

HB

22

HFIN

FILE

FISCAL NOTE

STATE OF ALASKA
2007 LEGISLATIVE SESSION

Fiscal Note Number: 2
Bill Version: HB 22
(H) Publish Date: 4/30/07

Revision Date/Time (Note if correction): _____ Dept Affected: OOG
Title: "An Act extending the termination date for the RDU: Executive Operations
Board of Governors of the Alaska Bar Assoc..." Component: Executive Office
Sponsor: Representatives Stoltze, Rainras, Gruenberg
Requester: House Judiciary Committee Component No. 6

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013
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 ()						
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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)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2007) cost: 0.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2008 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This proposed legislation will have no fiscal impact on the Office of the Governor.

Prepared by: Gail Fenuniai, Asst. Admin. Director
Division: Division of Administrative Services
Approved by: Linda J. Perez, Administrative Director
Agency: Office of the Governor, Division of Administrative Services

Phone: 465-3885
Date/Time: 4/20/2007, 9:21am
Date: 4/20/2007

FISCAL NOTE

STATE OF ALASKA
2007 LEGISLATIVE SESSION

Fiscal Note Number: 1
Bill Version: HB 22
(H) Publish Date: 4/30/07

Revision Date/Time (Note if correction): _____ Dept. Affected: Commerce
Title Extend Board of Governors ABA RDU Corp, Bus & Prof Licensing (117)
Component Corp, Bus & Prof Licensing
Sponsor Stoltze, Ramras, Gruenberg
Requester House Judiciary Component No. 2360

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013
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						
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CHANGE IN REVENUES ()						
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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)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2007) cost: 0.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2008 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This legislation would extend the Board of Governors of the Alaska Bar Association to 2010. This board is governed by the Board of Governors of the Alaska Bar, not this division. Accordingly, this legislation would not have a fiscal impact on the operations of the division.

Prepared by: Chris Wyatt, Administrative Manager
Division: Corporations, Business, and Professional Licensing
Approved by: Emil Notti, Commissioner
Agency: Commerce, Community, and Economic Development

Phone: (907) 465-2572
Date/Time: 4/20/07 5:41 PM
Date: 4/20/2007

HOUSE BILL NO. 22

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FIFTH LEGISLATURE - FIRST SESSION

BY REPRESENTATIVES STOLTZE AND RAMRAS, Gruenberg

Introduced: 1/16/07

Referred: Judiciary, Finance

A BILL

FOR AN ACT ENTITLED

1 "An Act extending the termination date for the Board of Governors of the Alaska Bar
2 Association; and providing for an effective date."

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, 2010 [2007];

7 * Sec. 2. This Act takes effect immediately under AS 01.10.070(c).

AMENDMENT \

OFFERED IN THE HOUSE

BY: REPRESENTATIVE GARA

TO: CS HB22 (FIN)

Page 1, line 2:

Delete: "and making disbursements by the Alaska Bar Association subject to legislative appropriation as program receipts under the Fiscal Procedures Act; relating to employees of the Alaska Bar Association; establishing the lawyers' fund for client protection in the general fund;"

Page 1 line 10 through Page 3 line 13:

Delete all material.

Page 3 line 15:

Delete all material.

moved 5/9/07
MH objected failed (3-7)

25-LS0138VL
Bullard
5/8/07

CS FOR HOUSE BILL NO. 22()

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FIFTH LEGISLATURE - FIRST SESSION

BY

Offered:

Referred:

Sponsor(s): REPRESENTATIVES STOLTZE AND RAMRAS, Gruenberg

A BILL

FOR AN ACT ENTITLED

1 "An Act extending the termination date for the Board of Governors of the Alaska Bar
2 Association and making disbursements by the Alaska Bar Association subject to
3 legislative appropriation as program receipts under the Fiscal Procedures Act; relating
4 to employees of the Alaska Bar Association; establishing the lawyers' fund for client
5 protection in the general fund; and providing for an effective date."

6 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

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

8 (2) Board of Governors of the Alaska Bar Association (AS 08.03.010)
9 - June 30, 2010 [2007];

10 * Sec. 2. AS 08.08.080(c) is amended to read:

11 (c) Consistent with this chapter and the Alaska Bar Rules, the board may

12 (1) provide for employees of the Alaska Bar, the time, place and
13 method of their selection, and their respective powers, duties, terms of office, and

1 compensation; an employee hired under this paragraph is not a state employee for
2 any purpose;

3 (2) establish, collect, deposit, invest, and, subject to appropriation by
4 the legislature, disburse membership and admission fees, penalties, and other funds;

5 (3) sue in the name of the Alaska Bar in a court of competent
6 jurisdiction to enjoin a person from doing an act constituting a violation of this
7 chapter;

8 (4) provide for all other matters affecting in any way the organization
9 and functioning of the Alaska Bar.

10 * Sec. 3. AS 08.08 is amended by adding a new section to article 2 to read:

11 **Sec. 08.08.105. Annual budget.** The Board of Governors shall submit a
12 budget for each fiscal year to the administrative director of the Alaska Court System.
13 The administrative director of the Alaska Court System shall annually submit that
14 estimated budget to the governor for information purposes in the preparation of the
15 executive budget.

16 * Sec. 4. AS 08.08 is amended by adding a new section to article 5 read:

17 **Sec. 08.08.255. Lawyers' fund for client protection.** (a) The lawyers' fund
18 for client protection is established in the general fund to compensate individuals who
19 have lost money, property, or other things of value as the result of the dishonest
20 conduct of a lawyer.

21 (b) The legislature may appropriate money to the fund from Alaska Bar
22 Association member dues, income earned on investment of the money in the fund, and
23 all money collected by the Alaska Bar Association under its subrogation rights of the
24 fund's applicants claims. Money in the fund does not lapse. The Alaska Bar
25 Association may use the money in the fund to pay for claims against the fund for
26 hearing and legal expenses directly related to fund operations and claims. Nothing in
27 this section creates a dedicated fund.

28 (c) A claim against the fund must meet the requirements and follow the
29 procedure established in the Alaska Bar Rules. A claim may not be made for a loss
30 that is covered by insurance or bond.

31 * Sec. 5. AS 37.05.146(c) is amended by adding a new paragraph to read:

1 (82) receipts of the Alaska Bar Association (AS 08.08.080(c)(2)).

2 * Sec. 6. The uncodified law of the State of Alaska is amended by adding a new section to
3 read:

4 APPLICABILITY. A claim filed before the effective date of sec. 4 of this Act against
5 the Alaska Bar Association's lawyers' fund for client protection shall be considered a claim
6 against the lawyers' fund for client protection established under AS 08.08.255, enacted by sec.
7 4 of this Act.

8 * Sec. 7. The uncodified law of the State of Alaska is amended by adding a new section to
9 read:

10 TRANSITIONAL PROVISIONS. The Alaska Bar Association shall transfer the
11 balance of the lawyers' fund for client protection existing before the effective date of this
12 section to the lawyers' fund for client protection established under AS 08.08.255, enacted by
13 sec. 4 of this Act.

14 * Sec. 8. Section 1 of this Act takes effect immediately under AS 01.10.070(c).

15 * Sec. 9. Sections 2 - 7 of this Act take effect July 1, 2009.

FISCAL NOTE

STATE OF ALASKA
2007 LEGISLATIVE SESSION

Fiscal Note Number: 1
Bill Version: HB 22
(H) Publish Date: 4/30/07

Revision Date/Time (Note if correction): _____ Dept. Affected: Commerce
Title Extend Board of Governors ABA RDU Corp, Bus & Prof Licensing (117)
Component Corp, Bus & Prof Licensing
Sponsor Stoltze, Ramras, Gruenberg
Requester House Judiciary Component No. 2360

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013
Personal Services						
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Contractual						
Supplies						
Equipment						
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TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2007) cost: 0.0

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POSITIONS

Full-time						
Part-time						
Temporary						

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

This legislation would extend the Board of Governors of the Alaska Bar Association to 2010. This board is governed by the Board of Governors of the Alaska Bar, not this division. Accordingly, this legislation would not have a fiscal impact on the operations of the division.

Prepared by: Chris Wyatt, Administrative Manager
Division: Corporations, Business, and Professional Licensing
Approved by: Emil Notti, Commissioner
Agency: Commerce, Community, and Economic Development

Phone (907) 465-2572
Date/Time 4/20/07 5:41 PM
Date 4/20/2007

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Board of Governors of the Alaska Bar Assoc..." Component: Executive Office
Sponsor: Representatives Stoltze, Ramras, Gruenberg
Requester: House Judiciary Committee Component No. 6

Expenditures/Revenues (Thousands of Dollars)

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Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)
This proposed legislation will have no fiscal impact on the Office of the Governor.

Prepared by: Gail Fenuniai, Asst. Admin. Director Phone: 465-3885
Division: Division of Administrative Services Date/Time: 4/20/2007, 9:21am
Approved by: Linda J. Perez, Administrative Director Date: 4/20/2007
Agency: Office of the Governor, Division of Administrative Services

ALASKA STATE LEGISLATURE

Vice Chair:
House Finance Committee

Chair:
House Finance Subcommittees for;
Department of Public Safety
Department of Law



Session:
Alaska State Capitol, Rm 501
Juneau, AK 99801-1182
Phone: (907) 465-4958
Fax: (907) 465-4928

District:
600 E. Railroad Ave.
Wasilla, AK 99654

BILL STOLTZE
STATE REPRESENTATIVE
Representative_Bill_Stoltze@legis.state.ak.us

Sponsor Statement For CS for House Bill 22

Committee substitute for House Bill 22 extends the sunset date of the Board of Governors of the Alaska Bar Association (ABA) until June 30, 2010 and requires an appropriation by the legislature in order to dispense program funds.

The Board of Governors for the Alaska Bar Association is comprised of 12 members. Nine members are elected by active members of the Alaska Bar Association. There are also three non-attorney members appointed by the Governor and confirmed by the Legislature.

The ABA collects dues and other fees on an annual basis and expends these funds to govern the association. Specifically the ABA administers exams, approves, recommends rules concerning practice of law to the State Supreme Court and provides continuing legal education and other member services.

The bar association was created in 1955 and the funds that sustain the bar association are "state revenue". However, the ABA has been, and is continuing to expend this public revenue without an appropriation by the legislature. CSHB 22 corrects this situation and mandates the ABA submit a FY09 budget request, through the Alaska Court System, for review and approval by the legislature.

CSHB 22 also creates a "lawyer fund for client protection" fund as a new sub-account contained within the state general fund. The ABA currently maintains this fund, which contains nearly \$1.2 million, to reimburse attorneys' clients who have suffered non-insured losses of money, property, or other things of value, as a result of dishonest conduct by attorneys. This fund is preserved with the creation of the sub-account, contained with the general fund, which does not lapse, but is subject to appropriation each year, by the legislature.

As an instrument of the state, the ABA should not be able to spend state funds without being authorized to do so by an appropriation. This legislation simply

DISTRICT 16

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KNIK RIVER ROAD • LAZY MOUNTAIN • PALMER • PETERS CREEK

brings the ABA in compliance with Article IX, Section 13 of the Constitution which say that "no money shall be withdrawn from the treasury except in accordance with appropriations made by law".

I appreciate your support for House Bill 22.



Alaska State Legislature

Please enter into the record my testimony to the House Finance committee name
 Committee on HB 22, dated 5/9/07
 bill # / subject public hearing date

Mr. Chairman + honorable committee members:

This is Kristine A. Schmidt, President of the Kenai Peninsula Bar Association, a voluntary association of Kenai Peninsula attorneys. I am requesting on behalf of the Association that the committee pass HB 22 without amendment. We ~~are~~^{lawyers} on the Peninsula did not hear about or see the Committee substitute until after this hearing started, and we are particularly concerned about making a major policy changes to our regulatory agency during the last few days of the legislative session, with ~~such short~~^{so little} public notice. Please allow time for our membership to consider such changes and contact their representatives. I'm sorry I had to leave the teleconference for a prior commitment.

Signed: KRISTINE A. SCHMIDT
 Testifier
KENAI PENINSULA BAR ASSOCIATION
 Representing (optional)
110 S WILLOW ST STE 101 KENAI AK 99611
 Address
907-283-7373
 Phone number

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

(907) 465-3867 or 465-2450
FAX (907) 465-2029
Mail Stop 3101


State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM

April 23, 2007

SUBJECT: Alaska Bar Association Questions (Work Order No. 25-LS0879)

TO: Representative John Coghill, Jr.
Attn: Rynniva Moss

FROM: Alpheus Bullard 
Legislative Counsel

You requested a legal opinion as to three related questions, (1) whether the existence of the Alaska Bar Association ("bar association") prior to Alaskan statehood exempts the bar association from the Alaska constitutional prohibition against the dedication of sources of public revenue found in Art. IX, sec. 7, (2) whether the existence of the bar association prior to statehood places the bar association outside the constitutional appropriations framework, and (3) whether funds of the bar association, governed by the Alaska Supreme Court, could be subject to legislative appropriation. In a subsequent conversation with Ms. Moss of your staff, Ms. Moss explained that these questions related to an over-arching inquiry as to whether the bar association could be alternately funded through the Legislature's appropriations to the court system. Allow me to address these questions as a whole below.

Background

In enacting AS 08.08, the legislature re-established the "integrated bar" that the Territorial Legislature established in 1955.¹ An "integrated bar" means that attorneys must not only be admitted by a court to practice law, they must also meet a legislative requirement to be licensed, be members of the bar association, and pay bar dues. These licensing and bar membership requirements are within the legislature's police power to protect the public welfare. However, they do not supplant the court's inherent power to define what the practice of law is and to determine who is qualified to practice law.

Unlike other chapters in AS 08 where boards and commissions regulate the practice of the profession that they license, AS 08.08 does not give the bar association regulatory control of the practice of law. AS 08.08.210(b) provides that the practice of law shall be defined in the Alaska Bar Rules (these are rules adopted by the Alaska Supreme Court).

Current funding of the bar association

Currently, the operations of the bar association are "funded entirely by the membership through dues, admission fees, continuing legal education charges, lawyer referral fees,

¹ Alaska Integrated Bar Act, Chapter 196, Laws of Alaska, 1955.

convention fees, and interest income.² The bar association receives and expends its membership fees and other sources of revenue without an appropriation by the legislature, a circumstance authorized by AS 08.08.080(c)(2).³ The bar association has not received any state funding through appropriation except for per diem and travel expenses of the public members of the Board of Governors between 1981 and 1986.⁴

Bar association funds are state revenue

The funds which sustain the bar association are "state revenue." To characterize these funds as anything other than "a source of public revenue," would be to posit that the bar association is a private organization existing outside the state governmental framework. This is not a credible argument. The bar association is both a creature of statute (AS 08.08) and an organ of the court system subject to the Alaska Bar Rules promulgated by the Alaska Supreme Court.

Bar association revenues as a dedicated fund

The bar association was established by the Legislature of the Territory of Alaska in 1955. Whether the bar's current revenues are a dedicated fund is an academic detail, for nothing prohibits the legislature from dispensing with a dedicated fund. While the bar association's use of its member dues may be a "dedication for [a] special purpose[s]"⁵ which existed upon the date of the ratification of art. IX, sec. 7,⁶ no dedication need necessarily be retained, all existing dedications at the time of the constitution's ratification were to "be left in effect [only] as long as the legislature [sees] fit to leave them there."⁷

² Board of Governors of the Alaska Bar Association: Sunset Review, November 28, 2005, Audit Control No. 41-20040-06, at 14.

³ AS 08.08.080(c)(2) provides "(c) Consistent with this chapter and the Alaska Bar Rules, the board may . . . (2) establish, collect, deposit, invest, and disburse membership and admission fees, penalties, and other funds;"

⁴ Board of Governors of the Alaska Bar Association: Sunset Review, November 28, 2005, Audit Control No. 41-20040-06, at 35 (Response of Alaska Bar Association).

⁵ Language from Art. IX, sec. 7, Dedicated Funds, which reads:

The proceeds of any state tax or license shall not be dedicated to any special purpose, except as provided in section 15 of this article or when required by the federal government for state participation in federal programs. This provision shall not prohibit the continuance of any dedication for special purposes existing upon the date of ratification of this section by the people of Alaska.

⁶ The Alaska constitution was ratified on April 26, 1956.

⁷ Convention Delegate Nerland quoted in Alaska Constitutional Convention Proceedings, part 4, Proceedings: January 17-25, 1956 p. 2415.

Representative John Coghill, Jr.

April 23, 2007

Page 3

Bar association funds as a trust

The only argument that could be marshaled to prevent bar association funds from being deposited into the general fund and allocated back to the bar association is that these funds represent some sort of trust by implication. This would be a novel legal argument without an identifiable precedent, and it is my opinion that such an argument would not be raised.

Funding the bar association through the legislature's budgetary appropriation to the Court System

There is no constitutional or legal reason that the revenues of the bar association could not be deposited into the general fund and allocated back to the Court System to fund the operations of the bar association through the legislature's constitutional "power of the purse."

Elephant in the room

Regulation of the practice of law is an inherent judicial power vested with the Alaska Supreme Court. See Citizens Coalition v. McAlpine, 810 P.2d 162 (Alaska 1991) and Kelly v. Donohue, 907 P.2d 458 (Alaska 1996). In Citizens Coalition, the Alaska Supreme Court expressed its belief in its extensive rule-making authority arising out of the Alaska Constitution. The Court noted that "[o]ne inherent judicial power that we have exercised repeatedly is the power to regulate the practice of law in the state ...[i]n exercise of our inherent power, we have adopted rules that govern beyond the 'administration . . . practice and procedure' limitations of article IV, section 15, most notably the Alaska Bar Rules and the Code of Professional Responsibility." Id. at 165. It is possible that the court could, under its judicial power and jurisdiction found in art. IV, secs. 1 and 15 of the Alaska constitution, decide that the bar association as an element of the judicial system should be removed from statute and be placed under the control of the court system. It is not possible to know what would elicit such a judicial action, but legislative action that served to unduly affect the operations or activities of the bar association might be one such circumstance.

I hope that the above information is helpful. If you have any questions or if I can be of further assistance, please do not hesitate to contact me.

ALB:lmb
07-105.lmb

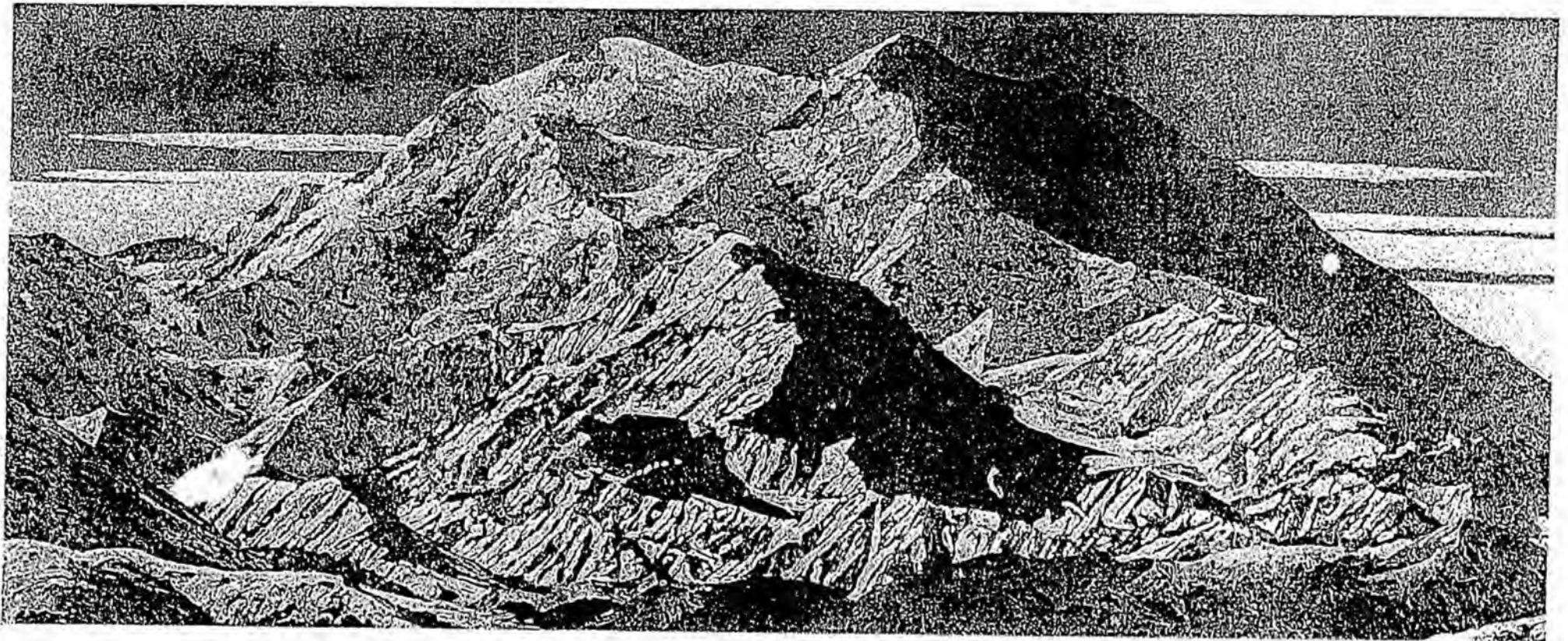
Alaska Bar Association
General Fund Revenues Compared with Expenses
Calendar Years 2003 through 2006

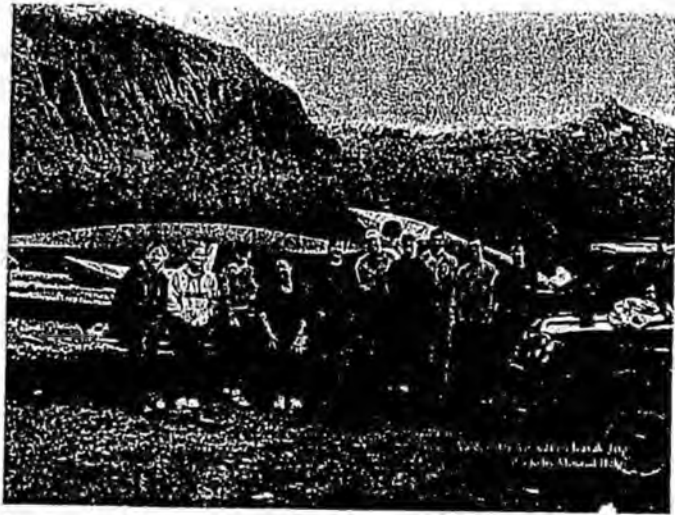
	2003	2004	2005	2006
Revenues				
Dues	\$ 1,346,808	\$ 1,361,672	\$ 1,674,351	\$ 1,702,211
Admission Fees	186,905	146,175	161,875	174,750
Continuing Legal Education	132,830	102,121	153,271	131,979
Lawyer Referral Fees	46,520	51,816	54,461	42,242
Annual Meeting	94,042	117,189	122,414	123,905
Earnings on Investments	76,593	61,403	82,552	105,092
Unrealized Loss on Investments	(3,041)	(29,993)	(49,268)	(6,638)
Other	42,416	142,845	152,113	155,499
Total Revenues	1,923,073	1,953,228	2,351,769	2,429,040
Expenses				
Admissions	171,525	170,888	176,178	175,898
Board of Governors	40,728	33,637	42,959	42,364
Discipline	576,469	603,493	623,605	646,385
Fee Arbitration	54,614	57,685	59,326	63,311
Lawyer Referral	44,878	47,995	47,641	50,785
Continuing Legal Education	421,767	312,481	356,375	339,725
Administration	392,549	422,902	448,167	460,255
Annual Meeting	99,018	105,871	122,145	122,746
Other	151,708	187,090	239,700	247,320
Total Expenses	1,953,256	1,942,042	2,116,096	2,148,789
Increase (decrease) in net unrestricted assets	(30,183)	11,186	235,673	280,251
Unrestricted Net assets at beginning of year:				
Designated for Working Capital	200,000	675,000	675,000	700,000
Designated for Asset Acquisition	117,928	107,990	120,665	129,375
Undesignated	1,298,021	802,776	801,287	1,003,250
Total at Beginning of Year	1,615,949	1,585,766	1,596,952	1,832,625
Unrestricted Net assets at end of year:				
Designated for Working Capital	675,000	675,000	700,000	700,000
Designated for Asset Acquisition	107,990	120,665	129,375	129,375
Undesignated	802,776	801,287	1,003,250	1,283,501
Total at End of Year	\$ 1,585,766	\$ 1,596,952	\$ 1,832,625	\$ 2,112,876

Source: Alaska Bar Association's Audited Financial Statements for 2002 through 2006

ALASKA BAR ASSOCIATION

2006 Annual Report





Board of Governors and Bar staff representatives visit the
Vuldez Bar Association for pro bono outreach.

