

HB

549

ALASKA STATE LEGISLATURE

Rep. Lesil McGuire, Chair
Rep. Tom Anderson, Vice-Chair
Rep. Jim Holm
Rep. Dan Ogg
Rep. Ralph Samuels
Rep. Les Gara
Rep. Max Gruenberg



State Capitol, Room 120
Juneau, AK 99801-1182
(907) 465-4990
Fax (907) 465-6592

House Judiciary Committee

MEMORANDUM

To: Senator Ralph Seekins, Chair
Senate Judiciary Committee

From: Representative Lesil McGuire, Chair 
House Judiciary Committee

Date: April 27, 2004

Re: Request for Hearing

I respectfully request that SCS CSHB 549(L&C), "An Act relating to unsolicited communications following an aircraft accident" be scheduled for a hearing in the Senate Judiciary Committee at your earliest convenience. I have included the following in the bill packet for your information:

1. Sponsor Statement
2. SCS CSHB 549(L&C)
3. CSHB 549(JUD) am
4. CSHB 549(JUD)
5. Zero Fiscal Notes
6. Letter of Support
7. Applicable Alaska Rules of Professional Conduct
8. Federal Statutory Counterpart
9. Applicable Sections of Alaska Statutes

If you have any questions please feel free to contact me personally, or my staff, Vanessa Tondini, at 4990. Thank you for your time and consideration.

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House Judiciary Committee Sponsor Statement SCS CSHB 549(L&C)

"An Act relating to unsolicited communications following an aircraft accident."

Across the nation, there are rules of professional conduct that all attorneys are bound to abide by to keep their license to practice law. Alaska is no exception and its rules are similar to those found across the nation. Alaska's Rules of Professional Conduct state that an attorney "shall not solicit by in-person or live telephone contact professional employment from a prospective client with whom the lawyer has no family or prior professional relationship when a significant motive for the lawyer's doing so is the lawyer's pecuniary gain." Rule 7.3(a). The lawyer cannot solicit professional employment by written or recorded means, even if allowed under 7.3(a), where the client has made known that they do not desire to be solicited by the lawyer, or the solicitation involves coercion, duress, or harassment. Rule 7.3(b). The reason for this rule is that the "prospective client, who may already feel overwhelmed by the circumstances giving rise to the need for legal services, may find it difficult fully to evaluate all available alternatives with reasoned judgment and appropriate self-interest in the face of the lawyer's presence and insistence upon being retained immediately. The situation is fraught with the possibility of undue influence, intimidation and over-reaching." Comment to Rule 7.3. Even though this rule and rules like it have been in place across the nation for some time, they have not controlled the legal feeding frenzy that takes place in the aftermath of aviation accidents.

The federal government tried to correct this problem when it recognized the vulnerability of aviation accident victims and their families in 1996 and passed the Aviation Disaster Family Assistance Act. This federal law mandated that air carriers provide specific support to the families of those injured or killed and prohibited unsolicited contact by attorneys with these individuals for 30 days. In 2000, this law was amended to expand the scope of unsolicited contact to include "any associated, agent, employee or other representative of an attorney" and expanded the time period from 30 to 45 days. Unfortunately, the enforcement of this law requires action by the Civil Aeronautics Board or the U.S. Attorney General, and the penalty for its violation is a mere \$1,000 fine. There is currently very little enforcement of this law. There is also some legal debate as to whether or not the federal law is enforceable against attorneys who violate it in the context of aviation accidents involving flights entirely within Alaska.

In the aftermath of an aviation accident in Alaska, the injured and the families of the deceased or injured are vulnerable to the external pressures of others. This is particularly true

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House Judiciary Committee

when the accident happens in rural Alaska due to their initial isolation from all of the necessary support services immediately after the accident. These individuals should not be preyed upon by anyone who is pressing them to decide matters relating to future legal actions until they themselves decide that the time is appropriate to initiate that process.

