

13. *Who pays for publication of the Alaska Bar Rag? Alaska Bar Review? Why should all Bar members be forced to contribute?*

All Bar members pay for these publications. The Bylaws of the Bar Association require that the Bar issue a publication at least quarterly. A 1991 survey of the active membership indicated that, of those who responded, 71% were in favor of keeping the Bar Rag and 61% were in favor of keeping the Alaska Law Review. 64% of the Bar Rag expense is offset by ad revenue.

14. *Why do Bar members pay for discipline when Judicial branch retains ultimate jurisdiction over attorney discipline? (Why not put it in Judiciary budget?)*

The Bar Association investigates and prosecutes attorney misconduct by delegation of the Alaska Supreme Court pursuant to the Court's authority under Article IV, Section 15 of the Alaska Constitution. The Court has indicated that "the license to practice law in Alaska is a continuing proclamation by the supreme court ... that the holder is fit to be entrusted with professional and judicial matters and to aid in the administration of justice as an attorney and counselor, and to act as an officer of the courts." Bar Rule 9(a).

This is an important delegation because it confers on the Bar Association both the responsibility and the privilege of self-regulation. The Bar's Board of Governors is responsible to the public, the courts and the legal profession for the identification and professional discipline of those members who fail to meet the ethical standards of the profession. The Board oversees the operation of the Discipline Section, reviews reports from volunteer attorneys appointed to discipline panels by the Chief Justice, and makes recommendations for final discipline to the Court. In so doing, it involves many members of the

MEMORANDUM

Members of the Senate Finance Committee
February 27, 1998

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profession in the difficult, but necessary process of peer review and thus educates the entire profession in the ethical requirements of practice in Alaska.

The direct involvement of the Bar in this process is crucial to the continuing goal of improving the provision of legal services. The Legislature itself has recognized this principle in the Integrated Bar Act (AS 08.08.080) when it gave the Board the ability to approve and recommend to the Supreme Court rules concerning admission, discipline, licensing, continuing legal education and defining the practice of law.

Finally, the Court System is already asking the Legislature for additional funding to do what it is already requested to do. Does the Legislature want to add another \$500,000 to the Court System budget in order to save money for the attorneys of this State?

15. *Why is it necessary to have \$1.1 Million in certificates of deposit? Why not keep a reasonable amount and return a pro rata share to Bar members.*

The current level of bar dues was set in 1993 (the most recent prior increase was in 1981) with the expectation that it would generate a surplus for several years and avoid the necessity of a further increase in the near future. Due to increased efficiencies, the temporary surplus has increased somewhat more than anticipated and is now expected to last through approximately 2004. Nevertheless the reserve is not huge. There is a minimum working capital reserve of \$200,000 and a further \$100,000 for protected computer acquisitions. The additional funds on hand amount to about seven months' expenses at the current level. This is not an excessive amount, and is consistent with the policy the State has pursued on a much larger scale, in recognition that future revenue increases cannot be guaranteed. Although the idea might be popular with voters, the Legislature has not decided to distribute the budget reserve per capita and count on being able to tax it back in the future.

Given that it would be imprudent to wipe out all the cash reserves at one stroke, the most that could conceivably be returned would be \$500,000, or about \$200 per active member. I do not believe the Board would consider this a prudent policy, for at least the following reasons:

This would require a dues increase much sooner in the future than otherwise planned. The current plan for gradual and widely-spaced increases was adopted after deliberate study and should not be lightly abandoned.

The current reserve was accumulated over several years and the membership is constantly changing due to admissions, resignations, deaths, etc. There is no way to say to whom the current surplus "belongs" and awarding a refund to current members is totally arbitrary. Keeping the money in reserve in effect benefits members who have a long-term commitment to the Bar.

Inactive members also pay dues at a reduced level. How would any refund be apportioned to them?

Any refund would be taxable income so the net benefit to most members would be less than the face amount.

CONCLUSION

The recent legislative audit of the Bar Association found little to criticize, and concluded that the Bar's function was being fulfilled in an effective and efficient manner. The auditors recommended that the Legislature extend the Bar for an additional six years rather than the customary four. The auditors emphasized a key point: the Bar does not use any State money and is supported entirely by member dues. The tone of the questions propounded by Senator Donley is to the effect that the Bar wastes members' money and dues should be reduced. But the recommendations of the audit are that the Bar should undertake additional regulation of lawyers and additional services to the public, measures which are likely to increase the Bar's budget rather than save money. We believe the recommendations of the audit are propounded thoughtfully and should be seriously considered, as we assume the legislature expects us to do, but we are reluctant to add programs which will raise dues unless we are convinced there will be a real public benefit.

