

**SB**

**186**



# Alaska State Legislature

*Session:*  
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**Representative Lesil McGuire**  
Chair, Judiciary Committee

# Fax

**To:** Leg Legal **From:** Shalon Szymanski, HJUD Committee Aide

**Fax:** 2029 **Pages:** 6 (including coversheet)

**Phone:** **Date:** February 23, 2006

**Re:** Request for Final **CC:**

**Urgent**     **For Review**     **Please Comment**     **Please Reply**     **Please Recycle**

● **Comments:**

# ALASKA STATE LEGISLATURE

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Rep. Tom Anderson, Vice-Chair  
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Rep. Max Gruenberg



State Capitol, Room 120  
Juneau, AK 99801-1182  
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## House Judiciary Committee

### Memorandum

**To:** Leg. Legal  
**From:** Shalon Szymanski, Committee Aide  
House Judiciary Committee  
**Date:** February 23, 2006  
**Re:** CS Request (FINAL)

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Please create a final Committee Substitute (JUD) for work order # 24-LS0874\C, CSSB 186 mirroring #24-LS0874\C, but also adding:

- 4 Attached Amendments

If you have any questions or need further information, please feel free to contact me.

My direct line x6841

Thank you!

The information attached to this memo is **CONFIDENTIAL** an/or privileged. It is intended to be reviewed initially by only the individual named above. If the reader of this Memorandum is not the intended recipient or a representative of the intended recipient, you are hereby notified that any review, dissemination, or copying of the information contained herein is prohibited. If you have received this in error, please immediately notify the sender by telephone and return this to the sender at the above address.

PASSED  
AMENDMENT # ~~1~~ 1

OFFERED IN THE HOUSE  
TO: HCS CSSB 186(STA)

BY REPRESENTATIVE GRUENBERG

1 Page 3, following line 21:

2 Insert a new bill section to read:

3 **"\* Sec. 7. AS 39.52 is amended by adding a new section to read:**

4 **Sec. 39.52.165. Professional misconduct.** A public officer may not, in taking  
5 official action, violate or be required to violate a provision of a code or canon of  
6 professional ethics if the public officer's professional conduct is bound by the code or  
7 canon of professional ethics as a condition of obtaining or retaining a license to  
8 engage in or to practice the profession."

9  
10 Renumber the following bill sections accordingly.



CONCEPTUAL AMENDMENT # 3(B)

OFFERED IN THE HOUSE

BY: REP GARA

TO: HCS CSSB 186 (STA)

Page 8, Lines 12-13

Delete:

“(2) did not reasonably believe the facts alleged in the complaint, if proven, would constitute a violation of this chapter.”

**CONCEPTUAL AMENDMENT**

OFFERED IN THE HOUSE

BY: REP GARA

TO: HCS CSSB 186 (STA)

**Page 6, Lines 13**

**Insert:**

"until the finding of probable cause"

**After:**

"the report is confidential"

# LEGAL SERVICES

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## MEMORANDUM

February 24, 2006

**SUBJECT:** HCS CSSB 186(JUD): additional changes to the bill due to amendments to SB 186 by the House Judiciary committee (Work Order No. 24-LS0874P)

**TO:** Representative Lesil McGuire  
Chair of the House Judiciary Committee

**FROM:** Dan Wayne   
Legislative Counsel

As requested I have provided a final draft of a House Judiciary CS for the CS for Senate Bill 186(STA). While incorporating the amendments provided by your committee I discovered the need for three technical changes and made them.

First, I changed the title to delete reference to an effective date.

On page 7, lines 6 and 14, I changed "until *after* the board makes a finding of probable cause" by removing the word "after." This was done to conform those lines to two other references in the draft bill to the board making a finding of probable cause, and also to remove any doubt about exactly when confidentiality terminates.

On page 8, line 14, I deleted all of subsection (b), which only related to (a)(2) that your committee deleted by amendment.

If I may be of further assistance, please advise.

DCW:med  
06-160.med

Enclosure

# ALASKA STATE SENATE

Session:  
State Capitol  
Juneau, Alaska 99801-1182  
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Senator\_Ralph\_Seekins@legis.state.ak.us

**Senator Ralph Seekins**  
District D

## Senate Bill 186 & 187 Sponsor Statement

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**“An Act relating to the Alaska Executive Branch Ethics Act.” (SB 186)**

**“An Act relating to legislative ethics open meetings guidelines, to the public members of the Select Committee on Legislative Ethics, to alternate members of the legislative subcommittees, to advisory opinions, and to confidential information and proceedings regarding legislative ethics complaints and investigations.” (SB 187)**

There has been much discussion throughout the Capitol hallways and committee rooms regarding ethics laws. The Senate Judiciary Committee, in particular, has taken great interest and much testimony on this important topic. Over the last three months a substantial amount of research has been conducted on ethical treatises and other states' ethics laws. Furthermore, CPAs, judges and employment law attorneys have been interviewed along with legislators from around the country. This effort has resulted in the introduction of two bills — SB 186 & 187 — designed to improve the Executive and Legislative Code of Ethics, respectively.