This bill is based on the federal law, and applies only to flights that take place entirely within Alaska (intrastate transportation). Like the federal law, this bill does not interfere with the performance of the family support functions provided for in the Family Assistance Act by the air carrier and its insurer. This bill is different from the federal counterpart in that a reference to "the air carrier's attorney" has been added to make it clear that all attorneys are to refrain from having contact with the injured passengers or their families.

Regarding sanctions against attorneys who violate this statute, the Sponsor believes that a civil financial penalty only would be inadequate because the financial incentive of representing aircraft accident victims on contingency fee arrangements is so great. A criminal sanction would serve as the greatest deterrent to this type of predatory conduct, since the Alaska Bar Association will take notice of an attorney's criminal conviction and be in a position to take licensing actions that will more directly impact the attorney's future earning capacity. Under the most current version of the bill, an offense is a Class A misdemeanor with a fine equal to the greater of \$100,000 or the amount of the legal fee that attorney receives for representing a party whose representation was acquired through a contact in violation of this bill.

Under this bill, an Alaskan affected by an aviation accident may initiate contact with an attorney immediately, without any restrictions. This bill only prevents lawyers and their agents from initiating the contact. This will allow Alaskans to take time to reflect on their potential claims, and research their options for the best legal representation to meet their needs. This may or may not be the attorney who was well positioned to rush to the hospital and drive them home.

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: 1
Bill Version: CSHB 549(JUD)
(H) Publish Date: 4/7/04

Revision Date/Time (Note if correction): _____ Dept. Affected: _____
Title Unsolicited Communication: BRU Alaska Court System
Aircraft Crash Component Trial Courts
Sponsor House Judiciary Committee
Requester _____ Component No. _____

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
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						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2004) cost: 0.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

The court system does not anticipate any fiscal impact from the passage of HB 549.

Prepared by: Doug Woollver Administrative Attorney
Division: Alaska Court System
Approved by: Stephanie Cole Administrative Director by Doug Woollver
Agency: Alaska Court System

Phone 463-4750
Date/Time 4/2/04 11:52 AM
Date 4/2/2004

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: 2
 Bill Version: CSHB 549(JUD)
 (H) Publish Date: 4/7/04

Revision Date/Time (Note if correction): _____ Dept. Affected: LAW
 Title "An Act relating to unsolicited communications RDU CIVIL
following an aircraft accident..." Component Various
 Sponsor House Judiciary Committee
 Requester House Judiciary Committee Component No. _____

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Personal Services						
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Estimate of any current year (FY2004) cost: 0.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This bill adds a new section to AS 02-40 prohibiting an attorney or potential party from initiating contact with an individual injured in an accident involving an air carrier within 45 days following the accident.

Passage of this legislation will have no foreseeable fiscal impact on the Department of Law.

Prepared by: Kathryn A. Daughetee, Director
 Division: Administrative Services
 Approved by: Kathryn Daughetee for Gregg D. Renkes, Attorney General
 Agency: Department of Law

Phone 465-3673
 Date/Time 4/4/04 1:10 PM
 Date 4/4/2004

Subject: Support for HB 549

Date: Tue, 06 Apr 2004 14:35:08 -0800

From: Tom Nicolos <tom.nicolos@capesmythe.com>

To: Representative_Lesil_McGuire@legis.state.ak.us

Good afternoon and thank you for the opportunity to testify in support of HB 549. I recognize you have been busy so I will try to be brief. My name is Tom Nicolos, I live in Barrow and I am the General Manager for Cape Smythe Air Service. Additionally, I currently serve on the Board of Directors as Vice-President of the Alaska Air Carriers Association.

As I hope you are aware the Federal government recognized that a problem existed and had attempted to address this issue in the Aviation Disaster Family Assistance Act of 1996. They failed however to put into effect any substantial deterrent to prevent the continual occurrences of abuse of the Act.

Cape Smythe Air Service and the Alaska Air Carriers Association strongly support HB 549 and encourage the Alaska Legislature to act to correct oversights in the Federal legislation. Cape Smythe Air Service has seen first hand, attorneys who operate with disregard to the Federal Act. When inquiries are made as to why this is allowed to happen, we are informed it is because there are no teeth in the Federal Statute.