In any mandatory association there will be a minority, sometimes a vocal minority, which is unhappy with leadership decisions. If the burdens of Bar membership are too great, there is the option of transfer to inactive membership or outright resignation. It is impossible to appease all the dissenters, especially where the leadership is confronted with inconsistent

MEMORANDUM

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requests. As with any other public institution, policy choices must be made within the available resources. The Bar is fortunate to have an experienced and well qualified staff which is conscious of the need to operate with a limited budget and I believe the Board has exercised responsible control over the Bar's budget without crippling our ability to fulfill the functions the law, the Supreme Court, and the bulk of the membership expects.

A handwritten signature in black ink, appearing to be "Wanda B. Smith", written in a cursive style.

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Audit Report

BOARD OF GOVERNORS OF THE
ALASKA BAR ASSOCIATION

January 2, 1998



Audit Control Number:

41-1451-98

Division of Legislative Audit

P.O. Box 113300, Juneau, Alaska 99811-3300

ALASKA STATE LEGISLATURE

LEGISLATIVE BUDGET AND AUDIT COMMITTEE

Division of Legislative Audit



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January 2, 1998

Members of the Legislative Budget
and Audit Committee:

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

BOARD OF GOVERNORS OF THE ALASKA BAR ASSOCIATION

January 2, 1998

Audit Control Number

41-1451-98

The objective of the audit was to determine if the Board of Governors of the Alaska Bar Association should continue its existence. Alaska Statute 08.03.010 scheduled the board for termination on June 30, 1998. We recommend the legislature extend the termination date until June 30, 2004.

This report does not include a response from the state agency responsible for the program's administration. This is an exception to generally accepted government auditing standards.

With the exception noted in the previous paragraph, the audit was conducted in accordance with generally accepted government auditing standards. Field work procedures utilized in the course of developing the findings and discussion presented in this report are discussed in the Objectives, Scope, and Methodology section. Audit results may be found in the Report Conclusions, Findings and Recommendations, and the Analysis of Public Need sections of this report.

A handwritten signature in cursive script that reads "Pat Davidson".

Pat Davidson, CPA
Acting Legislative Auditor

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OBJECTIVES, SCOPE, AND METHODOLOGY

In accordance with Title 24 and Title 44 of the Alaska Statutes (sunset legislation), we have reviewed the activities of the Board of Governors of the Alaska Bar Association (the board). The purpose of this audit was 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 currently specifies that the board will terminate on June 30, 1998.

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 law in this State. A primary objective of this audit, therefore, was to determine whether the need for protection of the public continues to exist.

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

Our analysis of public need, findings and recommendations, and our conclusions have been summarized in the appropriate sections of this report.

Scope and Methodology

The major areas of our review were the licensing, examination, and discipline functions provided by the Alaska Bar Association, as well as board proceedings. Our audit period was January 1994 through December 1997. We reviewed and evaluated the following:

- Applicable statutes, Alaska Bar Rules, and bylaws;
- American Bar Association Model Rules;
- Files and documentation relating to disciplinary actions, continuing legal education, and admissions;
- Minutes of board meetings and correspondence files.

In addition, we conducted interviews of staff members, including the Alaska Bar Association's executive director.

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ORGANIZATION AND FUNCTION

The practice of law in the State of Alaska is regulated by the Board of Governors of the Alaska Bar Association (the board). The board consists of twelve members including nine attorneys elected by the active membership of the Alaska Bar Association and three non-attorney public members that are 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), the Alaska Bar Rules, and the Rules of Professional Conduct which are promulgated by the Alaska Supreme Court. The purpose of the board includes the following: to cultivate and advance the science of jurisprudence, to promote reform in the law and in judicial procedure, to facilitate the administration of justice, to encourage continuing legal education for the membership, and to increase the public service and efficiency of the Alaska Bar Association.

The two primary functions of the Alaska Bar Association are the admission and discipline of its members. To accomplish these and other functions, the Alaska Bar Association operated with a 1997 budget of \$1,735,000. Funding is provided primarily by membership dues (\$450 per year), admission fees, lawyer referral fees, continuing legal education charges, interest income, and administrative discipline fees. The Alaska Bar Association did not receive any state funding within the audit period.