Senate Bill 186 revises the Executive Branch Code of Ethics. The terms “substantial” and “insignificant” defy clear definition and consequently are removed from AS 39.52.110(b). Furthermore, this section gains key language outlining specific types of personal or financial activity which the public employee should take into consideration prior to taking official action on matters which could create a conflict.

Of particular note is the inclusion of a recommendation originating from the Bundy Report pertaining to stock ownership. Here, the limiting factors are one percent with a total value of less than \$10,000. This section also includes new language detailing methods by which the public official can avoid even the slightest perception of impropriety. This can be accomplished through the placement of financial assets into a blind trust or other instrument in which the official has no management control.

Two new terms are brought into use throughout AS 39.52 — “business associate” and “household”. These terms are intended to better define close relationships maintained by the state employee particularly as these relationships affect, or are affected by, action taken by the employee in his or her official capacity.

State law currently sets out two remedial options available to a supervisor when a determination has been made that an ethics violation could exist or will occur. Currently, the supervisor could either reassign the employee or require divestiture of the financial interest creating the potential conflict. Senate Bill 186 provides a logical third option. That is to place the financial interest into a blind trust or other investment tool whereby the employee has no management control.

Recent experience has highlighted a significant procedural ambiguity existing in current statute pertaining to a potential violation involving the governor, lieutenant governor or attorney general. Senate Bill 186 clarifies this by adding language spelling out a clear procedural path to be followed in the unlikely event this situation should arise in the future.

Senate Bill 186 proposes that in a case involving the governor or lieutenant governor, the attorney general refers the matter to the personnel board which appoints an independent counsel to investigate. Results of the investigation are submitted to the attorney general, via written report, who then makes a determination as to whether a violation has occurred. If so, then the report is automatically converted to a complaint and forwarded to the personnel board for resolution.

In a case involving the attorney general, it is the governor that refers the matter to the personnel board at which point the same procedure as that described in the previous paragraph is followed. Of course, in this case the written report is then submitted back to the governor who makes the determination as to the necessity for further action through the personnel board.

---

One feature common to both Senate Bill 186 and 187 has received much attention. That is the civil fine of up to \$5,000 which could be levied on an individual for violating confidentiality requirements. This provision *will not* discourage people with righteous complaints from coming forward and making them. It *will* remind people with less than pure intent that there are legal requirements to abide by and liabilities attached to violations.

Our ethics statutes recognize the paramount importance of maintaining the presumption of innocence prior to any finding of probable cause being made. Current state law explicitly requires members of the State Personnel Board and the Select Committee on Legislative Ethics, and others assisting in an investigation, to maintain confidentiality. Why is this? Why should they be bound to this ethic? The clear answer to this question lies in the moral responsibility of fairness our system of justice provides to the accused during the investigatory pursuit of truth.

We must remember that when investigating an ethics complaint, it is no less than the subject's reputation which is at stake. An adverse finding could negatively affect an individual's career for years to come. But a false accusation could have the very same effect. How fair is that?

As it stands now, fair application of our ethics laws is being perverted through a parallel process of faux justice commonly known as trial by media. The fact is, where violations of ethics are alleged, it seems to be more important for a complainant to get the immediate gratification provided by a news flash than to let the Personnel Board or the Select Committee proceed with their statutory function and render a decision based on facts.

Restated, current law allows a complainant to use an ethics violation as a political hatchet. In these cases the end result is not nearly as important as the opening salvo. In fact, a complainant's entire purpose may be completely satisfied over the course of a single day's news cycle. Charged, tried and convicted in the court of public opinion. Case closed. Is this fair? Or even ethical?

If truth and justice are the complainant's pure motivating factors, then process and procedure should be welcomed along with the requisite confidentiality demanded of all parties involved. If the members of the Personnel Board and the Select Committee and others associated with an investigation must

maintain confidentiality why shouldn't the complainant be required to do the same? That seems only fair.