THE ALASKA BAR ASSOCIATION

2006 Board of Governors

John Tiemessen, President
Matthew Claman, President-Elect
Sidney Billingslea, Vice President
William Granger, Secretary
Philip Pallenberg, Treasurer
Chris Cooke
Joe Faulhaber
Michael Hurley
Allison Mendel
Mitchell Seaver
Krista Stearns
Jason Weiner
Maude Blair (New Lawyer Liaison)

Staff

Deborah O'Regan, Executive Director
Barbara Armstrong, Assistant Director & CLE Director
Krista Scully, Pro Bono Director
Kristi Powell, Executive Assistant
Karen A. Schmidkofer, Controller
Candice Goard Bryant, Accounting Assistant
Kara Bridge, CLE Coordinator
Devon Richardson, Admissions Assistant/Receptionist
Charissa Felman, Lawyer Referral Assistant

Stephen J. Van Goor, Bar Counsel
Mark Woelber, Assistant Bar Counsel
Louise R. Driscoll, Assistant Bar Counsel
Deborah C. Ricker, Discipline Investigator/Paralegal
JoAnne Baker, Section Coordinator & Arbitration/Discipline/CLE Library
Ingrid Varenbrink, Arbitration/Discipline/CLE Library
Gail Welt, Executive Assistant
Annette Ravithis, Discipline Secretary
Jonathan Minton, CLE Assistant

Cover art: *Denali Spring, 2000, 24" x 60," oil on canvas. By Kesler Woodward
(www.keslerwoodward.com)*

Introduction & Overview

In 2006, the Alaska Bar Association had 3,819 members in the following categories: 2,858 Active (2,367 In-state and 491 Outside), 859 Inactive, 101 Retired, and 1 Honorary. Its affairs are governed by a 12-member Board of nine attorneys and three non-attorney citizens. A (non-voting) New Lawyer Liaison also advises the Board.

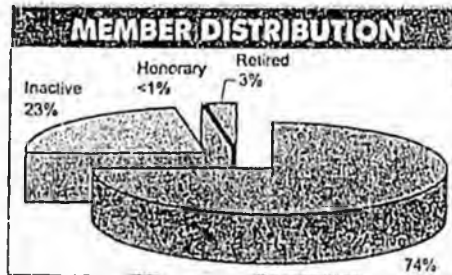
Written guidelines for governance are contained in the Integrated Bar Act, the Alaska Bar Rules (promulgated by the Supreme Court of Alaska), the Alaska Rules of Professional Conduct, the Association's Bylaws and Regulations, the Board of Governors' Policy Manual, and a Personnel Manual.

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

There are presently 9 standing committees, 22 sections, 5 bar rule committees, and special committees as appointed by the Board. In addition,

the Bar Association participates in a number of adjunct organizations and administers special projects, such as the Statewide Lawyer Referral Service. More than half of the membership participates, voluntarily and without remuneration, in the affairs of the Association.

The staff of the Alaska Bar has grown from a part-time, volunteer executive secretary when it was founded in 1968, to 18 employees.



The Association is primarily funded by its membership's annual dues, continuing legal education program registration fees, admissions, the annual convention, the Lawyer Referral Service, and interest income. The Association received no public monies in the 2006 fiscal year.

Principal Activities

• Bar Examination

The Alaska Bar Examination is conducted twice annually in Anchorage, Fairbanks, Juneau, and Ketchikan and in such other locations as the Board directed. Starting in 2007, the Bar exam will be offered only in Anchorage, Juneau and Fairbanks. It consists of: 1) one day of essay questions

2002 - 2006 Bar Exam Results			
Date	Applicants	Passed	Pass Rate
July 2006	82	52	63%
	64 1st timers	46	72%
Feb. 2006	66	40	61%
	46 1st timers	36	78%
July 2005	70	39	56%
	49 1st timers	35	71%
Feb. 2005	62	44	71%
	50 1st timers	39	78%
July 2004	61	43	70%
	52 1st timers	40	77%
Feb. 2004	56	37	66%
	31 1st timers	27	87%
July 2003	86	51	59%
	63 1st timers	44	70%
Feb. 2003	53	27	51%
	31 1st timers	25	81%
July 2002	60	31	52%
	42 1st timers	23	55%
Feb. 2002	35	20	57%
	23 1st timers	14	61%

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

Admissions

All applicants are required to attend a course on ethics as prescribed by the Board prior to admission.

All applicants must also submit an affidavit that they have read and are familiar with the Alaska Rules of Professional Conduct. (Bar Rule 64)

on Alaska law prepared by a permanent committee of the Association known as the Alaska Law Examiners; 2) two half-days of objective, multiple choice questions (the Multistate Bar Examination or "MBE"), prepared by the National Conference of Bar Examiners (NCBE) and administered simultaneously in more than 40 states; and 3) a half day of the performance test (the Multistate Performance Test of "MPT") prepared by NCBE.

In addition, a Multistate Professional Responsibility Exam (MPRE) is given separately three times a year (March, August, and November).

In 2006, 148 individuals took the Bar Exam and 92 passed the exam.

ADMISSION WITHOUT EXAMINATION

Bar Rule 2, Section 2 provides an admission without examination rule, with reciprocity provisions. An applicant who has taken a written bar exam in a reciprocal jurisdiction and has engaged in the active practice of law for five of the previous seven years may be eligible for reciprocal admission.

In 2006, 30 applicants were approved for admission without examination.

• Discipline of Members

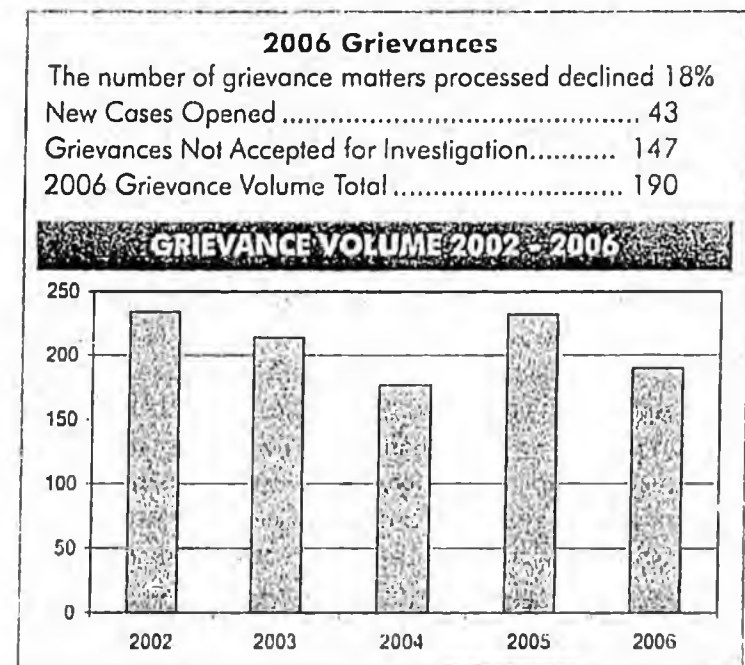
The Alaska Supreme Court has held that an attorney's license to practice law is "a continuing proclamation by the Court that the holder is fit to be entrusted with professional and judicial matters...as an officer of the courts." Investigation and recommendations for professional

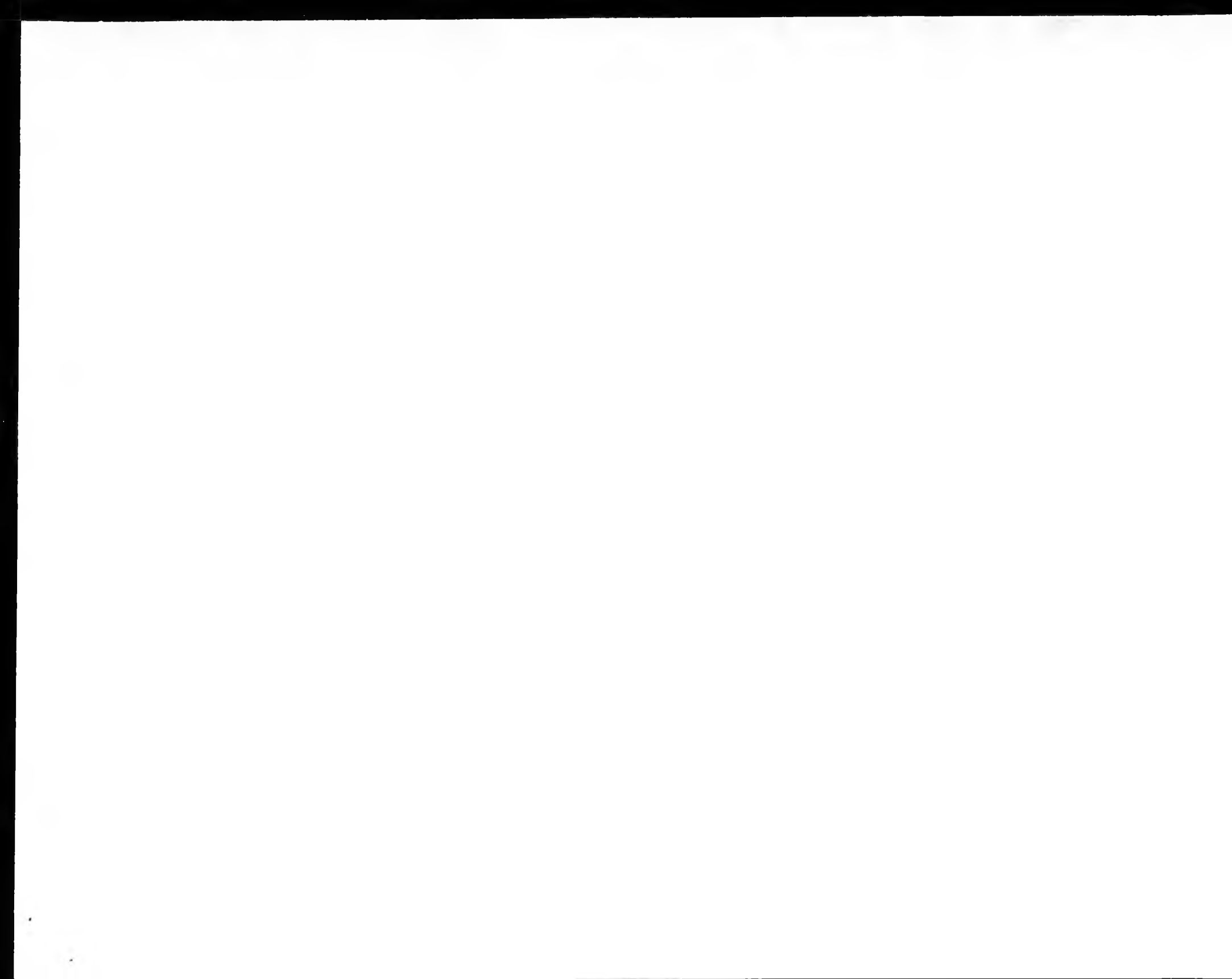
conduct matters have been delegated by the Court to the Bar Association.

Expenditures for the Discipline Section totaled \$646,385 during 2006, a substantial allocation of Bar Association resources for the protection of clients, the public, and the legal system in Alaska.

2006 GRIEVANCES

The Discipline Section processed 190 grievances in 2006 compared with 232 in 2005, representing an 18% decline. Summary statistical data related to discipline status are contained in the charts.





Discipline Case Statistics

2002-2006

	'02	'03	'04	'05	'06
Open cases pending as of Jan. 1.....	88	106	83	63	61
New cases opened in 2006(+)	42	25	31	36	43
TOTAL open and new cases	130	131	114	99	104

Cases closed in 2002-2006

Closed after disbarment by Supreme Court.....	5	17	0	3	0
Closed after suspension by Supreme Court.....	6	1	10	3	7
Closed after probation ended.....	0	0	0	0	0
Closed after public censure by Supreme Court.....	0	1	1	4	0
Closed after reprimand publicly imposed by Disciplinary Board.....	0	2	0	1	2
Closed after reprimand privately imposed by Disciplinary Board.....	0	0	1	0	2
Closed after written private admonition by Bar Counsel.....	0	0	2	3	4
Dismissed by Bar Counsel.....	13	26	36	24	31
Closed after mediation.....	0	1	1	0	0
TOTAL closed cases (-)	24	48	51	38	46
Open cases pending as of Dec. 31	106	83	63	61	58

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

Status of Open Cases as of December 31, 2002 - 2006

	'02	'03	'04	'05	'06
Pending First Response from Respondent Attorney	6	3	7	7	3
Pending Complainant's Reply	4	3	1	2	1
Pending Second Response from Respondent Attorney	1	0	7	0	0
Pending Bar Counsel Investigation/Decision	67	62	32	25	23
Abeyance Pending Outcome of Related Court Case	2	2	2	9	9
Pending Mediation	1	1	0	0	0
Abeyance Pending Outcome of Fee Arbitration	0	0	0	0	0
Pending Approval to Issue Written Private Admonition	0	0	0	1	0
Pending Acceptance of Written Private Admonition by Respondent Attorney	0	0	1	0	0
Pending Approval to File Petition for Formal Hearing	0	0	5	8	10
Pending Stipulation for Discipline between Bar Counsel and Respondent Attorney	0	2	0	0	0
Pending Stipulation Consideration by Disciplinary Board	0	0	0	6	0
Pending Stipulation Consideration by Supreme Court	0	0	0	0	0
Pending before Area Hearing Committee	7	1	0	0	5
Pending before Disciplinary Board	17	2	2	0	5
Pending before Supreme Court	0	6	5	2	1
Respondent Attorney on Probation	1	1	1	1	1
TOTAL open cases	106	83	63	61	58

SUMMARY OF PUBLIC DISCIPLINE ACTIONS IN 2006

The Alaska Supreme Court suspended William T. Ford for 90 days effective February 27, 2006. Mr. Ford was subsequently reinstated effective June 2, 2006. The Court publicly censured and suspended Eugene B. Cyrus for 6 months effective May 3, 2006. The Court suspended Michael A. Stepovich for three years with one year stayed effective October 15, 2006.

The Disciplinary Board publicly reprimanded Mikel R. Miller effective April 25, 2006 based on a public reprimand imposed by the Supreme Court of the State of Oregon, and publicly reprimanded Calvin P. Vance effective September 8, 2006 based on a public reprimand imposed by the

“The Bar Association, under the Alaska Bar Rules, maintains an Attorney Fee Dispute Review Committee to hear fee disputes between attorneys and clients.”

Disciplinary Board of the Supreme Court of the State of Oregon.

SUMMARY OF REINSTATEMENT ACTIONS, 2006

A suspended or disbarred attorney may be reinstated by the Alaska Supreme Court, but only after the appropriate review procedures are followed.

As reported above, William T. Ford was reinstated on June 2, 2006.

SUMMARY OF DISABILITY ACTIONS IN 2006

The Rules of Disciplinary Enforcement also anticipate circumstances where the need for protection of the public arises from mental or physical infirmity, illness, or addiction to controlled substances.

Robert C. Nauheim was transferred to disability inactive status due to a physical disability effective December 11, 2006.

• Attorney Fee Dispute Review Committee

The Bar Association, under the Alaska Bar Rules, maintains an Attorney Fee Dispute Review Committee to hear fee disputes between attorneys and clients where such disputes have not been determined by statute, court rule, or decision. Five subcommittees residing in Ketchikan, Juneau, Anchorage, Kenai and Fairbanks comprise the Committee. Each subcommittee consists of a “pool” of attorney and non-attorney members who serve for three years on a volunteer basis. From these subcommittees, a panel of two attorneys and one non-attorney is convened to hear a fee dispute. If the amount in dispute is \$5,000 or less, a single panel member hears the matter.

2002 - 2006 Fee Arbitration Statistics

	'02	'03	'04	'05	'06
Arbitrations pending January 1	32	37	33	21	27
Arbitrations opened during year (+)	55	58	39	60	53
Arbitrations closed during year (-)	50	62	51	54	54
Arbitrations pending Dec. 31 year-end	37	33	21	27	26

• Lawyers' Fund for Client Protection Committee (LFCP)

The Bar Association maintains a fund for the purpose of reimbursing attorneys' clients who have suffered non-insured losses of money, property, or other things of value, as a result of dishonest conduct by attorneys. Dishonest conduct is defined as acts of embezzlement, wrongful taking, or conversion of money, property, or other things of value. The monies of the Fund come from yearly assessments on active members, paid concurrently with membership dues, as well as interest earned on the Fund balance.

2006 LFCP Actions

Case Number	Reimbursement(s) [*] Paid by Board	Reimbursement(s) Rejected by Board	Reimbursement(s) Rejected by LFCP Committee
2005L001	\$22,000		
2006L001	\$2,600		
2006L003		\$3,500	
2006L007	\$3,000		
2006L010		\$3,500	
2006L015		\$7,500	
2006L016		\$6,500	
2006L017		\$850,000	
2006L018		\$2,500	
2006L020	\$3,000		
2006L021	\$1,372.11		
Totals	\$31,972.11	\$892,500.00	

* Figures reflect reimbursements from the Fund which may be less than the amount requested by the claimant.

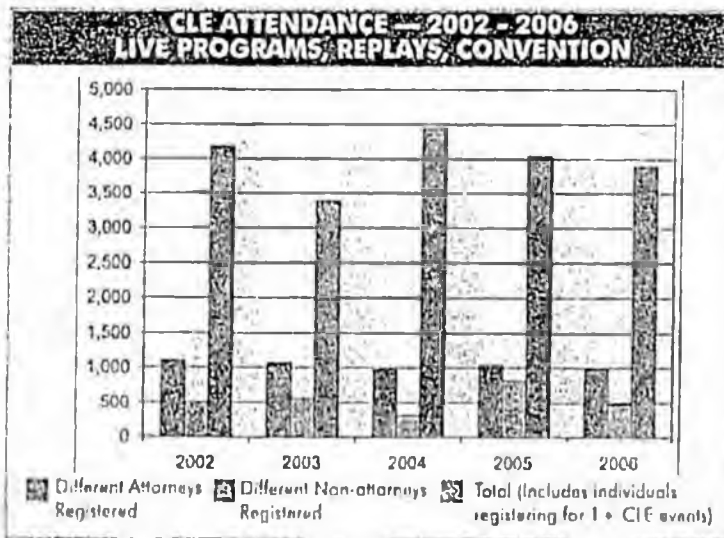
At the close of 2006, fourteen (14) claims were pending before the LFCP Committee. The Committee and the Board of Governors took action on eleven (11) claims during the year.

• Continuing Legal Education (CLE)

The Continuing Legal Education Committee and the Association's Director of Continuing Legal Education are responsible for presenting and administering all CLE programs and activities, including the CLE Library.

The substantive law sections of the Bar Association are responsible for sponsoring a minimum of one CLE seminar every two years. In 2006 there were 22 active substantive law sections, with a total membership of 1,425.

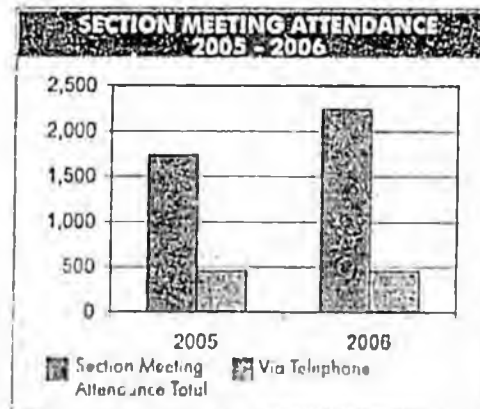
The majority of live CLE programs are presented in Anchorage, which has the largest concentration of lawyers in the state.



To provide CLE opportunities for attorneys practicing outside of Anchorage, law firms in Juneau, Fairbanks, and Kenai host regularly scheduled group video replays of CLE seminars. These locations receive full video presentations and course materials. Other communities in Alaska may also request a group video replay. The Bar also provides online CLE programs.

The Alaska Bar CLE program continues to work with Seattle University School of Law CLE and Summer Law School Programs. Faculty of the Seattle University Law Program at UAA meet with the Bar's substantive law sections, and section members make presentations to the law students enrolled in the program.

Since 2003 the Bar has partnered with the American Law Institute-American Bar Association (ALI-ABA) to offer their live satellite-delivered CLEs at KAKM's studios in Anchorage. Beginning this year, ALI-ABA webcasting is an additional option for Alaska Bar members. In 2006, the Bar partnered with LegalSpan, an online educational delivery company, to provide more extensive online CLE options and to explore webcasting of Alaska Bar live programs. The Bar's inaugural webcast in October 2006, "A Trust Accounts



Ethics Refresher," was very successful with 90 registrants online and 21 registrants at the live broadcast site.

Alaska Bar CLE Attendance

In 2006, attendance at CLE programs totaled 3,888, including 111 speakers.

In addition, 1,783 attorneys attended in person and 456 participated by telephone in the Bar's substantive law sections' monthly meetings.

VCLE Compliance

For the reporting year of Jan. 1 - Dec. 31, 2006, 1,101 attorneys voluntarily complied with the VCLE Rule.

“In addition to services associated with CLE, the Bar Association provides other programs to assist members of the Bar in their practices.”

• Voluntary Continuing Legal Education (VCLE)

The Voluntary CLE Rule, originally a 3-year pilot project, became effective on September 2, 1999 and recommended a minimum of 12 hours of approved CLE credit (including one in Ethics) each calendar year.

This incentive-based VCLE rule was adopted by the Alaska Supreme Court in response to the rule proposed by the Alaska Bar. Those members complying with the VCLE rule:

- receive a discount on Bar dues,
- may participate in the Lawyer Referral Service, and
- have their names published in an annual list of those who have met the Supreme Court's recommended guidelines.

The compliance or non-compliance with the VCLE Rule may also be taken into account in a disciplinary matter related to the competency of an attorney.

Bar members report annually. The Board of Governors voted in 2003 to revise the VCLE reporting procedure. Bar

2002 - 2006 CLE PROGRAMS SUMMARY					
	'02	'03	'04	'05	'06
Topics	24	23	18	29	26
Live Bar Programs	33	25	20	36	27
Mandatory Ethics*	2	2	4	5	5
Convention CLE Programs	16	10	13	9	14
Video Replays	59	62	36	42	40
Satellite Seminars	0	1	3	4	2

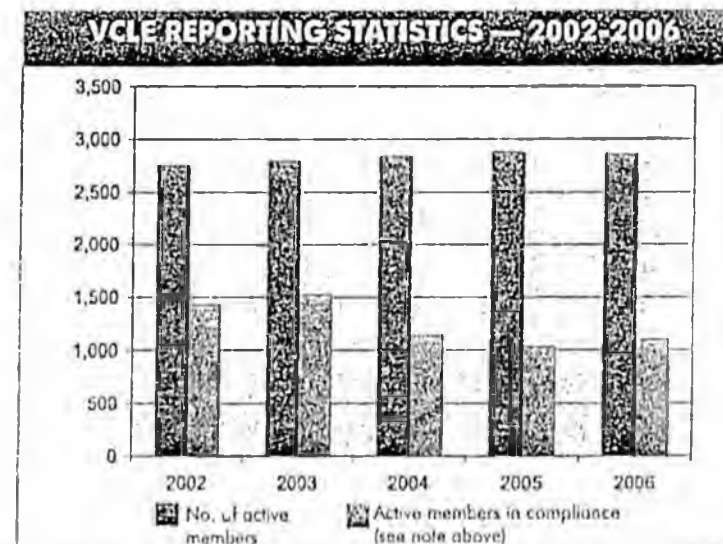
*Mandatory Ethics: A Short Course on Discipline and Fee Arbitration Procedures in Alaska, a one hour videotape, is required viewing for admission to the Alaska Bar. Group video sessions are presented in the spring and in the fall. The format was changed to a one hour video in the fall of 2004.

members now certify on their annual Bar dues statement whether or not they have completed the recommended minimum CLE hours and are in compliance with the VCLE Rule.

In May 2005, the Board of Governors appointed a Mandatory CLE Task Force, comprised of representatives of the Board, the Alaska Court System, and the Alaska Judicial Council, to study the issue of whether MCLE should be adopted in Alaska. The Task Force subcommittee reports were submitted to the Board of Governors in January 2006.

In September 2006, the Board of Governors voted to amend the Bar Rules to establish an MCLE program in Alaska, and to forward the proposed amendments to the Alaska Supreme Court for approval.

Note: These compliance numbers include members who did not turn in a form, but were nonetheless in compliance because they had adequate credits carried forward from the prior reporting year.



