

HB

88

ALASKA STATE LEGISLATURE HOUSE JUDICIARY COMMITTEE

Representative Jay Ramras
Chairman

(907) 465-3004

Fax: (907) 465-2070

Representative_Jay_Ramras@legis.state.ak.us
1292 Sadler Way, Suite 324
Fairbanks, AK 99701



Committee Members:

Representative Nancy Dahlstrom,
Vice-Chairman
Representative John Coghill
Representative Bob Lynn
Representative Carl Gatto
Representative Max Gruenberg
Representative Lindsey Holmes

State Capitol, Room 120
Juneau, Alaska 99801

Sponsor Statement HB 88

“An Act extending the termination date of the Board of Governors of the Alaska Bar Association; and providing for an effective date.”

The Alaska Bar Association was established in 1955. The Bar Association’s two primary functions are to screen applicants for admission, thereby ensuring all successful applicants are fit to practice law, and to provide discipline by investigating grievances against members of the Bar. The Bar Association also performs a wide variety of other functions including offering classes for continuing legal education, lawyer referral services, and fee arbitration.

The Board consists of twelve members, nine attorneys elected by the active membership of the Bar Association, and three non-attorney, public members appointed by the Governor and confirmed by the Legislature.

The Division of Legislative Audit, in its November 4, 2008, report concluded that “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.” The Division of Legislative Audit further recommended that the termination date of the board be extended to June 30, 2017.

The Board of Governors of the Alaska Bar Association is currently scheduled to terminate on June 30, 2009, and would have one year to conclude its administrative operations unless the legislature acts this session. House Bill 88 will extend the termination date for the Board of Governors of the Alaska Bar Association for another eight years.

FISCAL NOTE

STATE OF ALASKA
2009 LEGISLATIVE SESSION

Fiscal Note Number: 1
 Bill Version: 26-LS0410A
 () Publish Date: _____

Identifier (file name): House Bill 88
 Title: Extend Bar Ass'n Board of Governors
 Sponsor: Rep. Jay Ramras
 Requester: _____

Dept. Affected: None
 RDU: _____
 Component: _____
 Component Number: _____

Expenditures/Revenues (Thousands of Dollars)

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

	Appropriation Required	Information						
		FY 2010	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014	FY 2015
OPERATING EXPENDITURES								
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	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 Interagency Receipts								
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2009) cost: _____

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 2017. The board is governed by the Board of Governors of the Alaska Bar. Accordingly, this legislation would not have a fiscal impact on any division of the State of Alaska.

Prepared by: House Judiciary Committee
 Division: Legislative
 Approved by: House Judiciary Committee Chairman Jay Ramras

Phone 465-4990
 Date/Time 2/4/09 at 2:45 p.m.
 Date 2/4/2009

Jane Pierson

From: Theresa Nangle Obermeyer [tobermeyer@gci.net]
Sent: Friday, January 30, 2009 3:30 PM
To: Jane Pierson
Subject: Response to Alaska Bar Association Audit #41-20057-08

1/6/09

Theresa Nangle Obermeyer, Ph.D.

Alaska Type A Teaching Certificate since 1979

Alaska Real Estate Broker since 1979

3000 Dartmouth Drive

Anchorage, Alaska 99508-4413

(907)278-9455 Phone/Fax/Msg.

<http://www.tobermeyer.info>

Alaska Legislative Audit #41-20057-08 Alaska Bar Association Sunset June 30, 2009 recommends Alaska Bar Association extension. The Audit is online at <http://www.legaudit.state.ak.us/pages/digests/2008/20057dig.htm>

ALASKA BAR ASSOCIATION SHOULD BE SUNSET JUNE 30, 2009 during Alaska 50th Anniversary of Statehood year for the foreseeable future while Alaska Legislature has time to analyze the two essential functions of admissions and discipline. Alaska has unique circumstances as the only state without a law school or any elected attorney. Legislative Audit #41-20057-08 is a "white wash." Sunset should be reevaluated by 26th Alaska Legislature 2nd Session. Please review the "Summary" of the Audit "four objectives of our report" including the termination date extension of Board of Governors Alaska Bar Association (Board), whether the Board is operating in the public interest, to determine if the Board has exercised appropriate oversight of licensed attorneys, and to provide current status on the recommendations made in the prior report. Board of Governors Alaska Bar Association demonstrate none of these objectives at the present time. Ms. Patricia Davidson, Alaska Legislative Auditor, is unable to write the essence of the lack of accountability of Alaska Bar Association as she is a public employee without legal recourse. Alaska Bar Association Audit is the most important of all the State of Alaska Audits done because if any other Alaska professional has a problem with licensure in his/her profession, the applicant must hire a licensed Alaska attorney in order to appeal. Only Alaska Legislature can create accountability of Alaska Bar Association. Major issues follow:

1. American and Alaskan Jurisprudence

Please specifically review Page 19 of Alaska Bar Association Audit #41-20057-08. Article I Section 3 of the Alaska Bar Association Bylaws sets out the purposes of the Alaska Bar which are:

"1. To cultivate and advance the SCIENCE OF JURISPRUDENCE." (Emphasis added.) "Jurisprudence is the philosophy of the law or science . . . which has for its function to ascertain the principles on which legal rules are based . . . (in order to) produce the greatest advantage to the community" according to Black's Law Dictionary. Please see "In Re Obermeyer II

8/23/00" and In the Matter of the Application of Thomas S. Obermeyer 717 Pacific Reporter 2d 382, 57 American Law Reports 4th 1195 (Alaska 4/18/86), both of which can be found at <http://www.state.ak.us/courts> "Appellate Courts" "Alaska Case Law Precedent since 1960," Thomson-West page, "By Party Name" "Obermeyer." THESE CASES ARE AMERICAN AND ALASKAN JURISPRUDENCE.

2. Alaska Bar Association Admission by Reciprocity Gives More Rights to Out of State Attorneys than Alaska Attorneys

The current Alaska Bar Rules of Alaska Bar Association give an Alaska law license to any applicant by reciprocity if he/she has been licensed by written Bar Exam in the 33 of 50 reciprocal states, pays \$1,500, and gets three letters from clients in the preceding state that the applicant has practiced law there for 5 out of the last 7 years. Alaska Active Out of State attorneys number over 18% of the Total Alaska attorneys or 530 out of 2,938 per Todd Communications Alaska Directory of Attorneys Fall, 2008 Page 2. **July, 2006-June, 2008 per the "Audit" Page 31, 45% of Alaska Bar Association admission has been by reciprocity – most of whom have never set foot on Alaska soil judging by their current addresses.** Why do these out of state applicants want reciprocity here? Obviously, these attorneys are making money off Alaska. Another almost 30% of Alaska In State Active Attorneys work for the Government per Directory Spring, 2008 Page 64.

Alaska Bar Exam, "a test of minimal competency," has an average 63% passage rate July, 2006-June, 2008 per Page 31 of the Audit. Alaska has as high requirements as any state in the U.S. for sitting for this Alaska Bar Exam but presumably has the lowest passage rate of the 50 states of Bar Association applicants, all of whom went to American Bar Association accredited law schools.

If 45% of Alaska Bar admissions currently are by reciprocity to those who overwhelmingly are not Alaska residents, what will the number be if Alaska Legislature goes along with the Audit recommendation and continues Alaska Bar Association without review until June 30, 2017 or eight long years?

3. Current licensure by exam or reciprocity does not assure competence, ethical behavior, protection, or service to the public. Board of Governors Alaska Bar Association (Board) offers no alternatives.

Massachusetts Supreme Judicial Court has allowed a Massachusetts Bar applicant who graduated from an on-line law school owned by testing-prep company, Kaplan, Inc., to sit for Massachusetts Bar Exam. See Ross E. Mitchell vs. Board of Bar Examiners, SJC-10157, September 3, 2008 – November 20, 2008. The applicant was allowed to take and pass the California Bar Exam, a state which allows applicants to sit for this Exam from unaccredited law schools. What does this tell the Alaska public about bar exams? About competency to practice? About ethics? About dealing with clients, peers, and the courts in a timely and courteous way? If the practice of law boils down to one exam, one score on one sheet of paper, does it truly protect the public and inspire confidence, when a legal education was acquired at whatever rate of speed on-line? Mr. Mitchell has made both Alaska's licensure practices and American Bar Association accredited law schools' three years of Socratic Method teaching archaic. At Alaska Statehood 1959 and after, some attorneys and judges obtained Alaska law licenses by clerking for the court without having gone to law school at all. The on-line law degree points out that there are alternatives to practice that Alaska Bar Association is unwilling to visit.

Unlike all the other 49 states, Alaska Bar Association Board of Governors offers no alternative methods of admission like a possible clerkship at a law firm or for a judge, even after the Alaska Bar applicant has faithfully obtained American Bar Association 3 year law school education. Furthermore, the Alaska Bar Rule 2.2(b)(3) disallows admission by reciprocity if applicants have failed Alaska Bar Exam in the last five years even if licensed by written Bar Exam in a reciprocal state. This harms Alaska residents who live and work in Alaska and only highlights the unfairness of reciprocity applicants from 33 states who have never sat for the Alaska Bar Exam simply paying

\$1,500 to be licensed here. On point is Ms. Marla Greenstein, who as Executive Director, Alaska Commission of Judicial Conduct since 1982, was admitted by reciprocity in 1997 without having ever taken the Alaska Bar Exam. There are others including Ms. Angela O'Brien, licensed by reciprocity on September 30, 2008, who live in Alaska but have not taken Alaska Bar Exam. Alaskans currently would be fools to take Alaska Bar Exam with our low passage rate by going through our established Alaska Bar Association channels. The shrewd approach is to circumvent Alaska Bar Exam and become licensed in Alaska by reciprocity which is easier. Ms. Greenstein, Ms. O'Brien, and the others only had to have been licensed by written Bar Exam in a state that has reciprocity with Alaska and presumably proved in some perfunctory way that they had practiced five of seven years in their state of previous admission.

By contrast, Thomas S. Obermeyer, Alaska resident for 30 years and Attorney, licensed since 1990 by similar Missouri Bar Exam, a state that presumably has reciprocity with Alaska, has dedicated himself in good faith having paid for, studied for, and taken Alaska Bar Exam 34 times most recently "failed" on October 30, 2008 over an almost 25 year period in an effort to create fair Alaska law licensure. Tom has only chosen to go through the established process to obtain his Alaska law license and begin with his legal career. The lack of assistance given to Tom Obermeyer over such a long period of time shows how outrageously unfairly one Alaska Bar applicant could have been treated while seemingly everyone else is given favorable treatment.