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Senate Bill 187 revises the Legislative Standards of Conduct. To start with, this bill adds succinct language which simply restates a truism — where matters of legislative procedure are concerned, the Alaska State Constitution<sup>1</sup> and the Uniform Rules of Procedure<sup>2</sup> take precedence over statute. The bill also clarifies application of the Uniform Rules of Procedure with respect to open meetings guidelines. This, too, is an explicit restatement of Constitutional authority.

With respect to the Select Committee on Legislative Ethics, Senate Bill 187 seeks to empanel public members representing a broad cross section of Alaskans. While current law does not favor a particular profession or background, practical experience suggests that, as a matter of convenience, this ideal may be somewhat overlooked. As a result, the Committee may not have the opportunity to benefit from a full range of professional and geographic experience which may otherwise be available.

Senate Bill 187 also seeks to make the Committee more efficient in another important way. It provides that alternate legislative members may attend all meetings and hearings. This allows the alternate to cast informed votes should the need arise due to the absence of a regular member.

Where advisory opinions are concerned, clarifying language is added which makes clear that if the requestor of the opinion identifies another person in the request, then that person, too, shall not only receive the opinion but also be bound by the same standard of confidentiality applying to the requestor in current law. However, the opinion may be released if all parties provide written consent.

Much of the text found in Senate Bill 187 relates directly to AS 24.60.170. This section addresses proceedings before the Committee. New subsection "s" replaces much, if not all, of the confidentiality language scattered throughout this section. Subsection "s" provides the language establishing the new link in the chain of confidentiality whereby an individual may not disclose the filing of a complaint or the intention to file a complaint, or the intention of another to file a complaint.

All proceedings and actions taken by the Committee will be confidential. All documents filed with the Committee, produced by the Committee or obtained or disclosed as result of Committee investigation, discovery, or a hearing will be confidential. *However*, should the Committee, after investigation, find probable cause to believe that the subject of a complaint has committed a violation that may require sanctions instead of or in addition to corrective action, then the Committee will formally charge the individual. A finding of probable cause triggers public disclosure of the complaint.

It's important to note that the subject of a complaint may waive the confidentiality requirements spelled out in subsection "s". If confidentiality is waived with respect to a meeting or proceeding, then the proceeding is open to all members of the public. If confidentiality is waived with respect to a document or other information, then the document or information is available to all members of the public.

In summary, Alaska's ethics code applies not just to a handful of individuals but to 15,000+ state employees. It seems we should be keeping this in mind when we look at designing a system that not only seeks fairness to the individual employee but also justice for the public at large. Senate Bills 186 and 187 implements a number of features which are intended to accomplish these dual purposes in a straightforward fashion.

<sup>1</sup> Article II, Section 12

<sup>2</sup> Rules 53 & 55 and Section 4 of Mason's Manual of Legislative Procedure, 2000 edition

# FISCAL NOTE

**STATE OF ALASKA**  
**2006 LEGISLATIVE SESSION**

Fiscal Note Number: \_\_\_\_\_  
 Bill Version: SB 186  
 ( ) Publish Date: \_\_\_\_\_

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: Administration  
 Title Executive Branch Ethics RDU Central Administrative Services  
 Component Personnel  
 Sponsor Senator Seekins  
 Requester (S) STA Component No. 56

**Expenditures/Revenues** (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

<b>CAPITAL EXPENDITURES</b>						
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<b>CHANGE IN REVENUES ( )</b>						
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**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)						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY2006) cost: 0.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2007 budget proposal:

**POSITIONS**

Full-time						
Part-time						
Temporary						

**ANALYSIS:** (Attach a separate page if necessary)

This bill will have no fiscal impact on the Division of Personnel.

Prepared by: Mila Cosgrove, Director Phone 465-4429  
 Division Personnel Date/Time 1/31/06 10:25 AM  
 Approved by: Mike Tibbies, Deputy Commissioner Date 1/31/2006  
 Agency Administration

# FISCAL NOTE

**STATE OF ALASKA**  
**2006 LEGISLATIVE SESSION**

Fiscal Note Number: \_\_\_\_\_  
 Bill Version: CSSB186-LAW-OA&E-1-  
 ( ) Publish Date: \_\_\_\_\_

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: LAW  
 Title "An Act relating to the Alaska Executive RDU CIVIL  
Branch Ethics Act..." Component Opinions, Appeals & Ethics  
 Sponsor Senator Seekins  
 Requester House State Affairs Component No. \_\_\_\_\_

**Expenditures/Revenues** (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

<b>CAPITAL EXPENDITURES</b>						
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<b>CHANGE IN REVENUES ( )</b>						
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**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)						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY2006) cost: 0.0