Total Lawyer Referrals 2002 - 2006

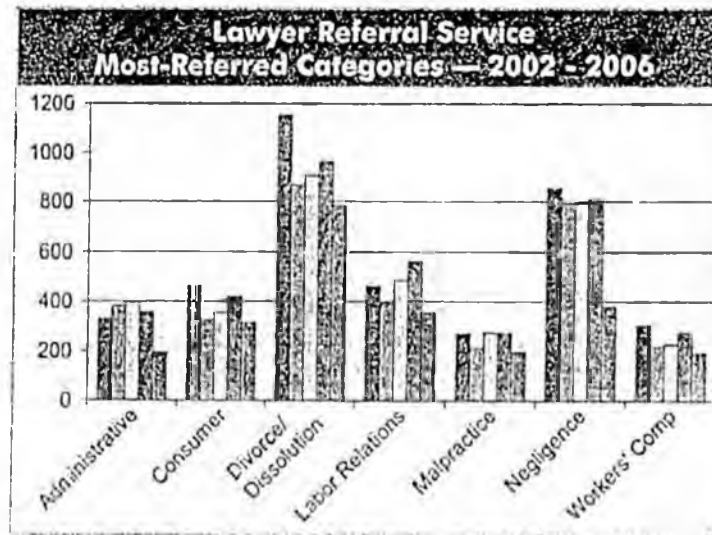
	'02	'03	'04	'05	'06
Administrative	331	382	396	357	194
Admiralty	16	19	17	17	18
Adoption	27	34	34	37	16
Alaska Native Law	11	—	—	2	—
Arts	9	—	—	—	2
Bankruptcy	122	108	110	142	52
Commercial	185	148	123	212	112
Construction	36	14	37	40	29
Consumer	464	326	356	419	315
Criminal: Felony	144	130	127	228	92
Criminal: Misdemeanor	260	162	143	175	114
Discrimination	56	66	13	—	—
Divorce/Dissolution/Custody	1153	869	907	962	784
Eminent Domain	2	—	—	5	4
Environmental	2	—	—	6	6
Foreign Language	3	—	2	—	—
Guardian/Conservator	29	—	33	52	64
Immigration	41	25	70	—	28
Insurance	89	87	88	89	51
Labor Relations	464	395	488	563	355
Landlord/Tenant	215	161	182	250	63
Malpractice	271	212	276	275	197
Military	0	—	—	—	—
Mining	—	—	—	—	—
Negligence	856	791	794	812	380
Patent/Copyright	—	—	—	—	5
Public Interest	5	8	4	3	3
Real Estate	230	206	281	290	175
SSI Cases	18	28	82	51	22
Tax	34	8	—	—	—
Traffic	24	8	4	21	49
Trusts/Wills/Estates	171	167	187	227	144
Workers' Compensation	305	217	228	276	192
Total	5,573	4,585	4,982	5,511	3,468
Change from previous year	-8%	-8%	+9%	+11%	-37%

• Lawyer Referral Service

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

Each caller requesting services is given the names of three lawyers in his/her geographic area who are listed in the category requested. Each lawyer pays a \$4 surcharge to the Bar Association on each referral made, regardless of whether the caller actually contacts the lawyer as a result of the referral. The first half-hour conference may be charged at a maximum of \$50. Thereafter the fee is agreed upon by the attorney and the client.

At the end of 2006, 79 attorneys were enrolled in 33 practice categories in the Lawyer Referral Service, with total referrals of 3,468 — a 37% decline from the 5,511 referrals in 2005.



“At the end of 2006, 79 attorneys were enrolled in 33 practice categories in the Lawyer Referral Service with total referrals of 3,468 — a 37% decline from 2005.”

“ In 2006, the Board of Governors allocated \$10,000 for grants to organizations delivering Law Related Education programs and materials. These annual grants will be targeted to programs that offer practical or direct LRE programs in urban and Bush areas.”

• Pro Bono

The Alaska Bar Association's Pro Bono Director works in partnership with Alaska's legal service providers, the legal community, Pro Bono Services Committee of the Bar Association, and other organizations in Alaska to promote, educate, recognize and recruit attorneys and other professional services to assist low-income citizens. The program serves as an information clearinghouse for the membership regarding volunteer opportunities, resources, training, and other volunteer support services, as well as a contact for legal services providers.

In 2006, the Pro Bono Director, accompanied by the Bar President or a member of the Board of Governors traveled to eight communities as an outreach function and to increase volunteerism in smaller communities. The Director made presentations to 15 of the 22 substantive law sections, eight community groups, assisted in the establishment of a legal hotline for Spanish speaking citizens, spearheaded two community service projects in the areas of Tax and Elder Law, and presented at two swearing-in ceremonies of new attorneys to further establish the need for civil justice representation to Alaska's nearly 90,000 low-income citizens

• Committees of the Alaska Bar

Substantial work is accomplished through the extensive committee structure of the Alaska Bar Association.

Governance is structured around the Board of Governors and its three major committees, with administrative and day-to-day activity as the responsibility of the Executive Director and staff.

Committees of the Bar include:

- The Bar Rules Committees, which include the Committee of Law Examiners, Area Disciplinary Hearing Committees, the Mediation Panel, the Attorney Fee Dispute Review Committees, the Lawyers' Fund for Client Protection Committee, and Admission Waiver Programs.
- The Standing Committees, including Bar Polls and Elections, Continuing Legal Education, Ethics, Bar Historians, Law Related Education, Pro Bono Services, Lawyers' Assistance, Judicial Independence and Alaska Rules of Professional Conduct.
- The Substantive Law Sections, comprised of 22 peer groups practicing in specific areas of the law.

Members and chairs of these committees and sections are found in the appendices.

Membership Services

In addition to services associated with CLE and other activity areas, the Bar Association provides programs that assist members of the Bar in their practices. Complete information about these as well as other Bar programs and services can be found on the Bar's website at www.alaskabar.org.

Programs include:

- **ALPS (Attorney Liability Protection Society).** The Alaska Bar Association is a member of a multi-state, lawyer-owned insurance company. Membership in ALPS increases the availability of coverage to Alaska lawyers at rates that are predictable and which avoid dramatic fluctuations caused by policies and practices over which the lawyers have no control.

- **Computerized Legal Research.** The Bar Association sponsors a group program to provide members with access to LEXIS, a computer-assisted legal research service. Participating firms pay a \$25 monthly subscription fee. Additionally, all members' use of LEXIS aggregates to take advantage of volume discounts.
- **Loislaw.** Loislaw launched a subscription service for searchable, linked Alaska Bar CLE materials on the Loislaw website. These enhanced CLE materials are available from Loislaw for a fee of \$120 per year (\$10 per month) for Bar members.
- **Free Downloading of Alaska Bar CLE Materials.** All Alaska Bar CLE materials 1 calendar year old or older are available on the Bar website for free downloading. These materials are not searchable or linked.
- **Group Insurance.** The Bar Association sponsors a life insurance program for Bar members with States West Life Insurance Company. All members of the Association and employees of their firms are eligible. The Bar Association also sponsors a group medical program. Medical, dental, vision, life and disability coverage are available to firms ranging in size from sole practitioners to those with more than 100 employees. The plan is underwritten by Blue Cross of Washington and Alaska. The Bar Association also sponsors a disability insurance program offered by Unimerica Insurance Co.
- **The Alaska Bar Rag.** The official publication of the Bar Association is the *Alaska Bar Rag*, which is published quarterly. The editor is Thomas V. Van Flein.
- **E-News.** This weekly e-mail newsletter is sent to all members for whom the Bar has e-mail addresses. It contains announcements about Bar Association activities, court news, upcoming CLE programs, and other timely items of interest.
- **Unreported Court Opinions Database.** The Bar maintains a searchable database of unreported court opinions on the Bar website.
- **Section News.** This newsletter, containing notices of section meetings, CLE seminars, and information on new case law, is e-mailed monthly to 85% of substantive law section members. Members without e-mail are mailed a hard copy. Section meeting dates are noted on the website calendar, and the full newsletter is posted on the Bar website at www.alaskabar.org.
- **Ethics Opinions.** All Alaska Bar Ethics Opinions are published in the Alaska Bar Rag and online at the Bar's website www.alaskabar.org.
- **Public Copying Machines.** The Alaska Bar Association and the Alaska Court System are continuing a cooperative agreement to provide copying services in the Anchorage Law Library. The Alaska Bar Association has a service agreement with the Anchorage Bar Association for the purpose of providing copiers in the Anchorage Law Library for the use of all library patrons. The revenue is divided as follows: Alaska Court System 40%; Anchorage Bar Association 50%; Alaska Bar Association 10%.

ADJUNCT INVOLVEMENT

The Alaska Bar Association cooperates, partners and supports with its membership a number of programs related to the Alaska legal and justice system:

- **The Alaska Bar Foundation** was established in 1972 for the purpose of fostering and maintaining the honor and integrity of the profession, improving and facilitating the administration of justice, promoting the study of law and continuing legal education,

“The Alaska Bar Association cooperates, partners, and supports with its membership a number of programs related to the Alaska legal and justice systems.”

“The 2006 financial reports reflect total revenue of \$2,429,040 with total expenses of \$2,148,789. The net gain of \$280,251 showed improvement from the 2005 gain of \$235,673.”

administering loans and scholarships, and maintaining a law library and research center.

- **Alaska Law Review**, edited by law students at Duke University School of Law in Durham, NC, includes articles by practicing attorneys, law professors, and notes and comments by Duke law students. The Bar publishes the Review semi-annually for the education of the legal community. Bar members receive the publication as part of their Bar dues benefits.
- **Alaska Legal Services Corporation** provides legal assistance to persons lacking the financial resources to obtain private counsel.
- **Alaska Code Revision Commission**, established in 1976, reviews and recommends revisions to the laws of Alaska.
- **Alaska Commission on Judicial Conduct** includes three attorney members who have practiced law in Alaska for at least 10 years. They are appointed to the Commission by the Governor from recommendations submitted by the Board of Governors.
- **IOLTA** is an opt-out Interest on Lawyers Trust Accounts program for the placement of client trust money into interest-bearing accounts. The interest earned on each account is paid periodically to the Alaska Bar Foundation for its charitable and public service work.

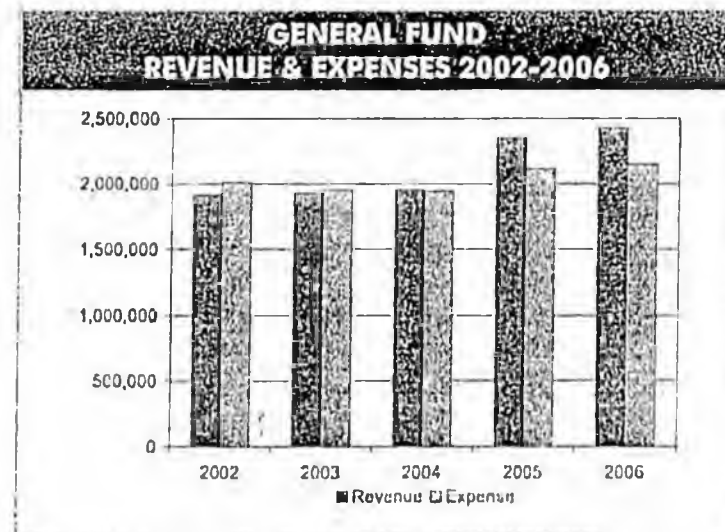
In 2006, the IOLTA program earned \$146,822 from interest, and awarded grants totaling \$104,000.

Foundation grants included: \$27,000 to the Alaska Pro Bono Program, \$4,000 to United Youth Courts of Alaska, \$55,000 to Alaska Legal Services Corp, and \$18,000 to the Alaska Immigration Justice Project.

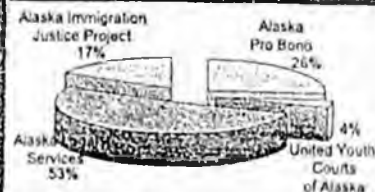
- **Alaska Judicial Council** includes three attorneys who serve staggered, six-year terms. The Council's purpose is to recommend candidates who are seeking judicial office and to conduct studies for the improvement of the administration of justice in Alaska.
- **Other Relationships.** The Bar Association maintains relationships with other, non-Alaskan organizations, usually with representation by a member of the Board of Governors or Bar executive staff. These include the American Bar Association, National Conference of Bar Presidents, Ninth Circuit Judicial Conference, National Association of Bar Executives, Association for Continuing Legal Education (ACLEA), ORACLE (MCLE Regulators), National Organization of Bar Counsel, and Western States Bar Conference.

Financial Statements & Budget

The 2006 financial reports reflect total revenue of \$2,429,040 with total expenses of \$2,148,789. The net gain of \$280,251 showed improvement from the 2005 gain of \$235,673.



IOLTA GRANTS 2006





Daniel, Hewko
& Tharp

Certified Public Accountants * A Professional Corporation

INDEPENDENT AUDITORS' REPORT

Board of Governors
Alaska Bar Association

We have audited the accompanying statements of financial position of the General Fund, the Lawyers' Fund for Client Protection and the Court System Library Fund of the Alaska Bar Association as of December 31, 2006, and the related statements of activities, functional expenses, and cash flows for the year then ended. These financial statements are the responsibility of the Association's management. Our responsibility is to express an opinion on these financial statements based on our audit.

We conducted our audit in accordance with auditing standards generally accepted in the United States of America. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe our audit provides a reasonable basis for our opinion.

In our opinion, the financial statements referred to above present fairly, in all material respects, the financial position of the General Fund, the Lawyers' Fund for Client Protection and the Court System Library Fund of the Alaska Bar Association as of December 31, 2006, and the changes in net assets and cash flows for the year then ended in conformity with accounting principles generally accepted in the United States of America.

Anchorage, Alaska
February 23, 2007

Daniel, Hewko & Tharp

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ALASKA BAR ASSOCIATION
STATEMENT OF ACTIVITIES
For the Year Ended December 31, 2006

UNRESTRICTED NET ASSETS	UNRESTRICTED NET ASSETS			Total All Funds
	General Fund	Lawyers' Fund for Client Protection	Court System Library Fund	
Revenue and Other Income				
Dues	\$ 1,702,211	\$ 28,623	\$ -	\$ 1,730,834
Admission fees	174,750	-	-	174,750
Continuing legal education	131,979	-	-	131,979
Lawyer referral fees	42,242	-	-	42,242
Annual meeting	123,905	-	-	123,905
Share from copiers	-	-	-	1,856
Rule 81	-	-	-	118,800
Other	116,590	-	-	39,067
Earnings on investments	74,909	2,210	1,856	149,329
Unrealized loss on investments	105,092	158	-	(1,225)
Total unrestricted revenue	2,429,040	44,047	190	2,511,537
Expenses				
Admissions	-	80,451	-	175,898
Board of Governors	-	-	-	42,364
Discipline	175,898	-	-	646,385
Fee arbitration	42,364	-	-	63,311
Lawyer referral	646,385	-	-	50,785
Continuing legal education	63,311	-	-	339,725
Administration	50,785	-	-	460,255
Pro Bono	339,725	-	-	79,737
Voluntary CLE	460,255	-	-	20,800
Annual meeting	79,737	-	-	122,746
Claims awarded	20,800	-	-	31,972
Rule 31 Trustee Counsel	122,746	-	-	39,700
Other	-	-	-	148,715
Total expenses	146,783	31,972	12	2,222,393
Increase in unrestricted net assets	2,148,789	39,700	12	289,144
Net assets, beginning of year	380,251	1,920	12	2,997,908
Net assets, end of year	\$ 2,112,876	\$ 1,153,037	\$ 21,139	\$ 3,287,052

The full Independent Auditor's Report and accompanying financial statements and notes are available for inspection at the Bar Association office.

APPENDIX A

Bar Bylaws and Rules Proposed, Added, Modified, or Repealed in 2006

Article IV, Section 8

September 2006: The Board amended Bylaws, Article IV, Section 8 to provide for electronic notice of Board meetings.

Article VIII, Section 3

October 2006: The Board amended Bylaws, Article VIII, Section 3 to change its parliamentary rules from "Robert's Rules of Order, Revised" to "Robert's Rules of Order, Newly Revised."

Bar Rules Proposed to the Supreme Court in 2006

Alaska Rules of Professional Conduct

September 2006: The Board proposed comprehensive amendments to the Alaska Rules of Professional Conduct based on the American Bar Association's Ethics 2000 amendments to the Model Rules of Professional Conduct.

Alaska Bar Rules

September 2006: The Board proposed an amendment to Bar Rule 61(d) correcting the name of the Child Support Enforcement Division to the Child Support Services Division.

September 2006: The Board proposed an amendment to Bar Rule 5, Section 1(b) adding the filing of the Bar Rule 64 affidavit to the requirement to file membership acceptance forms within 60 days of completion of certain admissions requirements.

September 2006: The Board proposed a new Bar Rule 43.2 permitting practice by a retired or inactive "Emeritus Attorney" for qualified legal services organizations.

September 2006: The Board proposed an amendment to Bar Rule 22(a) and an addition to Bar Rule 61(e) providing for administrative suspension of an attorney for failure to respond to an attorney grievance.

October 2006, filed January 2007: The Board proposed an amendment to Bar Rules 65 and 61 and a new Bar Rule 66 to provide for a program of mandatory continuing legal education and providing for administrative suspension for failure to comply with requirements.

October 2006, filed January 2007: The Board proposed a housekeeping amendment to Bar Rule 39(a) correcting the address of the Alaska Bar Association.

October 2006, filed January 2007: The Board proposed an amendment to Bar Rule 40(u) regarding citations to the Uniform Arbitration Act.

October 2006, filed January 2007: The Board proposed an amendment to Bar Rule 3, Section 6 changing the reapplication deadline for the July bar examination to June 15.

Bar Rules Adopted by the Supreme Court in 2006

Alaska Bar Rules

Effective October 15, 2006: The Supreme Court amended Bar Rule 43 to permit lawyers working exclusively for Alaska Legal Services Corporation on a part-time basis to practice law without admission to the Alaska Bar Association.

APPENDIX B

Bar Sections & Committees

Substantive Sections and Chairs, 2006

At the end of 2006 there were 22 active sections.
The Sections, Chairs, and Co-Chairs at the end of 2006 follow:

Administrative Law

Kathy Atkinson

Admiralty Law

Steve Shamburek & Mark Manning

Alaska Native Law

Natalie Landreth

Alternate Dispute Resolution

Glenn Cravez

Bankruptcy Law

Michelle Boulton & Gary Spraker

Business Law

Leonard Anderson & Colleen Libbey

Corporate Counsel

Marcia Davis & Carol Johnson

Elder Law

Kenneth Kirk & Una Gandbhir

Employment Law

Tom Daniel, Will Schendel & Rob Schmidt

Environmental/Natural Resources Law

Larry Albert, Larry Hartig & Russ Winner

Estate Planning/Probate Law

Susan B. Foley & Bill Pearson

Family Law

Lori Ann Colbert & SJ Lee

Health Law

Joan Wilson

Immigration Law

Kathy Atkinson

Intellectual Property Law

Jon Dawson

International Law

Andy Haas

Law & Community Health Forum

Sura Acharya & Stephanie Pawlowski

Municipal Law

John Hartle & Rhonda Fehlen-Westover

Real Estate Law

Joan Travostino

Tax Law

Charles Schuetze

Torts/Personal Injury Law

Jim Leik

Workers' Comp

Joe Kalamarides

CLE Committee Members

June 30, 2005 - June 30, 2006

Fairbanks

James DeWitt, Chair 6/2008

Gail Ballou 6/2008

Aimee Anderson Oravec 6/2007

Anchorage

Peter Ashman 6/2008

Nora Barlow 6/2006

Jason Bergevin 6/2007

David Carter 6/2007

Lea Filippi 6/2006

Bonnie Harris 6/2006

Barbara Jones 6/2008

Christine Thoreson 6/2008

Juneau

Justice Walter Carpeneti, 6/2006

Judicial Representative

Stanley Fields, 6/2007

Young Lawyer Rep

David Ingram 6/2006

Girdwood

Hollis Handler, 6/2006

Young Lawyer Rep

Bar Committees and Chairs

Alaska Bar Rag

Tom Van Flein

Alaska Rules of Professional Conduct

Jerome Jurloy

Bar Polls & Elections

Tim Middleton

Continuing Legal Education

James DeWitt

Ethics

Bob Mahoney

Historians

Leroy Barker

Judicial Independence

Susie Dosik

Law Examiners

Mary Gilson

Law Related Education

Barbara Jones

Lawyers Assistance

Vanessa White

Lawyers Fund for Client Protection

Paul Nangle

Pro Bono Service

Robert Stewart

ALASKA STATE LEGISLATURE

LEGISLATIVE BUDGET AND AUDIT COMMITTEE

Division of Legislative Audit



P.O. Box 113300
Juneau, AK 9811-3300
(907) 465-3830
FAX (907) 465-2347
legaudit@legis.state.ak.us

September 15, 2006

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
SUNSET REVIEW FOLLOW-UP
September 15, 2006

Audit Control Number
41-20050-06

This follow-up audit was conducted as required by AS 44.66.050 and under the authority of AS 24.20.271(1) and a special request by the Legislative Budget and Audit Committee. Alaska Statute 44.66.050(c) lists criteria to be used to assess the demonstrated public need for a given board, commission, agency, or program subject to the sunset review process. Currently, under AS 08.03.010(c)(2), the Board of Governors of the Alaska Bar Association is scheduled to terminate on June 30, 2007.

In our opinion, the termination date for this Board should be extended. The regulation and licensure of attorneys contributes to the protection of the public's welfare. We recommend the legislature extend the termination date to June 30, 2014.

The audit was conducted in accordance with generally accepted government auditing standards. Fieldwork procedures utilized in the course of developing the findings and discussion presented in this report are discussed in the Objectives, Scope, and Methodology section.

Pat Davidson, CPA
Legislative Auditor

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OBJECTIVES, SCOPE, AND METHODOLOGY

In accordance with the intent of Title 24 and Title 44 of the Alaska Statutes (sunset legislation), and a special request from the Legislative Budget and Audit Committee, we have performed a follow-up of our prior audit, *Board of Governors of the Alaska Bar Association, November 28, 2005*, (Audit Control No. 41-20040-06). Our audit included review of certain activities of the Board of Governors of the Alaska Bar Association (Board). Under AS 44.66.050(a), the legislative committee of reference is to consider this report during the legislative oversight process to determine whether the Board's termination date should be extended. Currently, AS 08.03.010(c)(2) requires the Board to terminate on June 30, 2007. If the legislature takes no action to extend the termination date, the Board will have one year from that date to conclude its operations

Objectives

There are three specific objectives of our report. They are:

1. To provide a current status on the recommendations made in the prior report.
2. To provide updated financial and occupational statistics information.
3. To provide information on organizational, budgeting/appropriation, and disciplinary structure alternatives existing in other states.

In addition, we will report anything that comes to our attention during this review that would change our prior report conclusions and analysis of public need.

Scope and Methodology

The focus of our review was identifying the current status of issues addressed in our prior audit report and gathering information related to organizational, budgeting/appropriation, and disciplinary structures existing in other states. Our audit was a follow-up to the report of November 28, 2005 that reviewed Board operations and activities of the Bar from January 2002 through June 30, 2005.

We reviewed and evaluated the following:

- Applicable statutes, Alaska Bar Rules, Alaska Rules of Professional Conduct, and bar association bylaws
- American Bar Association (ABA) Model Rules
- Board minutes
- Alaska Bar Association annual reports

- Attorney discipline reports
- Audited financial statements of the Board
- Attorney examination and admission results
- Lawyer referral service reports
- Websites of National Conference of Bar Examiners (NCBE), American Bar Association (ABA), and other states' bars
- Various reports and publication of the ABA and the NCBE

In addition, we conducted interviews of the Board staff, including the Executive Director, Board Counsel, and Comptroller.

ORGANIZATION AND FUNCTION

The practice of law in the State of Alaska is regulated by the Board of Governors of the Alaska Bar Association (Board). The Board consists of 12 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 (Bar).

The two primary functions of the Bar are the admission and discipline of its members. To accomplish these and other functions, the Bar operated with a 2006 budget of \$2,385,811. Funding is provided primarily by membership dues (\$550 per year), admission fees, lawyer referral fees, continuing legal education charges, administrative discipline fees, and interest income.

- Admission Function The Board is responsible for screening applicants for admission to the Bar. 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 Bar'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.