4. Fairness to Alaska Bar Applicants for Admission

Please review attached "Draft Bill Authorizing Admission of Reciprocal Applicants to Alaska Bar Association" which can be downloaded at <http://www.tobermeyer.info/pdfs/26thAKLeg1stSess2009.pdf> and the precedent, "Laws of Alaska 1966 HB 520 Chapter 144 An Act-Authorizing the Department of Labor to enter into reciprocal agreements with other states regarding wage claims; and providing for an effective date," that can be downloaded at <http://www.tobermeyer.info/pdfs/LawsOfAK.pdf>. The current practice of Board of Governors Alaska Bar Association penalizes local licensed attorneys who are admitted by Bar Exam in the 33 reciprocal states. "DRAFT Bill Authorizing Admission of Reciprocal Applicants to Alaska Bar Association" would change this practice that currently gives more rights to attorneys who have never landed on Alaska soil. Do Alaskans want those from other states to have more rights than we have? Does the "DRAFT Bill" protect the Alaska public?

5. The current Financial Position, Revenue, and Expense statements of Alaska Bar Association are jumbled and combined to confuse and hide actual expenses in the "ivory tower" Atwood Building #1900 in Anchorage.

The Audit fails to delineate details of operating expenses and personnel assigned to each activity, and it fails to list salaries of Executive Director, Bar Counsel, other attorneys and staff. RESULT: THE QUASI-GOVERNMENTAL ALASKA BAR ASSOCIATION HAS NO GOVERNMENTAL SUPERVISION. Auditor Patricia Davidson did not so much as discuss the details of Alaska Bar Association Operating Budget information in her Appendices. The salaries and travel of the Alaska staff attorneys of Alaska Bar Association especially Ms. Deborah O'Regan and Mr. Stephen Van Goor, who have been employed at Alaska Bar Association since 1980 and whose salaries the Obermeyers have been paying since 1984, are not included. **By contrast, when bills authorizing governmental activity are introduced in Alaska Legislature, attached are fiscal notes with personnel costs.**

The Alaska Supreme Court should take over the Alaska Bar Association as a governmental body for the foreseeable future.

Admissions

If Alaska Supreme Court administers both exams and admission by reciprocity, there would be better communication between Alaska Bar Association Board of Governors and the Court, fewer

admissions by reciprocity, more fairness and alternative options for admissions, better treatment of Alaska applicants, and more public trust. This would be an interim solution that should be tried for a year at a time with analysis by Alaska Legislature to see if it is working.

Alaska State Court justices/judges should be more fully scrutinized as well. I will update <http://www.tobermeyer.info/asj.html> which shows Alaska justices/judges got 50% salary increases per CSSB237 in 2006. Another increase was implemented by 25th Alaska Legislative 2nd Session SCS CSHB 417(FIN) Section 20 (a) (b) and (c). Research should be undertaken to analyze how many State of Alaska justice/judges are appropriate based on Alaska population and Alaska Bar Association membership. At the moment, becoming Alaska State Court justice/judge is much more coveted than actively practicing law as an Alaska attorney advocate. There is "Alaska Judicial Retirement System" through Alaska Retirement Management Board under Alaska Department of Revenue. Is there Alaska Judicial Retirement System Board? There should be more analysis of our Alaska State Court justices/judges by Alaska Legislature.

Discipline

Ms. Davidson indicates that discipline should be controlled by Alaska Supreme Court. Suspensions and disbarments are already submitted to the Supreme Court, but complete supervision of discipline should be imposed by the court. In many states there is a separate Office of the Disciplinary Counsel with a separate Board.

In the Alaska Bar Audit there is no discussion of "Citizen Complaints" against Alaska attorneys to Alaska Bar Association. The reader is expected to believe that there are no Alaska citizen initiated complaints at all to Alaska Bar Association. I have direct experience in this area per <http://www.tobermeyer.info/pdfs/VanGoor41505.pdf> about the lack of any discipline whatsoever at Alaska Bar Association regarding the 30 lengthy complaints that I filed at Alaska Bar Association 1993-2003. I would be pleased to produce the three boxes of comprehensive timely stamped filings with lengthy transcripts of my 30 complaints against licensed Alaska attorneys which resulted in my worse treatment by more Alaska attorneys. In other words, I am positive today that every complaint I filed was used against me.

Regarding Alaska Attorney "Discipline Function" per Page 3 of the Audit, I am aware that very high profile Alaska attorneys who have been convicted in courts of law of criminal offenses after pleading "No Contest" have not been disciplined by Alaska Bar Association including Mr. Robert C. Ely and Mr. Mitchell Gravo. Former Alaska Attorney General Gregg Renkes resigned February 5, 2005 over a highly publicized conflict of interest but was never disciplined. He is a licensed Alaska Active Out of State attorney today. I have observed Board of Governors "throwing the book" at a handful of unknown Alaska attorneys in private practice whose ethical lapses are grave but these attorneys do not have criminal convictions from a court of law. I have not observed any semblance of consistency in "Attorney Discipline" for sanctions for similar offenses. All are approved by Alaska Supreme Court which is ultimately responsible for equitable fairness and justice in the practice of law.

The current discipline procedures of Alaska Bar Association are probably a primary reason why Alaska has the highest number of government attorneys in the U.S. in addition to the fact the Alaska attorney government employment is exceedingly lucrative offering excellent benefits and outstanding retirement packages. Alaska Legislature should get the salaries and benefits packages for the 576 or more State of Alaska attorneys out of a total 705 including State of Alaska, Municipal, and U.S. Government attorneys. State of Alaska attorneys are 82% of the total of all Alaska In State Government attorneys. In Spring, 2008 30% of the total of 2,395 Alaska In State attorneys were employed by the Government according to Todd Communications Alaska Directory of Attorneys. Fall, 2008 stopped publishing the number which probably exceeds 30% at this time.

Continuing Legal Education

So far, voluntary CLE in Alaska has been a farce. Regarding "Findings and Recommendations" of Audit #41-20057-08, no specific recommendation was made about how many hours of Mandatory Continuing Legal Education (MCLE) should be required for practicing Alaska attorneys. Ms. Davidson wrote on Page 7 of the "Audit" that 41 of the 50 states have MCLE. To date, 3 clock hours of Mandatory Ethics Continuing Legal Education (MECLE) began on January 1, 2008 and "has teeth" in that there are sanctions for non-compliance to be imposed after January 1, 2009 per Alaska Supreme Court Order No. 1640. Alaska Legislature should ask for a full report on how the newly concluded December 31, 2008 MECLE went. To my knowledge, all other professions in Alaska have much longer and expensive mandatory requirements for continuing licensure. Alaska Bar Association should do so as well. At least twelve hours of mandatory MCLE would improve the profession greatly in Alaska. It would also assure collegiality among lawyers and impose a sense of purpose and ethical public service. Ethics training is important but most attorneys know right from wrong long before they deviate from the norm.

I follow actively Alaska Bar Association activities and this Audit is the first I have known that a "Bar CLE Committee consisting of 15 members assists CLE director" Page 19 exists. What I know is that Ms. Barbara Armstrong, CLE Director since about 1980, was President, American Continuing Legal Education Association, about 10 years ago when Alaska Bar did not require Continuing Legal Education and many years prior to January 1, 2008 MECLE three clock hours implementation.

There is a Law Related Education (LRE) Committee of Alaska Bar Association which to my knowledge only gives money to K-12 education. I applied for three grants including "Keep the Kids in School Initiative Anchorage School District," "Alaska Permanent Fund Board Confirmation Committee," and "Fair Alaska Law Licensure" on January 10, 2007 to Ms. Barbara Hood, Alaska Teaching Justice Network. All were rejected by Ms. Barbara A. Jones, Chair, LRE Committee on January 31, 2007. In 2008 I was unable to find out when the LRE grant applications were due. I intend to apply again by January 16, 2009 but will be applying to Ms. Deborah O'Regan, Executive Director, instead of the Chair, LRE Committee. Ms. O'Regan is in control of the entire process.

Ethics Reform was presumably implemented in 25th Alaska Legislature 1st Session. There can be no Ethics Reform unless Alaska Bar Association is improved. I filed Complaint AGO File No. 661-08-0157 in September, 2007 which was a paper copy of Alaska Permanent Fund Board Confirmation Committee per <http://www.apfboardconfirmation.org> to Ms. Julia Bockmon, State of Alaska Attorney General's Office, requesting an investigation. Instead, I got a letter dated November 30, 2007 from Ms. Bockman copying Mr. Michael J. Burns, Attorney who has never attempted to be licensed to practice law in Alaska, former Chair, University of Alaska Board of Regents, and current Executive Director, Alaska Permanent Fund, stating "Further statements regarding the existence of your complaint or our investigation may result in penalties for violation of the Executive Branch Ethics Act." In other words, I was threatened with economic sanctions for filing the complaint.

Conclusion

Alaska Bar Association offices and personnel should become a State of Alaska governmental agency under direct supervision of Alaska Supreme Court with annual governmental budgets subject to Alaska Legislative scrutiny for the immediate future. This decision should be subject to review yearly.

Alaska Legislative Audit #41-20057-08 does little to dig into the details of the operation of the Alaska Bar Association. The Audit does not recognize that Alaska Bar Association fails in several of its intended purposes as stated on Page 19 because Alaska Bar has the benefit of governmental protection without direct daily governmental oversight. Alaska Bar does not advance jurisprudence and justice; increase public service and efficiency of the bar; promote reform in the law and procedure; or mandate substantive legal education. The Audit proposes more public notice and participation of public in teleconference meetings but the public is afraid of Alaska Bar so public

notice and participation of the public in teleconferences will have no effect. Nothing could serve the public more than to make Alaska Bar functions a matter of total government control. Are the employees of the Alaska Bar Association staff, Bar Counsel, Executive Director, etc., the beneficiaries of State retirement and medical benefits? This should have been explained fully in the Audit but is not addressed.

Public participation currently is discouraged at all levels. When my husband, Thomas Obermeyer, Missouri Attorney since 1990, appeared before the Senate Judiciary Committee in May, 2007 regarding sunset of the Alaska Bar Association, he was the only person to appear. Bar Counsel Stephen Van Goor was on line by teleconference. When Tom asked for time to contradict Mr. Van Goor's statements, Hollis French, still current Alaska State Senate Judiciary Chair, cut him off. The minutes of the meeting were never transcribed. Would anyone be more articulate than Tom Obermeyer who had in 2007 weathered 23 years and 30 Alaska Bar Exam "failures?" This was the same Hollis French who as a State of Alaska Prosecutor charged and prosecuted me in State of Alaska/Hilton Anchorage vs. Theresa Nangle Obermeyer 3AN-S98-2211 CR for over nine months until I was acquitted in a seven day jury trial on November 10, 1998. How much did that cost?