Check this box (X) if funding for this bill is included in the Governor's FY 2007 budget proposal:

**POSITIONS**

Full-time						
Part-time						
Temporary						

**ANALYSIS:** (Attach a separate page if necessary)

This bill makes numerous amendments to the Executive Branch Ethics Act. It amends AS 39.52.110(b) (Scope of Code) by establishing a "bright line" test for when a personal or financial interest is insignificant under the ethics act. The bill amends AS 39.52.130(f) (Improper Gifts) and 39.52.150(a), (c) and (d) (Contracts, Leases, Loans) to add "business associate" to the list of people whose interests must be considered. A change to AS 39.52.210 and AS 39.52.410 would allow a financial interest that violates the ethics act to be placed in a blind trust or similar arrangement. AS 39.52.230 is changed to add a new subsection (b) that describes how reporting of violations of the ethics act should be handled if the report concerns the governor, lieutenant governor, or the attorney general. Changes are also made to AS 39.52.335 and .340 regarding confidentiality and reporting requirements by the personnel board. AS 39.52.340 is also amended by adding new subsections dealing with

Prepared by: Kathryn Daughhete, Director Phone 465-3673  
 Division Administrative Services Division Date/Time 1/30/06 1:22 PM  
 Approved by: Kathryn Daughhete for David Marquez, Attorney General Date 1/30/2006  
 Agency Department of Law

**FISCAL NOTE**

**STATE OF ALASKA  
2006 LEGISLATIVE SESSION**

**BILL NO. CSSB186**

**ANALYSIS CONTINUATION**

confidentiality and imposing a civil penalty of up to \$5000 for those who violate the confidentiality requirement, and giving the attorney general the authority to enforce this section by filing an appropriate civil action.

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

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## Frist Was Updated On Blind Trust

WASHINGTON, Sept. 26, 2005

(AP) Blind trusts are designed to keep an arm's-length distance between federal officials and their investments, to avoid conflicts of interest. But documents show that Senate Majority Leader Bill Frist knew quite a bit about his accounts from nearly two dozen letters from the trust administrators.

Frist, R-Tenn., received regular updates of transfers of assets to his blind trusts and sales of assets. He also was able to initiate a stock sale of a hospital chain founded by his family with perfect timing. Shortly after the sale this summer, the stock price dived.

A possible presidential contender in 2008, Frist now faces dual investigations by the U.S. attorney for the Southern District of New York and the Securities and Exchange Commission into his stock sales.

Sheldon Cohen, who was the trustee for Democrat Walter Mondale's blind trust when he was vice president, and drafted Democrat Lyndon Johnson's blind trust for Johnson's presidency, said that in the executive branch, "You don't tell them how it's composed." He said Frist, like any federal official, "absolves himself of conflict by not knowing what he owns."

Cohen said that when Mondale left office, he told Cohen to sell his assets. "He had no idea what I was holding," the Washington attorney and former Internal Revenue Service commissioner said.

Frist spokesman Bob Stevenson said the senator received approval from the Senate Ethics Committee before he initiated the stock sale. All the information Frist received complied with federal law and Senate ethics rules, Stevenson added.

The stock was in HCA Inc., a chain of hospitals founded in the late 1960s by Frist's father and brother. At the time of the sale, insiders also were selling. Shortly after that sale, the stock price dipped because of a warning that earnings would not meet Wall Street expectations.

"If, in fact, Frist was actively involved in this decision, he certainly has to supply an explanation of how that's consistent with a blind trust," said Bob Bauer, a Washington attorney who has set up blind trusts for Democratic members of Congress.

Bauer said he has no knowledge of Frist's dealings with the trustees of his investments.

Whether Frist knew too much about his investments, or took advantage of insider trading, is not known. But the potential political damage increased in recent days.

Frist also knows first hand how a Senate leader's career can suddenly roll downhill. His predecessor, Sen. Trent Lott, R-Miss., lost his leadership post after praising the late Sen. Strom Thurmond's segregationist campaign for the presidency in 1948.

Documents on file with the Senate show the trustees for Frist and his immediate family wrote the senator nearly two dozen times between 2001 and July 2005.

The documents list assets going into the account and assets sold. Some assets have a dollar range of the investment's value and some list the number of shares.

The trust is considered blind because eventually, through the sale of transferred assets and the purchase of new assets, the official will be shielded from knowing the assets he owns. The knowledge Frist learned about his holdings potentially makes it more difficult to avoid a conflict of interest.