Recently, Cape Smythe had an aircraft involved in an incident where an aircraft ran off the end of the runway barely the full aircraft length. Because of past issues it has become our policy to request everyone be checked at the local hospital. Almost before we could have the passengers checked, several passengers were on there way to the local snow machine dealer to pick out the what they expected to get from having the fortune to have been involved in an aircraft mishap.

While it is important that individuals injured any accident or occurrence be properly provided for, we must stop this expectation of entitlement that has been fostered by attorneys who know the system and know they can muscle settlements out of air carrier insurers. We are not trying to impact the freedoms and choices of the citizens. But we are trying to correct the problem by keeping lawyers from starting the cycle by taking advantage of passengers and their families when they are most vulnerable and creating inappropriate expectations immediately after an accident.

I strongly urge you to correct this oversight and put HB 549 forward to the Alaskan Legislature for adoption.

Thank you for your time.

Tom D. Nicolos
Cape Smythe Air Service

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Rule 7.1

ALASKA RULES OF COURT

need not identify the client. (SCO 1123 effective July 15, 1993)

ALASKA COMMENT

The Committee amended the last sentence in order to state more clearly the nature of the disclosure which must be made by the lawyer.

COMMENT

Lawyers involved in organizations seeking law reform generally do not have a client-lawyer relationship with the organization. Otherwise, it might follow that a lawyer could not be involved in a bar association law reform program that might indirectly affect a client. *See also* Rule 1.2(b). For example, a lawyer specializing in antitrust litigation might be regarded as disqualified from participating in drafting revisions of rules governing that subject. In determining the nature and scope of participation in such activities, a lawyer should be mindful of obligations to clients under other rules, particularly Rule 1.7. A lawyer is professionally obligated to protect the integrity of the program by making an appropriate disclosure within the organization when the lawyer knows a private client might be materially benefitted.

INFORMATION ABOUT LEGAL SERVICES

Rule 7.1. Communications Concerning a Lawyer's Services.

A lawyer shall not make a false or misleading communication about the lawyer or the lawyer's services or any prospective client's need for legal services. A communication is false or misleading if it:

- (a) contains a material misrepresentation of fact or law, or omits a fact necessary to make the statement considered as a whole not materially misleading;
- (b) is likely to create an unjustified expectation about results the lawyer can achieve, or states or implies that the lawyer can achieve results by means that violate the Rules of Professional Conduct or other law; or
- (c) compares the lawyer's services with other lawyer's services, unless the comparison can be factually substantiated. (SCO 1123 effective July 15, 1993)

ALASKA COMMENT

The Committee revised Model Rule 7.1 to address the situation in which a lawyer might provide misleading information with regard to a potential client's needs for legal services from a particular lawyer.

COMMENT

This rule governs all communications about a lawyer's services, including advertising permitted by Rule 7.2. Whatever means are used to make known a lawyer's services, statements about them should be truthful. The prohibition in paragraph (b) of statements that may create "unjustified expectations" would ordinarily preclude advertisements about results obtained on behalf of a client, such as the amount of a damage award or the lawyer's record in obtaining favorable verdicts, and advertisements containing client endorsements. Such information may create the unjustified expectation that similar results can be obtained for others without reference to the specific factual and legal circumstances.

Rule 7.2. Advertising.

(a) Subject to the requirements of Rules 7.1 and 7.3, a lawyer may advertise services through public media, such as a telephone directory, legal directory, newspaper or other periodical, outdoor advertising, radio or television or through written or recorded communication.

(b) A copy or recording of each advertisement or communication shall be retained by the lawyer for two years after its last dissemination along with a record of when and where it was used.

(c) A lawyer shall not give anything of value to a person for recommending the lawyer's services, except that a lawyer may

(1) pay the reasonable cost of advertising or written communication permitted by this rule;

(2) pay the usual charges of a not-for-profit lawyer referral service or other legal service organization; and

(3) pay for a law practice in accordance with Rule 1.17.