In my case, I have been defamed endlessly by Alaska corrupt media which is about 95% owned in many Lower 48 states because I continue to believe that I have a right to attend a public meeting. I was jailed over night in a set-up orchestrated by Ms. O'Regan and Mr. Van Goor when Board of Governors was at court on January 15, 1999. If a person dares to go to an advertised "public meeting," he/she is made to look foolish and is targeted. I have lived this fact for many years. Governor Sarah Palin nominated me December 2, 2008 <http://www.tobermeyer.info/pdfs/fbresponse.pdf> for a position as a "Public Member" Board of Governors Alaska Bar Association. I hope that I will be appointed.

Alaska Bar Association has the best of both worlds – private and quasi-governmental. Currently, Alaska Supreme Court "rubber stamps" admissions and discipline actions and no Alaska State Agency oversees the Board's operations. This has to change. Alaska Bar dues are among the highest in the nation because Alaska attorneys do not want any competition. The Board allows the employees to lavish themselves with high salaries, travel, and plush offices as long as competition is limited. Alaska Active Out of State attorneys are very weak and totally depend on the handful of local Alaska attorneys who control everything that goes on in Alaska. Substantive truth and real numbers never surface.

This document is meant to create much more discussion about Alaska Bench and Bar. Alaska Legislature must send a strong message to Alaska Bar Association that "the light of day" will shine on its totally unaccountable practices that hurt all Alaskans.

ALASKA STATE LEGISLATURE

LEGISLATIVE BUDGET AND AUDIT COMMITTEE



Division of Legislative Audit

P.O. Box 113300
Juneau, AK 99811-3300
(907) 465-3830
FAX (907) 465-2347
legaudit@legis.state.ak.us

November 4, 2008

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 4, 2008

Audit Control Number
41-20057-08

The 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, 2009.

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, 2017.

The audit was conducted in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives. Fieldwork procedures utilized in the course of developing the findings and discussion presented in this report are discussed in the Objectives, Scope, and Methodology.

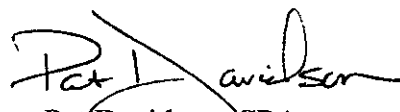

Pat Davidson, CPA
Legislative Auditor

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OBJECTIVES, SCOPE, AND METHODOLOGY

In accordance with Title 24 and Title 44 of the Alaska Statutes (sunset legislation), we have reviewed the activities of the Board of Governors of the Alaska Bar Association (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, 2009. 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 four central objectives of our report. They are:

1. To determine if the termination date for 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).
4. To provide a current status on the recommendations made in the prior report.

The assessment of the operations and performance of the board was based on criteria set 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

Our review focused on the continuing legal education requirement, discipline function provided by the Bar, as well as board proceedings. Our audit reviewed board operations and activities from July 1, 2006 through June 30, 2008.

We reviewed and evaluated the following:

- Applicable statutes, Alaska Bar Rules, Alaska Rules of Professional Conduct, and Bar bylaws
- Board minutes
- Bar annual reports

- Attorney discipline files
- Audited financial statement of the board

In addition, we conducted interviews of the board president, staff, including the executive director, board counsel, director of continuing legal education, 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 (Bar) 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 (CLE) for the membership, and to increase the public service and efficiency of the 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 2008 budget of \$1,983,738. Funding is provided primarily by membership dues (\$410 per year), admission fees, lawyer referral fees, CLE 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. 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 selects hearing committee members from a group of individuals in each judicial district

Exhibit 1

The Board of Governors of the Alaska Bar Association (as of October 20, 2008)
Mitch Seaver, President <i>First Judicial District</i>
Sidney K. Billingslea, President-elect <i>Third Judicial District</i>
Don McLean, Vice-president <i>Public Member</i>
Jason A. Weiner, Treasurer <i>Second/Fourth Judicial District</i>
Christopher R. Cooke, Secretary <i>Third Judicial District</i>
Carl Ekstrom <i>Public Member</i>
William A. Granger <i>Public Member</i>
Donald W. McClintock <i>Third Judicial District</i>
Allison Mendel <i>Third Judicial District</i>
Hanna Sebold <i>First Judicial District</i>
Krista S. Stearns <i>Third Judicial District</i>
John J. Tiemessen <i>Second/Fourth Judicial District</i>

appointed by the Chief Justice of the Supreme Court. The board is also responsible for issuing reprimands when warranted, and for recommending the Supreme Court impose disbarment, suspension, probation, or public censure when appropriate.

Miscellaneous Functions The Bar also performs a wide variety of miscellaneous functions that include providing classes for and accrediting CLE providers, a lawyer referral service, client mediation, and fee arbitration with clients. In conjunction with the 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 from earnings of interest on the lawyers trust account program. These grants are used to support legal services for the economically disadvantaged and improve the administration of justice.

The Bar's office is located in Anchorage and is currently staffed by 19 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 and lawyer disciplinary sanctions involving disbarment, suspension, probation, and public censure.

REPORT CONCLUSIONS

In our opinion, the termination date of the Board of Governors of the Alaska Bar Association (board) should be extended. 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, 2017.

(Intentionally left blank)

FINDINGS AND RECOMMENDATIONS

In the prior audit, *Board of Governors of the Alaska Bar Association, Follow Up, September 15, 2006*, (Audit Control No. 41-20050-06), there were three recommendations, one of which has been fully implemented. The implemented recommendation was to adopt a due date for timely issuance of annual reports. The recommendation was resolved at the board's September 7, 2006 meeting where the board voted to amend their Standing Policies, setting April 15 as the due date for the completion of the preceding year's annual report. Review of the 2006 and 2007 annual report documentation confirmed they were completed prior to the April 15 due date.

The recommendation to adopt mandatory minimum continuing legal education (CLE) for attorneys is partially implemented and is reiterated as Recommendation No. 1

The final recommendation, which relates to the Alaska Bar Association (Bar) developing a database of disciplined lawyers, has not been addressed and is reiterated as Recommendation No. 2. In addition, review of board meeting proceedings resulted in noted deficiencies. The deficiencies are further discussed in Recommendation No. 3

Recommendation No. 1

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

Prior Finding

CLE for attorneys is voluntary rather than required. The Supreme Court adopted voluntary CLE under Bar Rule 65 in 1999. It encouraged all active members of the 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.

Forty-one legal jurisdictions in the United States have a mandatory CLE 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.

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

Overall, we believe a mandatory minimum CLE 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 CLE.

Legislative Audit's Current Position

The board voted at their September 7, 2006 meeting to send the mandatory CLE rule, as published, to the Alaska Supreme Court. Based on this rule, the Alaska Supreme Court amended Alaska Bar Rule 65 through Supreme Court Order No. 1640, to require all members to complete three credit hours of mandatory ethics continuing legal education (MECLE) per year. In addition to MECLE, all members are encouraged to complete nine credit hours of approved voluntary continuing legal education (VCLE). Members must certify with the Bar that they have completed the required MECLE and provide the number or an estimated number of completed VCLE.

The Supreme Court Order No. 1640 also added Alaska Bar Rule 66 for the suspension of members who have not complied with completing the required MECLE or members who failed to report the MECLE and VCLE for the year. These rules became effective January 1, 2008.

The mandatory ethics requirement does not fully achieve the goal of promoting competency and professionalism in members of the Bar. Although ethics education is part of the goal, requiring CLE, as opposed to encouraging VCLE, will strengthen the public's confidence that attorneys are professional and competent. Therefore, we reiterate our prior recommendation.

Recommendation No. 2

The board should consider developing a database of disciplined lawyers in the Bar'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 the Bar's 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 would 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 its 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 from the Bar's website.

The board stated in the prior recommendation that the new discipline module of the replacement database, including online reporting of public discipline would be operational in the summer of 2007. However, due to changing priorities, the Bar has not started implementing the discipline module, though it is tentatively scheduled for early 2009.

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 Bar's website.

Recommendation No. 3

The board should adhere to existing public notice requirements for all meetings or modify the bylaws to clearly address conference call board meeting procedures and public notice requirements.

The board, as the governing body of the Bar, is vested with the power and authority to adopt regulations and policies concerning activities, affairs, and organization of the Bar, as well as collect and disburse all monies of the organization. In order to achieve these responsibilities, the board meets at least four times during the year. In addition to the four regular meetings, the president may, or upon written request of three governors, call emergency meetings. Public notice for regular and emergency meetings must be provided at least thirty and three days prior to the meeting, respectively. The proceedings for these board meetings are outlined in the Bar bylaws under Article IV specific to the board.

Since June 30, 2006, there were eight regular and five conference call board meetings. None of the conference call meetings met the public notice requirements for board meetings. There appears to be some confusion by the board as to the public notice requirements for conference call meetings.

The bylaws do not identify conference call meetings as a unique type of board meeting with unique public notice requirements; therefore the board should adhere to the public notice requirements for regular board meetings. Adequate public notice of meetings is necessary to allow for maximum public participation in public activities.

If the board believes the conference call meetings are inherently different from regular meeting then the bylaws should be modified to clearly address conference call board meetings to ensure the appropriate procedures are followed and the public receives adequate notice for such meetings.

AUDITOR'S COMMENTS

The sunset process allows for an objective and independent 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 overall conclusions of our review are that the Board of Governors of the Alaska Bar Association (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 industry 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 twelve 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. 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 1993,¹ 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...the 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... the 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 judicial branch employees.

¹ 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.

- Disciplinary function placed 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 for 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 to address the 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.²

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 (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

² As of June 30, 2008, the Alaska Bar Association has reciprocal agreements with 33 states.

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 fees 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. Through the Alaska Bar Foundation, the earnings from the interest on Lawyers Trust Account are used to improve the administration of justice.
- 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 members of the Bar, their families, or business associates when it appears a Bar member has substance abuse 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 September 2005, the board adopted an amendment to Bylaw III, Section 1(a) which states that, "*the annual membership fee for an active member is the amount approved by the board.*" Thus, the board can set the dues amount in accordance with the operating expenses and number of Bar members.

The 2008 budgeted revenue is \$1,983,738. The Bar has cumulative net assets of \$3,496,544 as of the end of calendar year 2007. The net assets include approximately \$1.1 million for the Lawyers' Fund for Client Protection. This fund is for clients who have suffered monetary losses as a result of dishonest acts by their lawyer. These funds are designed to protect the public and cannot be used for general operating expenses.

The maintenance of substantial net assets is not consistent with the other professions regulated by the State, under the jurisdiction of the Department of Commerce, Community, and Economic Development (DCCED) – 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. As the Bar is not included in DCCED's organizational structure, the ability to pool resources and meet funding shortages is not available. Although the Bar's funding needs are greater, the net assets are still substantial.