Frist's 2005 financial disclosure form lists blind trusts valued between \$7 million and \$35 million.

Frist, a heart surgeon, has been the Senate's leader as the chamber has considered Medicare legislation and many other issues that would affect HCA's hospitals and doctors.

Another political problem for Frist: His own statements suggest he had no knowledge of his blind trust investments.

Asked in a television interview in January 2003 whether he should sell his HCA stock, responded, "Well, I think really for our viewers it should be understood that I put this into a blind trust. So as far as I know, I own no HCA stock"

Frist, referring to his trust and those of his family, also said in the interview, "I have no control. It is illegal right now for me to know what the composition of those trusts are. So I have no idea."

Stevenson, the Frist spokesman, said there limited instances "where federal law and Senate ethics regulations call for the

disclosure of certain transactions or events to the Ethics Committee and to Senator Frist as the trust's owner.

"Except in these very limited instances, Senator Frist does not receive information related to the disposition of his assets under the control of the trustee."

Frist sold the HCA stock at a time when insiders in the company also were selling off shares worth \$112 million from January through June of this year. Aides to the senator said he acted to avoid a conflict of interest, and that he had no information about the company that wasn't available to the public.

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**XEROX.**



## **Executive Commission on Ethical Standards**

### **Blind Trusts**

Pursuant to Executive Order No. 10, blind trusts may be utilized by a public officer or public employee or his or her spouse or dependent children for certain categories of assets. Blind trusts must be approved by the Executive Commission on Ethical Standards and shall contain the following characteristics:

- a. The trust shall not contain investments or assets in which the holder's ownership right or interest is required to be recorded in a public office or those assets whose permanency makes transfer by the trustee improbable or impractical; these investments or assets would include, but not be limited to, businesses, real estate, security interests in personal property and mortgages;
- b. The trust shall contain a clear statement of its purpose, namely, to remove from the grantor control and knowledge of investment of trust assets so that conflicts between grantor's responsibilities and duties as a public officer or employee of the State of New Jersey and his or her private business or financial interests will be eliminated;
- c. The trust shall be irrevocable, and shall be terminated only upon the death of the public officer or employee or upon termination of his or her status as a public officer or employee, whichever shall first occur;
- d. The trustee shall be directed not to disclose to the grantor any information about any of the assets in the trust;
- e. The trustee shall be required either to:
  - i. prepare and file grantor's personal income tax returns, withholding from distribution of the trust's net income amounts sufficient to pay the grantor's tax; and further to participate in the audit of the grantor's returns during the period of the trust with authority to compromise the grantor's tax liability; or
  - ii. submit to the grantor, for income tax purposes, a certification of income paid without identifying the assets producing such income;
- f. Among its other powers, the trustee shall have authority to determine whether any of the assets originally transferred to the trustee are to be sold and, if so, when;
- g. a provision shall be included in the trust agreement prohibiting the trustee from investing the trust property in corporations or businesses which it knows to a significant amount of business with the State of New Jersey or from knowingly

making any investment in a corporation, business or venture over which the grantor has regulatory or supervisory authority by virtue of his or her official position;

- h. The grantor shall retain no control over the trustee nor shall he or she be permitted to make any recommendations or suggestions as to the trust property;
- i. The trustee shall be a commercial trustee and not a natural person;
- j. The principal benefit to be retained by the grantor shall be the right to receive income from the assets transferred to the trust;
- k. The trust shall not become effective until submitted and approved by the Executive Commission on Ethical Standards; and
  - 1. The trust agreement shall provide that the trustee will give the Executive Commission on Ethical Standards access to any records or information related to the trust which is necessary for the performance of the Commission's duties.
  - 2. A copy of the executed blind trust agreement shall be filed with the Executive Commission on Ethical Standards and with the head of the department in which the State officer or employee holds his or her position. Attached to such copy shall be a brief statement outlining the business or financial interests from which the State officer or employee seeks to remove himself or herself and the actual or potential conflicts of interest, or appearance of such conflicts, which he or she seeks to avoid by use of the trust agreement.

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substituted "domestic partner" for "spousal equivalent" in subsection (g).

**Opinions of attorney general.** — Requiring an attorney who is a public official to disclose the names

of clients, including the clients of the firm, is valid and legally supportable; and disclosure of such names does not violate any constitutional or professional privileges. February 15, 1985 Op. Att'y Gen.

#### NOTES TO DECISIONS

To determine the validity of the disclosure provisions of the Conflict of Interest law, both the nature and the extent of the privacy invasion and the strength of the state interest requiring disclosure must be considered. *Falcon v. Alaska Pub. Offices Comm'n*, 570 P.2d 469 (Alaska 1977).