The Board of Governors of the Alaska Bar Association

David Bundy, President
Third Judicial District
Term Expires 2000

William B. Schendel, President Elect
Combined Second and Fourth Judicial Districts
Term Expires 1999

Joseph Faulhaber, Vice President
Public member
Term Expired 1997

Ray R. Brown, Secretary
Third Judicial District
Term Expires 1998

Barbara Miklos, Treasurer
Public Member
Term Expires 1998

Lisa Kirsch
First Judicial District
Term Expires 2000

Bruce B. Weyhrauch
First Judicial District
Term Expires 1999

Kirsten Tinglum
Third Judicial District
Term Expires 1999

Venable Vermont, Jr.
Third Judicial District
Term Expires 1998

Barbara L. Schuhmann
Combined Second and Fourth Judicial Districts
Term Expires 2000

Debra Call
Public Member
Term Expires 1999

Diane F. Vallentine
At-Large Member
Term Expires 1998

- Admission Function The board is responsible for screening applicants for admission to the Alaska Bar Association. The board certifies to the Supreme Court that all successful applicants are fit to practice law. The board appoints an executive director who is responsible for directing all staff functions, including the oversight of the admissions function.
- Discipline Function The board is responsible for investigating grievances against all members of the Bar Association. The board appoints the discipline counsel. This counsel is responsible for oversight of all disciplinary actions taken against the Alaska Bar Association's membership and provides an ethics course that is required for all applicants. The board appoints hearing committees from each judicial district. The board is also responsible for issuing reprimands when warranted, and for recommending that the Supreme Court impose disbarment, suspension, probation, or public censure when appropriate.
- Miscellaneous Functions The Alaska Bar Association also performs a wide variety of miscellaneous functions that includes providing classes for continuing legal education, a lawyer referral service, and fee arbitration. In conjunction with Alaska Legal Services Corporation, the Alaska Bar Association sponsors the Alaska Pro Bono Program. The Alaska Bar Association provides a number of other member services including attorney liability protection, group insurance, the *Alaska Bar Rag*, and ethics opinions.

The Alaska Bar Association's office is located in Anchorage and is currently staffed by 15 full-time and job-share employees.

REPORT CONCLUSIONS

In our opinion, the Board of Governors of the Alaska Bar Association (the board) should be reestablished. Since the first three attorneys were admitted to the practice of law in Alaska in 1884, membership has grown to its current level of 2,232 active members practicing in the State. The regulation and licensing of qualified attorneys contributes greatly to the protection of the public's welfare. A license to practice law in the State is a continuing proclamation by the Alaska Supreme Court that an attorney is fit to be entrusted with professional and judicial matters, to aid in the administration of justice as an attorney and counselor, and to act as an officer of the courts. The Board of Governors, through the Supreme Court, provides this protection by ensuring that persons licensed to practice law are qualified and by providing investigation of complaints and a discipline process designed to ensure that those licensed act in a competent and professional manner. As such, we recommend that the legislature extend the termination date of the board until June 30, 2004.

In general, it is our opinion that the board meets the public need in an effective and economical manner. However, we have made recommendations that, if implemented, will improve the efficiency and effectiveness of the board's operations. See the Findings and Recommendations section of this report.

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FINDINGS AND RECOMMENDATIONS

Six recommendations were made in our report *Board of Governors of the Alaska Bar Association*, dated November 17, 1993. Recommendation Nos. 3, 4, 5, and 6 from that report have been resolved. Recommendation Nos. 1 and 2 from that report have not been implemented and are restated in the current report as Recommendation Nos. 2 and 3. Additionally, one new recommendation (Recommendation No. 1) is presented.

Recommendation No. 1

The Board of Governors of the Alaska Bar Association (the board) should establish screening and oversight procedures for attorneys wishing to participate in the Lawyer Referral Service.

Alaska's Lawyer Referral Service provides an in-state, toll-free telephone number available to members of the public seeking an attorney. Persons calling the number are given the names of three attorneys who practice in the caller's area and who have expressed an interest in the field of law the person requests.

Attorneys are charged a \$50 annual enrollment fee for each section they want their name listed in. They are also charged a minimal fee for each referral made to them. All active Alaska Bar members in good standing are eligible and are encouraged to use the service. Participating attorneys are required to maintain errors and omissions (malpractice) insurance of at least \$50,000. However, there are no other eligibility requirements for enrollment in the service, and no screening and oversight to ensure that the attorney is qualified in any particular field of law.