In order to address the cumulative net assets, the board voted at the end of 2007 to reduce the active members' due from \$550 to \$410, effective in the 2008 membership year. The Bar anticipates that with the reduction in membership dues net assets will be reduced by approximately \$400,000 per year.

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

Although the board has a Statutes, Bylaws, and Rules Committee, consisting of 12 members responsible for drafting proposed revisions of the statutes, bylaws, and rules which govern the activities of the Bar, the board has not recommended any statutory changes during July 1, 2006 through June 30, 2008. 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 Bar policies and procedures.

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's membership is involved in its operations. This operation may include service on one of the ten standing committees or five Alaska Bar Rules committees. It may include participation in one of 23 sections or groups 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 on the Alaska Public Online Notice system and on the Bar's website. Members of the general public are encouraged to make comments and adequate time is allotted 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, non-attorneys serve on disciplinary hearing committees and fee arbitration panels throughout the State.

As mentioned above, the Bar publicly advertises meetings of the board. Time is allotted at all board meetings for public comments. However, some board meetings did not have adequate public notice. Further discussion on public notice of the conference call board meetings is in Recommendation No. 3.

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. Two complaints specifically involving the actions and activities of the board were filed with and investigated by the Office of the Ombudsman during July 1, 2006 through June 30, 2008. The investigations were closed due to the Ombudsman not having jurisdiction over the activities of the Bar.

There were no complaints filed with the Office of Victim's Rights against the board from July 1, 2006 through June 30, 2008.

The board has a lawyer discipline process for investigation of grievances alleging attorney misconduct. If a grievance does not result in an investigation being opened by the bar counsel, the complainant may ask for that decision to be reviewed by the board discipline liaison. Additionally the Supreme Court may review decisions made by the bar counsel or the liaison, though this is done rarely.

Sanctions are imposed on those found in violation of the Rules of Professional Conduct. The Supreme Court reviews only the most serious disciplinary actions, such as public censure, disbarment, suspension, or probation. Other disciplinary cases are not subject to Supreme Court review. These sanctions would include written private admonition and board reprimand. This process for professional discipline 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.

The Bar receives an average of 228 complaints annually. Analyses of the complaints filed during July 1, 2006 through June 30, 2008 shows that all were reviewed, but relatively few were pursued beyond the initial investigation. Approximately 80% of the grievances received were not accepted for investigation due to lack of merit. The Bar estimates that 10 to 15 appeals are reviewed annually by the board discipline liaison, and 1 or 2 reviews by the Supreme Court.

Over 650 grievances were filed during 2006, 2007, and 2008,⁵ resulting in 143 cases being opened and the remaining grievances were not accepted. The investigations resulted in thirty-two cases⁶ with sanctions against a total of twenty-one attorneys. Four attorneys were disbarred, seventeen were suspended, three were publicly and two were privately reprimanded, five received private admonition, and one was publicly censured. Discipline statistics are shown in Appendix B. Closure of grievance cases with sanctions such as disbarment, suspension, public censure, public reprimand, and admonition appear reasonable.

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.

⁵ Complaints received for 2008 include January 1 through June 30.

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

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

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 the 33 states with which Alaska has a reciprocal agreement.

Examination and admission statistics are shown in Appendix C.

Per Bar Rule 65, in order to promote competence and professionalism, the Alaska Supreme Court and the Bar encourage all members to engage in continuing legal education (CLE).

Supreme Court issued Order No. 1640, which amended Bar Rule 65, to require all active Bar members to complete three credit hours per calendar year of approved mandatory ethics continuing legal education (MECLE). In addition, all active Bar members are encouraged to engage in nine hours per calendar year of approved voluntary continuing legal education (VCLE). This order became effective January 1, 2008.

The Supreme Court Order No. 1640 also added Alaska Bar Rule 66 for the suspension of members who have not complied with completing the required MECLE or members who failed to report the MECLE and VCLE for the year.

The Bar offers CLE for its membership and maintains an educational library. The majority of live CLE programs are presented and video taped in Anchorage. For lawyers located outside of Anchorage, the Bar has regularly scheduled video replays in Juneau, Fairbanks, and Kenai. Also available are DVDs and CLE materials for purchase through the Bar's online CLE library catalog.

In 2006, the Bar partnered with the online CLE provider LegalSpan to develop online CLE seminars and live webcasting of selected programs. The Bar presented 10 live webcasts in 2007. All of the video taped live seminars are also available as online CLE through LegalSpan.

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 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 Auditor's Comments sections of this report.

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 Bar bylaws sets out the purposes of the Bar which are:

1. To cultivate and advance the science of jurisprudence.
2. To promote reform in the law and in judicial procedure.
3. To facilitate the administration of justice.
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 and 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 Anchorage, Fairbanks, Juneau, Kenai, Matanuska-Susitna, 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 (Council). The Council recommends candidates for judicial office and conducts studies for the improvement of the administration of justice in Alaska. Council members 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 CLE committee, consisting of 15 members, assists the CLE 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 68 live, 2 satellite, 15 webcasts, and 36 conventions for CLE presentations for 3,926, 4,820, and 1,976 attorney participants from calendar year 2006 through 2008,⁸ respectively.

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

⁸ Data is presented as of June 30, 2008.

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.

APPENDICES

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 non-insured losses of money or property as a result of dishonest conduct by attorneys. Related trustee counsel compensation may be paid from this fund under 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. The purpose of the fund 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.

The financial information of Bar funds is from the Bar's audited financial statements for 2007.

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Appendix A

**Alaska Bar Association
Statement of Financial Position
Calendar Year 2007**

Assets	General Fund	Lawyers' Fund for Client Protection	Court System Library Fund	Total All Funds
Current Assets				
Cash	\$ 534,056	\$ 137,534	\$ 23,472	\$ 695,062
Investments	2,133,208	907,611	-	3,040,819
Accounts receivable	1,016,821	-	-	1,016,821
Accrued interest receivable	27,514	8,158	-	35,672
Due from general fund	-	58,287	-	58,287
Prepaid Expenses	92,744	-	-	92,744
Total Current Assets	3,804,343	1,111,590	23,472	4,939,405
Property and Equipment, at cost				
Office furniture and equipment	452,421	-	-	452,421
Leasehold improvements	94,898	-	-	94,898
Video tape library and equipment	7,587	-	-	7,587
Historical artifacts	3,750	-	-	3,750
Subtotal Property and Equipment	558,656	-	-	\$ 558,656
Less accumulated depreciation	(486,130)	-	-	(486,130)
Total Property and Equipment	72,526	-	-	72,526
Total Assets	\$ 3,876,869	\$ 1,111,590	\$ 23,472	\$ 5,011,931
Liabilities and Net Assets				
Current Liabilities				
Deferred dues and fees	1,281,715	29,260	-	1,310,975
Accounts payable and accrued expenses	126,423	-	-	126,423
Due to other funds	72,965	-	-	72,965
Due to Bar Foundation	1,274	-	-	1,274
Total Current Liabilities	2,112,876	29,260	-	1,511,637
Net Assets				
Unrestricted (designated by the Board of Governors)				
Designated for Working Capital	800,000	-	-	800,000
Designated for Asset Acquisition	124,874	-	-	124,874
Undesignated	1,465,868	1,082,330	23,472	2,571,670
Permanently restricted	3,750	-	-	3,750
Total Net Assets	2,394,492	1,082,330	23,472	3,500,294
Total Liabilities and Net Assets	\$ 3,876,869	\$ 1,111,590	\$ 23,472	\$ 5,011,931

Appendix A

Alaska Bar Association Revenues Compared with Expenses Calendar Year 2007

	General Fund	Lawyers' Fund for Client Protection	Court System Library Fund	Total All Funds
Revenues				
Dues	\$ 1,686,571	\$ 29,043	\$ -	\$ 1,715,614
Admission Fees	150,850	-	-	150,850
Continuing Legal Education	136,404	-	-	136,404
Lawyer Referral Fees	41,593	-	-	41,593
Annual Meeting	134,557	-	-	134,557
Earnings on Investments	126,973	43,425	205	170,603
Other	<u>235,298</u>	<u>14,727</u>	<u>2,140</u>	<u>252,165</u>
Total Revenues	<u>2,512,246</u>	<u>87,195</u>	<u>2,345</u>	<u>2,601,786</u>
	-	-	-	-
Expenses				
Admissions	182,457	-	-	182,457
Board of Governors	47,822	-	-	47,822
Discipline	664,488	-	-	664,488
Fee Arbitration	66,780	-	-	66,780
Lawyer Referral	52,504	-	-	52,504
Continuing Legal Education	327,828	-	-	327,828
Administration	492,382	-	-	492,382
Annual Meeting	112,091	-	-	112,091
Other	<u>288,028</u>	<u>157,902</u>	<u>12</u>	<u>445,942</u>
Total Expenses	<u>2,234,380</u>	<u>157,902</u>	<u>12</u>	<u>2,392,294</u>
	-	-	-	-
Increase (decrease) in net unrestricted assets	277,866	(70,707)	2,333	209,492
	-	-	-	-
Unrestricted Net assets at beginning of year:				
Designated for Working Capital	775,000	-	-	775,000
Designated for Asset Acquisition	130,239	-	-	130,239
Undesignated	<u>1,207,637</u>	<u>1,153,037</u>	<u>21,139</u>	<u>2,381,813</u>
Total at Beginning of Year	<u>2,112,876</u>	<u>1,153,037</u>	<u>21,139</u>	<u>3,287,052</u>
	-	-	-	-
Unrestricted Net assets at end of year:				
Designated for Working Capital	800,000	-	-	800,000
Designated for Asset Acquisition	124,874	-	-	124,874
Undesignated	<u>1,465,868</u>	<u>1,082,330</u>	<u>23,472</u>	<u>2,571,670</u>
Total at End of Year	<u>\$ 2,390,742</u>	<u>\$ 1,082,330</u>	<u>\$ 23,472</u>	<u>\$ 3,496,544</u>

Appendix A

Alaska Bar Association General Fund Revenues Compared with Expenses Calendar Years 2006 through 2007