Certain types of information communicated in the context of the physician-patient relationship fall within a constitutionally-protected zone of privacy. *Falcon v. Alaska Pub. Offices Comm'n*, 570 P.2d 469 (Alaska 1977).

Patient of a physician is a client for medical services and falls within the scope of this chapter. *Falcon v. Alaska Pub. Offices Comm'n*, 570 P.2d 469 (Alaska 1977).

And source of income. — The Conflict of Interest law encompasses a physician's individual patients as sources of income. *Falcon v. Alaska Pub. Offices Comm'n*, 570 P.2d 469 (Alaska 1977).

Reporting individual names of physician's patients. — Until appropriate regulations are promulgated, the Conflict of Interest law may not be applied so as to require reporting the names of individual

patients of a physician. *Falcon v. Alaska Pub. Offices Comm'n*, 570 P.2d 469 (Alaska 1977).

**Substantial compliance.** — In an election contest, where the record showed that appellee candidate failed to disclose all of his assets under AS 39.50.030(b), judgment for the candidate was affirmed because substantial compliance was the appropriate standard for imposing the forfeiture remedy of AS 39.50.060(b) and the superior court did not clearly err in finding that the candidate substantially complied with the disclosure requirements of AS 39.50.030(b). *Grimm v. Wagoner*, 77 P.3d 423 (Alaska 2003).

Alaska Supreme Court reads "accurate representation" in AS 39.50.030(a) as not precluding a substantial compliance standard for enforcement of AS 39.50.060(b); thus, a candidate can comply with AS 39.50.030(a) for the purposes of AS 39.50.060(b) without strictly complying with the substantive disclosure requirements. *Grimm v. Wagoner*, 77 P.3d 423 (Alaska 2003).

Applied in *Warren v. Thomas*, 568 P.2d 400 (Alaska 1977).

**Sec. 39.50.035. Exemptions.** A person subject to this chapter is not exempt from any of its provisions except to the extent state courts determine that legally privileged professional relationships preclude complete compliance. (§ 5 ch 25 SLA 1975)

#### NOTES TO DECISIONS

This section applies only to legal privileges, not ethical mandates. *Falcon v. Alaska Pub. Offices Comm'n*, 570 P.2d 469 (Alaska 1977).

Fact that a physician is subject to professional

discipline for revealing the names of patients does not create a "legal privilege." *Falcon v. Alaska Pub. Offices Comm'n*, 570 P.2d 469 (Alaska 1977).

**Sec. 39.50.040. Blind trusts.** (a) A public official may transfer all or a portion of the official's assets to a blind trust for the duration of service in public office. The original assets placed in the blind trust shall be listed by the official in the statement required to be filed under this chapter. The instrument creating the blind trust must be included with the statement.

(b) For a trust to qualify under this section,

- (1) assets transferred to the trust shall be marketable;
- (2) the trustee shall be a bank or other institutional fiduciary;
- (3) the trustee shall have full authority to manage the trust, including the purchase, sale, and exchange of its assets in accordance with fiduciary principles;
- (4) information regarding the identity and the nature of its assets shall be confidential from the trustor for the duration of the trust;
- (5) the trustee shall be required to report any known breach of confidentiality or the termination of the trust to the office where the trustor is required to file statements under this chapter; and
- (6) [Repealed, § 26 ch 25 SLA 1975.] (1974 Initiative Proposal No. 2. § 1; am §§ 6, 26 ch 25 SLA 1975)

## NOTES TO DECISIONS

Cited in *Warren v. Thomas*, 568 P.2d 400 (Alaska 1977).

**Sec. 39.50.050. Administration and inspection.** (a) The Alaska Public Offices Commission created under AS 15.13.020(a) shall administer the provisions of this chapter. The commission shall prepare and keep available for distribution standardized forms on which the reports required by this chapter shall be filed. The commission shall print the forms provided under this section so that the front and back of each page have the same orientation when the page is rotated on the vertical axis of the page. The commission may request that the information required under this chapter be submitted electronically but shall accept any information required under this chapter that is typed in clear and legible black typeface or hand-printed in dark ink on paper in a format approved by the commission or on forms provided by the commission and that is filed with the commission.

(b) The commission shall adopt regulations to implement and interpret the provisions of this chapter. Regulations or interpretation shall be within the intent and purpose of this chapter and are subject to judicial review under the Administrative Procedure Act (AS 44.62).