This contrasts sharply with the American Bar Association's recommendation for such programs. According to the American Bar's *Model Supreme Court Rules Governing Lawyer Referral and Information Services*, "[t]he overriding concern of the model rules is consumer protection." These rules further provide that

[r]equirements for eligibility should include sufficient experience to ensure that the lawyer is qualified in the field of practice. The [lawyer referral] service should require proof of compliance with the requirements so established, which may include certification in affidavit or affirmation form.

In commentary discussion, the model states:

The importance of establishing meaningful experience requirements cannot be underestimated. It is inappropriate for the service to simply refer callers to the next lawyer on the list without determining that the lawyer is qualified in the field of practice in which legal services are needed. Since the public relies on services to provide qualified legal representation which improves on what the consumer can obtain by lot, it is incumbent upon these services to ensure that their attorneys have substantially more qualifications than mere bar membership. [Emphasis added.]

The model concludes that *"the service must establish procedures for the admission, suspension, or removal of a lawyer from any panel."*¹

Alaska's referral service has no such oversight procedures. As long as a member is currently in good standing and maintains malpractice insurance they are eligible to enroll in the service. No consideration is given to disciplinary actions or competence in the specific field.

By providing a referral, the Alaska Bar creates the appearance that it considers the attorneys referred to be competent to practice in a particular field of law. Members of the public who call the Alaska Bar Association for a referral may erroneously assume that the Alaska Bar has taken some measures to reasonably ensure the attorney has some level of expertise in a particular field of law. However, the referral service provides members of the public with little more assurance they will receive competent legal representation than they get seeking an attorney from telephone directory assistance.

We believe the people of Alaska would benefit from the board taking a proactive role in screening and overseeing attorneys participating in the Lawyer Referral Service. Adopting aspects of the American Bar's recommended model rules on such services would contribute greatly to consumer protection.

Recommendation No. 2

The board should recommend to the Supreme Court that mandatory continuing legal education requirements for attorneys be adopted.

The American Bar Association currently reports that 40 of 51² jurisdictions require some form of Continuing Legal Education (CLE). CLE requirements range from 8 to 15 hours per year with the majority of the jurisdictions requiring between 12 and 15 hours. Specific course requirements, such as ethics courses, vary.

One purpose of the Alaska Bar Association, as set out in its bylaws, is to encourage CLE. To this end, the board expends considerable resources to provide appropriate courses. Despite these efforts, less than half of all active Alaska Bar members took a Alaska Bar-sponsored CLE course during any year of our audit period (1994-1997). Data on the attendance at CLE courses provided by other entities is not available. As such, the Alaska Bar is uncertain whether a majority of attorneys are participating in any CLE.

It appears that the board is not willing to recommend the implementation of mandatory CLE without the consent of the general membership.³ However, the board has the authority to recommend that the Supreme Court implement such a requirement without the approval of the

¹ The American Bar Association is comprised of state Bar Associations, including Alaska. The organization's model rules, while not mandatory, provide a suggested framework for individual states' Bar Rules.

² The 51 jurisdictions include all 50 states and the District of Columbia.

³ In 1990, the board proposed the implementation of mandatory CLE to the general membership of the Bar. However, Bar members voted down this proposal with 56% opposed. No further action by the board was taken.

general membership. According to Alaska Bar Rule 62, Section 2: "*The board, on its own initiative may, in accordance with this Rule, recommend for adoption proposed Bar Rules and adopt bylaws and regulations.*"

Many other professions in Alaska require continuing education to maintain licensure. For example, certified public accountants, chiropractors, dentists, doctors, nurses, optometrists, pharmacists, psychologists, and veterinarians are all required to meet specified continuing education standards. We believe these requirements contribute to professionalism and client satisfaction.

Requiring Alaska Bar members to obtain continuing education may cause a slight increase in administration costs. However, we believe the benefits of continuing education far outweigh the additional costs that may be incurred. Maintenance of legal skills should be of paramount importance to attorneys and their clients.

The board has recently appointed a subcommittee to consider mandatory CLE. We understand that the subcommittee will be soliciting input from the Alaska Bar's general membership regarding such requirements. We support mandatory CLE and encourage the board to act to put such a requirement in place, with or without the support of the general membership of the Alaska Bar.