	2006	2007
Revenues		
Dues	\$ 1,702,211	\$ 1,686,571
Admission Fees	174,750	150,850
Continuing Legal Education	131,979	136,404
Lawyer Referral Fees	42,242	41,593
Annual Meeting	123,905	134,557
Earnings on Investments	105,092	126,973
Other	<u>148,861</u>	<u>235,298</u>
Total Revenues	<u>2,429,040</u>	<u>2,512,246</u>
Expenses		
Admissions	175,898	182,457
Board of Governors	42,364	47,822
Discipline	646,385	664,488
Fee Arbitration	63,311	66,780
Lawyer Referral	50,785	52,504
Continuing Legal Education	360,525	327,828
Administration	460,255	492,382
Annual Meeting	122,746	112,091
Other	<u>226,520</u>	<u>288,028</u>
Total Expenses	<u>2,148,789</u>	<u>2,234,380</u>
Increase (decrease) in net unrestricted assets	280,251	277,866
Unrestricted Net assets at beginning of year:		
Designated for Working Capital	700,000	775,000
Designated for Asset Acquisition	129,375	130,239
Undesignated	<u>1,003,250</u>	<u>1,207,637</u>
Total at Beginning of Year	1,832,625	2,112,876
Unrestricted Net assets at end of year:		
Designated for Working Capital	775,000	800,000
Designated for Asset Acquisition	130,239	124,874
Undesignated	<u>1,207,637</u>	<u>1,465,868</u>
Total at End of Year	<u>\$ 2,112,876</u>	<u>\$ 2,390,742</u>

Appendix A

Alaska Bar Association
Lawyers' Fund for Client Protection Revenues Compared with Expenses
Calendar Years 2006 through 2007

	<u>2006</u>	<u>2007</u>
Revenues		
Dues	\$ 28,623	\$ 29,043
Earnings on Investments	44,047	43,425
Unrealized (Loss) Gain on Investments	5,413	11,547
Other	<u>2,368</u>	<u>3,180</u>
Total Revenues	<u>80,451</u>	<u>87,195</u>
 Expenses		
Claims Awarded	71,672	127,235
Other	<u>1,920</u>	<u>30,667</u>
Total Expenses	<u>73,592</u>	<u>157,902</u>
 Increase (decrease) in net unrestricted assets	 6,859	 (70,707)
 Unrestricted Net assets at beginning of year:		
Undesignated	<u>1,146,178</u>	<u>1,153,037</u>
Total at Beginning of Year	1,146,178	1,153,037
 Unrestricted Net assets at end of year		
Undesignated	<u>1,153,037</u>	<u>1,082,330</u>
Total at End of Year	<u>\$ 1,153,037</u>	<u>\$ 1,082,330</u>

Appendix A

Alaska Bar Association
Court System Library Fund Revenues Compared with Expenses
Calendar Years 2006 through 2007

	<u>2006</u>	<u>2007</u>
Revenues		
Earnings on Investments	\$ 190	\$ 205
Share from Copiers	<u>1,856</u>	<u>2,140</u>
Total Revenues	<u>2,046</u>	<u>2,345</u>
Expenses		
Other	<u>12</u>	<u>12</u>
Total Expenses	<u>12</u>	<u>12</u>
 Increase (decrease) in net unrestricted assets	 2,034	 2,333
 Unrestricted Net assets at beginning of year:		
Undesignated	<u>19,105</u>	<u>21,139</u>
Total at Beginning of Year	<u>19,105</u>	<u>21,139</u>
 Unrestricted Net assets at end of year		
Undesignated	<u>21,139</u>	<u>23,472</u>
Total at End of Year	<u>\$ 21,139</u>	<u>\$ 23,472</u>

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Appendix B

Board of Governors of the Alaska Bar Association Discipline Statistics Calendar Years 2006 through 2008⁹

<u>Disposition of Closed Disciplinary Cases</u>	<u>2006</u>	<u>2007</u>	<u>2008</u>
Disbarment by Supreme Court	-	2	2
Suspension by Supreme Court	7	5	5
Public Censure by Supreme Court	-	1	-
Public Reprimand by Disciplinary Board	2	1	1
Private Reprimand by Disciplinary Board	2	-	1
Private Admonition by Discipline Counsel	4	1	2
Dismissed	31	21	5
Closed After Mediation	-	-	-
Total Closed Cases	<u>46</u>	<u>31</u>	<u>12</u>
<u>Status of Open Cases at Year End</u>			
Attorney on Probation	1	1	1
Pending Supreme Court	1	3	7
Pending Disciplinary Board	5	8	-
Pending Hearing Committee	5	-	12
Pending Stipulation	-	3	8
Pending Approval to File Formal Hearing	10	11	7
Pending Written Private Admonition	-	-	-
Abeyance due to Court Case	9	9	9
Pending Bar Counsel Investigation/Decision	23	33	40
Pending Complainant Reply	1	1	10
Pending Respondent Response	3	17	21
Pending Mediation	-	-	-
Total Open Cases	<u>58</u>	<u>86</u>	<u>115</u>

Source: Data for 2006-2007 was obtained from annual reports of the Alaska Bar Association. The 2008 data is from Alaska Bar Association's quarterly Discipline Reports to the Alaska Supreme Court for January 1, 2008 through June 30, 2008.

⁹ The amounts reported for 2008 includes activity from January 1 through June 30, 2008.

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Appendix C

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

Examination Statistics

Examination Dates	<u>Number Taking Exam</u>	<u>Number Passing Exam</u>	<u>Percent Passing Exam</u>
July 2006	82	52	63%
February 2007	54	26	48%
July 2007	75	52	69%
February 2008	<u>37</u>	<u>27</u>	<u>73%</u>
Total	248	157	63%

Admission Statistics

Calendar Year	<u>Admission By Examination</u>	<u>Admission By Reciprocity</u>	<u>Total Admissions</u>
2006	85	30	115
2007	70	43	113
2008 ¹⁰	<u>40</u>	<u>14</u>	<u>54</u>
Total	195	87	282

Source: Alaska Bar Association's 2006-2007 Annual Reports and 2008 information provided by the Alaska Bar Association's executive director.

¹⁰ Admissions through June 30, 2008.

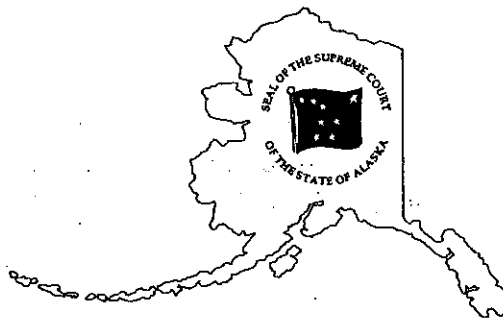
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Board of Governors of the Alaska Bar Association
Attorney Referrals
January 1, 2006 through June 30, 2008
(Unaudited)

<u>Practice Categories</u>	<u>2006</u>	<u>2007</u>	<u>2008</u>
Administrative	194	219	128
Admiralty	18	12	7
Adoption	16	35	15
Arts	2	3	4
Bankruptcy	52	79	63
Commercial	112	149	76
Construction	29	63	15
Consumer	315	275	152
Criminal: Felony	92	166	55
Criminal: Misdemeanor	114	170	75
Divorce/Dissolution/Custody	784	809	402
Eminent Domain	4	-	4
Environmental	6	-	-
Foreign Language	-	2	3
Guardian/Conservator	64	11	18
Immigration	28	52	18
Insurance	51	61	23
Labor Relations	355	392	194
Landlord/Tenant	63	30	49
Malpractice	197	244	96
Negligence	380	556	211
Patent/Copyright	5	41	8
Public Interest	3	1	1
Real Estate	175	257	112
Social Security Insurance Cases	22	48	2
Traffic	49	8	3
Trusts/Wills/Estates	144	222	107
Workers' Compensation	<u>192</u>	<u>229</u>	<u>110</u>
Total	<u>3,468</u>	<u>4,134</u>	<u>1,951</u>

Source: Data for 2006-2007 was obtained from Annual Reports of the Alaska Bar Association. The 2008 data provided by the Alaska Bar Association's executive director is for 6 months of attorney referrals.

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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

November 20, 2008

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

RECEIVED
NOV 25 2008
LEGISLATIVE AUDIT

Re: Preliminary Audit Report
Board of Governors of Alaska Bar Association
Sunset Review, November 8, 2008

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 findings and 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, 2017.

However, we take issue with the auditor's comments beginning on page 11. 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 roles. 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 appropriate 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 an 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 final arbiter of guilt or innocence.

Pat Davidson
November 20, 2008
Page 3

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 'C. S. Christensen III', 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

December 2, 2008

RECEIVED
DEC 02 2008
LEGISLATIVE AUDIT

Pat Davidson
Legislative Auditor
c/o Division of Legislative Audit
4341 B Street, Ste. 400
Anchorage, AK 99503

Dear Ms. Davidson:

Thank you for the thorough sunset review 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, 2017.

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 22 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 Supreme Court has adopted an MCLE rule and will review the program in three years.

The Alaska Supreme Court adopted an MCLE rule in December 2007, effective January 1, 2008. Bar Association members will be required to report for the first time by February 1, 2009.

The MCLE rule requires that all active Bar members complete at least three hours of ethics CLE per year and report that they have done so. Members must also report whether they have completed nine hours of general CLE, and if they have not done so, they must report the estimated hours of general CLE that they did complete.

In their commentary to the rule, the Supreme Court stated that "To protect the public, ensure that lawyers remain mindful of their obligations to their clients, and to address the area about which the Association receives the majority of questions from and complaints about lawyers, the Supreme Court is imposing a mandatory requirement for ethics CLE on all active Bar members."

The Court also stated that "At the end of three years, the Supreme Court will again assess the project's results, including recommendations and statistics provided by the Association, and will determine whether an expanded mandatory CLE program is necessary."

At the end of the three year period, the Association will have the benefit of its experience in administering the mandatory ethics and reporting program. It will be able to determine what issues and problems have arisen and will also allow the Association time to educate Bar members about complying with the educational and reporting requirements.

The Association has hired a part-time MCLE Administrator to administer the program. In addition, the Association is offering a free ethics CLE program on November 5, 2008, in accordance with the Supreme Court's wish that the Association provide at least three hours a year of ethics CLE at no cost to members. This program will be available in a variety of formats: live, via webcast or on DVD.

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 post public discipline 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.

Like many computer programming projects, the implementation of the new database is taking longer than originally anticipated. Issues include the need to modify and test programs that are unique to Alaska. The new MCLE requirement also took priority over the implementation of other program modules, such as discipline.

In addition, the fact that only a minority of states publish their lawyers discipline list on their websites indicates the difficulty many states have in automating this information. Timeliness and accuracy are essential to this process.

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 coming 12 - 18 months.

Response to Recommendation No. 3. We agree that the Bylaws of the Alaska Bar Association should be modified to specifically include conference call meetings of the Board and to provide for reasonable public notice of those meetings.

From time to time the Board of Governors finds it necessary to call meetings between regularly scheduled Board meetings to take up specific items which should not be delayed until the next Board meeting. The Board limits its action to those items listed in the call of the meeting.