The Board of Governors of the Alaska Bar Association (as of June 1, 2006)
<i>John J. Tiemessen , President Second/Fourth Judicial District</i>
<i>Matthew W. Claman, President-elect Third Judicial District</i>
<i>Sidney K. Billingslea, Vice-president Third Judicial District</i>
<i>Philip M. Pallenberg , Treasurer First Judicial District</i>
<i>William A. Granger, Secretary Public Member</i>
<i>Christopher R. Cooke Member At Large</i>
<i>Mitchell A. Seaver First Judicial District</i>
<i>Joseph N. Faulhaber Public Member</i>
<i>Michael J. Hurley Public Member</i>
<i>Allison Mendel Third Judicial District</i>
<i>Krista S. Stearns Third Judicial District</i>
<i>Jason A. Weiner Second/Fourth Judicial District</i>

- Miscellaneous Functions The Bar also performs a wide variety of miscellaneous functions that include providing classes for and accrediting providers of continuing legal education, a lawyer referral service, client mediation, and fee arbitration with clients. In conjunction with Alaska Legal Services Corporation, the Bar sponsors the Alaska Pro Bono Program. The Bar provides a number of other member services including attorney liability protection, group insurance, the *Alaska Bar Rag*, ethics opinions, and alcohol and drug counseling. In addition the association provides grants through the Alaska Bar Foundation (ABF) from earnings of interest on lawyers trust account (IOLTA) program. IOLTA grants are used to support legal services for the economically disadvantaged and improve the administration of justice.

The Alaska Bar Association's office is located in Anchorage and is currently staffed by 18 full-time and job-share employees.

The Board's decision involving examination and discipline may be appealed to the Alaska Supreme Court. The Alaska Supreme Court issues the order of admission to the bar association and lawyer disciplinary sanctions involving disbarment, suspension, probation, and public censure.

REPORT CONCLUSIONS

Prior Audit Conclusion

The objective of our prior audit, *Board of Governors of the Alaska Bar Association, November 28, 2005*, (Audit Control No. 41-20040-06) was to determine if the Board of Governors of the Alaska Bar Association (Board) should continue to exist, primarily based on the results discussed in the Analysis of Public Need section of the report.

The conclusion of the prior report was that the termination date of the Board of Governors of the Alaska Bar Association should be extended. Since the first three attorneys were admitted to the practice of law in Alaska in 1884, membership has grown to its current level of 2,839 active members practicing in the State. The regulation and licensing of qualified attorneys contributes to the protection of the public's welfare.

The Board, through the Alaska Supreme Court, protects the public by ensuring that persons licensed to practice law are qualified. It also provides for the investigation of complaints and has established a disciplinary process designed to promote licensed individuals to act in a competent and professional manner. Chapter 58, SLA 2005 amended AS 08.03.020(c) to increase, from four to eight years, the period for which a board scheduled for termination may be continued or reestablished by the legislature. As such, we recommended that the legislature extend the termination date of the Board to June 30, 2014.

Nothing came to our attention during our current assessment that would give rise to a change in our conclusion or recommendation regarding extension of the termination date.

Current Audit Results

The objective of this audit is to provide a current status on the recommendations made in the prior report, provide updated financial and occupational statistics information, and provide information on organizational, budgeting/appropriations, and disciplinary structure alternatives existing on other states.

We have reiterated and provided a current status of the three recommendations made in our prior audit, *Board of Governors of the Alaska Bar Association, November 28, 2005*, (Audit Control No. 41-20040-06). These recommendations, if implemented, will improve the effectiveness of the Board's goals and operations. See the Findings and Recommendations section of this report.

We have also incorporated the financial information and occupational statistics, from Appendices A, B, C, and D in our prior audit, with updates for more current periods and more recent activities. See Appendices A, B, C, and D of this report.

And finally we have included, for discussion, information on possible organizational alternatives from a limited review of other states in the Additional Auditor Comments section of this report.

FINDINGS AND RECOMMENDATIONS

In the prior audit, *Board of Governors of the Alaska Bar Association, November 28, 2005*, (Audit Control No. 41-20040-06) there were three recommendations, two of which have been fully implemented. They are reiterated below, with a current status, as Recommendations No. 1 through 3.

Recommendation No. 1

The Board should recommend to the Alaska Supreme Court that mandatory minimum CLE for attorneys be adopted.

Prior Finding

Continuing legal education for attorneys is only voluntary rather than required. The Supreme Court adopted a voluntary CLE under Bar Rule 65 in 1999. It encouraged all active members of the Alaska Bar Association (Bar) to complete at least 12 credit hours of approved CLE, including one credit hour of ethics. Incentives, such as reduction of bar dues and eligibility to participate in the Lawyer Referral Service are authorized to those who comply with the bar rule.

The Board implemented a three-year voluntary CLE pilot project effective September 2, 1999 which ended in December 2002. Each member of the Bar was required to report at the end of each year the CLE hours earned during the preceding year on the prescribed CLE reporting form. The average participation rate during the pilot program years was 46%. The Board eliminated the voluntary CLE reporting requirement at the end of the pilot program. However to encourage completion and reporting of approved CLE, the Bar continued its reduced annual dues to those attorneys who certify completion of CLE on their annual dues statement. The reported average participation rate for CLE has dropped from 46% to 38% for the two years after the end of the pilot program.

Forty-one legal jurisdictions in the United States have a mandatory CLE education requirement for attorneys desiring to practice law in their jurisdiction. Mandatory CLE requirements range from 8 to 27 credit hours per year with the majority of the jurisdictions requiring between 12 and 15 hours. Specific course requirements vary.

Many professions require continuing education to maintain licensure in Alaska. For example, Alaska-licensed dentists, doctors, pharmacists, and psychologists are all required to meet minimum continuing education standards.

The Board's major concern regarding mandatory CLE is an appearance of a conflict of interest. Currently, the Bar both accredits CLE providers and provides CLE. The American Law Institute-American Bar Association study released in 1998 recommended creating a

distinct and separate department or organization, with separate staff, to regulate and sponsor CLE so as to avoid the appearance of conflict of interest.

The Board has recently established a joint task force on mandatory continuing legal education. The memberships include three members of the Board and a representative each from the Alaska Supreme Court and the Judicial Council.

Overall, we believe a mandatory minimum continuing legal education requirement will enhance the membership's continued professional competence and raise the public's confidence in attorneys. The Board should encourage the Supreme Court to adopt an Alaska Bar Rule requiring mandatory minimum continuing legal education.

Legislative Audit's Current Position

In their response to the prior recommendation, the Board noted there was sentiment on the Board in favor of mandatory continuing legal education. They stated that despite several potential obstacles it was probable that they would approve a mandatory CLE rule and recommend its adoption to the Alaska Supreme Court.

At their January 2006 board meeting, the Board heard reports from the aforementioned joint task force on mandatory CLE. They then voted to table related discussions until their April 2006 meeting and to set up an informal meeting with the Supreme Court to discuss mandatory CLE.

A luncheon meeting with the five members of the Supreme Court was held in conjunction with the April 2006 board meeting. Mandatory CLE was one of the topics discussed. The Bar was told to make a recommendation to the court and submit a request to take action if they wanted the court to review the issue.

The Board subsequently voted at their April 2006 meeting to publish a proposed amendment to the Bar Rules providing for a mandatory CLE program. The publishing of the proposed change is the next required step in the court established process governing the adoption of new or modified Bar Rules.

The proposed rule change was published, as required, in April 2006. Solicited comments from members of the Bar were accepted through August 15, 2006. The issue of mandatory CLE was on the agenda for the Board of Governors' September 2006 meeting.

Most recently, the Board voted at their September 7, 2006 meeting to send the mandatory CLE rule, as published, to the Alaska Supreme Court. In effect, they have now implemented our prior recommendation.

The Board should consider developing a database of disciplined lawyers in the association's website.

Prior Finding

While current procedures are adequate, the Board could increase efficient and effective communication of lawyer discipline to the public by publishing their discipline list on their website.

Board procedures provide for public notice of all attorneys who have been disbarred, suspended, put on probation, publicly censured, or reprimanded. Currently, the Board publishes the names of these attorneys 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. Notice of all disciplines imposed by the court, all orders granting reinstatements, and all public reprimands are also transmitted to the American Bar Association National Lawyer Regulatory Data Bank. These are long-standing means of providing public notice; however, 15 states currently also publish their lawyers discipline list on their websites.

The Board should consider developing a database for the Bar's website of the disciplines imposed against lawyers. It would be an effective medium in addition to the others used to inform the public of lawyers who have been disciplined. It will enhance public notification and client protection through increased accessibility of discipline information.

Legislative Audit's Current Position

In their response to the prior recommendation, the Board agreed that having public discipline information available on their website was a desirable goal and that they would work to that end. Although some steps have been taken towards the possible implementation of our recommendation, attorney discipline information is not yet available via link from the Alaska Bar Association web-site.

The Alaska Bar Association has joined a consortium of other state and local Bars and through this group entered into a long-term contract aimed at replacing their legacy database with a new member management system. A module created specifically to accommodate lawyer discipline data is planned for the new system. By design, this module is expected to provide a technologically viable means to publish lawyer disciplinary information on the Alaska Bar Association web-site. The Board anticipates that the new discipline module of the replacement database, including online reporting of public discipline, will be operational in the summer of 2007.

Legislative audit's position remains unchanged. We continue to believe the Board should develop a database of disciplined lawyers to which access is provided the public via the association's website. We encourage continued efforts in this area. Client protection will undoubtedly be improved with increased accessibility to discipline information.

Recommendation No. 3

The Board should adopt a due date for the annual report to ensure it is made available to the Supreme Court, the legislature and the public on a timely basis.

Prior Finding

The Board's annual reports for the three years 2002 through 2004 were not prepared timely.¹ In fact, the 2004 report is still in draft format. AS 08.08.085 requires the Board to prepare an annual report and notify the legislature when it is available; however, it does not specify a due date. The annual report is normally made available to the legislature in the spring of the subsequent year. For the past three years, the executive director has placed a low priority on the preparation of the annual reports.

The Board's annual report contains information on matters relating to admission, discipline of members, modification or repeals of bylaws, and bar rules proposed to or adopted by the Supreme Court. The annual report may also be used to recommend changes to the Alaska Bar statutes. Information provided in the report will be more useful and relevant to public officials and the public when provided in a timely manner.

The adoption of a specific due date by the Board in its bylaws or standing policies should ensure the timely preparation of the Board's annual report.

Legislative Audit's Current Position

In their response to the prior recommendation, the Board stated they would take steps to amend their Standing Policies to set a deadline for submission of the Annual Report. They noted that the required amendment would be proposed at the January 2006 Board of Governors meeting. This did not occur. An amendment was also not proposed at the April 2006 Board of Governors meeting.

Although the 2005 Annual Report was completed timely, until recently no action was taken to implement our recommendation. The issue of formally adopting an annual report due date was on the agenda for the Board of Governors' September 2006 meeting.

Most recently, the Board voted at their September 7, 2006 meeting to amend their Standing Policies to set April 15 as the due date for the completion of the preceding year's annual report. In effect, they have now implemented our prior recommendation.

AUDITOR'S COMMENTS

¹ We considered completion of the annual report to be untimely if it was not completed within four months after the end of the calendar year.

Prior Auditor Comments

As delineated in our prior audit, *Board of Governors of the Alaska Bar Association, November 28, 2005*, (Audit Control No. 41-20040-06) the sunset process allows for an objective review of various boards and commissions to determine if the public need for protection continues to exist and if the entity is satisfying that need. The independent conclusions of a review agency, such as this Division, provide certain assurances that entities such as the Board of Governors of the Alaska Bar Association (Board) are operating in the public interest. Our overall conclusion at that time was that Board was operating in the public interest and that there was a continuing public need for the attorney admission and discipline functions of the Alaska Bar Association (Bar). Nothing came to our attention during our current assessment that would give rise to a change in our position or conclusions.

Whether the discipline function is to be controlled by government or by attorneys is a policy-level determination that should be carefully considered by the Supreme Court, the Board, and the legislature. The following comments are again intended to assist in such consideration.

Self-regulation, whether by industries or profession, has always been viewed skeptically by the citizenry. There is often a perception of conflict of interest in whether actions are for the benefit of the organization's membership or for the citizens' benefit. The attorney discipline system of the Bar is a self-regulatory function that may suffer from this public perception.

The Board is comprised of 12 members, of which nine are attorney members elected by the Bar's membership and three public members appointed by the governor. As the majority is elected by the membership, the Bar's discipline activities will likely be perceived as self-regulation.

We continue to believe that the attorney discipline system in Alaska could be a government function. In at least 22 states, discipline is carried out by a state government agency. In 2000, Nebraska's Supreme Court moved the disciplinary function out from their bar association to the Supreme Court Counsel for Discipline.

The American Bar Association concurs and, in fact has recommended that the disciplinary function of state bars be under the direct control of the Supreme Court. The American Bar Association's *Model Rules for Lawyer Disciplinary Enforcement*, August 1993,² recommended the following:

The disciplinary system should be controlled and managed exclusively by the state's highest court and not the state or local bar association [T]he disciplinary process should be directed solely by the disciplinary policy of the court and its appointees and not

² The *Model Rules for Lawyer Disciplinary Enforcement*, August 1993 was amended on August 5, 1996, on February 8, 1999 and on August 12, 2002. The 1993 recommendation is in the commentary under Rule 2.

influenced by internal politics of the bar association ... [T]he disciplinary system should be free from even the appearance of conflicts of interest or impropriety.

The following options should be considered in a move away from attorney self-regulation:

- Disciplinary investigations performed by Alaska Court System employees
- Place disciplinary function under the Supreme Court with a Disciplinary Board appointed by the court

There should be no general fund net cost to either of these options. They would be paid by attorney licensing fees, the same as they currently are and as they are for other occupations. Fees are established such that full costs are recouped.

From a citizen's perspective, there are no advantages to allowing the legal profession to self-regulate. However, there will always be the disadvantage of at least the perception of inadequate discipline. In a move away from self-regulation, the legal profession and the State's citizens would likely benefit.

Additional Auditor Comments

One of the objectives of the current audit is to provide information on organizational, budgeting/appropriations, and disciplinary structure alternatives existing on other states. The following comments address these issues. Our supporting analyses were not intended to be comprehensive, but address those areas we were able to cover within the scope of the current review.

The manner in which lawyer admission and disciplinary functions are organized varies widely from state to state. In some jurisdictions both functions are handled by the same entity, similar to the manner in which these functions are addressed in Alaska. In other instances, this is not the case. It is more likely that state government agencies operating under that state's Supreme Court will perform these functions in states where there is a voluntary Bar. In states with mandatory, or unified, Bars it is more common for the state Bar Association to be involved with these functions at least to some degree.

During our current audit we determined that the annual Bar Association budget in at least two other states, both of which have mandatory state Bars, is subject to legislative appropriation. This is not the case in Alaska or the majority of states with unified Bars. In one of those states (Alabama) all practicing attorneys pay an annual license fee, which goes into a special trust fund. From this fund, the legislature makes an appropriation for the use of the Alabama State Bar. Virginia operates in a somewhat similar manner.

In direct response to the Legislative Budget and Audit Committee's request for information regarding organizational, budgeting/appropriations, and disciplinary structures used in other states, the Alaska Bar Association's executive director conducted an email/phone survey of

the Bar Associations in states with unified Bars. Eight specific questions were posed and a 100% response rate was attained. The questions posed were as follows:

1. Are you a state agency, state instrumentality, public corporation, or other (please specify)?
2. Is your budget approved by Board of Governors (governing board), Supreme Court, legislature, or other (please specify)?
3. Are your funds considered to be part of the budget of Bar Association, Supreme Court, legislature or other state agency, or other (please specify)?
4. Are you receiving appropriations (funds) from the legislature?
5. Do you administer admissions?
6. Do you administer discipline?
7. Do you administer mandatory CLE?
8. Do you provide CLE programs?

We have included the executive director's survey summary as Appendix E to this report for information purposes only. Although we did not audit the survey results, we did find the summary substantially supported by the survey responses provided to the auditors.

Based on our limited research, it appears that a wide range of structures exist on which modifications to Alaska's system could be modeled in the event a policy-level decision is made to revamp our current system. A more extensive, detailed research project could be undertaken at that time by legislative legal and research services, the Board, and the Court System when working on proposed changes.

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ANALYSIS OF PUBLIC NEED

Nothing came to our attention during our current assessment that would give rise to a change in our position or the conclusions drawn in our prior audit, *Board of Governors of the Alaska Bar Association, November 28, 2005*, (Audit Control No. 41-20040-06). Included here is a reiteration of the analyses presented in our prior report.

The following analyses of the Board of Governors of the Alaska Bar Association (Board) activities relate to the public-need factors defined in AS 44.66.050(c). These analyses are not intended to be comprehensive, but address those areas we were able to cover within the scope of our review.

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

The Board admits applicants to practice law through an examination process that was designed in consultation with a national expert. The Board also admits members by motion for reciprocity. This option is limited to attorneys in the active practice of law for five of the last seven years in states with which Alaska has a reciprocal agreement.

Additionally, the Alaska Bar Association (Bar) also provides services that are more typically provided by professional associations rather than regulatory agencies. These include:

- The Bar has a committee to administer the *Lawyers' Fund for Client Protection*. This fund receives \$10 from each active member's annual dues. The fund is used to reimburse clients for losses³ caused by dishonest conduct⁴ of a lawyer which is not covered by insurance or fidelity bond, whether of the lawyer or the client. The maximum amount payable to any individual is the lesser of \$50,000 or 10% of the fund amount at the time of the award. The aggregate maximum amount that may be paid to all claimants under a fee arbitration case arising from the dishonest conduct of a particular lawyer is \$200,000.
- Since 1976, the Bar has maintained a *Fee Arbitration* process allowing a client to resolve attorney fee disputes that have not been determined by statute or court rule or decision. For fee disputes of \$5,000 or less, the process provides for a single arbitrator. Disputes over \$5,000 are heard by a three-member panel that consists of two attorneys and one

³ Reimbursable losses are losses of money, property, or other things of value caused by the lawyer when: (1) acting in a fiduciary capacity customary to the practice of law, such as a administrator, executor, trustee, guardian or conservator; (2) acting as an escrow holder; or (3) filed within three years after the claimant knew or should have known of the dishonest conduct of the lawyer (Alaska Bar Rule 45).

⁴ Alaska Bar Rule 45 defines "dishonest conduct" as wrongful acts committed by a lawyer in the manner of defalcation or embezzlement of money, or the wrongful taking or conversion of money, property or other things of value.

public member. Failure by an attorney to participate in this process may be grounds for disciplinary action.

- The Bar also offers a mediation process that attempts to resolve the differences between attorneys and their clients. This process is not used when the issues are of a very serious nature such as allegations of intentional dishonesty, material misrepresentation, or the alleged conduct could lead to suspension or disbarment. Mediation requires the approval of both parties and the Bar counsel. The agreement is considered a contract and is legally enforceable in court.
- The Bar operates a *Lawyer Referral Service* funded by enrollment fee from participating members. Members of the public can call an instate toll free number and obtain the names of three attorneys who have listed themselves as practicing law in a certain field. Lawyer Referral Service statistics are shown in Appendix D (*NOTE: Appendix D included in this report has been updated with additional information obtained during the current audit*).
- The Bar provides grants to support legal services for the economically disadvantaged and improve the administration of justice through the Alaska Bar Foundation from earnings of the Interest on Lawyers Trust Account.
- The Bar jointly sponsors the Alaska Pro Bono Program with the Alaska Legal Services Corporation in which attorneys provide free legal advice to low-income Alaskans.
- The Bar also has a *Lawyer Assistance Committee* that provides assistance and counseling to bar applicants and lawyers with drug and alcohol problems.

Determine the extent to which the operation of the board, commission, or agency program has been impeded or enhanced by existing statutes, procedures, and practices that 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. In 2004, the Board amended Article VII Section 1(a) of the bylaws to increase fees for additional substantive law section membership and associate⁵ members. The Board also amended Article III Section 1(a) of the bylaws to increase active members' dues to \$550, effective in the 2005 membership year.

The 2005 budgeted revenue is \$2,195,584. The Bar has a cumulative revenue surplus of \$2,722,989 as of the end of calendar year 2004. (See Appendix A – *NOTE: Appendix A included in this report has been updated with additional information obtained during the current audit*). The maintenance of a substantial revenue surplus is not consistent with the

⁵ A member of the public may join the Bar's section membership as an associate member. Associate members are nonvoting members and may not serve on the section's executive committee.

other professions regulated by the State, under the jurisdiction of the Department of Commerce, Community, and Economic Development – Division of Corporations, Business, and Professional Licensing. Those professional fees are required by statute to be set so the total fee collections approximately equal the actual regulatory cost of the occupation.

In August 2004, the Board formed the Bar Services and Funding Committee “to study and propose new ways to utilize bar dues and a portion of the unappropriated capital to advance the profession of law in Alaska and to benefit the members of the Bar and the practice of law in general.”

Determine the extent to which the board, commission, or agency has recommended statutory changes that 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, Bylaws, and Rules of Professional Conduct that govern the Bar policies and procedures. The Board also had addressed the two recommendations presented in their prior sunset review. See Findings and Recommendations section.

Determine 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 that it has provided.

The Bar membership is involved in its operations. This operation may include service on one of the eight standing committees or five Alaska Bar Rules committees. It may include participation in one of the 24 sections or group of members with similar specialization (bankruptcy, criminal law, etc).

In addition to the above committees, members of the Bar may be appointed to serve in an adjunct organization, such as the Alaska Legal Services Corporation. Also, special committees are established from time to time by the President with the advice and consent of the Board.

The Bar publishes all proposed changes to the Alaska Bar Rules in its quarterly publication, the *Alaska Bar Rag*, which is distributed to all members of the Bar 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 advertises board meetings in four Alaska newspapers, the *Alaska Bar Rag*, and the Alaska Public Online Notice System. Adequate time is allotted, and members of the general public are encouraged to make comments at all meetings.

Determine 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, nonattorneys serve on disciplinary hearing committees and fee arbitration panels throughout the State. The membership of the Joint Task Force on Mandatory Continuing Legal Education established in May 2005 includes a public member of the Board.

As mentioned above, the Bar publicly advertises meetings of the Board. Time is allotted at all board meetings for public comments.

Determine 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 victims' rights or the office of the ombudsman have been processed and resolved.

The Bar is an instrumentality of the State but is not administratively assigned to any department. However, the Alaska Supreme Court exercises a great degree of oversight. No complaints or investigations specifically involving the actions and activities of the Board were filed with the Office of the Ombudsman during our audit period.

The Board has a lawyer discipline process for investigation of complaints alleging attorney misconduct. Sanctions are imposed on those found in violation of the Rules of Professional Conduct. All public disciplinary action is subject to Supreme Court review. This process was developed through a cooperative effort of the Alaska Supreme Court, the Board, Bar staff, and a review team from the American Bar Association's Standing Committee on Professional Discipline.

An average of 215 complaints is received annually. Analyses of the complaints filed during the audit period shows that all grievances were reviewed, but relatively few were pursued beyond the initial investigation. Over 80 percent of the grievances received were not accepted for investigation due to lack of merit. Closure of grievances cases with sanctions such as disbarment, suspension, public censure, public reprimand, and admonition appear reasonable.

Over 600 complaints were filed during 2002, 2003, and 2004; these resulted in 135 cases being opened and the remaining complaints were not accepted. The investigations resulted in 50 cases⁶ with sanctions against a total of 16 attorneys. Six attorneys were disbarred, six were suspended, two were publicly reprimanded, and two were publicly censured. Discipline statistics are shown in Appendix B (*NOTE: Appendix B included in this report has been updated with additional information obtained during the current audit*).

⁶ A single attorney may have multiple cases filed against them.

Board procedures provide for public notice of all attorneys who have been disbarred, suspended, put on probation, publicly censured, or reprimanded. The names of these attorneys 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. Notice of all disciplines imposed by the court, all orders granting reinstatements, and all public reprimands are transmitted to the American Bar Association's National Lawyer Regulatory Data Bank. However, as discussed in Recommendation No. 2, the Board does not publish the names of lawyers who were suspended, disbarred, publicly reprimanded or censured on their website.

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

The Board admits applicants to practice law through an examination process that was designed in consultation with a national expert. Admission is contingent on the following:

- Passing the Alaska Bar Examination
- Passing the Multi-state Professional Responsibility Examination
- Passing character investigation to determine if the applicant is of good moral character
- Attendance⁷ of a mandatory three hour ethics presentation by the Board.

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

Examination and admission statistics are shown in Appendix C (*NOTE: Appendix C included in this report has been updated with additional information obtained during the current audit*).

The Bar offers continuing legal education for its membership and maintains an educational library. The Board established a three-year voluntary continuing legal education (CLE) project which required completion of a minimum of twelve hours of CLE, including one hour in ethics each calendar year. The Board compiled statistics of member participation and reported the information to the Supreme Court each year. The project expired in 2002 and the Board continued the voluntary CLE program. However, as discussed in Recommendation No. 1, the voluntary CLE average participation of 46 percent during the pilot period (September 19, 1999 – December 31, 2002) has declined during the subsequent two years

⁷ This requirement may be fulfilled by watching the ethics videotape and signing an affidavit.

(2003 through 2004) to 38 percent. Forty-one states, excluding Alaska, currently have mandatory CLE requirements which range from eight to twenty-seven credit hours per year.