Recommendation No. 3

The board should recommend that the Supreme Court adopt rules requiring attorneys to disclose additional information to prospective clients.

We believe rules should be adopted to require attorneys to disclose to prospective clients items such as the existence and function of the Alaska Bar's disciplinary system and the amount of malpractice insurance carried. A better-informed client will help put attorneys and clients on more equal footing. This will benefit the legal profession's reputation as a whole and it will also enhance public protection.

- Discipline System Attorneys should be required to disclose to their clients the existence and function of the disciplinary system. The Alaska Bar Association currently has a pamphlet that states it is responsible for the supervision of attorney conduct. This pamphlet also gives examples of misconduct, describes how to file a complaint, outlines the investigation, hearing, and appeal process, and explains what the complainant should and should not expect from the disciplinary system. However, clients can only obtain the pamphlet from the Alaska Bar Association or clerk of the court, necessitating previous client knowledge of the Alaska Bar and its discipline function. We believe attorneys should be required to provide their clients with such a pamphlet. We also believe the pamphlet should be modified to explain how a member of the public can determine, prior to hire, if any disciplinary action has been taken against an attorney.

In addition to requiring attorneys to distribute the pamphlet described above, the board could further increase public awareness of the disciplinary system by listing a separate number for attorney discipline in the white pages and in the yellow pages of in-state telephone books. Finally, the board should consider sponsoring public service announcements to educate the public regarding the existence of the attorney disciplinary process.

- Malpractice Insurance Not all attorneys carry malpractice insurance. If a violation of the Rules of Professional Conduct occurs, a client may receive restitution from the Lawyers' Fund for Client Protection.⁴ However, in other cases of misconduct, the client would be forced to file a civil suit to obtain restitution. If the attorney carries no malpractice insurance, the chances of recovery are presumably greatly reduced. We believe the client has a right to this information and the attorney should disclose it up front. A client may wish to consider this factor in selecting an attorney.⁵

Recently, the board has formed a subcommittee on mandatory malpractice insurance disclosure. This committee has drafted proposed changes to Alaska Bar Rules that would require attorneys to inform prospective clients if they do not carry malpractice insurance. The subcommittee plans to present their proposed changes to the entire board at the January 1998 meeting. We support the proposed changes, and encourage the board to do all it can to ensure they are implemented.

This recommendation is similar to a recommendation made during our last sunset audit of the board. Such disclosures will make prospective clients better informed consumers of legal services. Many persons in need of legal services are not well versed as to the level of service they are entitled to from their attorney, much less what recourse they have if they become the victim of attorney misconduct. The distressing circumstances that often give rise to the need for legal services exacerbates this problem. We believe that requiring attorneys to better educate clients in what to expect will benefit the legal profession as well as the public as a whole.

⁴ The Lawyers' Fund for Client Protection is generated from a portion of bar membership dues. It is maintained for the purpose of making reimbursements to clients who have suffered non-insured losses of money, property, or other things of value as a result of a dishonest act by an attorney.

⁵ In April 1995 the board conducted a survey of attorneys. The survey asked about the level of malpractice insurance attorneys carried. The survey also asked if attorneys would be in favor of making malpractice insurance mandatory. The results of the survey showed that 79% of the attorneys responding to the survey do carry some malpractice insurance. However, the majority did not favor mandatory insurance requirements.

ANALYSIS OF PUBLIC NEED

Limited Analysis

The following analyses of board activities relate to the public need factors defined in the "sunset" law, Alaska Statute 44.66.050. These analyses are not intended to be comprehensive, but address those areas we were able to cover within the scope of our review.

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

The Alaska Bar Association admits applicants to practice law through an examination process that was designed in consultation with a national expert. Admission is also contingent on the passage of the Multistate Professional Responsibility Examination and a character investigation to determine if the applicant is of good moral character.

The Alaska Bar Association also admits members by motion for reciprocity. This option is limited to attorneys in the active practice of law for five of seven years in states with which Alaska has a reciprocal agreement.

The Alaska Bar Association has a lawyer discipline process for the investigation of complaints alleging attorney misconduct. Sanctions are imposed on those found to be in violation of the Rules of Professional Conduct. All public disciplinary action is subject to Supreme Court review; we understand that the Court follows the board's recommendations in approximately 80-85% of the cases. This process was developed through a cooperative effort of the Supreme Court, the Board of Governors, Alaska Bar Association staff, and a review team from the American Bar Association's Standing Committee on Professional Discipline.