Bar staff recognizes that the conference call meetings since June 30, 2006 did not meet the 30 day public notice requirement for Board meetings. However, the need for a conference call meeting of the Board is often realized only a week or two in advance, and therefore, it could not meet the 30 day notice requirement.

The staff will draft a proposed amendment to the Bylaws, to be taken up by the Board of Governors, to provide that the President may call a conference call meeting of the Board as appropriate to conduct business as necessary between regularly scheduled Board meetings. This will recognize conference calls as a unique type of Board meeting, and, in

accordance with AS 44.62.310(e), the proposed Bylaw will state that "reasonable public notice" will be given.

The Bylaws will also be amended to clarify that Board of Governors meetings, as well as Association meetings, are governed according to Roberts Rules of Order, Newly Revised. The Board has operated under these rules, but this will be clearly stated in the Bylaws.

Matters "not accepted" for investigation.

Page 17 states that 80% of the grievances received were not accepted for investigation due to lack of merit. While formal investigations were not conducted, these matters were thoroughly reviewed by discipline section staff counsel with expertise in attorney grievance matters and both complainants and respondent attorneys were informed in writing of the reasons that the matters were not accepted for investigation.

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.

In 2006, 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

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.

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 significant 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.

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 approximately 800 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.

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.

Meanwhile, the Board of Governors would still need to have its own staff 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 (\$212,500/month or \$850,000.) 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 \$1,275,000 - \$1,912,000.)

Unlike state agencies, the Bar cannot request supplemental appropriations from the Legislature or pool resources if an unexpected event occurs which would incur significant financial expense. The Board also 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.

Between 1981 and 2005, Bar dues had only been raised twice: from \$310 to \$450 in 1994; and, from \$450 to \$550 in 2005.

At the October 2007 meeting, the Board of Governors approved the first bar dues reduction in the history of the Alaska Bar Association. To make the reduction, the Board voted to change a twenty-five year old budget policy that increased the unappropriated capital to offset future year deficits, deferring an increase in bar dues. Now the Board will budget on a "pay as you go" basis. This resulted in an approved draw down of the then \$1.2 million unappropriated capital by approximately \$400,000 for 2008. Active members of the bar saw their 2008 dues decrease to \$410. 2008 inactive member dues were \$135.

The Board reviewed the 2009 budget at the October 2008 meeting and voted to set 2009 active member bar dues at \$450 (plus \$10 for the Lawyers' Fund for Client Protection) and inactive dues at \$150. This will result in an estimated loss in 2009 of \$340,697, leaving a projected estimate of unappropriated capital of \$670,536 at the end of 2009.

Lawyers' Fund for Client Protection

Every year, Bar members each pays ten dollars to the Lawyers' Fund for Client Protection. This is a trust fund which 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 \$1,122,144. These funds are designed to protect the public and cannot be used for general operating expenses.

To date in 2008, \$28,100 in claims was awarded to clients of attorneys who were found to be dishonest in their dealings with the clients. \$127,235 was awarded in 2007 and \$31,972 was awarded in 2006.

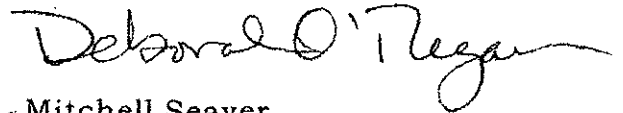
As an instrumentality that predates the ratification of the Alaska Constitution, the Alaska Bar maintains these funds under Article IX, Sec.

Response to Preliminary Audit Report
December 2, 2008
Page 8

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.

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 Mitchell Seaver
President

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ALASKA BAR ASSOCIATION

2007 Annual Report



THE ALASKA BAR ASSOCIATION

2007 Board of Governors

Matthew Claman, President
 Mitchell Seaver, President-Elect
 William Granger, Vice President
 Krista Stearns, Secretary
 Sidney Billingslea, Treasurer
 Chris Cooke
 Ethan Falatko
 Joe Faulhaber
 Don McLean
 Allison Mendel
 John Tiemessen
 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. Schmidtkofer, Controller
 Candice Goard Bryant, Accounting Assistant
 Kara Bridge, CLE Coordinator
 Devon Richardson, Admissions Assistant/Receptionist
 Charissa Feltman, Lawyer Referral Assistant
 Brent Reynolds, Webmaster & Network Technician
 Jonathan Minton, CLE Assistant

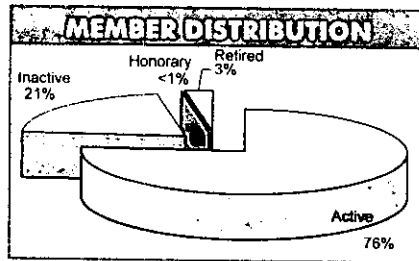
Stephen J. Van Goor, Bar Counsel
 Mark Woelber, Assistant Bar Counsel
 Louise R. Driscoll, Assistant Bar Counsel
 Deborah C. Ricker, Discipline Investigator/Paralegal
 JoAnne Baker, Section Coordinator & Arbitration/Discipline/CLE Library
 Ingrid Varenbrink, Arbitration/Discipline/CLE Library
 Gail Welt,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

Introduction & Overview

In 2007, the Alaska Bar Association had 3,865 members in the following categories: 2,931 Active (2,406 In-state and 525 Outside), 825 Inactive, 108 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, 23 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 19 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 2007 fiscal year.

Principal Activities

• Bar Examination

The Alaska Bar Examination is conducted twice annually in Anchorage, Fairbanks and Juneau. It consists of: 1) one day of essay questions on Alaska law prepared by a permanent

2003 - 2007 Bar Exam Results			
Date	Applicants	Passed	Pass Rate
July 2007	75	52	69%
	54 1st timers	47	87%
Feb. 2007	54	26	48%
	24 1st timers	17	71%
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%

“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)

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 48 states and D.C.; and 3) a half day of the performance test (the Multistate Performance Test or "MPT") prepared by NCBE.

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

In 2007, 129 individuals took the Bar Exam and 78 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 2007, 43 applicants were approved for admission without examination.

• Discipline of Members

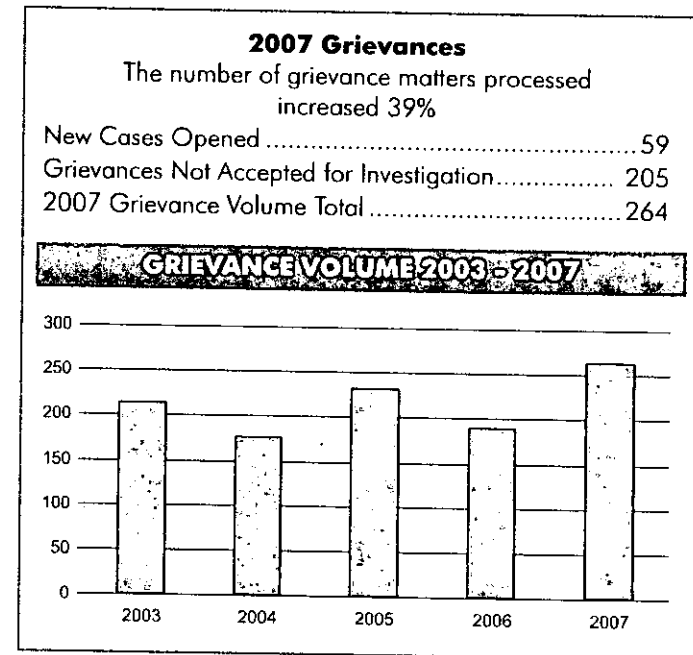
The Alaska Supreme Court has held that an attorney's license to practice law is "a continuing proclamation by the Court that the holder is fit to be entrusted with professional and judicial matters...as an officer of the courts." Investigation and recommendations for professional

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

Expenditures for the Discipline Section totaled \$664,488 during 2007, a substantial allocation of Bar Association resources for the protection of clients, the public, and the legal system in Alaska.

2007 GRIEVANCES

The Discipline Section received 264 grievances in 2007, compared with 190 in 2006, representing a 39% increase. Summary statistical data related to discipline status are contained in the charts.



Discipline Case Statistics¹**2003-2007**

	'03	'04	'05	'06	'07
Open cases pending as of Jan. 1.....	106	83	63	61	58
New cases opened in 2007(+)	25	31	36	43	59
TOTAL open and new cases	131	114	99	104	117

Cases closed in 2003-2007

Closed after disbarment by Supreme Court.....	17	0	3	0	2
Closed after suspension by Supreme Court.....	1	10	3	7	5
Closed after probation ended.....	0	0	0	0	0
Closed after public censure by Supreme Court.....	1	1	4	0	1
Closed after reprimand publicly imposed by Disciplinary Board.....	2	0	1	2	1
Closed after reprimand privately imposed by Disciplinary Board.....	0	1	0	2	0
Closed after written private admonition by Bar Counsel.....	0	2	3	4	1
Dismissed by Bar Counsel.....	26	36	24	31	21
Closed after mediation.....	1	1	0	0	0
TOTAL closed cases (-)	48	51	38	46	31
Open cases pending as of Dec. 31, 2007	83	63	61	58	86

¹ All numbers reflect individual grievances filed and not the number of attorneys involved.

Status of Open Cases as of December 31

	'03	'04	'05	'06	'07
Pending First Response from Respondent Attorney	3	7	7	3	15
Pending Complainant's Reply	3	1	2	1	1
Pending Second Response from Respondent Attorney	0	7	0	0	2
Pending Bar Counsel Investigation/Decision	62	32	25	23	33
Abeyance Pending Outcome of Related Court Case	2	2	9	9	9
Pending Mediation	1	0	0	0	0
Abeyance Pending Outcome of Fee Arbitration	0	0	0	0	0
Pending Approval to Issue Written Private Admonition	0	0	1	0	0
Pending Acceptance of Written Private Admonition by Respondent Attorney	0	1	0	0	0
Pending Approval to File Petition for Formal Hearing	0	5	8	10	11
Pending Stipulation for Discipline between Bar Counsel and Respondent Attorney	2	0	0	0	0
Pending Stipulation Consideration by Disciplinary Board	0	0	6	0	0
Pending Stipulation Consideration by Supreme Court	0	0	0	0	3
Pending before Area Hearing Committee	1	0	0	5	0
Pending before Disciplinary Board	2	2	0	5	8
Pending before Supreme Court	6	5	2	1	3
Respondent Attorney on Probation	1	1	1	1	1
TOTAL open cases	83	63	61	58	86

SUMMARY OF PUBLIC DISCIPLINE ACTIONS IN 2007

- The Alaska Supreme Court disbarred William S. Labahn effective September 14, 2007 and Mitchel J. Schapira effective November 21, 2007.
- The Court suspended Larry A. Wiggins for 180 days with 90 days stayed on conditions effective June 25, 2007.
- The Court issued a public censure to Anthony L. Strong effective August 22, 2007.
- The Court interimly suspended Mark J. Avery effective April 17, 2007.
- The Disciplinary Board publicly reprimanded James A. Wendt effective October 26, 2007.