As of 2004, lawyers located outside of Anchorage may participate in CLE through audio-video presentations available in three Alaska communities – Fairbanks, Juneau, and Kenai. Other communities may request a group video replay.

Determine 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 and the Auditor Comments sections of this report.

Determine 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 or interest.

The Board allows special accommodations for applicants who have been determined to have disabilities.

We did not find any evidence that the Board was not complying with state personnel laws, including affirmative action in qualifying applicants for licensure. In no instance did the Board deny an applicant a license based on personal attributes.

Determine the extent to which the board, commission, or agency has effectively attained its objectives and purposes and the efficiency with which the board, commission, or agency has operated.

Article I Section 3 of the association bylaws sets out the purposes of the Bar which include:

1. To cultivate and advance the science of jurisprudence
2. To promote reform in the law and in judicial procedure
3. To facilitate the administration of justice
4. To encourage legal education for the membership
5. To increase the public service and efficiency of the bar

To achieve these purposes the Bar has established and maintains various committees as well as performs certain functions. For example, the Bar maintains a Law Related Education Committee to present programs to the community and school system to aid in the understanding of the law and legal system. The committee is divided into subcommittees in

the communities of Anchorage, Fairbanks, Juneau, Kenai, Mat-Su, and other communities where the Board president sees the need to appoint a subcommittee.

The Board appoints three attorneys to serve staggered six-year terms on the Alaska Judicial Council. The Council recommends candidates for judicial office and conducts studies for the improvement of the administration of justice in Alaska. As council members, they survey, investigate, and evaluate incumbent justices and judges standing for retention. The evaluation is published in the Lieutenant Governor's Official Elections Pamphlet. They are also involved in screening of applicants for the state public defenders office.

The Bar's continuing legal education committee consisting of 15 members assists the continuing legal education director in overseeing the presentation of substantive legal education programs to educate Alaskan lawyers, about developments in the field of law, and emphasize their ethical responsibilities. The Bar has conducted 100 live, 6 satellite, 49 conventions, and 2 video conference CLE presentations for 1,096, 1,066, and 973 attorney participants from calendar year 2002 through 2004, respectively.

Determine the extent to which the board, commission, or agency duplicates the activities of another governmental agency or the private sector.

The Board does not duplicate the activities of another governmental agency. However, many of its activities are those typically performed by a professional association. As discussed earlier, some of these more typical private sector activities include such things as fee arbitration, referral services, and sponsorship of a pro bono program.

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APPENDICES

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APPENDIX A

Alaska Bar Association Funds

The Alaska Bar Association (Bar) maintains three separate funds for accounting and reporting purposes. These include a General Fund, the Lawyers' Fund for Client Protection, and the Court System Library Fund. The following describes these funds and their purpose.

- General Fund – This fund is the Bar's operating fund. It accounts for the financial resources and transactions not accounted for in other funds.
- Lawyers' Fund for Client Protection – In accordance with Alaska Bar Rules promulgated by the court system, this fund is maintained solely for the purpose of making reimbursements to clients who have incurred noninsured losses of money or property as a result of dishonest conduct by attorneys. Related trustee counsel compensation may be paid from this fund in certain circumstances.
- Court System Library Fund – This fund is maintained by the Bar, pursuant to a cooperative agreement with the Alaska Court System and the Anchorage Bar Association. Its purpose is to account for the portion of receipts generated from copying services provided in the Anchorage Law Library that are to be used for purchasing legal research resources for the Alaska Court Libraries as designated by the State Law Librarian.

APPENDIX A
(continued)

Alaska Bar Association
Revenues Compared with Expenses
Calendar Year 2005

	General Fund	Lawyers' Fund for Client Protection	Court System Library Fund	Total All Funds
Revenues				
Dues	\$1,674,351	\$ 28,296		\$ 1,702,647
Admission Fees	161,875			161,875
Continuing Legal Education	153,271			153,271
Lawyer Referral Fees	54,461			54,461
Annual Meeting	122,414			122,414
Earnings on Investments	82,552	45,574	\$ 91	128,217
Unrealized Loss on Investments	(49,768)	(27,902)		(77,170)
Other	152,113	14,026	6,730	172,869
Total Revenues	2,351,769	59,994	6,821	2,418,584
Expenses				
Admissions	176,178			176,178
Board of Governors	42,959			42,959
Discipline	623,605			623,605
Fee Arbitration	59,326			59,326
Lawyer Referral	47,641			47,641
Continuing Legal Education	356,375			356,375
Administration	448,167			448,167
Annual Meeting	122,145			122,145
Other	239,700	27,557	12	267,269
Total Expenses	2,116,096	27,557	12	2,143,665
Increase (decrease) in net unrestricted assets	235,673	32,437	6,809	274,919
Unrestricted Net assets at beginning of year:				
Designated for Working Capital	675,000	0	0	675,000
Designated for Asset Acquisition	120,665	0	0	120,665
Undesignated	801,287	1,113,741	12,296	1,927,324
Total at Beginning of Year	1,596,952	1,113,741	12,296	2,722,989
Unrestricted Net assets at end of year:				
Designated for Working Capital	700,000	0	0	700,000
Designated for Asset Acquisition	129,375	0	0	129,375
Undesignated	1,003,250	1,146,178	19,105	2,168,533
Total at End of Year	\$ 1,832,625	\$ 1,146,178	\$ 19,105	\$ 2,997,908

Source: Alaska Bar Association's Audited Financial Statements for 2004 and 2005.

APPENDIX A
(continued)

**Alaska Bar Association,
General Fund Revenues Compared with Expenses
Calendar Years 2002 through 2005**

	2002	2003	2004	2005
Revenues				
Dues	\$ 1,332,811	\$ 1,346,808	\$ 1,361,672	\$ 1,674,351
Admission Fees	156,055	186,905	146,175	161,875
Continuing Legal Education	111,740	132,830	102,121	153,271
Lawyer Referral Fees	59,462	46,520	51,816	54,461
Annual Meeting	97,071	94,042	117,189	122,414
Earnings on Investments	100,098	76,593	61,403	82,552
Unrealized Loss on Investments	(357)	(3,041)	(29,993)	(49,268)
Other	49,596	42,416	142,845	152,113
Total Revenues	1,906,476	1,923,073	1,953,228	2,351,769
Expenses				
Admissions	163,646	171,525	170,888	176,178
Board of Governors	37,540	40,728	33,637	42,959
Discipline	637,541	576,469	603,493	623,605
Fee Arbitration	53,548	54,614	57,685	59,326
Lawyer Referral	45,682	44,878	47,995	47,641
Continuing Legal Education	420,517	421,767	312,481	356,375
Administration	378,578	392,549	422,902	448,167
Annual Meeting	105,371	99,018	105,871	122,145
Other	172,512	151,708	187,090	239,700
Total Expenses	2,015,035	1,953,256	1,942,042	2,116,096
Increase (decrease) in net unrestricted assets	(108,559)	(30,183)	11,186	235,673
Unrestricted Net assets at beginning of year:				
Designated for Working Capital	200,000	200,000	675,000	675,000
Designated for Asset Acquisition	118,871	117,928	107,990	120,665
Undesignated	1,405,637	1,298,021	802,776	801,287
Total at Beginning of Year	1,724,508	1,615,949	1,585,766	1,596,952
Unrestricted Net assets at end of year:				
Designated for Working Capital	200,000	675,000	675,000	700,000
Designated for Asset Acquisition	117,928	107,990	120,665	129,375
Undesignated	1,298,021	802,776	801,287	1,003,250
Total at End of Year	\$ 1,615,949	\$ 1,585,766	\$ 1,596,952	\$ 1,832,625

Source: Alaska Bar Association's Audited Financial Statements for 2001 through 2005.

Alaska Bar Association
General Fund Revenues Compared with Expenses
Calendar Years 2003 through 2006

	2003	2004	2005	2006
Revenues				
Dues	\$ 1,346,808	\$ 1,361,672	\$ 1,674,351	\$ 1,702,211
Admission Fees	186,905	146,175	161,875	174,750
Continuing Legal Education	132,830	102,121	153,271	131,979
Lawyer Referral Fees	46,520	51,816	54,461	42,242
Annual Meeting	94,042	117,189	122,414	123,905
Earnings on Investments	76,593	61,403	82,552	105,092
Unrealized Loss on Investments	(3,041)	(29,993)	(49,268)	(6,638)
Other	42,416	142,845	152,113	155,499
Total Revenues	1,923,073	1,953,228	2,351,769	2,429,040
Expenses				
Admissions	171,525	170,888	176,178	175,898
Board of Governors	40,728	33,637	42,959	42,364
Discipline	576,469	603,493	623,605	646,385
Fee Arbitration	54,614	57,685	59,326	63,311
Lawyer Referral	44,878	47,995	47,641	50,785
Continuing Legal Education	421,767	312,481	356,375	339,725
Administration	392,549	422,902	448,167	460,255
Annual Meeting	99,018	105,871	122,145	122,746
Other	151,708	187,090	239,700	247,320
Total Expenses	1,953,256	1,942,042	2,116,096	2,148,789
Increase (decrease) in net unrestricted assets	(30,183)	11,186	235,673	280,251
Unrestricted Net assets at beginning of year:				
Designated for Working Capital	200,000	675,000	675,000	700,000
Designated for Asset Acquisition	117,928	107,990	120,665	129,375
Undesignated	1,298,021	802,776	801,287	1,003,250
Total at Beginning of Year	1,615,949	1,585,766	1,596,952	1,832,625
Unrestricted Net assets at end of year:				
Designated for Working Capital	675,000	675,000	700,000	700,000
Designated for Asset Acquisition	107,990	120,665	129,375	129,375
Undesignated	802,776	801,287	1,003,250	1,283,501
Total at End of Year	\$ 1,585,766	\$ 1,596,952	\$ 1,832,625	\$ 2,112,876

Source: Alaska Bar Association's Audited Financial Statements for 2002 through 2006

FISCAL NOTE

STATE OF ALASKA
2006 LEGISLATIVE SESSION

Fiscal Note Number: 1
Bill Version: CSHB 316(JUD)
(H) Publish Date: 5/6/06

Revision Date/Time (Note if correction): _____ Dept. Affected: _____
Title "An Act extending the termination date for the RDU
Board of Governors of the Alaska Bar..." Component _____
Sponsor Stolze _____
Requester House Judiciary Committee 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						
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 (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)

The Board of Governors of the Alaska Bar Association is not allocated to a Department and considers itself exempt from the appropriation powers of the Legislature.

Prepared by: Kevin Jardell, Legislative Director Phone 465-4021
Division Governor's Legislative Office Date/Time 4/26/06 7:00 AM
Approved by: Kevin Jardell, Legislative Director Date 4/26/2006
Agency Governor's Legislative Office

APPENDIX A
(continued)

Alaska Bar Association
Lawyers' Fund for Client Protection Revenues Compared with Expenses
Calendar Years 2002 through 2005

	2002	2003	2004	2005
Revenues				
Dues	\$ 29,362	\$ 27,728	\$ 28,032	\$ 28,296
Earnings on Investments	47,876	43,024	39,529	45,574
Unrealized (Loss) Gain on Investments	17,399	(5,037)	(22,447)	(27,902)
Other	0	1,920	2,110	14,026
Total Revenues	94,637	67,635	47,224	59,994
Expenses				
Claims Awarded	5,583	800	72,328	27,257
Other	300	305	738	300
Total Expenses	5,883	1,105	73,066	27,557
Increase (decrease) in net unrestricted assets	88,754	66,530	(25,842)	32,437
Unrestricted Net assets at beginning of year:				
Undesignated	984,299	1,073,053	1,139,583	1,113,741
Total at Beginning of Year	984,299	1,073,053	1,139,583	1,113,741
Unrestricted Net assets at end of year				
Undesignated	1,073,053	1,139,583	1,113,741	1,146,178
Total at End of Year	\$ 1,073,053	\$ 1,139,583	\$ 1,113,741	\$ 1,146,178

Source: Alaska Bar Association's Audited Financial Statements for 2001 through 2005.

APPENDIX A
(continued)

Alaska Bar Association
Court System Library Fund Revenues Compared with Expenses
Calendar Years 2002 through 2005

	2002	2003	2004	2005
Revenues				
Earnings on Investments	\$ 139	\$ 44	\$ 30	\$ 91
Share from Copiers	0	8,090	5,719	6,730
Total Revenues	139	8,134	5,749	6,821
Expenses				
Research Resources	11,904	8,091	7,140	0
Other	12	12	12	12
Total Expenses	11,916	8,103	7,152	12
Increase (decrease) in net unrestricted assets	(11,777)	31	(1,403)	6,809
Unrestricted Net assets at beginning of year:				
Undesignated	25,445	13,668	13,699	12,296
Total at Beginning of Year	25,445	13,668	13,699	12,296
Unrestricted Net assets at end of year				
Undesignated	13,668	13,699	12,296	19,105
Total at End of Year	\$ 13,668	\$ 13,699	\$ 12,296	\$ 19,105

Source: Alaska Bar Association's Audited Financial Statements for 2001 through 2005.

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APPENDIX B

Board of Governors of the Alaska Bar Association Discipline Statistics Calendar Years 2002 through 2006⁸

<u>Disposition of Closed Disciplinary Cases</u>	<u>2002</u>	<u>2003</u>	<u>2004</u>	<u>2005</u>	<u>2006</u>
Disbarment by Supreme Court	5	17	0	3	0
Suspension by Supreme Court	6	1	10	3	6
Public Censure by Supreme Court	0	1	1	4	0
Public Reprimand by Disciplinary Board	0	2	0	1	1
Private Reprimand by Disciplinary Board	0	0	1	0	1
Private Admonition by Discipline Counsel	0	0	2	3	2
Dismissed	13	26	36	24	23
Closed After Mediation	<u>0</u>	<u>1</u>	<u>1</u>	<u>0</u>	<u>0</u>
Total Closed Cases	<u>24</u>	<u>48</u>	<u>51</u>	<u>38</u>	<u>33</u>

Status of Open Cases at Year End

Attorney on Probation	1	1	1	1	1
Pending Supreme Court	0	6	5	2	2
Pending Disciplinary Board	17	2	2	0	1
Pending Hearing Committee	7	1	0	0	5
Pending Stipulation	0	2	0	6	1
Pending Approval to File Formal Hearing	0	0	5	8	1
Pending Written Private Admonition	0	0	1	1	1
Abeyance due to Court Case	2	2	2	9	9
Pending Bar Counsel Investigation/Decision	67	62	32	25	26
Pending Complainant Reply	4	3	1	2	1
Pending Respondent Response	7	3	14	7	11
Pending Mediation	<u>1</u>	<u>1</u>	<u>0</u>	<u>0</u>	<u>0</u>
Total Open Cases	<u>106</u>	<u>83</u>	<u>63</u>	<u>61</u>	<u>59</u>

Source: Data for 2002-2005 was obtained from annual reports of the Alaska Bar Association. The 2006 data is from Alaska Bar Association's quarterly Discipline Reports to the Alaska Supreme Court

Note: These numbers reflect individual complaints filed and not the number of attorneys under investigation. An individual attorney may have more than one case established against them.

⁸ The amounts reported for 2006 includes activity from January 1 through June 30, 2006.

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APPENDIX C

Board of Governors of the Alaska Bar Association Bar Examination and Admission Statistics

Examination Statistics

Examination Dates	Number Taking <u>Exam</u>	Number Passing <u>Exam</u>	Percent Passing <u>Exam</u>
February 2002	35	20	57%
July 2002	60	31	52%
February 2003	53	27	51%
July 2003	86	51	59%
February 2004	56	37	66%
July 2004	61	43	70%
February 2005	62	44	71%
July 2005	70	39	56%
February 2006	<u>66</u>	<u>40</u>	<u>61%</u>
Total	<u>549</u>	<u>332</u>	<u>60%</u>

Admission Statistics

Calendar Year	Admission By <u>Examination</u>	Admission By <u>Reciprocity</u>	Total <u>Admissions</u>
2002	51	24	75
2003	78	18	96
2004	80	30	110
2005	83	39	122
2006 ⁹	<u>40</u>	<u>17</u>	<u>57</u>
Total	<u>332</u>	<u>128</u>	<u>460</u>

Source: Alaska Bar Association's 2002-2005 Annual Reports and updated information provided by the Alaska Bar Association's executive director.

⁹ Admissions through June 30, 2006.

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APPENDIX D

Board of Governors of the Alaska Bar Association Attorney Referrals January 1, 2002 through June 30, 2006 (unaudited)

<u>Practice Categories</u>	<u>2002</u>	<u>2003</u>	<u>2004</u>	<u>2005</u>	<u>2006</u>
Administrative	331	382	396	357	125
Admiralty	16	19	17	17	17
Adoption	27	34	34	37	14
Alaska Native Law	11	0	0	2	0
Arts	9	0	0	0	4
Bankruptcy	122	108	110	142	34
Commercial	185	148	123	212	69
Construction	36	14	37	40	23
Consumer	464	326	356	419	171
Criminal: Felony	144	130	127	228	66
Criminal: Misdemeanor	260	162	143	175	76
Discrimination	56	66	13	0	0
Divorce/Dissolution/Custody	1,153	869	907	962	404
Eminent Domain	2	0	0	5	4
Environmental	2	0	0	6	0
Foreign Language	3	0	2	0	6
Guardian/Conservator	29	14	33	52	33
Immigration	41	25	70	0	8
Insurance	89	87	88	89	46
Labor Relations	464	395	488	563	245
Landlord/Tenant	215	161	182	250	55
Malpractice	271	212	276	275	152
Negligence	856	791	794	812	312
Public Interest	5	8	4	3	4
Real Estate	230	206	281	290	105
Social Security Insurance Cases	18	28	82	51	11
Tax	34	8	0	0	0
Traffic	24	8	4	21	36
Trusts/Wills/Estates	171	167	187	227	92
Workers' Compensation	305	217	228	276	113
Total	5,573	4,585	4,982	5,511	2,225

Source: Data for 2002-2005 was obtained from Annual Reports of the Alaska Bar Association. The 2006 data was provided by the Alaska Bar Association's executive director.

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APPENDIX E

The following information was provided by the Alaska Bar Association's executive director.

Unified State Bar Survey Executive Summary

The Legislative Budget & Audit Committee asked the Legislative Auditor to identify the organizational, budgeting/appropriations, and disciplinary structures used in other states.

33 state bar associations, including Alaska, are "unified" or "mandatory" state bars. This means that all lawyers practicing law in that state must be a member of and pay dues to that state bar association. Most of these unified bars have regulatory functions such as discipline, admissions, mandatory CLE, fee arbitration, etc., which are delegated to them by the state supreme court. They usually have other member services as well.

The other state bar associations are "voluntary" bar associations. Lawyers may, but are not required to join those voluntary bars. In those states, lawyers pay their dues directly to the state supreme court. These voluntary bars often have programs such as continuing legal education seminars, law related education or other membership services, but do not perform any regulatory functions.

In July 2006, I contacted the 32 other unified state bar associations through the National Association of Bar Associations (NABE) Chief Staff Executives listserv. I asked them eight questions about their structure and functions. (Appendix A.) Through mostly e-mail responses, and several phone calls, I received 100% response.

A. Organizational Structure of the Unified State Bars

Of the 33 unified state bars, 21 bars are state instrumentalities, public corporations, or professional associations. 12 are considered to be either a state agency or "quasi" state agency. Some of those who identified

themselves as a state agency described themselves as a "self-governing" agency, an agency "for tax purposes," "a public corporation" as well as an agency, or a "state agency for certain purposes."

B. Budgeting/Appropriations

The 33 unified state bars were asked which entity approved their budget: their governing board, their supreme court, their legislature, or another body. 26 state bars had their budget approved by their governing board. 4 had their budget reviewed or approved by their governing board and their supreme court. One state indicated that its budget was approved by their supreme court, and two states either file a budget with the state budget office or have their money appropriated by their legislature from the state bar account.

APPENDIX E

(continued)

The bars were asked if their funds were considered to be the bar association's funds, the Supreme Court's funds, the legislature's funds or some other body's funds. 30 bars indicated that the funds were considered to be the bar association's funds. One bar indicated that though bar dues are paid to the bar, license fees are paid to their supreme court, which forwards a percentage of this to the bar. One bar said that special membership dues are considered associational and under control of the bar. Occupational license fees are paid to the state treasury to the credit of the state bar. One bar stated that their funds are kept segregated in the treasury.

None of the state bars receive appropriations, independent of bar funds, from the state treasury. One bar indicated that they are self-funded with all funds turned over to the state treasury but appropriated back to the bar. Another bar stated that the bar application fees are paid to their supreme court, of which 94% is passed back to the bar.

C. Functions of the Unified State Bars: Admissions and Discipline

11 of the unified state bars administer admissions (e.g., the bar exam). Anecdotally, in the other states, admissions is done by a separate agency under their supreme courts.

Of these 11 states, only two do not also administer discipline. The other 9 states administer both admissions and discipline.

21 of the unified state bars administer discipline. The Montana Bar's employees do discipline, but are funded from a separate attorney assessment.

In November and December, 2005, bar counsel of the Alaska Bar Association conducted an e-mail and phone survey of the members of the National Organization of Bar Counsel whose members staff disciplinary jurisdictions nationwide. Of the 48 states the Alaska Bar was able to contact, 13, in addition to Alaska, indicated that they were not state government agencies under their supreme courts; 13 generally indicated that they were considered creations of their supreme courts, but either not considered state government agencies or state employees; and, 22 indicated that they were state government agencies under their supreme courts.

D. Mandatory Continuing Legal Education (MCLE) and CLE programs

The last two questions asked whether the unified state bars regulated of Mandatory Continuing Legal Education and provided CLE programs. 19 of the 33 bars indicated that they regulate MCLE. Only three of the state bars said they do not provide CLE programs at all. Anecdotally, in almost all states, if the state bar does both MCLE and CLE programs, this function is performed by a separate person or department.

Conclusion

65% of the state bar associations are unified or mandatory state bars.

64% of the unified state bars are state instrumentalities, public corporations or professional associations. 21% of the unified bars are state instrumentalities.

APPENDIX E
(continued)

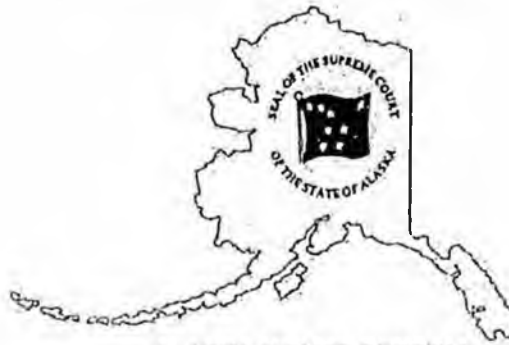
27% of the unified bars administer both admissions and discipline.

64% of the unified bars administer discipline.

The budget of 79% of the unified bars is approved by their governing board only, with 91% of the unified bars indicating that their funds are considered to be part of the bar's budget only. 100% of the unified bars fund their functions without supplemental appropriations.

58% of the unified bars administer MCLE regulation, with 91% of the unified bars providing CLE programs.

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ALASKA COURT SYSTEM
State of Alaska
Office of the Administrative Director

C. S. Christensen III
Deputy Administrative Director

820 West 4th Avenue
Anchorage, Alaska 99501-2005
(907) 264-8228; FAX (907) 264-8291
cchristensen@courts.state.ak.us

October 19, 2006

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

Re: Preliminary Audit Report 41-20050-06
Board of Governors of Alaska Bar Association

Dear Ms. Davidson:

Thank you for the opportunity to offer a written response to the findings and recommendations contained in the above-referenced Preliminary Audit Report. This response represents the views of the Administrative Office of the Alaska Court System (AOC).

The AOC takes no position on the three recommendations directed at the Board of Governors of the Alaska Bar Association. We agree with the conclusion that the regulation and licensure of attorneys contributes to the protection of the public's welfare. We also concur in the recommendation to the legislature that the termination date of the Board be extended to June 30, 2014.

However, we continue to take issue with certain conclusions of the prior audit that are referenced in the Auditor's Comments beginning on page 11. That prior audit, *Board of Governors of the Alaska Bar Association, November 28, 2005* (Audit Control No. 41-20040-06), made conclusory observations about the current system of attorney discipline, and stated that such discipline could be a government function. Specifically, it suggested that the following options be considered:

- Disciplinary investigations performed by Alaska Court System employees
- Place disciplinary function under the Supreme Court with a Disciplinary Board appointed by the court

Pat Davidson
October 19, 2006
Page 2

Considerations not addressed by the prior audit lead us to conclude that these two options are flawed.