(d) Any communication made pursuant to this rule shall include the name of at least one lawyer responsible for its content. (SCO 1123 effective July 15, 1993)

COMMENT

To assist the public in obtaining legal services, lawyers should be allowed to make known their services not only through reputation but also through organized information campaigns in the form of advertising. Advertising involves an active quest for clients, contrary to the tradition that a lawyer should not seek clientele. However, the public's need to know about legal services can be fulfilled in part through advertising. This need is particularly acute in

the case of persons of moderate means who have not made extensive use of legal services. The interest in expanding public information about legal services ought to prevail over considerations of tradition. Nevertheless, advertising by lawyers entails the risk of practices that are misleading or overreaching.

This rule permits public dissemination of information concerning a lawyer's name or firm name, address and telephone number; the kinds of services the lawyer will undertake; the basis on which the lawyer's fees are determined, including prices for specific services and payment and credit arrangements; a lawyer's foreign language ability; names of references and, with their consent, names of clients regularly represented; and other information that might invite the attention of those seeking legal assistance.

Questions of effectiveness and taste in advertising are matters of speculation and subjective judgment. Some jurisdictions have had extensive prohibitions against television advertising, against advertising going beyond specified facts about a lawyer, or against "undignified" advertising. Television is now one of the most powerful media for getting information to the public, particularly persons of low and moderate income; prohibiting television advertising, therefore, would impede the flow of information about legal services to many sectors of the public. Limiting the information that may be advertised has a similar effect and assumes that the bar can accurately forecast the kind of information that the public would regard as relevant.

Neither this rule nor Rule 7.3 prohibits communications authorized by law, such as notice to members of a class in class action litigation.

Record of Advertising

Paragraph (b) requires that a record of the content and use of advertising be kept in order to facilitate enforcement of this rule. It does not require that advertising be subject to review prior to dissemination. Such a requirement would be burdensome and expensive relative to its possible benefits, and may be of doubtful constitutionality.

Paying Others to Recommend a Lawyer

A lawyer is allowed to pay for advertising permitted by this rule and for the purchase of a law practice in accordance with the provisions of Rule 1.17, but otherwise is not permitted to pay another person for channeling professional work. This restriction does not prevent an organization or person other than the lawyer from advertising or recommending the lawyer's services. Thus, a legal aid agency or prepaid legal services may pay to advertise legal services

provided under its auspices. Likewise, a lawyer may participate in not-for-profit lawyer referral programs and pay the usual fees charged by such programs. Paragraph (c) does not prohibit paying regular compensation to an assistant, such as a secretary, to prepare communications permitted by this rule.

Rule 7.3. Direct Contact with Prospective Clients.

(a) A lawyer shall not solicit by in-person or live telephone contact professional employment from a prospective client with whom the lawyer has no family or prior professional relationship when a significant motive for the lawyer's doing so is the lawyer's pecuniary gain.

(b) A lawyer shall not solicit professional employment from a prospective client by written or recorded communication or by in-person or telephone contact even when not otherwise prohibited by paragraph (a), if:

(1) the prospective client has made known to the lawyer a desire not to be solicited by the lawyer; or

(2) the solicitation involves coercion, duress or harassment.

(c) Every written or recorded communication from a lawyer soliciting professional employment from a prospective client known to be in need of legal services in a particular matter, and with whom the lawyer has no family or prior professional relationship, shall include the words "Advertising Material" on the front of the outside envelope and at the beginning and ending of any recorded communication.

(d) Notwithstanding the prohibitions in paragraph (a), a lawyer may participate in a prepaid or group legal service plan operated by an organization not owned or directed by the lawyer which uses in-person or telephone contact to solicit memberships or subscriptions for the plan from persons who are not known to need legal services in a particular matter covered by the plan. (SCO 1123 effective July 15, 1993; amended by SCO 1426 effective April 15, 2001)

COMMENT

There is a potential for abuse inherent in direct in-person or live telephone contact by a lawyer with a prospective client known to need legal services. These forms of contact between a lawyer and a prospective client subject the layperson to the private importuning of the trained advocate in a direct interpersonal encounter. The prospective client, who may already feel overwhelmed by the circumstances giv-

ing rise to the need for legal services, may find it difficult fully to evaluate all available alternatives with reasoned judgment and appropriate self-interest in the fact of the lawyer's presence and insistence upon being retained immediately. The situation is fraught with the possibility of undue influence, intimidation, and over-reaching.