The American Bar Association's *Model Rules for Lawyer Disciplinary Enforcement* recommends that discipline be administered through an entity other than the Alaska Bar Association. However, we generally found the Alaska Bar's handling of disciplinary matters to be adequate. We did note one instance where we were concerned with the board's handling of a disciplinary matter. An attorney had agreed to the Alaska Bar disciplinary counsel's recommendation that he serve a 90-day suspension for falsifying billing records. It appears that because the falsification did not result in the client being charged more, the board voted to recommend to the Supreme Court that the lawyer be subject to public censure, a reduced sanction. While the Supreme Court followed the board's recommendation, we were concerned that the board's election to reduce the recommended sanction could negatively impact the public's perception of Alaska Bar Association discipline activities and the general concept of self-regulation of attorneys. Compounding this, the name of the attorney subject to the reduced sanction of public censure was excluded from the Alaska Bar's annual report. Normally, public censure includes publication in both the *Alaska Bar Rag* and the Alaska Bar's annual report. This appears to have been a clerical oversight, as the names of two other attorneys, both disbarred during the same timeframe, were also excluded from the same annual report.

Analysis of the 953 complaints filed during our audit period shows that 72% of all grievances filed were reviewed but not pursued beyond initial investigation. On its face, this statistic appears troubling, but further scrutiny shows it to be reasonable. Some grievances were referred to the fee arbitration committee or to a conciliation panel whose services are discussed below. If a grievance involved pending litigation, it was not accepted; however, the complainant was advised that it may be resubmitted and considered once the litigation is settled. In some instances, grievances were dismissed because action had already been taken against the attorney. For example, we reviewed one file in which a grievance was not accepted because the respondent attorney had been disbarred since the incident occurred. Baseless grievances are very common in some fields of legal practice; we understand that approximately half of all grievances are filed against criminal law and family practice attorneys, both areas that lend themselves to high emotion. There is a potential that in many of these types of cases, the grievance is based on the outcome of a case, and not on any real attorney misconduct.

Board procedures provide for public notice of all attorneys who have been disbarred, suspended, or publicly censured or reprimanded. The names of attorneys who have been disbarred or suspended are published in four major newspapers throughout the State, the local newspaper where the attorney practiced, the *Alaska Bar Rag*, and in the board's annual report. Public censures and reprimands are only published in the *Alaska Bar Rag* and in the annual report.

The Alaska Bar Association offers fee arbitration as a dispute resolution process. This process provides for the dispute to be arbitrated by a three-member panel that consists of two attorneys and one public member. Failure by an attorney to participate in good faith in this process may be grounds for disciplinary action.

Similarly, the Alaska Bar Association offers a conciliation process that attempts to resolve disputes between attorneys and clients, when the dispute is neither fee nor misconduct related. Again, failure by an attorney to participate in good faith may be grounds for disciplinary action.

The Alaska Bar Association maintains the Lawyers' Fund for Client Protection. The purpose of this fund is to make reimbursements to attorneys' clients who have suffered non-insured losses of money, property, or other things of value as a result of a dishonest act by an attorney. Ten dollars of each Alaska Bar Association member's annual dues is deposited in this fund.

The Alaska Bar Association jointly sponsors the Alaska Pro Bono Program with the Alaska Legal Services Corporation in which attorneys provide free legal services to low-income Alaskans.

The Alaska Bar operates a Lawyer Referral Service, which is funded by subscribing attorneys. Members of the public can call an in-state, toll-free number and receive the names of three attorneys who have listed themselves as practicing law in a certain discipline. Subscribing attorneys agree to provide the referred client the first half hour of consultation at a reduced rate of \$50. See Appendix D for the number of referrals, and Recommendation No. 1 for suggested improvements.

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.

The operations of the board are funded entirely by the membership through dues, admission fees, continuing legal education charges, lawyer referral fees, convention fees, and interest income. The 1997 budgeted revenue was \$1,886,000. See Appendix A for a schedule of Alaska Bar Association revenues and expenditures for 1994 through 1997.

The Alaska Bar Association has an experienced and competent staff.

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

The board has not recommended any statutory changes during this audit period. However, the board has been active in the process of evaluating and revising the Alaska Bar Rules that govern the Alaska Bar Association's policies and procedures. The board has also addressed certain recommendations presented in our 1993 audit.

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.