(c) Reports filed under this chapter shall be kept on file for at least six years and are public records.

(d) [*Repealed, § 35 ch 126 SLA 1994.*] (1974 Initiative Proposal No. 2, § 1; am §§ 7, 8 ch 25 SLA 1975; am § 7 ch 167 SLA 1976; am § 35 ch 126 SLA 1994; am § 36 ch 108 SLA 2003; am § 4 ch 155 SLA 2004)

**Effect of amendments.** — The 1994 amendment, effective July 1, 1994, repealed subsection (d), relating to the procedures required to facilitate the filing of reports under AS 24.45.

The 2003 amendment, effective September 14, 2003, in subsection (a) added the last sentence and made a stylistic change.

The 2004 amendment, effective October 1, 2004, rewrote subsection (a).

**Opinions of attorney general.** — The commis-

sion's power to investigate violations of AS 39.50.090 derives from AS 39.50.050, which authorizes the commission to administer AS 39.50 and promulgate regulations to implement the chapter. In carrying out this responsibility, the commission staff should immediately notify the chief prosecutor whenever commission records, files, and inquiries reveal a possible criminal violation of AS 39.50.090. November 26, 1984 Op. Att'y Gen.

## NOTES TO DECISIONS

**This section requires the commission to promulgate regulations to implement and interpret the provisions of the Conflict of Interest law.** *Falcon v. Alaska Pub. Offices Comm'n*, 570 P.2d 469 (Alaska 1977).

**Scope of regulations.** — The commission may

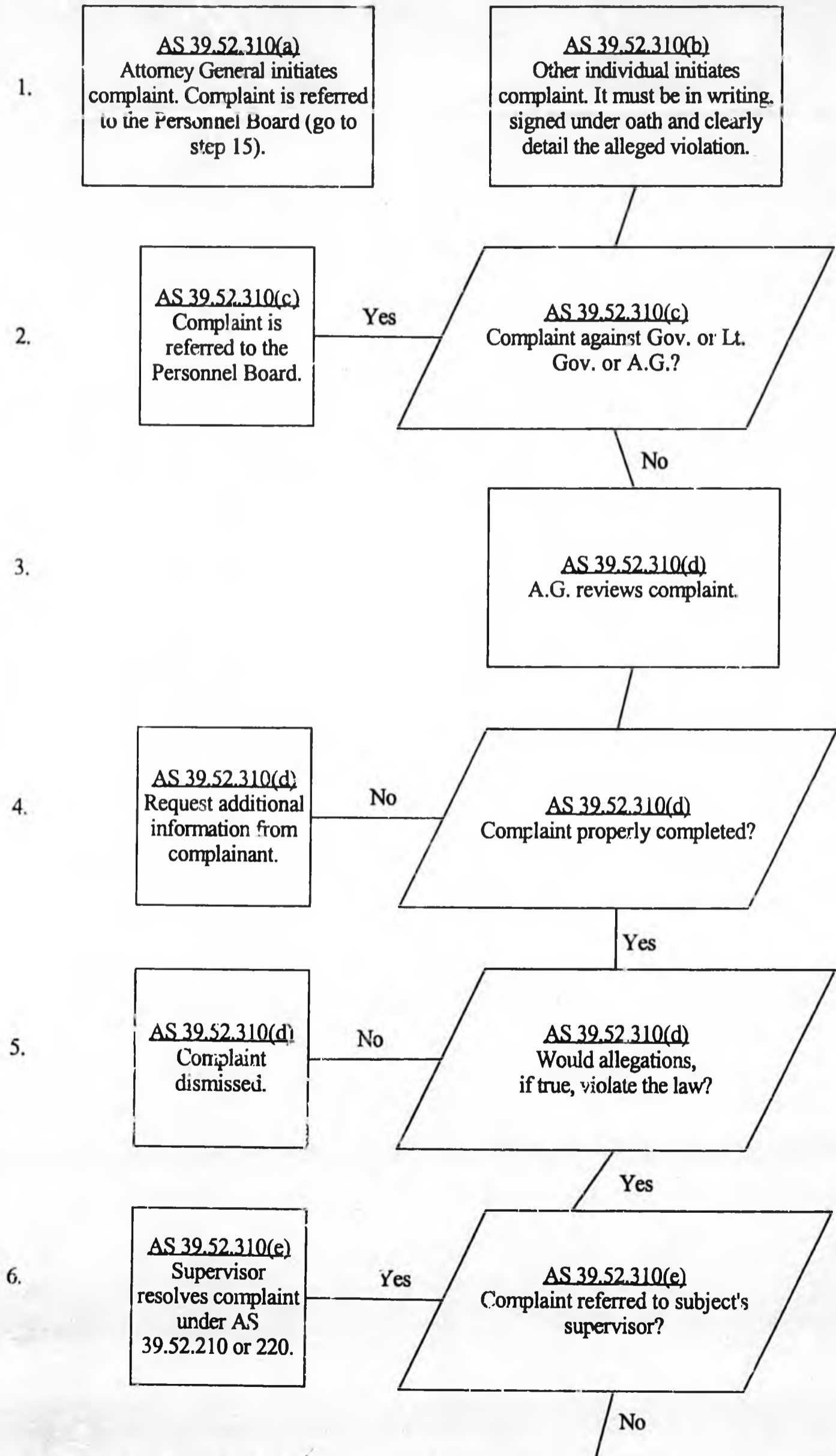
well wish to promulgate regulations which apply to relationships other than that of physician-patient. *Falcon v. Alaska Pub. Offices Comm'n*, 570 P.2d 469 (Alaska 1977).