This potential for abuse inherent in direct in-person or live telephone solicitation of prospective clients justifies its prohibition, particularly since lawyer advertising permitted under Rule 7.2 offer alternative means of conveying necessary information to those who may be in need of legal services. Advertising and written and recorded communications which may be mailed or autodialed make it possible for a prospective client to be informed about the need for legal services, and about the qualifications of available lawyers and law firms, without subjecting the prospective client to direct in-person or telephone persuasion that may overwhelm the client's judgment.

The use of general advertising and written and recorded communications to transmit information from lawyer to prospective client, rather than direct in-person or live telephone contact, will help to assure that the information flows cleanly as well as freely. The contents of advertisements and communications permitted under Rule 7.2 are permanently recorded so that they cannot be disputed and may be shared with others who know the lawyer. This potential for informal review is itself likely to help guard against statements and claims that might constitute false and misleading communications, in violation of Rule 7.1. The contents of direct in-person or live telephone conversations between a lawyer to a prospective client can be disputed and are not subject to third-party scrutiny. Consequently, they are much more likely to approach (and occasionally cross) the dividing line between accurate representations and those that are false and misleading.

There is far less likelihood that a lawyer would engage in abusive practices against an individual with whom the lawyer has a prior personal or professional relationship or where the lawyer is motivated by considerations other than the lawyer's pecuniary gain. Consequently, the general prohibition in Rule 7.3(a) and the requirements of Rule 7.3(c) are not applicable in those situations.

But even permitted forms of solicitation can be abused. Thus, any solicitation which contains information which is false or misleading within the meaning of Rule 7.1, which involves coercion, duress or harassment within the meaning of Rule 7.3(b)(2), or which involves contact with a prospec-

tive client who has made known to the lawyer a desire not to be solicited by the lawyer within the meaning of Rule 7.3(b)(1) is prohibited. Moreover, if after sending a letter or other communication to a client as permitted by Rule 7.2 the lawyer receives no response, any further effort to communicate with the prospective client may violate the provisions of Rule 7.3(b).

This Rule is not intended to prohibit a lawyer from contacting representatives of organizations or groups that may be interested in establishing a group or prepaid legal plan for its members, insureds, beneficiaries or other third parties for the purpose of informing such entities of the availability of and details concerning the plan or arrangement which the lawyer or the lawyer's firm is willing to offer. This form of communication is not directed to a prospective client. Rather, it is usually addressed to an individual acting in a fiduciary capacity seeking a supplier of legal services for others who may, if they choose, become prospective clients of the lawyer. Under these circumstances, the activity which the lawyer undertakes in communicating with such representatives and the type of information transmitted to the individual are functionally similar to and serve the same purpose as advertising permitted under Rule 7.2.

The requirement in Rule 7.3(c) that certain communications be marked "Advertising Material" does not apply to communications sent in response to requests of potential clients or their spokespersons or sponsors. General announcements by lawyers, including changes in personnel or office location, do not constitute communications soliciting professional employment from a client known to be in need of legal services within the meaning of this Rule.

Paragraph (c) of this Rule would permit an attorney to participate with an organization which uses personal contact to solicit members for its group or prepaid legal service plan, provided that the personal contact is not undertaken by any lawyer who would be a provider of legal services through the plan. The organization referred in paragraph (d) must not be owned by or directed (whether as manager or otherwise) by any lawyer or law firm that participates in the plan. For example, paragraph (d) would not permit a lawyer to create an organization controlled directly or indirectly by the lawyer and use the organization for the in-person or telephone solicitation of legal employment of the lawyer through memberships in the plan or otherwise. The communication permitted by these organizations also must not be directed to a person known to need legal services in a particular matter, but it is to be designed to inform potential plan members generally of another

means of affordable legal services. Lawyers who participate in a legal service plan must reasonably assure that the plan sponsors are in compliance with Rules 7.1, 7.2 and 7.3(b). See 8.4(a)

Rule 7.4. Communication of Fields of Practice and Certification.