The Alaska Bar Association membership is involved in its operations. This involvement may include serving on one of the six standing committees or five Alaska Bar Rules committees. It may also include participation in a section or group of members with similar specialization (bankruptcy law, criminal defense, etc.). Each section is responsible for monitoring the law, suggesting revisions, and reporting annually to the membership. It may also include participating in an adjunct organization such as the Alaska Pro Bono Program or special projects like the Lawyer Referral Service.

The Alaska Bar Association publishes all proposed changes to the Alaska Bar Rules in its semi-monthly publication, the *Alaska Bar Rag*, that is distributed to all members of the Alaska Bar Association and to interested members of the public. Members are asked to submit any and all comments on proposed rule changes for review by the board.

The board also advertises all board meetings in four Alaskan newspapers and in the *Alaska Bar Rag*. It also allots time for public comments at all meetings.

The extent to which the board, commission, or agency has encouraged public participation in the making of its regulations and decisions.

In addition to the three public members who serve on the Board of Governors, non-attorneys serve on disciplinary hearing committees and fee arbitration panels throughout the State.

As mentioned above, the Alaska Bar Association publicly advertises meetings of the Board of Governors of the Alaska Bar Association in major newspapers and the *Alaska Bar Rag*. Time is allotted at all board meetings for public comments.

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.

The Alaska Bar Association is an instrumentality of the State, but is not administratively assigned to any department. No significant complaints were filed against the Alaska Bar Association with the Office of the Ombudsman during our audit period.

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

We found no instances where the board had licensed unqualified applicants.

Of the 953 grievances filed during our audit period, 49 grievances, against 26 attorneys, resulted in some form of sanction. This included six disbarments.

The Alaska Bar Association offers continuing legal education programs to its membership and it also maintains an educational library. See Recommendation No. 2.

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.

We found no evidence that the board was not complying with applicable personnel practices.

The board has on several occasions voiced concern over the low minority pass rate of the Alaska Bar Examination. It implemented a minority tutoring program to improve this pass rate, but the program was discontinued due to lack of interest. Six applicants participated in the program prior to the February 1995 exam. No interest was expressed in the program after that time.

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 Findings and Recommendations section of this report.

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APPENDICES

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APPENDIX A

Board of Governors of the Alaska Bar Association
Revenues Compared with Expenditures
 Calendar Years 1994 through 1997

<u>Revenues</u>	<u>1994</u>	<u>1995</u>	<u>1996</u>	<u>1997</u>
Membership Dues	\$ 1,231,678	\$ 1,255,876	\$ 1,254,847	\$ 1,284,340
Admission Fees	181,950	163,000	183,605	181,600
Continuing Legal Education	132,831	171,084	136,525	117,000
Lawyer Referral Fees	62,128	59,379	113,798	104,100
Annual Meeting	35,871	33,560	55,335	45,000
Interest on Investments	45,765	68,637	71,173	70,000
Other	<u>76,444</u>	<u>50,752</u>	<u>93,506</u>	<u>84,076</u>
<u>Total Revenues</u>	<u>1,766,667</u>	<u>1,802,288</u>	<u>1,908,789</u>	<u>1,886,116</u>
<u>Expenses</u>				
Admissions	193,633	153,797	163,100	176,581
Board of Governors	50,736	59,783	59,995	47,126
Discipline	472,789	521,712	525,366	559,133
Administration	350,807	378,583	379,081	414,966
Lawyer Referrals	52,032	52,099	49,749	53,339
Continuing Legal Education	244,729	250,632	267,159	263,322
Fee Arbitration	38,763	41,178	45,524	47,746
Annual Meeting	35,236	37,837	69,633	45,000
Other	<u>106,000</u>	<u>132,450</u>	<u>136,628</u>	<u>127,565</u>
<u>Total Expenses</u>	<u>1,544,725</u>	<u>1,628,071</u>	<u>1,696,235</u>	<u>1,734,778</u>
<u>Excess (deficit) of</u>				
<u>Revenues over Expenses</u>	<u>\$ 221,942</u>	<u>\$ 174,217</u>	<u>\$ 212,554</u>	<u>\$ 151,338</u>

Source: Alaska Bar Association annual reports for 1994 – 1996 data. Amounts for 1997 are from the Alaska Bar Association's 1997 budget.