The historical record shows that attorney discipline has always been a matter of importance to the supreme court. In fact, when the supreme court first asserted control of the Bar over the Bar's strenuous objections in 1964, it did so by promulgating rules governing the discipline of attorneys, among other things. See *In the Matter of an Application for an Order Vacating ALASKA SUPREME COURT ORDERS NO. 64, 68, 69, 70 and 71, and Other Relief*, 395 P.2d 853 (Alaska 1964). Public confidence in the process of attorney discipline is essential.

Equally important, however, is the need to keep separate the prosecutorial and adjudicative functions inherent in attorney discipline. Under our system of government, it is imperative that those who have the duty of charging transgressors and proving their guilt do not have the final say in determining that guilt. As currently designed, the system of attorney discipline keeps a wall between those two functions. It is the Bar which has the duty to investigate and prosecute allegations of attorney misconduct, to make preliminary findings, and to recommend punishment. It is the supreme court which makes the final determination of guilt or innocence, and which makes the final determination regarding punishment.

The fundamental problem with placing the attorney discipline function within the court system is that the entity responsible for investigating and prosecuting attorney misconduct would also be the entity responsible for making the ultimate determination of guilt or innocence. As the final adjudicative body for cases decided under the Alaska Constitution, it is inappropriate for the supreme court to exercise both executive and judicial powers in disciplinary matters.

There may be other states in which the supreme court exercises both prosecutorial and adjudicative authority. However, that does not mean that it is good public policy to do so, or that doing so is consistent with the fundamental principles under which our system was intended to operate. Administrative convenience is not adequate justification for this consolidation of government power.

As pointed out in the Preliminary Audit Report, modification of the existing disciplinary structure would be a policy-level decision, and a wide range of structures exist on which modifications could be modeled. If it is ever determined that the current system of attorney discipline does not work adequately and needs to be changed, a better model to follow would be the one utilized by the Judicial Conduct Commission. This commission is part of the judicial branch of government, not the court system, and as such it is independent of the supreme court. The commission engages in investigatory and prosecutorial tasks when allegations of

Pat Davidson
October 19, 2006
Page 3

judicial misconduct are made, and makes recommendations to the supreme court. The supreme court exercises the judicial function, serving as the ultimate arbiter of guilt or innocence.

It is true that a separate disciplinary entity such as this could be paid for by Bar dues and have no cost to the general fund at this time. However, the persons staffing said agency would be new state employees. The legislature has demonstrated an intent in recent years to limit the addition of permanent, full-time state employees, and absent concrete evidence that the current system does not adequately serve the public interest, it may be disinclined to create a new state bureaucracy.

Thank you for providing the opportunity to comment on this audit. Please feel free to contact me if you have any questions.

Very truly yours,

A handwritten signature in black ink, appearing to read 'CSC', with a long horizontal flourish extending to the right.

C. S. Christensen III
Deputy Administrative Director

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ALASKA BAR

A S S O C I A T I O N

October 11, 2006

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

Dear Ms. Davidson:

Thank you for the thorough sunset review follow-up of the Alaska Bar Association and the opportunity to respond to your preliminary audit report.

Sunset and Fiscal Note

The Board concurs with extending the sunset date of the Alaska Bar Association Board of Governors until June 30, 2014.

There will be no fiscal note attached to any bill filed with the legislature to extend the sunset date of the Board of Governors, as the Bar Association will not be seeking any state funding for its operational costs. The Bar Association has obtained state funding only during the limited time frame between 1981 and 1986, and only for the per diem and travel expenses of the three public members who sat on the Board. For the past 20 years, the Bar Association has paid those expenses without state funding.

As noted in the audit, the operations of the Bar Association 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. Ironically, a decision to sunset the Bar would have a multi-million dollar fiscal impact to the state.

Response to Recommendation No. 1: The Board of Governors has forwarded an MCLE rule to the Alaska Supreme Court.

In the September 15, 2006 preliminary audit report, the legislative auditor correctly outlined the steps which the Board of Governors has taken in 2006 regarding MCLE.

Response to Preliminary Audit Report
October 11, 2006
Page 2

At the Board of Governors meeting on September 7, 2006, the Board voted to send the MCLE rule as published to the Alaska Supreme Court. Only the Supreme Court can adopt a rule providing for MCLE.

The MCLE rule, as published by the Board, would provide that active Bar members complete 12 hours of CLE a year, including 1 hour of ethics.

Response to Recommendation No. 2. We agree that Lawyer Public Discipline History should be available on the Alaska Bar Association website.

The legislative auditor notes that the Alaska Bar Association has joined a consortium of other state and local bars aimed at replacing our database with a new member management system. This will include a module specifically for lawyer discipline data. This system will provide a means to have lawyer disciplinary information on the Bar's website.

It has been the Bar's goal since the website was first launched in 1998 to post public discipline information. The Bar has managed its website without a full-time webmaster.

The Board agrees that having public discipline information available on our website is a desirable goal and we will continue to work to that end. We anticipate that the new discipline module, including online reporting of public discipline, will be operational in the summer of 2007.

Response to Recommendation No. 3. The Standing Policies of the Board of Governors have been amended to provide for a due date for the annual report.

At the Board of Governors meeting on September 7, 2006, the Board voted to amend their Standing Policies to set April 15 as a specific due date for completion of the annual report for the preceding year.

Concluding Comments: Lawyer self-regulation has been effective and efficient 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 and efficiently in Alaska. To its credit, the Alaska Bar Association has one of the most aggressive and effective discipline systems in the country.

The Bar Association conducted an e-mail and phone survey of the members of the National Organization of Bar Counsel whose members staff disciplinary jurisdictions nationwide. Of the 48 states the Bar was able to contact, 26 indicated that they were not state government agencies.

As reported in our December 16, 2005 response, 13¹ jurisdictions, in addition to Alaska, indicated that they were not state government agencies under their supreme courts; 13² generally indicated that they were considered creations of their supreme courts, but either not considered state government agencies or state employees; and, 22³ indicated that they were state government agencies under their supreme courts.

Based on this survey, Alaska is not unique in its approach to attorney discipline. Indeed, because the Bar Association performs these vital functions under the supervision of the Alaska Supreme Court, its system is similar to those in place in a significant number of other state jurisdictions.

We believe that there would be additional costs to both the court and the Bar Association if the attorney discipline system in Alaska was carried out by a government agency. Currently, the Bar Association has one bar counsel, two assistant bar counsel, one paralegal, two legal secretaries, and two other employees of the Bar who provide support to the discipline system in addition to their other Bar duties.

Currently these employees have the benefit of shared costs of office space, conference room, computer system, telephone system, copy machines, etc. with the rest of the Bar staff. In addition, the Bar's system administrator provides computer support to all Bar employees. If the discipline employees were split off from the Bar Association, they would lose the benefit of this shared functionality and they would have to purchase and maintain separate space and equipment.

¹ Alabama, Arizona, Hawaii, Idaho, Kentucky, Montana, Nevada, North Carolina, Oregon, South Dakota, Utah, Washington, and Wyoming.

² Arkansas, Florida, Idaho, Iowa, Kansas, Maine, Maryland, Massachusetts, Michigan, Mississippi, Missouri, North Dakota, Pennsylvania, and West Virginia.

³ California, Colorado, Connecticut, Delaware, Georgia, Illinois, Indiana, Louisiana, Minnesota, Nebraska, New Hampshire, New Jersey, New Mexico, New York, Ohio, Rhode Island, South Carolina, Tennessee, Texas, Vermont, Virginia, and Wisconsin.

Currently discipline hearings are heard by a members of a volunteer committee made up of attorneys and public members. If discipline were split off from the Bar Association, the state would need to staff this function with state hearing officers.

Currently bar counsel supervises the assistant bar counsel and discipline staff, as well as handling such other discipline matters as reinstatement, etc. He also handles over 700 calls a year giving informal ethics advice to members of the Bar. If a new state agency had less than three lawyers on staff, this valuable service would not be feasible and the current caseload would likely see a dramatic increase in processing time. The discipline section would also lose the assistance of the two staff persons who provide other support to the discipline section.

Meanwhile, the Board of Governors would still need to have its own bar counsel, so the Bar Association would still have the expense of a lawyer and legal secretary on its staff.

There would also be additional expense if there was a Disciplinary Board separate from the Board of Governors. Currently, the Board of Governors acts as the Disciplinary Board at its regularly scheduled board meetings. The budget for the Board travel is included in the Board of Governors budget, and is not included as part of the discipline budget, so Discipline Board meetings would be a new expense.

The cost to Bar members to support additional staff, separate offices and equipment and separate Boards would mean a significant increase in bar dues, the addition of a separate disciplinary assessment, or that these expenses come out of the state general fund.

We believe that the subjective benefit of splitting out the discipline function from the Bar is outweighed by the practical and economic realities.

It is also our belief that the present management system of the Bar provides a blend of private and governmental functions, insuring both accountability and good management. For example, 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 on the Board of Governors. Its rule making and 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

ensures that the Bar Association is both responsive to the needs of its members, and qualified to address such issues as admission standards and peer review.

Reserves of the Alaska Bar

The Board has a policy to hold a working capital reserve in an amount equal to four month's expenses. (\$191,000/month or \$764,000.) However it is not unusual for a non-profit association to hold a reserve in an amount equal to six to nine months of expenses. (Ranging from \$1,146,000 - \$1,719,000.)

Unlike state agencies, the Bar cannot request supplemental appropriations from the Legislature if an unexpected event occurs which would incur significant financial expense. Unlike private entities, the Bar cannot easily obtain business interruption insurance.

Recent experience with Gulf Coast bar associations in the wake of Hurricane Katrina indicates that a lack of preplanning for disasters will cripple a bar association at the very time it is under tremendous demand to provide emergency services to members and to assist members in aiding the public's need for legal assistance in the aftermath of a disaster. Also, the Board needs to be able to "save" for the financial viability of planned projects or events. For example, the Bar is in the process of replacing its entire database, a multi-year project that will cost nearly \$200,000.

Every year, Bar members each pay ten dollars to the Lawyers' Fund For Client Protection. This fund serves as a safety net primarily for clients who have suffered monetary losses as a result of dishonest acts by their lawyers. This Fund currently has \$1,171,000 in it. These funds are designed to protect the public and cannot be used for general operating expenses.

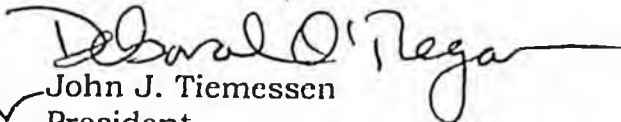
As an instrumentality that predates the ratification of the Alaska Constitution, the Alaska Bar maintains these funds under Article IX, Sec. 7 of the Alaska Constitution. It is unclear whether the Bar could continue to do so if portions of its powers were split to a state agency.

It has also been the policy of the Board to set Bar dues in an amount to accumulate a reserve, so that Bar dues do not have to be raised each year. The Board believes that the stability and predictability of Bar dues over a long period of time is desirable. In the past 22 years, Bar dues have only been raised twice: from \$310 to \$450 in 1994; and, from \$450 to \$550 in 2005.

Response to Preliminary Audit Report
October 11, 2006
Page 6

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 legal profession and service to the public.

Sincerely,
Alaska Bar Association


for John J. Tiemessen
President



Alaska Division of Legislative Audit Audit Digest #41-20040-06

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SUMMARY OF: A Sunset Review of the Alaska Court System, Board of Governors of the Alaska Bar Association, November 28, 2005.

PURPOSE OF THE REPORT

In accordance with Title 24 and Title 44 of the Alaska Statutes, we have reviewed the activities of the Board of Governors of the Alaska Bar Association (Board). As required by AS 44.66.050(a), the legislative committees of reference are to consider this report during the legislative oversight process involved in determining if the Board should be reestablished. Currently, AS 08.03.010(c)(2) states that the Board will terminate on June 30, 2006. If the legislature does not extend the termination date, the Board will have one year to conclude its administrative operations.

REPORT CONCLUSIONS

In our opinion, the termination date for the Board of Governors of the Alaska Bar Association should be extended. The Board, through the Supreme Court, protects the public by ensuring that persons licensed to practice law are qualified. It also provides for the investigation of complaints and has established a discipline process designed to ensure that those licensed act in a competent and professional manner.

Alaska Statute 08.03.010(c)(2) requires that the Board of Governors of the Alaska Bar Association be terminated on June 30, 2006. Under AS 08.03.020, the board has a one-year period to administratively conclude its affairs. We recommend the legislature extend the Board's termination date to June 30, 2014.

FINDINGS AND RECOMMENDATIONS

The Council's prior sunset audit reported several administrative weaknesses. Two of those recommendations have been resolved. Those issues that have not been resolved are reiterated in this report.

Recommendation No. 1.

The Board should recommend to the Alaska Supreme Court that mandatory minimum continuing legal education (CLE) for attorneys be adopted.

Continuing legal education for attorneys is only voluntary rather than required. The Supreme Court adopted a voluntary CLE under Bar Rule 65 in 1999. It encouraged all active members of the Alaska Bar Association (Bar) to complete at least 12 credit hours of approved CLE, including one credit hour of

ethics.

Many professions require continuing education to maintain licensure in Alaska. For example, Alaska licensed dentists, doctors, pharmacists, and psychologists are all required to meet minimum continuing education standards.

Overall, we believe a mandatory minimum continuing legal education requirement will enhance the membership's continued professional competence and raise the public's confidence in attorneys. The Board should encourage the Supreme Court to adopt an Alaska Bar Rule requiring mandatory minimum continuing legal education.

Recommendation No. 2.

The Board should consider developing a database of disciplined lawyers in the association's website.

While current procedures are adequate, the Board could increase efficient and effective communication of lawyer discipline to the public by publishing their discipline list on their website.

The Board should consider developing a database for the Bar's website of the discipline imposed against lawyers. It will enhance public notification and client protection through increased accessibility of discipline information.

Recommendation No. 3.

The Board should adopt a due date for the annual report to ensure it is made available to the Supreme Court, the Legislature and the public on a timely basis.

The Board's annual reports for the three years 2002 through 2004 were not prepared timely¹. The adoption of a specific due date by the Board in its bylaws or standing policies should ensure the timely preparation of the Board's annual report.

AUDITOR'S COMMENT

The attorney discipline system of the Bar is a self-regulatory function. Self-regulation has always been viewed skeptically by the citizenry. A majority of the board members is elected by the membership. The following options should be considered in a move away from attorney self-regulation:

- Disciplinary investigation performed by Alaska Court System employees.
- Place disciplinary function under the Supreme Court with a Disciplinary Board appointed by the court.

Footnotes

1 - We considered completion of the annual report to be untimely if it was not completed within four months after the end of the calendar year.

November 28, 2005

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
SUNSET REVIEW
November 28, 2005

Audit Control Number
41-20040-06

This audit was conducted as required by AS 44.66.050 and under the authority of AS 24.20.271(1). Alaska Statute 44.66.050(c) lists criteria to be used to assess the demonstrated public need for a given board, commission, agency, or program subject to the sunset review process. Currently, under AS 08.03.010(c)(2), the Board of Governors of the Alaska Bar Association is scheduled to terminate on June 30, 2006.

In our opinion, the termination date for this Board should be extended. The regulation and licensure of attorneys contributes to the protection of the public's welfare. We recommend the legislature extend the termination date to June 30, 2014.

The audit was conducted in accordance with generally accepted government auditing standards. Fieldwork procedures utilized in the course of developing the findings and discussion presented in this report are discussed in the Objectives, Scope, and Methodology section.

Pat Davidson, CPA
Legislative Auditor

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OBJECTIVES, SCOPE, AND METHODOLOGY

In accordance with the intent of 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 (Board). Under AS 44.66.050(a), the legislative committee of reference is to consider this report during the legislative oversight process to determine whether the Board's termination date should be extended. Currently, AS 08.03.010(c)(2) requires the Board to terminate on June 30, 2006. If the legislature takes no action to extend the termination date, the Board will have one year from that date to conclude its operations

Objectives

There are three central, interrelated objectives of our report. They are:

1. To determine if the termination date of the Board should be extended.
2. To determine if the Board is operating in the public's interest.
3. To determine if the Board has exercised appropriate oversight of licensed members of the Alaska Bar Association (Bar).

The assessment of the operations and performance of the Board was based on criteria set out in AS 44.66.050(c). Criteria set out in this statute relates to the determination of a demonstrated public need for the Board.

Scope and Methodology

The major areas of our review were the examination, admission/licensing, and discipline functions provided by the Bar, as well as Board proceedings. Our audit reviewed Board operations and activities of the Bar from January 2002 through June 30, 2005.

We reviewed and evaluated the following:

- Applicable statutes, Alaska Bar Rules, Alaska Rules of Professional Conduct, and bar association bylaws
- American Bar Association (ABA) Model Rules
- Board minutes
- Alaska Bar Association annual reports
- Attorney discipline files
- Attorney applications for examination and admission

- Websites of National Conference of Bar Examiners (NCBE), American Bar Association (ABA), and other states' bar admissions
- Publications such as:
 1. ABA 2005 State and Local Bar Membership Dues and Mandatory Fees Survey
 2. NCBE 2005 Comprehensive Guide to Bar Admissions
 3. New York State Bar Association Comparison of the Features of Mandatory Continuing Legal Education Rules in Effect as of July 2004

In addition, we conducted interviews of the Board president, staff, including the Executive Director, Board Counsel, director of continuing legal education, and Comptroller. We also made inquiries with other states' bar admission staff.

ORGANIZATION AND FUNCTION

The practice of law in the State of Alaska is regulated by the Board of Governors of the Alaska Bar Association (Board). The Board consists of 12 members including nine attorneys elected by the active membership of the Alaska Bar Association and three nonattorney 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 (Bar).

The two primary functions of the Bar are the admission and discipline of its members. To accomplish these and other functions, the Bar operated with a 2005 budget of \$2,195,584. Funding is provided primarily by membership due. (\$550 per year), admission fees, lawyer referral fees, continuing legal education charges, administrative discipline fees, and interest income.

- Admission Function The Board is responsible for screening applicants for admission to the Bar. 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 Bar'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.

The Board of Governors of the Alaska Bar Association (as of November 18, 2005)
<i>Jonathon A. Katcher, President Third Judicial District</i>
<i>John Tiemessen, President-elect Second/Fourth Judicial District</i>
<i>Christopher R. Cooke, Vice- president Third Judicial District</i>
<i>Sidney K. Billingslea, Treasurer Third Judicial District</i>
<i>Michael J. Hurley, Secretary Public Member</i>
<i>Matthew W. Claman Third Judicial District</i>
<i>Peter R. Ellis First Judicial District</i>
<i>Joseph N. Faulhaber Public Member</i>
<i>William A. Granger Public Member</i>
<i>Allison Mendel Third Judicial District</i>
<i>Philip M. Pallenberg First Judicial District</i>
<i>Jason A. Weiner Second/Fourth Judicial District</i>

- Miscellaneous Functions The Bar also performs a wide variety of miscellaneous functions that include providing classes for and accrediting providers of continuing legal education, a lawyer referral service, client mediation, and fee arbitration with clients. In conjunction with Alaska Legal Services Corporation, the Bar sponsors the Alaska Pro Bono Program. The Bar provides a number of other member services including attorney liability protection, group insurance, the *Alaska Bar Rag*, ethics opinions, and alcohol and drug counseling. In addition the association provides grants through the Alaska Bar Foundation (ABF) from earnings of interest on lawyers trust account (IOLTA¹) program. IOLTA grants are used to support legal services for the economically disadvantaged and improve the administration of justice.

The Alaska Bar Association's office is located in Anchorage and is currently staffed by 17 full-time and job-share employees.

The Board's decision involving examination and discipline may be appealed to the Alaska Supreme Court. The Alaska Supreme Court issues the order of admission to the bar association and lawyer disciplinary sanctions involving disbarment, suspension, probation, and public censure.

¹ An IOLTA account is a pooled, interest-bearing trust account for deposit of client funds that are so small, or will be held for so short a time, they would not earn net interest that would be payable to the client. A recent change to Rule 1.5 of Alaska Rules of Professional Conduct requires annual certification by all lawyers on the annual bar dues, whether the lawyer or the lawyer's firm is maintaining or not maintaining an IOLTA trust account.

REPORT CONCLUSIONS

In our opinion, the termination date of the Board of Governors of the Alaska Bar Association (Board) should be extended. Since the first three attorneys were admitted to the practice of law in Alaska in 1884, membership has grown to its current level of 2,839 active members practicing in the State. The regulation and licensing of qualified attorneys contributes to the protection of the public's welfare.

The Board, through the Alaska Supreme Court, protects the public by ensuring that persons licensed to practice law are qualified. It also provides for the investigation of complaints and has established a disciplinary process designed to promote licensed individuals to act in a competent and professional manner. Chapter 58, SLA 2005 amended AS 08.03.020(c) to increase from four to eight years the period for which a board scheduled for termination may be continued or reestablished by the legislature. As such, we recommend that the legislature extend the termination date of the Board to June 30, 2014.

We have also made recommendations that, if implemented, will improve the effectiveness of the Board's goals and operations. See the Findings and Recommendations section of this report.

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FINDINGS AND RECOMMENDATIONS

In the prior audit, *Board of Governors of the Alaska Bar Association, November 30, 2001*, (Audit Control No. 41-20008-02) there were two recommendations which have been resolved. These recommendations were to establish a screening and oversight procedures for attorneys wishing to participate in the lawyer referral services and improving adequate public notice of meetings.

In addition, the Supreme Court adopted a pilot 12 credit hour voluntary continuing legal education (CLE) program for three years in response to the recommendation for a mandatory continuing legal education during the 1998 sunset audit. We reviewed the results of the voluntary CLE pilot program which are addressed below as Recommendation No. 1.

Recommendation No. 1

The Board should recommend to the Alaska Supreme Court that mandatory minimum CLE for attorneys be adopted.

Continuing legal education for attorneys is only voluntary rather than required. The Supreme Court adopted a voluntary CLE under Bar Rule 65 in 1999. It encouraged all active members of the Alaska Bar Association (Bar) to complete at least 12 credit hours of approved CLE, including one credit hour of ethics. Incentives, such as reduction of bar dues and eligibility to participate in the Lawyer Referral Service are authorized to those who comply with the bar rule.

The Board implemented a three-year voluntary CLE pilot project effective September 2, 1999 which ended in December 2002. Each member of the Bar was required to report at the end of each year the CLE hours earned during the preceding year on the prescribed CLE reporting form. The average participation rate during the pilot program years was 46%. The Board eliminated the voluntary CLE reporting requirement at the end of the pilot program. However to encourage completion and reporting of approved CLE, the Bar continued its reduced annual dues to those attorneys who certify completion of CLE on their annual dues statement. The reported average participation rate for CLE has dropped from 46% to 38% for the two years after the end of the pilot program.

Forty-one legal jurisdictions in the United States have a mandatory CLE education requirement for attorneys desiring to practice law in their jurisdiction. Mandatory CLE requirements range from 8 to 27 credit hours per year with the majority of the jurisdictions requiring between 12 and 15 hours. Specific course requirements vary.

Many professions require continuing education to maintain licensure in Alaska. For example, Alaska-licensed dentists, doctors, pharmacists, and psychologists are all required to meet minimum continuing education standards.

The Board's major concern regarding mandatory CLE is an appearance of a conflict of interest. Currently, the Bar both accredits CLE providers and provides CLE. The American Law Institute-American Bar Association study released in 1998 recommended creating a distinct and separate department or organization, with separate staff, to regulate and sponsor CLE so as to avoid the appearance of conflict of interest.

The Board has recently established a joint task force on mandatory continuing legal education. The memberships include three members of the Board and a representative each from the Alaska Supreme Court and the Judicial Council.

Overall, we believe a mandatory minimum continuing legal education requirement will enhance the membership's continued professional competence and raise the public's confidence in attorneys. The Board should encourage the Supreme Court to adopt an Alaska Bar Rule requiring mandatory minimum continuing legal education.

Recommendation No. 2

The Board should consider developing a database of disciplined lawyers in the association's website.

While current procedures are adequate, the Board could increase efficient and effective communication of lawyer discipline to the public by publishing their discipline list on their website.

Board procedures provide for public notice of all attorneys who have been disbarred, suspended, put on probation, publicly censured, or reprimanded. Currently, the Board publishes the names of these attorneys 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. Notice of all disciplines imposed by the court, all orders granting reinstatements, and all public reprimands are also transmitted to the American Bar Association National Lawyer Regulatory Data Bank. These are long-standing means of providing public notice; however, 15 states currently also publish their lawyers discipline list on their websites.

The Board should consider developing a database for the Bar's website of the disciplines imposed against lawyers. It would be an effective medium in addition to the others used to inform the public of lawyers who have been disciplined. It will enhance public notification and client protection through increased accessibility of discipline information.

Recommendation No. 3

The Board should adopt a due date for the annual report to ensure it is made available to the Supreme Court, the legislature and the public on a timely basis.