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

SUMMARY OF REINSTATEMENT ACTIONS IN 2007

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

The Court reinstated Eugene B. Cyrus effective March 23, 2007.

SUMMARY OF DISABILITY ACTIONS IN 2007

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.

Ronald W. Lorensen was transferred to disability inactive status due to a physical disability effective February 14, 2007. Unfortunately, Mr. Lorensen passed away on March 29, 2007. Clifford W. Holst was transferred to disability inactive status due to a physical disability effective March 30, 2007.

• The 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.

2003 - 2007 Fee Arbitration Statistics

	'03	'04	'05	'06	'07
Arbitrations pending January 1	37	33	21	27	26
Arbitrations opened during year (+)	58	39	60	53	58
Arbitrations closed during year (-)	62	51	54	54	51
Arbitrations pending Dec. 31/year-end	33	21	27	26	33

• The Lawyers' Fund for Client Protection Committee

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 fund also pays the cost of trustee counsel appointed by the superior court to close the practice of a deceased sole practitioner or a lawyer who has abandoned his or her practice. 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.

At the close of 2007, four (4) claims were pending before the LFCP Committee. The Committee and the Board of Governors took action on 21 claims during the year.

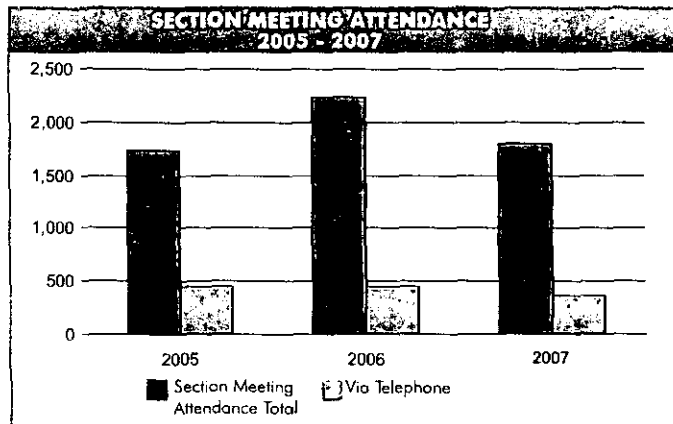
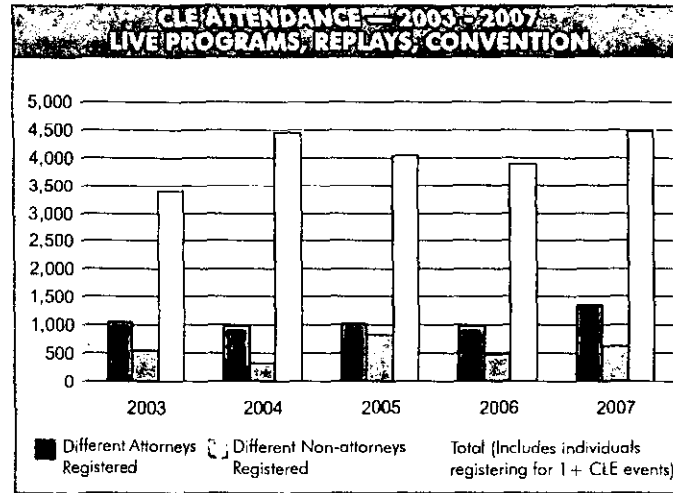
2007 LFCP Actions			
Case Number	Reimbursement(s)* Paid by Board	Reimbursement(s) Rejected by Board	Reimbursement(s) Rejected by LFCP Committee
20061002	\$3,500.00		
20061004	\$3,000.00		
20061005	\$3,750.00		
20061006	\$1,500.00		
20061008	\$25,000.00		
20061009	\$19,000.00		
20061011	\$25,000.00		
20061012	\$20,000.00		
20061013	\$1,250.00		
20061014	\$3,500.00		
20061019	\$2,500.00		
20061022			**\$750.00
20061024			\$1,500.00
20071001	\$2,000.00		
20071002			\$6,500.00
20071004			\$12,743.05
20071005	\$2,500.00		
20071006	\$11,235.00		
20071007	\$2,000.00		
20071008	\$1,000.00		
20071010	\$500.00		
Totals	\$127,235.00		\$21,493.05

*These figures reflect reimbursements from the Fund which may be less than the amount requested by the claimant.
 **Withdrawn when attorney agreed to pay claimant.

• 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 2007 there were 23 active substantive law



sections, with a total membership of 2033 for all sections, an increase of 608 members over 2006 membership.

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

Alaska Bar CLE Attendance

In 2007, registrations for CLE programs and events totaled 4,463.

Attendance at CLE programs totaled 2,110 (including 122 speakers), and 528 individuals attended one or more convention events.

Section Meeting Attendance

In addition, 1,439 attorneys attended in person and 359 participated by telephone in the Bar's substantive law sections' meetings. Attendance declined slightly in 2007 due to several sections opting to meet quarterly vs. monthly.

VCLE Compliance

A total of 1,096 active members of the Bar reported compliance with the VCLE Rule for the period of Jan. 1 - Dec. 31, 2007.

To provide CLE opportunities for attorneys practicing outside of Anchorage, the Bar has regularly scheduled video replays at law firms in Juneau, Fairbanks, and Kenai, as well having DVDs and CLE materials available for purchase through our online CLE Library Catalog. In 2006, the Bar began its partnership with the online CLE provider LegalSpan to develop online CLE seminars and live webcasting of selected programs. The Bar presented 10 live webcasts in 2007, and all of our videotaped live seminars are available 24/7 as online CLE through our online provider. The goal is to increase the number of programs we webcast live and to continue to add to our online CLE selections.

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's Summer 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.

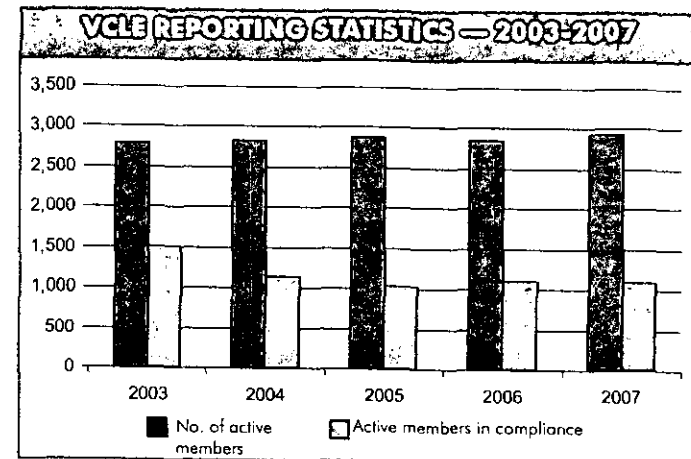
2003 - 2007 CLE PROGRAMS SUMMARY					
	'03	'04	'05	'06	'07
Topics	23	18	29	26	30
Live Bar Programs	25	20	36	27	33
Mandatory Ethics*	2	4	5	5	4
Convention CLE Programs	10	13	9	14	10
Video Replays	62	36	42	40	11
Satellite Seminars	1	3	4	2	0
Webinars	—	—	—	—	1
Live Webcasts	—	—	—	—	10

*Don't Cross That Line: Practicing Ethically and Successfully In Your First Years - A Mandatory Course for New Lawyers in Alaska, a 1.5 hour DVD, is required viewing for admission to the Alaska Bar. Group video replays are scheduled in the spring and fall in Anchorage, and admittees may also view the DVD individually.

• Voluntary Continuing Legal Education (VCLE) – Final VCLE Year

The Voluntary CLE Rule, originally a three-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.

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 for consideration 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.

• Mandatory CLE Rule (MCLE)

In December 2007, the Alaska Supreme Court approved a Mandatory CLE Rule (MCLE) effective January 1, 2008. The new MCLE Rule requires all active Alaska Bar members to:

- Complete 3 hours of approved ethics CLE and report completion.
- Report whether the member has completed more than 9 hours of approved general (VCLE) CLE.
- Report an estimate of how many hours of approved general (VCLE) CLE completed if fewer than 9 hours completed.

• 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

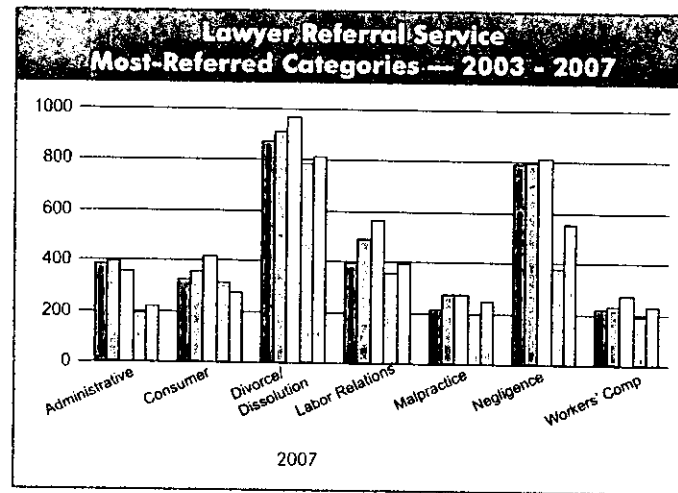
Total Lawyer Referrals 2003-2007					
	'03	'04	'05	'06	'07
Administrative	382	396	357	194	219
Admiralty	19	17	17	18	12
Adoption	34	34	37	16	35
Alaska Native Law	—	—	2	—	—
Arts	—	—	—	2	3
Bankruptcy	108	110	142	52	79
Commercial	148	123	212	112	149
Construction	14	37	40	29	63
Consumer	326	356	419	315	275
Criminal: Felony	130	127	228	92	166
Criminal: Misdemeanor	162	143	175	114	170
Discrimination	66	13	—	—	—
Divorce/Dissolution/Custody	869	907	962	784	809
Eminent Domain	—	—	5	4	—
Environmental	—	—	6	6	—
Foreign Language	—	2	—	—	2
Guardian/Conservator	—	33	52	64	11
Immigration	25	70	—	28	52
Insurance	87	88	89	51	61
Labor Relations	395	488	563	355	392
Landlord/Tenant	161	182	250	63	30
Malpractice	212	276	275	197	244
Military	—	—	—	—	—
Mining	—	—	—	—	—
Negligence	791	794	812	380	556
Patent/Copyright	—	—	—	5	41
Public Interest	8	4	3	3	1
Real Estate	206	281	290	175	257
SSI Cases	28	82	51	22	48
Tax	8	—	—	—	—
Traffic	8	4	21	49	8
Trusts/Wills/Estates	167	187	227	144	222
Workers' Compensation	217	228	276	192	229
	4,585	4,982	5,511	3,468	4,134
Change from previous year	-8%	+9%	+11%	-37%	+16%

“At the end of 2007, 77 attorneys were enrolled in 33 practice categories in the Lawyer Referral Service with total referrals of 4,134—a 16% increase from 2006.”