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APPENDIX B

Board of Governors of the Alaska Bar Association

Discipline Statistics

Calendar Years 1994 through 1997

<u>Disposition of Closed Disciplinary Cases</u>	<u>1994</u>	<u>1995</u>	<u>1996</u>	<u>1997^a</u>	<u>Total</u>
Disbarment by Supreme Court	10	3	1	16	30
Suspension by Supreme Court	2	7	10	7	26
Public Censure by Supreme Court	4	2	4	0	10
Public Reprimand by Disciplinary Board	1	1	5	6	13
Private Reprimand by Disciplinary Board	2	1	1	1	5
Private Admonition by Discipline Counsel	2	2	2	2	8
Closed after Probation Ended	1	0	0	0	1
Dismissed	<u>54</u>	<u>46</u>	<u>31</u>	<u>31</u>	<u>162</u>
Total Closed Cases	<u>76</u>	<u>62</u>	<u>54</u>	<u>63</u>	<u>255</u>

<u>Status of Open Cases at Period End</u>	<u>1994</u>	<u>1995</u>	<u>1996</u>	<u>1997</u>	<u>Total</u>
Attorney on Probation	1	3	1	1	6
Pending Supreme Court	9	10	3	0	22
Pending Disciplinary Board	4	3	18	2	27
Pending Hearing Committee	5	19	9	9	42
Pending Stipulation	2	6	10	0	18
Pending Approval to File Formal Hearing	5	0	0	1	6
Pending Written Private Admonition	1	1	0	0	2
Abeyance due to Court Case	2	1	2	2	7
Pending Bar Counsel Investigation/Decision	53	43	39	53	188
Pending Complainant Reply	2	2	4	1	9
Pending Respondent Response	7	11	8	7	33
File Under Review	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
Total Open Cases	<u>91</u>	<u>99</u>	<u>94</u>	<u>76</u>	<u>360</u>

Source: Alaska Bar Association annual reports for 1994 – 1996 data. Amounts for 1997 are based on figures compiled by the Alaska Bar Association's staff. All numbers reflect individual complaints filed and not the number of attorneys under investigation.

^a The 1997 information is presented as of December 19, 1997

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APPENDIX C

Board of Governors of the Alaska Bar Association
Bar Examination and Admission Statistics
 1994 through 1997

<u>Bar Examinations</u>	<u>Number Taking Exam</u>	<u>Number Passing Exam</u>	<u>Percent Passing Exam</u>
February 1994	86	61	71%
July 1994	92	67	73%
February 1995	46	35	76%
July 1995	60	47	78%
February 1996	51	35	69%
July 1996	66	47	71%
February 1997	44	28	63%
July 1997	<u>71</u>	<u>47</u>	<u>66%</u>
Total	<u>516</u>	<u>367</u>	<u>71%</u>

Admission Under Motion for Reciprocity

<u>Calendar Year</u>	<u>Number Admitted</u>
1994	16
1995	12
1996	10
1997	<u>12</u>
Total	<u>50</u>

Source: The Alaska Bar Association

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APPENDIX D

Board of Governors of the Alaska Bar Association
Attorney Referrals
 Calendar Years 1994 through 1996

<u>Area of Discipline</u>	<u>1994</u>	<u>1995</u>	<u>1996</u>
Administrative	505	412	176
Admiralty	65	88	68
Adoption	90	91	87
Alaska Native Law	33	26	30
Arts	12	5	12
Bankruptcy	251	264	317
Commercial	208	295	303
Construction	31	33	19
Consumer	1,057	963	917
Discrimination	341	121	155
Eminent Domain	7	1	6
Environmental	13	14	13
Family	2,773	2,594	2,749
Felony/Misdemeanor	755	668	675
Foreign Language	4	10	5
Guardian/Conservator	102	76	54
Immigration	91	116	41
Insurance	100	95	143
Labor Relations	952	977	955
Landlord/Tenant	572	497	570
Malpractice	352	334	362
Military	0	0	25
Mining	7	8	8
Negligence	947	8	1,341
Patent/Copyright	15	0	4
Public Interest	12	3	4
Real Estate	366	344	297
Social Security Insurance Cases	104	186	354
Tax	65	58	67
Traffic	125	129	150
Trust/Will/Estate	304	279	301
Workers' Compensation	<u>443</u>	<u>540</u>	<u>396</u>
Total	<u>10,702</u>	<u>9,235</u>	<u>10,604</u>

Source: This information was obtained from the Alaska Bar Association's statistical summaries in their annual reports. 1997 data was not yet available at our report date.