A lawyer may communicate the fact that the lawyer does or does not practice in particular fields of law. A lawyer shall not state or imply that the lawyer is a "specialist," "certified," or words of similar import except as follows:

(a) a lawyer admitted to engage in patent practice before the United States Patent and Trademark Office may use the designation "Patent Attorney" or a substantially similar designation; and

(b) a lawyer may communicate the fact that the lawyer has been certified as a specialist in a field of law by a named organization or authority, but only if that certification is granted by an organization or authority whose specialty certification program is accredited by the American Bar Association.

(SCO 1123 effective July 15, 1993; amended by SCO 1370 effective April 15, 2000)

ALASKA COMMENT

Paragraph (b) was deleted from ABA Model Rule 7.4 because the Committee concluded that under modern practice the field of admiralty is no longer a unique specialization.

COMMENT

Recognition of specialization in patent matters is a matter of long-established policy of the Patent and Trademark Office.

This rule permits a lawyer to indicate areas of practice in communications about the lawyer's services; for example, in a telephone directory or other advertising. If a lawyer practices only in certain fields, or will not accept matters except in such fields, the lawyer is permitted to so indicate. All communications are, however, subject to the "false and misleading" standard of Rule 7.1 in respect to communications concerning a lawyer's services.

A lawyer may not communicate that the lawyer is a specialist or has been recognized or certified as a specialist in a particular field of law, except as provided by this rule. Recognition of specialization in patent matters is a matter of long established policy of the Patent and Trademark Office, as reflected in paragraph (a). The American Bar Association's Model Rule 7.4 also permits attorneys who specialize in admiralty law to use the designa-

tion "proctor in admiralty" or otherwise hold themselves out as specialists in admiralty. This exception was not included in Alaska's Professional Conduct Rule 7.4 because the Alaska Bar Association's Committee on the Rules of Professional Conduct concluded that under modern practice the field of admiralty is no longer a unique specialization.

Paragraph (b) permits a lawyer to communicate that the lawyer has been certified as specialist in a field of law when the American Bar Association has accredited the organization's specialty program to grant such certification. Certification procedures imply that an objective entity has recognized a lawyer's higher degree of specialized ability than is suggested by general licensure to practice law. Those objective entities may be expected to apply standards of competence, experience, and knowledge to insure that a lawyer's recognition as a specialist is meaningful and reliable. In order to insure that consumers can obtain access to useful certification information, the name of the certifying organization or agency must be included in any communication regarding the certification.

See *Peel v. Attorney Registration & Disciplinary Comm'n*, 496 U.S. 91, 110 S.Ct. 2281, 110 L.Ed.2d 83 (1990).

Rule 7.5. Firm Names and Letterheads.

(a) A lawyer shall not use a firm name, letterhead or other professional designation that violates Rule 7.1. A trade name may be used by a lawyer in private practice if it does not imply a connection with a government agency or with a public or charitable legal services organization and is not otherwise in violation of Rule 7.1.

(b) A law firm with offices in more than one jurisdiction may use the same name in each jurisdiction, but identification of the lawyers in an office of the firm shall indicate the jurisdictional limitations on those not licensed to practice in the jurisdiction where the office is located.

(c) The name of a lawyer holding a public office shall not be used in the name of a law firm, or in communications on its behalf, during any substantial period in which the lawyer is not actively and regularly practicing with the firm.

(d) Lawyers shall not state or imply that they practice in a partnership or other organization unless the relationship stated or implied in fact exists.