Quoted in *State, Alaska Pub. Offices Comm'n v. Marshall*, 633 P.2d 227 (Alaska 1981).

**Sec. 39.50.060. Penalty for wilful violation of disclosure requirements.** (a) A person required to file a report of financial or business interests under this chapter who refuses or knowingly fails to disclose required information within the time required in this chapter, or who provides false or misleading information, knowing it to be false or misleading, is guilty of a misdemeanor and upon conviction is punishable by a fine of not less than \$100 nor more than \$1,000, or by imprisonment for a period of not more than six months, or by both.

(b) Any person failing or refusing to comply with the requirements of this chapter, in addition to the penalties prescribed, shall forfeit nomination to office and may not be seated or installed in office if the person has not complied. Nominated, hired, or appointed officials, commissioners, chairs, or members of commissions or boards specified in AS 39.50.200(b) may not be confirmed by the legislature if compliance has not been made. In

# Alaska Executive Branch Ethics Complaint Process



7.

AS 39.52.310(f)  
A.G. provides subject a copy of the complaint for a response to be made within 20 days.

8.

AS 39.52.310(f)  
May be considered an admission of violation.

No

AS 39.52.310(f)  
Subject responds to complaint within time allotted?

Yes

9.

AS 39.52.310(g)  
A.G. investigates the complaint.

10.

AS 39.52.310(i)  
Investigation or proceeding may be terminated.

Yes

AS 39.52.310(i)  
Complainant unwilling to assist? Complaint withdrawn? Subject makes restitution?

No

11.

AS 39.52.320  
Complaint dismissed.

No

AS 39.52.320  
Does investigation result in a finding of probable cause?

Yes

12.

AS 39.52.350(a)  
A.G. serves a copy of accusation on the subject setting out the alleged violation. All proceedings are now open to the public.

13.

AS 39.52.350(b)  
Subject of the complaint files an answer with the A.G. within 20 days.

14.

AS 39.52.350(b)  
May be considered an admission of violation.

No

AS 39.52.350(b)  
Subject responds to complaint within time allotted?

Yes

15.

AS 39.52.350(c & d)  
A.G. refers the matter to the Personnel Board.

16.

AS 39.52.350(d)  
Personnel Board imposes penalties.

No

AS 39.52.350(c)  
Does the subject deny occurrence of violation?

Yes

17.

AS 39.52.350(c)  
Personnel Board appoints a hearing officer to conduct a hearing.

18.

AS 39.52.360(a - g)  
Hearing officer hears complaint.

19.

**AS 39.52.360(b)**  
Hearing officer provides the Personnel Board a written report within 30 days after conclusion of hearing.

20.

**AS 39.52.370(a)**  
Within 10 days after receipt of report either party may protest hearing officer's findings and recommendation. Personnel Board hears any protest.

21.

**AS 39.52.370(b - e)**  
The Board can adopt or amend the hearing officer's report. The Personnel Board may hold its own hearing. Deliberations are closed to the public.

22.

**AS 39.52.370(d)**  
The Personnel Board issues a written order of dismissal.

No

**AS 39.52.370(d)**  
Did the Personnel Board determine the occurrence of a violation?

Yes

23.

**AS 39.52.370(d)**  
The Personnel Board may impose penalties under AS 39.52.410, 39.52.440 and 39.52.450 as appropriate.

24.

**AS 39.52.370(f)**  
The subject of the accusation may appeal the Personnel Board's decision to the Superior Court.