The Board's annual reports for the three years 2002 through 2004 were not prepared timely.² In fact, the 2004 report is still in draft format. AS 08.08.085 requires the Board to prepare an annual report and notify the legislature when it is available; however, it does not specify a due date. The annual report is normally made available to the legislature in the spring of the subsequent year. For the past three years, the executive director has placed a low priority on the preparation of the annual reports.

The Board's annual report contains information on matters relating to admission, discipline of members, modification or repeals of bylaws, and bar rules proposed to or adopted by the Supreme Court. The annual report may also be used to recommend changes to the Alaska Bar statutes. Information provided in the report will be more useful and relevant to public officials and the public when provided in a timely manner.

The adoption of a specific due date by the Board in its bylaws or standing policies should ensure the timely preparation of the Board's annual report.

² We considered completion of the annual report to be untimely if it was not completed within four months after the end of the calendar year.

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AUDITOR'S COMMENTS

The sunset process allows for an objective review of various boards and commissions to determine if the public need for protection continues to exist and if the entity is satisfying that need. The independent conclusions of a review agency, such as this Division, provide certain assurances that entities such as the Board of Governors of the Alaska Bar Association (Board) are operating in the public interest. The overall conclusions of our review are that the Board is operating in the public interest and that there is a continuing public need for the attorney admission and discipline functions of the Alaska Bar Association (Bar). Nevertheless, an overall evaluation of the basic approach to these functions should be undertaken from time to time. Whether the discipline function is to be controlled by government or by attorneys is a policy-level determination that should be carefully considered by the Supreme Court, the Board, and the legislature. The following comments are intended to assist in such consideration.

Self-regulation, whether by industries or profession, has always been viewed skeptically by the citizenry. There is often a perception of conflict of interest in whether actions are for the benefit of the organization's membership or for the citizens' benefit. The attorney discipline system of the Bar is a self-regulatory function that may suffer from this public perception.

The Board is comprised of 12 members, of which nine are attorney members elected by the Bar's membership and three public members appointed by the governor. As the majority is elected by the membership, the Bar's discipline activities will likely be perceived as self-regulation.

We believe that the attorney discipline system in Alaska could be a government function. In at least 22 states, discipline is carried out by a state government agency. In 2000, Nebraska's Supreme Court moved the disciplinary function out from their bar association to the Supreme Court Counsel for Discipline.

The American Bar Association concurs and, in fact has recommended that the disciplinary function of state bars be under the direct control of the Supreme Court. The American Bar Association's *Model Rules for Lawyer Disciplinary Enforcement*, August 1993,³ recommended the following:

The disciplinary system should be controlled and managed exclusively by the state's highest court and not the state or local bar association [T]he disciplinary process should be directed solely by the disciplinary policy of the court and its appointees and not influenced by internal politics of the bar association [T]he disciplinary system should be free from even the appearance of conflicts of interest or impropriety.

³ The *Model Rules for Lawyer Disciplinary Enforcement*, August 1993 was amended on August 5, 1996, on February 8, 1999 and on August 12, 2002. The 1993 recommendation is in the commentary under Rule 2.

The following options should be considered in a move away from attorney self-regulation:

- Disciplinary investigations performed by Alaska Court System employees
- Place disciplinary function under the Supreme Court with a Disciplinary Board appointed by the court

There should be no general fund net cost to either of these options. They would be paid by attorney licensing fees, the same as they currently are and as they are for other occupations. Fees are established such that full costs are recouped.

From a citizen's perspective, there are no advantages to allowing the legal profession to self-regulate. However, there will always be the disadvantage of at least the perception of inadequate discipline. In a move away from self-regulation, the legal profession and the State's citizens would likely benefit.

ANALYSIS OF PUBLIC NEED

The following analyses of the Board of Governors of the Alaska Bar Association (Board) activities relate to the public-need factors defined in AS 44.66.050(c). These analyses are not intended to be comprehensive, but address those areas we were able to cover within the scope of our review.

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

The Board admits applicants to practice law through an examination process that was designed in consultation with a national expert. The Board also admits members by motion for reciprocity. This option is limited to attorneys in the active practice of law for five of the last seven years in states with which Alaska has a reciprocal agreement.

Additionally, the Alaska Bar Association (Bar) also provides services that are more typically provided by professional associations rather than regulatory agencies. These include:

- The Bar has a committee to administer the *Lawyers Fund for Client Protection (LFCP)*. This fund receives \$10 from each active member's annual dues. The fund is used to reimburse clients for losses⁴ caused by dishonest conduct⁵ of a lawyer which is not covered by insurance or fidelity bond, whether of the lawyer or the client. The maximum amount payable to any individual is the lesser of \$50,000 or 10% of the fund amount at the time of the award. The aggregate maximum amount that may be paid to all claimants under a fee arbitration case arising from the dishonest conduct of a particular lawyer is \$200,000.
- Since 1976, the Bar has maintained a *Fee Arbitration* process allowing a client to resolve attorney fee disputes that have not been determined by statute or court rule or decision. For fee disputes of \$5,000 or less, the process provides for a single arbitrator. Disputes over \$5,000 are heard by a three-member panel that consists of two attorneys and one public member. Failure by an attorney to participate in this process may be grounds for disciplinary action.

⁴ Reimbursable losses are losses of money, property, or other things of value caused by the lawyer when: (1) acting in a fiduciary capacity customary to the practice of law, such as a administrator, executor, trustee, guardian or conservator; (2) acting as an escrow holder; or (3) filed within three years after the claimant knew or should have known of the dishonest conduct of the lawyer (Alaska Bar Rule 45).

⁵Alaska Bar Rule 45 defines "dishonest conduct" as wrongful acts committed by a lawyer in the manner of defalcation or embezzlement of money, or the wrongful taking or conversion of money, property or other things of value.

- The Bar also offers a mediation process that attempts to resolve the differences between attorneys and their clients. This process is not used when the issues are of a very serious nature such as allegations of intentional dishonesty, material misrepresentation, or the alleged conduct could lead to suspension or disbarment. Mediation requires the approval of both parties and the Bar counsel. The agreement is considered a contract and is legally enforceable in court.
- The Bar operates a *Lawyer Referral Service (LRS)* funded by enrollment fee from participating members. Members of the public can call an instate toll free number and obtain the names of three attorneys who have listed themselves as practicing law in a certain field. Lawyer Referral Service statistics are shown in Appendix D.
- The Bar provides grants to support legal services for the economically disadvantaged and improve the administration of justice through the Alaska Bar Foundation (ABF) from earnings of the Interest on Lawyers Trust Account⁶ (IOLTA).
- The Bar jointly sponsors the Alaska Pro Bono Program with the Alaska Legal Services Corporation in which attorneys provide free legal advice to low-income Alaskans.
- The Bar also has a *Lawyer Assistance Committee (LAC)* that provides assistance and counseling to bar applicants and lawyers with drug and alcohol problems.

Determine the extent to which the operation of the board, commission, or agency program has been impeded or enhanced by existing statutes, procedures, and practices that 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. In 2004, the Board amended Article VII Section 1 (a) of the bylaws to increase fees for additional substantive law section membership and associate⁷ members. The Board also amended Article III Section 1(a) of the bylaws to increase active members' dues to \$550, effective in the 2005 membership year.

The 2005 budgeted revenue is \$2,195,584. The Bar has a cumulative revenue surplus of \$2,722,989 as of the end of calendar year 2004. (See Appendix A) The maintenance of a substantial revenue surplus is not consistent with the other professions regulated by the state, under the jurisdiction of the Department of Commerce, Community, and Economic Development, Division of Corporations, Business and Professional Licensing. Those

⁶ A recent change to Rule 1.5 of Alaska Rules of Professional Conduct (ARPC) requires annual certification by all lawyers on the annual bar dues statement whether or not the lawyer or the lawyer's firm is maintaining an IOLTA trust account.

⁷ A member of the public may join the Bar's section membership as an associate member. Associate members are nonvoting members and may not serve on the section's executive committee.

professional fees are required by statute to be set so the total fee collections approximately equal the actual regulatory cost of the occupation.

In August 2004, the Board formed the Bar Services and Funding Committee (BSFC) "to study and propose new ways to utilize bar dues and a portion of the unappropriated capital to advance the profession of law in Alaska and to benefit the members of the Bar and the practice of law in general."

Determine the extent to which the board, commission, or agency has recommended statutory changes that 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, Bylaws, and Rules of Professional Conduct that govern the Bar policies and procedures. The Board also had addressed the two recommendations presented in their prior sunset review. See Findings and Recommendations Section.

Determine 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 that it has provided.

The Bar membership is involved in its operations. This operation may include service on one of the eight standing committees or five Alaska Bar Rules committees. It may include participation in one of the 24 sections or group of members with similar specialization (bankruptcy, criminal law, etc).

In addition to the above committees, members of the Bar may be appointed to serve in an adjunct organization, such as the Alaska Legal Services Corporation (ALSC). Also, special committees are established from time to time by the President with the advice and consent of the Board.

The Bar publishes all proposed changes to the Alaska Bar Rules in its quarterly publication, the *Alaska Bar Rag*, which is distributed to all members of the Bar 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 advertises board meetings in four Alaska newspapers, the *Alaska Bar Rag*, and the Alaska Public Online Notice System. Adequate time is allotted, and members of the general public are encouraged to make comments at all meetings.

Determine 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, nonattorneys serve on disciplinary hearing committees and fee arbitration panels throughout the State. The membership of the Joint Task Force on Mandatory Continuing Legal Education established in May 2005 includes a public member of the Board.

As mentioned above, the Bar publicly advertises meetings of the Board. Time is allotted at all board meetings for public comments.

Determine 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 victims' rights or the office of the ombudsman have been processed and resolved.

The Bar is an instrumentality of the State but is not administratively assigned to any department. However, the Alaska Supreme Court exercises a great degree of oversight. No complaints or investigations specifically involving the actions and activities of the Board were filed with the Office of the Ombudsman during our audit period.

The Board has a lawyer discipline process for investigation of complaints alleging attorney misconduct. Sanctions are imposed on those found in violation of the Rules of Professional Conduct. All public disciplinary action is subject to Supreme Court review. This process was developed through a cooperative effort of the Alaska Supreme Court, the Board, Bar staff, and a review team from the American Bar Association's Standing Committee on Professional Discipline.

An average of 215 complaints is received annually. Analyses of the complaints filed during the audit period shows that all grievances were reviewed, but relatively few were pursued beyond the initial investigation. Over 80 percent of the grievances received were not accepted for investigation due to lack of merit. Closure of grievances cases with sanctions such as disbarment, suspension, public censure, public reprimand, and admonition appear reasonable.

Over 600 complaints were filed during 2002, 2003, and 2004; these resulted in 135 cases being opened and the remaining complaints were not accepted. The investigations resulted in 50 cases^b with sanctions against a total of 16 attorneys. Six attorneys were disbarred, six were suspended, two were publicly reprimanded, and two were publicly censured. Discipline statistics are shown in Appendix B.

^b A single attorney may have multiple cases filed against them.

Board procedures provide for public notice of all attorneys who have been disbarred, suspended, put on probation, publicly censured, or reprimanded. The names of these attorneys 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. Notice of all disciplines imposed by the court, all orders granting reinstatements, and all public reprimands are transmitted to the American Bar Association's National Lawyer Regulatory Data Bank. However, as discussed in Recommendation No. 2, the Board does not publish the names of lawyers who were suspended, disbarred, publicly reprimanded or censured on their website.

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

The Board admits applicants to practice law through an examination process that was designed in consultation with a national expert. Admission is contingent on the following:

- Passing the Alaska Bar Examination
- Passing the Multi-state Professional Responsibility Examination (MPRE)
- Passing character investigation to determine if the applicant is of good moral character
- Attendance⁹ of a mandatory three hour ethics presentation by the Board.

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

Examination and admission statistics are shown in Appendix C.

The Bar offers continuing legal education for its membership and maintains an educational library. The Board established a three-year voluntary continuing legal education (CLE) project which required completion of a minimum of twelve hours of CLE, including one hour in ethics each calendar year. The Board compiled statistics of member participation and reported the information to the Supreme Court each year. The project expired in 2002 and the Board continued the voluntary CLE program. However, as discussed in Recommendation No. 1, the voluntary CLE average participation of 46 percent during the pilot period (September 19, 1999 – December 31, 2002) has declined during the subsequent two years (2003 through 2004) to 38 percent. Forty-one states, excluding Alaska, currently have mandatory CLE requirements which range from eight to twenty-seven credit hours per year.

As of 2004, lawyers located outside of Anchorage may participate in CLE through audio-video presentations available in three Alaska communities – Fairbanks, Juneau, and Kenai. Other communities may request a group video replay.

⁹ This requirement may be fulfilled by watching the ethics videotape and signing an affidavit.

Determine 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 and the Auditor Comments sections of this report.

Determine 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 or interest.

The Board allows special accommodations for applicants who have been determined to have disabilities.

We did not find any evidence that the Board was not complying with state personnel laws, including affirmative action in qualifying applicants for licensure. In no instance did the Board deny an applicant a license based on personal attributes.

Determine the extent to which the board, commission, or agency has effectively attained its objectives and purposes and the efficiency with which the board, commission, or agency has operated.

Article I Section 3 of the association bylaws sets out the purposes of the Bar which include:

1. To cultivate and advance the science of jurisprudence
2. To promote reform in the law and in judicial procedure
3. To facilitate the administration of justice
4. To encourage legal education for the membership
5. To increase the public service and efficiency of the bar

To achieve these purposes the Bar has established and maintains various committees as well as performs certain functions. For example, the Bar maintains a Law Related Education Committee to present programs to the community and school system to aid in the understanding of the law and legal system. The committee is divided into subcommittees in the communities of Anchorage, Fairbanks, Juneau, Kenai, Mat-SU, and other communities where the Board president sees the need to appoint a subcommittee.

The Board appoints three attorneys to serve staggered six-year terms on the Alaska Judicial Council. The Council recommends candidates for judicial office and conducts studies for the improvement of the administration of justice in Alaska. As council members, they survey, investigate, and evaluate incumbent justices and judges standing for retention. The evaluation

is published in the Lieutenant Governor's Official Elections Pamphlet. They are also involved in screening of applicants for the state public defenders office.

The Bar's continuing legal education committee consisting of 15 members assists the continuing legal education director in overseeing the presentation of substantive legal education programs to educate Alaskan lawyers, about developments in the field of law, and emphasize their ethical responsibilities. The Bar has conducted 100 live, 6 satellite, 49 conventions, and 2 video conference CLE presentations for 1,096, 1,066, and 973 attorney participants from calendar year 2002 through 2004, respectively.

Determine the extent to which the board, commission, or agency duplicates the activities of another governmental agency or the private sector.

The Board does not duplicate the activities of another governmental agency. However, many of its activities are those typically performed by a professional association. As discussed earlier, some of these more typical private sector activities include such things as fee arbitration, referral services, and sponsorship of a pro bono program.

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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 2002 through 2004

<u>Revenues</u>	<u>2002</u>	<u>2003</u>	<u>2004</u>
Dues	\$ 1,362,173	\$ 1,374,536	\$ 1,389,704
Admission Fees	156,055	186,905	146,175
Continuing Legal Education	111,740	132,830	102,121
Lawyer Referral Fees	59,462	46,520	51,816
Annual Meeting	97,071	94,042	117,189
Earnings on Investments	148,113	119,661	100,962
Other	<u>66,638</u>	<u>44,348</u>	<u>98,234</u>
<u>Total Revenues</u>	<u>2,001,252</u>	<u>1,998,842</u>	<u>2,006,201</u>
 EXPENSES			
Admissions	163,646	171,525	170,888
Board of Governors	37,540	40,728	33,637
Discipline	637,541	576,469	603,493
Fee Arbitration	53,548	54,614	57,685
Lawyer Referral	45,682	44,878	47,995
Continuing Legal Education	420,517	421,767	312,481
Administration	378,678	392,549	422,902
Annual meeting	105,371	99,018	105,871
Other	<u>190,311</u>	<u>160,916</u>	<u>267,308</u>
<u>Total Expenses</u>	<u>2,032,834</u>	<u>1,962,464</u>	<u>2,022,260</u>
 <u>Excess (deficit) of</u>			
<u>Revenues over Expenses</u>	\$ (31,582)	\$ 36,378	\$ (16,059)
<u>Net Assets at</u>			
<u>Beginning of Year</u>	<u>2,734,252</u>	<u>2,702,670</u>	<u>2,739,048</u>
 <u>Cumulative Surplus/(Deficit)</u>	 <u>\$ 2,702,670</u>	 <u>\$ 2,739,048</u>	 <u>\$ 2,722,989¹⁰</u>

Source: Alaska Bar Association Audited Financial Statements for 2002 through 2004

¹⁰ The cumulative surplus as of December 31, 2004 is comprised of the following Net Assets accounts: Designated by the Board of Governors for Working Capital - \$675,000; Asset Acquisition - \$120,665 and Undesignated - \$1,927,324.

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APPENDIX B

Board of Governors of the Alaska Bar Association
Discipline Statistics
Calendar Years 2002 through 2005¹¹
(unaudited)

<u>Disposition of Closed Disciplinary Cases</u>	<u>2002</u>	<u>2003</u>	<u>2004</u>	<u>2005</u>
Disbarment by Supreme Court	5	17	0	2
Suspension by Supreme Court	6	1	10	2
Public Censure by Supreme Court	0	1	1	0
Public Reprimand by Disciplinary Board	0	2	0	0
Private Reprimand by Disciplinary Board	0	0	1	0
Private Admonition by Discipline Counsel	0	0	2	0
Dismissed	13	26	36	5
Closed After Mediation	0	1	1	0
Total Closed Cases	<u>24</u>	<u>48</u>	<u>51</u>	<u>9</u>
 <u>Status of Open Cases at Year End</u>				
Attorney on Probation	1	1	1	1
Pending Supreme Court	0	6	5	2
Pending Disciplinary Board	17	2	2	1
Pending Hearing Committee	7	1	0	0
Pending Stipulation	0	2	0	9
Pending Approval to File Formal Hearing	0	0	5	5
Pending Written Private Admonition	0	0	1	0
Abeyance due to Court Case	2	2	2	2
Pending Bar Counsel Investigation/Decision	67	62	32	33
Pending Complainant Reply	4	3	1	1
Pending Respondent Response	7	3	14	14
Pending Mediation	1	1	0	0
Total Open Cases	<u>106</u>	<u>83</u>	<u>63</u>	<u>68</u>

Note: These numbers reflect individual complaints filed and not the number of attorneys under investigation. An individual attorney may have more than one case established against them.

Source: Data for 2002 – 2004 was obtained from the Board's annual reports. 2005 was compiled by the Alaska Bar Association's staff.

¹¹ The amounts reported for 2005 includes activity from January 1 through June 30, 2005.

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APPENDIX C

Board of Governors of the Alaska Bar Association
Bar Examination and Admission Statistics
 (unaudited)

Examination Statistics

Examination Dates	Number Taking	Number Passing	Percent Passing
	<u>Exam</u>	<u>Exam</u>	
February 2002	35	20	57%
July 2002	60	31	52%
February 2003	53	27	51%
July 2003	86	51	59%
February 2004	56	37	66%
July 2004	61	43	70%
February 2005	62	44	71%
Total	<u>413</u>	<u>253</u>	<u>61%</u>

Admission Statistics

Calendar Year	Admission By <u>Examination</u>	Admission By <u>Reciprocity</u>	Total <u>Admissions</u>
2002	50	22	72
2003	77	16	93
2004	81	31	112
2005 ¹²	<u>19</u>	<u>17</u>	<u>36</u>
Total	<u>227</u>	<u>86</u>	<u>313</u>

Source: Records provided by the Bar's staff.

¹² Admissions through June 30, 2005.

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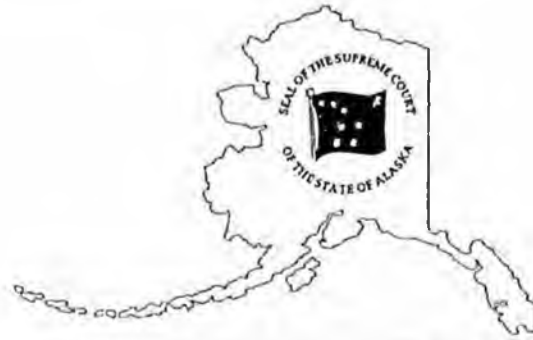
APPENDIX D

Board of Governors of the Alaska Bar Association
Attorney Referrals
January 2002 through June 30, 2005
(unaudited)

<u>Practice Categories</u>	<u>2002</u>	<u>2003</u>	<u>2004</u>	<u>2005</u>
Administrative	331	382	396	181
Admiralty	16	19	17	7
Adoption	27	34	34	17
Alaska Native Law	11	0	0	0
Arts	9	0	0	1
Bankruptcy	122	108	110	61
Commercial	185	148	123	120
Construction	36	14	37	25
Consumer	464	326	356	191
Criminal: Felony	144	130	127	133
Criminal: Misdemeanor	260	162	143	83
Discrimination	56	66	13	0
Divorce/Dissolution/Custody	1,153	869	907	472
Eminent Domain	2	0	0	2
Environmental	2	0	0	3
Foreign Language	3	0	2	0
Guardian/Conservator	29	14	33	15
Immigration	41	25	70	0
Insurance	89	87	88	44
Labor Relations	464	395	488	291
Landlord/Tenant	215	161	182	107
Malpractice	271	212	276	137
Negligence	856	791	794	427
Public Interest	5	8	4	2
Real Estate	230	206	281	149
Social Security Insurance Cases	18	28	82	20
Tax	34	8	0	0
Traffic	24	8	4	10
Trust/Will/Estate	171	167	187	101
Workers' Compensation	<u>305</u>	<u>217</u>	<u>228</u>	<u>129</u>
Total	<u>5,573</u>	<u>4,585</u>	<u>4,982</u>	<u>2,728</u>

Source: Alaska Bar Association 2002 -2003 Annual Reports and 2004 draft annual report. The 2005 information was provided by the Alaska Bar Association comptroller.

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ALASKA COURT SYSTEM
State of Alaska
Office of the Administrative Director

C. S. Christensen III
Deputy Administrative Director

820 West 4th Avenue
Anchorage, Alaska 99501-2005
(907) 264-8228; FAX (907) 264-8291
cchristensen@courts.state.ak.us

December 20, 2005

Cristino F. Fermin, CPA
In-Charge Auditor
Division of Legislative Audit
P.O. Box 113300
Juneau, Alaska 99811-3300

Re: Preliminary Audit Response
Board of Governors of Alaska Bar Association

Dear Mr. Fermin:

Thank you for the opportunity to offer a written response to the findings and recommendations contained in the above-referenced audit. This response represents the views of the Administrative Office of the Alaska Court System (AOC).

The AOC takes no position on the three recommendations directed at the Board of Governors of the Alaska Bar Association. We agree with the conclusion that the Board protects the public by ensuring that persons licensed to practice law are qualified. We also concur in the recommendation to the legislature that the termination date of the Board be extended to June 30, 2014.

However, we take issue with the auditor's comments beginning on page 4. Those comments go beyond the scope of the audit by making conclusory observations about the merits of self-regulation by the Bar, and suggesting that attorney discipline in Alaska could be a government function. Specifically, it is suggested that the following options be considered:

- Disciplinary investigations performed by Alaska Court System employees
- Place disciplinary function under the Supreme Court with a Disciplinary Board appointed by the court

The historical record shows that attorney discipline has always been a matter of importance to the supreme court. In fact, when the supreme court first asserted control of the Bar over the Bar's strenuous objection in 1964, it did so by promulgating rules governing the discipline of attorneys, among other things. See *In the Matter of an Application for an Order Vacating ALASKA SUPREME COURT ORDERS NO. 64, 68, 69, 70 and 71, and Other Relief*, 395 P.2d 853 (Alaska 1964). Public confidence in the process of attorney discipline is essential.

Equally important, however, is the need to keep separate the prosecutorial and adjudicative functions inherent in attorney discipline. Under our system of government, it is imperative that those who have the duty of charging transgressors and proving their guilt do not have the final say in determining that guilt. As currently designed, the system of attorney discipline keeps a wall between those two functions. It is the Bar which has the duty to investigate and prosecute allegations of attorney misconduct, to make preliminary findings, and to recommend punishment. It is the supreme court which makes the final determination of guilt or innocence, and which makes the final determination regarding punishment.

The fundamental problem with placing the attorney discipline function within the court system is that the entity responsible for investigating and prosecuting attorney misconduct would also be the entity responsible for making the ultimate determination of guilt or innocence. As the final adjudicative body for cases decided under the Alaska Constitution, it is inappropriate for the supreme court to exercise both executive and judicial powers in disciplinary matters.