(e) The term "of counsel" shall be used only to refer to a lawyer who has a close continuing rela-

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TITLE 49 > SUBTITLE II > CHAPTER 11 > SUBCHAPTER III

SUBCHAPTER III - AUTHORITY

- Sec. 1131. General authority
- Sec. 1132. Civil aircraft accident investigations
- Sec. 1133. Review of other agency action
- Sec. 1134. Inspections and autopsies
- Sec. 1135. Secretary of Transportation's responses to safety recommendations
- Sec. 1136. Assistance to families of passengers involved in aircraft accidents
- Sec. 1137. Authority of the Inspector General

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Sec. 1136. - Assistance to families of passengers involved in aircraft accidents

(a) In General. -

As soon as practicable after being notified of an aircraft accident within the United States involving an air carrier or foreign air carrier and resulting in a major loss of life, the Chairman of the National Transportation Safety Board shall -

(1)

designate and publicize the name and phone number of a director of family support services who shall be an employee of the Board and shall be responsible for acting as a point of contact within the Federal Government for the families of passengers involved in the accident and a liaison between the air carrier or foreign air carrier and the families; and

(2)

designate an independent nonprofit organization, with experience in disasters and posttrauma communication with families, which shall have primary responsibility for coordinating the emotional care and support of the families of passengers involved in the accident.

(b) Responsibilities of the Board. -

The Board shall have primary Federal responsibility for facilitating the recovery and identification of fatally-injured passengers involved in an accident described in subsection (a).

(c) Responsibilities of Designated Organization. -

The organization designated for an accident under

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[Topical references](#)

subsection (a)(2) shall have the following responsibilities with respect to the families of passengers involved in the accident:

(1)

To provide mental health and counseling services, in coordination with the disaster response team of the air carrier or foreign air carrier involved.

(2)

To take such actions as may be necessary to provide an environment in which the families may grieve in private.

(3)

To meet with the families who have traveled to the location of the accident, to contact the families unable to travel to such location, and to contact all affected families periodically thereafter until such time as the organization, in consultation with the director of family support services designated for the accident under subsection (a)(1), determines that further assistance is no longer needed.

(4)

To communicate with the families as to the roles of the organization, government agencies, and the air carrier or foreign air carrier involved with respect to the accident and the post-accident activities.

(5)

To arrange a suitable memorial service, in consultation with the families.

(d) Passenger Lists. -

(1) Requests for passenger lists. -

(A) Requests by director of family support services. -

It shall be the responsibility of the director of family support services designated for an accident under subsection (a)(1) to request, as soon as practicable, from the air carrier or foreign air carrier involved in the accident a list, which is based on the best available information at the time of the request, of the names of the passengers that were aboard the aircraft involved in the accident.

(B) Requests by designated organization. -

The organization designated for an accident under subsection (a)(2) may request from the air carrier or foreign air carrier involved in the accident a list described in subparagraph (A).

(2) Use of information. -

The director of family support services and the organization may not release to any person information on a list obtained under paragraph (1) but may provide information on the list about a passenger to the family of the passenger to the extent that the director of family support services or the organization considers appropriate.

(e) Continuing Responsibilities of the Board. -

In the course of its investigation of an accident described in subsection (a), the Board shall, to the maximum extent practicable, ensure that the families of passengers involved in the accident -

(1)

are briefed, prior to any public briefing, about the accident, its causes, and any other findings from the investigation; and

(2)

are individually informed of and allowed to attend any public hearings and meetings of the Board about the accident.

(f) Use of Air Carrier Resources. -

To the extent practicable, the organization designated for an accident under subsection (a)(2) shall coordinate its activities with the air carrier or foreign air carrier involved in the accident so that the resources of the carrier can be used to the greatest extent possible to carry out the organization's responsibilities under this section.

(g) Prohibited Actions. -

(1) Actions to Impede the board. -

No person (including a State or political subdivision) may impede the ability of the Board (including the

director of family support services designated for an accident under subsection (a)(1)), or an organization designated for an accident under subsection (a)(2), to carry out its responsibilities under this section or the ability of the families of passengers involved in the accident to have contact with one another.

(2) Unsolicited communications. -

In the event of an accident involving an air carrier providing interstate or foreign air transportation and in the event of an accident involving a foreign air carrier that occurs within the United States, no unsolicited communication concerning a potential action for personal injury or wrongful death may be made by an attorney (including any associate, agent, employee, or other representative of an attorney) or any potential party to the litigation of an individual injured in the accident, or to a relative of an individual involved in the accident, before the 45th day following the date of the accident.



*Amended
2000*

P.L. 106-181

-30 → 45

-expanded "attorney"

-added foreign air carrier.

(3) Prohibition on actions to prevent mental health and counseling services. -

No State or political subdivision thereof may prevent the employees, agents, or volunteers of an organization designated for an accident under subsection (a)(2) from providing mental health and counseling services under subsection (c)(1) in the 30-day period beginning on the date of the accident. The director of family support services designated for the accident under subsection (a)(1) may extend such period for not to exceed an additional 30 days if the director determines that the extension is necessary to meet the needs of the families and if State and local authorities are notified of the determination.

(h) Definitions. -

In this section, the following definitions apply:

(1) Aircraft accident. -

The term "aircraft accident" means any aviation disaster regardless of its cause or suspected cause.

(2) Passenger. -

The term "passenger" includes -

(A)

an employee of an air carrier or foreign air carrier
aboard an aircraft; and

(B)

any other person aboard the aircraft without
regard to whether the person paid for the
transportation, occupied a seat, or held a reservation
for the flight.

(I) Statutory Construction. -

Nothing in this section may be construed as limiting the
actions that an air carrier may take, or the obligations that
an air carrier may have, in providing assistance to the
families of passengers involved in an aircraft accident.

Added
2000
also
to protect air
carrier performing
"CARE" duties.

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Sec. 1151. - Aviation enforcement

(a) Civil Actions by Board. -

The National Transportation Safety Board may bring a civil action in a district court of the United States against a person to enforce section 1132, 1134(b) or (f)(1) (related to an aircraft accident), 1136(g)(2), or 1155(a) of this title or a regulation prescribed or order issued under any of those sections. An action under this subsection may be brought in the judicial district in which the person does business or the violation occurred.

(b) Civil Actions by Attorney General. -

On request of the Board, the Attorney General may bring a civil action in an appropriate court -

(1)

to enforce section 1132, 1134(b) or (f)(1) (related to an aircraft accident), 1136(g)(2), or 1155(a) of this title or a regulation prescribed or order issued under any of those sections; and

(2)

to prosecute a person violating those sections or a regulation prescribed or order issued under any of those sections.

(c) Participation of Board. -

On request of the Attorney General, the Board may participate in a civil action to enforce section 1132, 1134(b) or (f)(1) (related to an aircraft accident), 1136(g)(2), or 1155(a) of this title.

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Sec. 1155. - Aviation penalties

(a) Civil Penalty. -

(1)

A person violating section 1132, section 1134(b), section 1134(f)(1), or section 1136(g) (related to an aircraft accident) of this title or a regulation prescribed or order issued under any of those sections is liable to the United States Government for a civil penalty of not more than \$1,000. A separate violation occurs for each day a violation continues.

(2)

This subsection does not apply to a member of the armed forces of the United States or an employee of the Department of Defense subject to the Uniform Code of Military Justice when the member or employee is performing official duties. The appropriate military authorities are responsible for taking necessary disciplinary action and submitting to the National Transportation Safety Board a timely report on action taken.

(3)

The Board may compromise the amount of a civil penalty imposed under this subsection.

(4)

The Government may deduct the amount of a civil penalty imposed or compromised under this subsection from amounts it owes the person liable for the penalty.

(5)

A civil penalty under this subsection may be collected

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by bringing a civil action against the person liable for the penalty. The action shall conform as nearly as practicable to a civil action in admiralty.

(b) Criminal Penalty. -

A person that knowingly and without authority removes, conceals, or withholds a part of a civil aircraft involved in an accident, or property on the aircraft at the time of the accident, shall be fined under title 18, imprisoned for not more than 10 years, or both.

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