There may be other states in which the supreme court exercises both prosecutorial and adjudicative authority. However, that does not mean that it is good public policy to do so, or that doing so is consistent with the fundamental principles under which our system was intended to operate. Administrative convenience is not adequate justification for this consolidation of government power.

If it is ever determined that the current system of attorney discipline does not work adequately and needs to be changed, a better model would be the one utilized by the Judicial Conduct Commission. This commission is part of the judicial branch of government, not the court system, and as such it is independent of the supreme court. The commission engages in investigatory and prosecutorial tasks when allegations of judicial misconduct are made, and makes recommendations to the supreme court. The supreme court exercises the judicial function, serving as the ultimate arbiter of guilt.

It is true that a separate disciplinary entity such as this could be paid for by Bar dues and have no cost to the general fund at this time. However, the persons staffing said agency would be new state employees. The legislature has demonstrated an intent

Cristino F. Fermin, CPA
December 20, 2005
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in recent years to limit the addition of permanent, full-time state employees, and absent concrete evidence that the current system does not adequately serve the public interest, it may be disinclined to create a new state bureaucracy.

Thank you for providing the opportunity to comment on this audit. Please feel free to contact me if you have any questions.

Very truly yours,

C. S. Christensen III
Deputy Administrative Director

(Intentionally left blank)

December 16, 2005

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

Dear Ms. Davidson:

Thank you for the prompt and thorough audit and the opportunity to respond to your preliminary assessment 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 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. The Board works very hard to maintain the highest level of professionalism in the Bar while remaining within our budget.

Sunset and Fiscal Note

The Board concurs with extending the sunset date of the Alaska Bar Association Board of Governors until June 30, 2014.

Because you have prepared this audit so promptly, no bill has been filed with the legislature. However, when that occurs, there will be no fiscal note attached, as the Bar Association will not be seeking any state funding for its operational costs. The Bar Association has obtained state funding only during the limited time frame between 1981 and 1986, and only for the per diem and travel expenses of the three public members who sat on the Board. For the past 19 years, the Bar Association has paid those expenses without state funding.

As noted in the audit, the operations of the Bar Association 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 is currently addressing the issue of a Mandatory CLE requirement.

At the May 2005 meeting of the Board of Governors, the Board voted to establish a Joint Task Force on MCLE. Members of the Task Force now include a justice from the Alaska Supreme Court, an Alaska Court System attorney, the Executive Director of the Alaska Judicial Council, four members of the Board of Governors, and a representative from the Bar's CLE Committee. The Task Force will report to the Board at its January 2006 meeting. There is sentiment on the Board in favor of MCLE. The Board will most likely publish a proposed MCLE rule in the March 2006 *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.

The MCLE rule, as discussed by the Board, would provide that active Bar members complete 12 hours of CLE a year, including 1 hour of ethics.

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 Bar Association programs for self-study.

The implementation of MCLE will result in an increase in administration costs. A cost analysis of adding MCLE which was done in January 2005 showed that MCLE would have significant administrative and financial impact on the Bar Association - nearly \$180,000.

The Bar would be responsible for the administration of MCLE, which would include verification of the CLE credits of nearly 3,000 members, as well as the approval of courses presented by other CLE providers. MCLE would require at least one, and probably two, additional Bar staff. Even if the verification of CLE credits by attorneys is done on the honor system, with random audits (much like Alaska CPAs), the Bar would need to hire at least one additional staff person. This would be due to the time necessary to answer questions about course eligibility, conduct random audits, and deal with non-compliance, which would involve warning letters, extensions of time in which to comply, suspensions of Bar licenses for non-compliance, and reinstatements.

Also, the additional staff would be necessary to separate the two CLE functions of the Bar, being a CLE provider and a MCLE regulator. This separation is necessary to avoid the appearance of a conflict of interest, as noted in the

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audit, and was recommended in the 1998 ALI-ABA study mentioned in the audit.

Moreover, the Bar would need to offer more CLE programs than the 20-40 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 a MCLE requirement.

Nevertheless, it is probable that the Board will approve a MCLE rule and recommend its adoption to the Alaska Supreme Court.

Response to Recommendation No. 2. We agree that Lawyer Public Discipline History should be available on the Alaska Bar Association website.

It has been the Bar's goal since the website was first launched in 1998 to post public discipline information.

The Bar's website has been continually evolving. The first priority has been to get basic information on-line, such as how to apply for admission to the Bar, information on CLE seminars, lists of committees and Sections, and basic discipline information.

The Bar has managed its website without a full-time webmaster. Currently, the CLE Coordinator has primary responsibility for updating and posting information to the website. More complicated matters are contracted out to a private company.

Because of the lack of a full-time staff person who can devote time to the development of the website content, and the expense of contract programming, adding information to the website has largely been a matter of resources and priorities.

The Board agrees that having public discipline information available on our website is a desirable goal and we will work to that end.

Response to Recommendation No. 3. We agree that the Annual Report should be published in a timely manner, and we will modify the Standing Policies of the Board of Governors to reflect this.

The Board of Governors will take steps to amend the Standing Policies of the Board of Governors to set a deadline for the submission of the Annual Report.

The staff got behind on annual reports due to turnover in the position of Executive Assistant. This Assistant not only contributed to the completion of the annual report, but when there were vacancies in this position, the Executive Director had to personally take over some of the responsibilities of this position, which detracted from other duties.

Another factor contributing to the lateness was the subsequent decision by staff to redesign the annual report and other forms to make them more readable and easier to update. The annual report redesign "got behind" the redesign of the bar dues notice, the committee solicitation form, the Section solicitation form, and the development of the application forms for special accommodations requests for the Bar Exam.

The 2004 Annual Report has been published, and the Bar is now up to date with annual reports and will be timely starting with the 2005 report. At the January Board of Governors meeting, there will be a proposed amendment to the Standing Policies of the Board of Governors to adopt a specific due date for the annual report.

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. To its credit, the Alaska Bar Association has one of the most aggressive and effective discipline systems in the country.

The Bar Association conducted an e-mail and phone survey of the members of the National Organization of Bar Counsel whose members staff disciplinary jurisdictions nationwide. Of the 48 states the Bar was able to contact, 13¹, in addition to Alaska, indicated that they were not state government agencies under their supreme courts; 13² generally indicated that they were considered creations of their supreme courts, but either not considered state government

¹ Alabama, Arizona, Hawaii, Idaho, Kentucky, Montana, Nevada, North Carolina, Oregon, South Dakota, Utah, Washington, and Wyoming.

² Arkansas, Florida, Idaho, Iowa, Kansas, Maine, Maryland, Massachusetts, Michigan, Mississippi, Missouri, North Dakota, Pennsylvania, and West Virginia.

agencies or state employees; and, 22³ indicated that they were state government agencies under their supreme courts.

Based on this survey, Alaska is not unique in its approach to attorney discipline. Indeed, because the Bar Association performs these vital functions under the supervision of the Alaska Supreme Court, its system is similar to those in place in a significant number of other state jurisdictions.

It is also our belief that the present management system of the Bar provides a blend of private and governmental functions, insuring both accountability and good management. For example, 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 on the Board of Governors. Its rule making and 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 ensures that the Bar Association is both responsive to the needs of its members, and qualified to address such issues as admission standards and peer review.

Reserves of the Alaska Bar

The Board has a policy to hold a working capital reserve in an amount equal to four month's expenses. (\$190,753/month or \$763,011.) However it is not unusual for a non-profit association to hold a reserve in an amount equal to six to nine months of expenses. (Ranging from \$1,144,518 - \$1,716,777.)

Unlike state agencies, the Bar cannot request supplemental appropriations from the Legislature if an unexpected event occurs which would incur significant financial expense. Also, the Board needs to be able to "save" for the financial viability of planned projects or events. For example, the Bar will be replacing its entire database in the next year, a project that will cost \$200,000 or more.

It has also been the policy of the Board to set Bar dues in an amount to accumulate a reserve, so that Bar dues do not have to be raised each year. The Board believes that the stability and predictability of bar dues over a long period of time is desirable. In the past twenty years, bar dues have only been raised twice: from \$310 to \$450 in 1994; and, from \$450 to \$550 in 2005.

³ California, Colorado, Connecticut, Delaware, Georgia, Illinois, Indiana, Louisiana, Minnesota, Nebraska, New Hampshire, New Jersey, New Mexico, New York, Ohio, Rhode Island, South Carolina, Tennessee, Texas, Vermont, Virginia, and Wisconsin.

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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 legal profession and service to the public.

Sincerely,
Alaska Bar Association

Jonathon A. Katcher
President

Westlaw.

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ALASKA STATUTES

Title 8. Business and Professions.

Chapter 03. Termination, Continuation and Reestablishment of Regulatory Boards.

Sec. 08.03.010 Termination dates for regulatory boards.

- (a) [Repealed, § 4 ch 14 SLA 1987.]
- (b) [Repealed, § 4 ch 14 SLA 1987.]
- (c) The following boards have the termination date provided by this subsection:
 - (1) Board of Public Accountancy (AS 08.04.010) -- June 30, 2009;
 - (2) Board of Governors of the Alaska Bar Association (AS 08.08.040) -- June 30, 2007,
 - (3) State Board of Registration for Architects, Engineers, and Land Surveyors (AS 08.48.011) -- June 30, 2009;
 - (4) Board of Barbers and Hairdressers (AS 08.13.010) -- June 30, 2011;
 - (5) Board of Chiropractic Examiners (AS 08.20.010) -- June 30, 2014;
 - (6) Board of Social Work Examiners (AS 08.95.010) -- June 30, 2010;
 - (7) Board of Dental Examiners (AS 08.36.010) -- June 30, 2011;
 - (8) Board of Certified Direct-Entry Midwives (AS 08.65.010) -- June 30, 2007;
 - (9) Board of Dispensing Opticians (AS 08.71.010) -- June 30, 2004;
 - (10) Board of Marine Pilots (AS 08.62.010) -- June 30, 2007;
 - (11) Board of Marital and Family Therapy (AS 08.63.010) -- June 30, 2010;
 - (12) State Medical Board (AS 08.64.010) -- June 30, 2007;

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- (13) Board of Nursing (AS 08.68.010) -- June 30, 2011;
- (14) Board of Examiners in Optometry (AS 08.72.010) -- June 30, 2014;
- (15) Board of Pharmacy (AS 08.80.010) -- June 30, 2010;
- (16) State Physical Therapy and Occupational Therapy Board (AS 08.84.010) -- June 30, 2014;
- (17) Board of Professional Counselors (AS 08.29.010) -- June 30, 2010;
- (18) Board of Psychologist and Psychological Associate Examiners (AS 08.86.010) -- June 30, 2010;
- (19) Real Estate Commission (AS 08.88.011) -- June 30, 2008;
- (20) Board of Certified Real Estate Appraisers (AS 08.87.010) -- June 30, 2010;
- (21) Board of Veterinary Examiners (AS 08.98.010) -- June 30, 2009;
- (22) Big Game Commercial Services Board (AS 08.54.591) -- June 30, 2008.
- (d) [Repealed, § 3 ch 74 SLA 1979.]
- (e) [Repealed, § 3 ch 74 SLA 1979.]
- (§ 2 ch 149 SLA 1977; am §§ 1, 3 ch 74 SLA 1979; am §§ 1, 3 ch 36 SLA 1980; am §§ 1, 3 ch 37 SLA 1980; am §§ 1, 3 ch 38 SLA 1980; am §§ 1, 3 ch 39 SLA 1980; am §§ 1, 3 ch 40 SLA 1980; am §§ 1, 3 ch 41 SLA 1980; am §§ 1, 3 ch 42 SLA 1980; am §§ 1, 2 ch 43 SLA 1980; am §§ 1, 3 ch 67 SLA 1980; am §§ 10, 11 ch 71 SLA 1980; am §§ 6, 7 ch 72 SLA 1980; am §§ 2, 15 ch 82 SLA 1980; am §§ 1, 3 ch 87 SLA 1980; am §§ 7, 8 ch 143 SLA 1980; am §§ 1, 2 ch 153 SLA 1980; am §§ 2, 5 ch 159 SLA 1980; am §§ 41, 42 ch 167 SLA 1980; am §§ 1, 13 ch 52 SLA 1981; am §§ 1, 2 ch 53 SLA 1981; am § 1 ch 28 SLA 1982; am § 1 ch 60 SLA 1982; am § 1 ch 96 SLA 1982; am § 1 ch 8 SLA 1983; am § 1 ch 9 SLA 1983; am § 1 ch 13 SLA 1983; am § 1 ch 29 SLA 1983; am § 2 ch 48 SLA 1983; am §§ 12, 13 ch 6 SLA 1984; am § 1 ch 29 SLA 1984; am § 1 ch 49 SLA 1984; am § 1 ch 50 SLA 1984; am § 1 ch 63 SLA 1984; am § 1 ch 4 SLA 1985; am § 1 ch 28 SLA 1985; am § 1 ch 85 SLA 1985; am § 1 ch 36 SLA 1986; am § 1 ch 39 SLA 1986; am § 1 ch 46 SLA 1986; am § 2 ch 71 SLA 1986; am § 1 ch 96 SLA 1986; am § 1 ch 99 SLA 1986; am § 1 ch 137 SLA 1986; am § 1 ch 145 SLA 1986; am § 1 ch 146 SLA 1986; am § 4 ch 14 SLA 1987; am § 1 ch 55 SLA 1987; am § 1 ch 60 SLA 1987; am § 4 ch 74 SLA 1987; am § 1 ch 79 SLA 1987; am § 2 ch 87 SLA 1987; am § 48 ch 94 SLA 1987; am § 3 ch 2 FSSLA 1987; am § 1 ch 50 SLA 1988; am § 1 ch 51 SLA 1988; am § 1 ch

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57 SLA 1988; am § 1 ch 61 SLA 1988; am § 1 ch 62 SLA 1988; am § 3 ch 98 SLA 1988; am § 1 ch 124 SLA 1988; am § 5 ch 126 SLA 1988; am § 2 ch 132 SLA 1988; am § 1 ch 160 SLA 1988; am § 1 ch 20 SLA 1989; am § 2 ch 37 SLA 1989; am § 2 ch 40 SLA 1989; am § 1 ch 45 SLA 1989; am § 1 ch 48 SLA 1989; am § 1 ch 2 SLA 1990; am § 1 ch 3 SLA 1990; am § 1 ch 25 SLA 1990; am § 3 ch 177 SLA 1990; am § 1 ch 62 SLA 1991; am § 2 ch 89 SLA 1991; am § 1 ch 19 SLA 1992; am § 1 ch 20 SLA 1992; am § 1 ch 21 SLA 1992; am § 1 ch 22 SLA 1992; am § 1 ch 23 SLA 1992; am §§ 4, 5 ch 129 SLA 1992; am § 3 ch 130 SLA 1992; am § 21 ch 6 SLA 1993; am § 1 ch 20 SLA 1993; am § 1 ch 21 SLA 1993; am § 1 ch 22 SLA 1993; am § 1 ch 23 SLA 1993; am § 1 ch 24 SLA 1993; am § 1 ch 25 SLA 1993; am § 1 ch 23 SLA 1994; am § 1 ch 25 SLA 1994; am § 1 ch 27 SLA 1994; am § 1 ch 48 SLA 1994; am § 1 ch 88 SLA 1994; am § 1 ch 93 SLA 1994; am § 1 ch 95 SLA 1994; am § 1 ch 97 SLA 1994; am § 37 ch 101 SLA 1994; am § 1 ch 74 SLA 1995; am § 12 ch 91 SLA 1995; am §§ 1, 3 -- 7 ch 93 SLA 1995; am § 16 ch 33 SLA 1996; am § 1 ch 92 SLA 1996; am § 1 ch 93 SLA 1996; am § 1 ch 94 SLA 1996; am § 1 ch 34 SLA 1997; am § 1 ch 36 SLA 1997; am § 1 ch 47 SLA 1997; am § 1 ch 66 SLA 1997; am § 1 ch 5 SLA 1998; am § 1 ch 13 SLA 1998; am § 1 ch 46 SLA 1998; am § 1 ch 52 SLA 1998; am § 4 ch 75 SLA 1998; am § 4 ch 118 SLA 1998; am § 1 ch 1 SLA 1999; am § 1 ch 9 SLA 1999; am § 1 ch 52 SLA 1999; am § 1 ch 2 SLA 2001; am § 1 ch 5 SLA 2001; am § 1 ch 7 SLA 2001; am § 1 ch 24 SLA 2001; am § 1 ch 46 SLA 2001; am § 1 ch 47 SLA 2001; am § 1 ch 12 SLA 2002; am § 1 ch 16 SLA 2002; am § 1 ch 39 SLA 2002; am § 2 ch 58 SLA 2002; am § 1 ch 101 SLA 2002; am § 1 ch 2 SLA 2003; am § 1 ch 10 SLA 2003; am § 1 ch 16 SLA 2003; am § 1 ch 20 SLA 2003; am § 1 ch 106 SLA 2004; am § 1 ch 10 SLA 2005; am § 1 ch 11 SLA 2005; am §§ 1 -- 6 ch 36 SLA 2005; am § 1 ch 38 SLA 2005; am § 1 ch 47 SLA 2005; am § 1 ch 58 SLA 2005; am § 2 ch 84 SLA 2005; am § 1 ch 22 SLA 2006; am § 1 ch 23 SLA 2006; am § 1 ch 24 SLA 2006; am § 1 ch 101 SLA 2006)

HISTORICAL NOTES

Revisor's notes. -- Subsection (c) reorganized in 1991 to place the paragraphs in alphabetical order by occupation. Former paragraphs (c)(6) and (14) each enacted as (c)(23). Renumbered in 1992 to maintain the alphabetical organization, at which time the existing paragraphs were renumbered accordingly. Reorganized again in 1996 to reflect the repeal of former paragraph (c)(5) and to maintain alphabetical organization. Paragraph (c)(17) was enacted as (c)(21). Renumbered in 1998, at which time former (c)(17)-(20) were renumbered as (c)(18)-(21), respectively.

REFERENCES

Cross references. -- For termination dates of other boards, councils, or commissions, see AS 44.66.010(a); for transitional provisions relating to the 1998 enactment of paragraph (c)(17), see § 7, ch. 75, SLA 1998 in 1998 Temporary and Special Acts.

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HISTORICAL NOTES

Effect of amendment. -- The 1994 amendments substituted "1998" for "1993" in paragraph (c)(2), "1997" for "1993" in paragraphs (c)(4), (c)(10), and (c)(24), "1994" for "1993" in former paragraph (c)(5), "1998" for "1994" in paragraphs (c)(6) and (c)(7), and "1999" for "1993" in paragraph (c)(20), and repealed former paragraph (c)(15), relating to the Board of Mechanical Examiners.

The 1995 amendments substituted "1999" for "1994" in paragraph (c)(13), "2005" for "1995" in paragraphs (9), (14), and (22), "1999" for "1994" in paragraph (13), "2003" for "1995" in paragraphs (16) and (17), and "2004" for "1995" in paragraph (23), and repealed former paragraph (c)(18), relating to the Board of Nursing Home Administrators.

The first 1996 amendment, effective May 23, 1996, repealed former paragraph (c)(5).

The second 1996 amendment, effective June 21, 1996, substituted "June 30, 2002" for "June 30, 1996" in paragraph (c)(9).

The third 1996 amendment, effective June 21, 1996, substituted "June 30, 2002" for "June 30, 1996" in paragraph (c)(5).

The fourth 1996 amendment, effective June 21, 1996, substituted "2002" for "1996" in paragraph (c)(14).

The first 1997 amendment, effective July 1, 1997, substituted "June 30, 2001" for "June 30, 1997" in paragraph (c)(4).

The second 1997 amendment, effective July 1, 1997, substituted "June 30, 2001" for "June 30, 1997" in paragraph (c)(3).

The third 1997 amendment, effective July 1, 1997, substituted "June 30, 2001" for "June 30, 1997" in paragraph (c)(16).

The fourth 1997 amendment, effective July 1, 1997, substituted "June 30, 2001" for "June 30, 1997" in paragraph (c)(1).

The first 1998 amendment, effective March 21, 1998, substituted "June 30, 2001" for "June 30, 1997" in paragraph (c)(21).

The second 1998 amendment, effective April 17, 1998, substituted "June 30, 2001" for "June 30, 1997" in paragraph (c)(7).

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The third 1998 amendment, effective August 20, 1998, substituted "June 30, 2004" for "June 30, 1998" in paragraph (c)(20).

The fourth 1998 amendment, effective August 27, 1998, substituted "June 30, 2002" for "June 30, 1998" in paragraph (c)(2).

The fifth 1998 amendment, effective June 5, 1998, added paragraph (17) of subsection (c) and redesignated the subsequent paragraphs accordingly.

The sixth 1998 amendment, effective January 1, 1999, deleted "Clinical" preceding "Social Work" in paragraph (c)(6).

The first 1999 amendment, effective June 16, 1999, substituted "2003" for "1999" in paragraph (c)(10).

The second 1999 amendment effective, April 24, 1999, substituted "2003" for "1998" in paragraph (c)(8).

The third 1999 amendment, effective June 4, 1999, substituted "2005" for "1999" in paragraph (c)(15).

The 2001 amendments, in subsection (c), substituted "2005" for "2001" in paragraphs (1), (3), (4), (7), and (21), and "2006" for "2001" in paragraph (16).

The first 2002 amendment, effective July 24, 2002, extended the termination date of the Board of Professional Counselors from June 30, 2002 to June 30, 2005.

The second 2002 amendment, effective August 1, 2002, extended the termination date of the Board of Examiners in Optometry from June 30, 2002 to June 30, 2006.

The third 2002 amendment, effective September 4, 2002, extended the termination date of the Board of Chiropractic Examiners from June 30, 2002 to June 30, 2006.

The fourth 2002 amendment, effective June 20, 2002, extended the termination date of the Board of Dispensing Opticians from June 30, 2002 to June 30, 2004.

The fifth 2002 amendment, effective September 26, 2002, extended the termination date of the Board of Governors of the Alaska Bar Association from June 30, 2002 to June 30, 2006.

The first 2003 amendment, effective March 28, 2003, extended the termination date of the Board of Nursing from June 30, 2003 to June 30, 2011.

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The second 2003 amendment, effective April 17, 2003, extended the termination date of the Board of Marine Pilots from June 30, 2003 to June 30, 2007.

The third 2003 amendment, effective August 3, 2003, extended the termination date of the Board of Certified Direct-Entry Midwives from June 30, 2003 to June 30, 2007.

The fourth 2003 amendment, effective August 12, 2003, extended the termination date of the State Medical Board from June 30, 2003 to June 30, 2007.

The 2004 amendment, effective June 30, 2004, substituted "2008" for "2004" in paragraph (c)(19).

The first 2005 amendment, effective May 4, 2005, extended the termination date of the Board of Public Accountancy from June 30, 2005 to June 30, 2009.

The second 2005 amendment, effective June 3, 2005, extended the termination date of the Board of Barbers and Hairdressers from June 30, 2005 to June 30, 2011; extended the termination date of the Board of Social Work Examiners from June 30, 2005 to June 30, 2010; extended the termination date of the Board of Pharmacy from June 30, 2005 to June 30, 2010; extended the termination date of the Board of Professional Counselors from June 30, 2005 to June 30, 2010; extended the termination date of the Board of Psychologist and Psychological Associate Examiners from June 30, 2005 to June 30, 2010; and extended the termination date of the Board of Veterinary Examiners from June 30, 2005 to June 30, 2009.

The third 2005 amendment, effective June 25, 2005, extended the termination date of the Board of Marital and Family Therapy from June 30, 2005 to June 30, 2010.

The fourth 2005 amendment, effective July 1, 2005, extended the termination date of the State Board of Registration for Architects, Engineers, and Land Surveyors from June 30, 2005 to June 30, 2009.

The fifth 2005 amendment, effective August 1, 2005, extended the termination date of the Board of Certified Real Estate Appraisers from June 30, 2004 to June 30, 2010.

The sixth 2005 amendment, effective September 22, 2005, extended the termination date of the Board of Dental Examiners from June 30, 2005 to June 30, 2011.

The seventh 2005 amendment, effective December 5, 2005, added paragraph (c)(22).

The first 2006 amendment, effective May 6, 2006, substituted "June 30, 2014" for "June 30, 2006" in paragraph (c)(5).

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The second 2006 amendment, effective May 7, 2006, substituted "June 30, 2014" for "June 30, 2006" in paragraph (c)(16).

The third 2006 amendment, effective May 7, 2006, substituted "June 30, 2014" for "June 30, 2006" in paragraph (c)(14).

The fourth 2006 amendment, effective August 5, 2006, substituted "June 30, 2007" for "June 30, 2006" in paragraph (c)(2).

A. S. 08.03.010, AK ST § 08.03.010

Current through all 2006 Legislation, Annotations current through Opinions
Decided as of July 1, 2006.

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