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

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 2007, a total of 77 attorneys were enrolled in 33 practice categories in the Lawyer Referral Service, with total referrals of 4,134 a 16 % increase from the 3,468 referrals in 2006.



• Pro Bono Services

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 point of contact for legal service providers.

Selected as an internship site by Seattle University School of Law since 2006, the program enjoyed the labor of a talented first year law student to help further the issues of pro bono needs in Alaska. Projects included volunteer attorney recruitment, legal literacy curriculum research and development, and organizational capacity building.

Through a partnership with the Anchorage Bar Association's Young Lawyer Section, the Pro Bono Director assisted in the creation, planning, and execution of a project to benefit Alaska's senior citizen population through the development of a legal resources guide. The project was one of eight selected for funding nationally by the American Bar Association and will be complete by July 2008.

In 2007, the Pro Bono Director, accompanied by the Bar President or a member of the Board of Governors traveled to seven communities—Kodiak, Nome, Kotzebue, Kenai, Soldotna, Homer, and Juneau—as an outreach function and to increase volunteerism in smaller communities. The director made presentations to 16 of the 23 substantive law sections, six community groups, assisted in the establishment of Alaska's only language interpreter center and served on the search committee for the organization's new director, spearheaded two community service projects in the areas of tax and estate planning, and presented at two swearing-in ceremonies of new attorneys to further educate them about the need for civil justice representation to Alaska's nearly 80,000 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, Fair & Impartial Courts, and Alaska Rules of Professional Conduct.
- The Substantive Law Sections, comprised of 23 peer groups practicing in specific areas of the law.

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

Membership Services

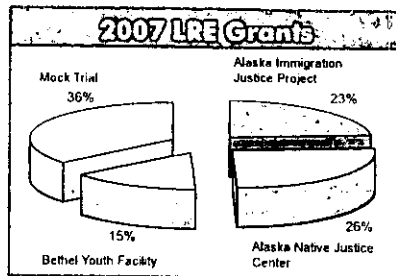
In addition to services associated with CLE and other activity areas, the Bar Association provides other programs that assist members of the Bar in their practices. Complete information about these as well as other Bar programs and services can be found on the Bar's website at www.alaskabar.org.

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.
- **Casemaker.** This online legal research tool is available to all Alaska Bar members at no cost to members. It is included in bar dues. The Alaska Unreported Court Opinions Database will now be hosted by Casemaker. Alaska joined about 28 other states offering this web-based research library and search engine to their Bar members.
- **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.
- **Free Downloading of Alaska Bar CLE Materials.** All Alaska Bar CLE materials one 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 LifeWise Assurance Company. All members of the Association and employees of their firms are eligible. The Bar Association

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

“ In 2007, the Board of Governors distributed \$6,930 for grants to organizations delivering Law Related Education (LRE) programs and materials. These annual grants are targeted to programs that offer practical or direct LRE programs in urban and Bush areas. ”



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 Premera Blue Cross Blue Shield of Alaska. The Bar Association also sponsors a disability insurance program offered by Unimerica Insurance Co.

- **The Alaska Bar Rag.** This quarterly periodical is the official publication of the Bar Association, with content provided by the Bar, attorneys, and organizations in the legal and justice communities. 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, and contains announcements about Bar Association activities, court news, upcoming CLE programs, and other timely items of interest.
- **Unreported Court Opinions Database.** This database, formerly hosted on the Alaska Bar website, will now be available through Casemaker.
- **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 posted 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 at www.alaskabar.org.

• **Public Copying Machines.** The Alaska Bar Association and the Alaska Court System are

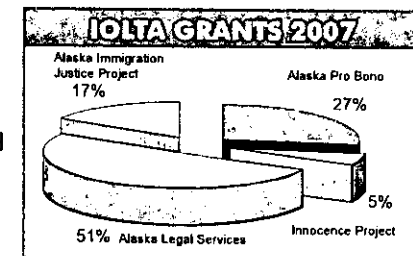
continuing a cooperative agreement to provide copying services in the Anchorage Law Library. The Alaska Bar Association has a service agreement with the Anchorage Bar Association for the purpose of providing copiers in the Anchorage Law Library for the use of all library patrons. The revenue is divided 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, administering loans and scholarships, and maintaining a law library and research center.
- **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 2007, the IOLTA program earned \$161,415 from interest, and awarded grants totaling \$140,000.



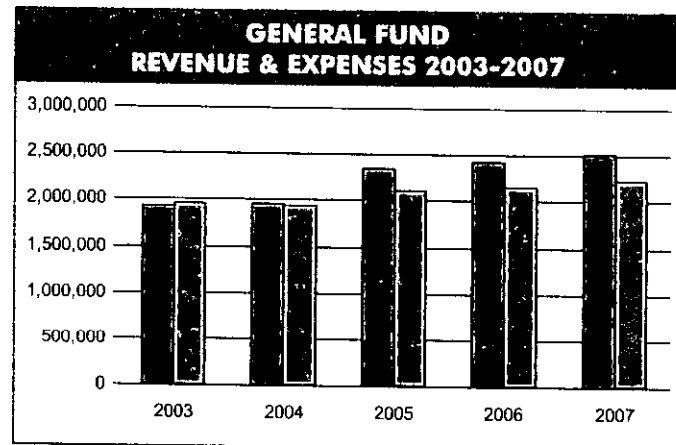
Foundation grants included: \$71,000 to Alaska Legal Services Corp.; \$38,000 to the Alaska Pro Bono Program; \$23,500 to the Alaska Immigration Justice Project; and \$7,500 to the Alaska Innocence Project.

- **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 law 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.
- **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), CLEreg (MCLE Regulators), National Organization of Bar Counsel, National Conference of Bar Examiners, and Western States Bar Conference.

Financial Statements & Budget

The 2007 financial reports reflect total general fund revenue of \$2,512,246, with total expenses of \$2,234,380. The net gain of \$277,866 was a slight decline from the 2006 gain of \$280,251.



“The 2007 financial reports reflect total general fund revenue of \$2,512,246, with total expenses of \$2,234,380. The net gain of \$277,866 was a slight decline from the 2006 gain of \$280,251.”



**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, 2007, 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.

Daniel, Hewko & Tharp

Anchorage, Alaska
February 27, 2008

ALASKA BAR ASSOCIATION
STATEMENT OF ACTIVITIES
For the Year Ended December 31, 2007

UNRESTRICTED NET ASSETS	General Fund	Lawyers' Fund for Client Protection	Court System Library Fund	Total All Funds
Revenue and Other Income				
Dues	\$ 1,686,571	\$ 29,043	\$ -	\$ 1,715,614
Admission fees	150,850	-	-	150,850
Continuing legal education	136,404	-	-	136,404
Lawyer referral fees	41,593	-	-	41,593
Annual meeting	134,557	-	-	134,557
Share from copiers	-	-	2,140	2,140
Rule 81 fees	128,510	2,390	-	130,900
Other	83,412	790	-	84,202
Earnings on investments	126,973	43,425	205	170,603
Unrealized gain on investments	23,376	11,547	-	34,923
Total unrestricted revenue	2,512,246	87,195	2,345	2,601,786
Expenses				
Admissions	182,457	-	-	182,457
Board of Governors	47,822	-	-	47,822
Discipline	664,488	-	-	664,488
Fee arbitration	66,780	-	-	66,780
Lawyer referral	52,504	-	-	52,504
Continuing legal education	327,828	-	-	327,828
Administration	492,382	-	-	492,382
Pro Bono	89,252	-	-	89,252
Voluntary CLE	22,300	-	-	22,300
Annual meeting	112,091	-	-	112,091
Claims awarded	-	127,235	-	127,235
Rule 31 Trustee Counsel	-	30,367	-	30,367
Other	176,476	300	12	176,788
Total expenses	2,234,380	157,902	12	2,392,294
Increase (decrease) in unrestricted net assets	277,866	(70,707)	2,333	209,492
Net assets, beginning of year	2,112,876	1,153,037	21,139	3,287,052
Net assets, end of year	\$ 2,390,742	\$ 1,082,330	\$ 23,472	\$ 3,496,544

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 Regulations Added, Modified, or Repealed in 2007

Article VII, Section 1(a)(11)

September 2007: The Board amended Bylaws, Article VII, Section 1(a)(11) to change the name of the "Judicial Independence Committee" to the "Committee for Fair and Impartial Courts."

Article VII, Section 1(a)(3)

October 2007: The Board amended Bylaws, Article VII, Section 1(a)(3) to change the reference from the "Code of Professional Responsibility" to the "Alaska Rules of Professional Conduct."

Bar Rules Proposed to the Supreme Court in 2007

Alaska Bar Rules

January 2007: The Board proposed an amendment to Bar Rule 39(a) correcting the Bar Association's address.

January 2007: The Board proposed an amendment to Bar Rule 40(u) correcting the citations to the uniform arbitration acts.

February 2007: The Board proposed a new rule, Bar Rule 15.1, that would require lawyers to have their trust accounts only at institutions that agree to provide trust account overdraft notices to bar counsel.

February 2007: The Board proposed an addition to Bar Rule 13 that would provide for a challenge procedure to mediators and referral back to grievance investigation or fee arbitration if there is no response to scheduling requests.

February 2007: The Board proposed an addition to Bar Rule 38 that would provide for the appointment of a mediator to the Executive Committee of the Fee Dispute Resolution Program and making the President-Elect a non-voting member.

February 2007: The Board proposed an amendment to Bar Rule 40 that would change the start of the time period for requesting modification of a fee arbitration decision from "delivery" to "service" of the decision and would change the start of the time period for objection from "receipt" of notice to "service" of notice.

February 2007: The Board proposed an amendment to Bar Rule 61(a) that would remove the filing date for a petition to suspend for nonpayment of dues. In addition, the amendment would direct the petition to the entire Supreme Court rather than an individual justice.

October 2007: The Board proposed amendments to Bar Rule 44 regarding legal intern permit eligibility and renewal as well as permitted acts by a legal intern.

October 2007: The Board proposed an amendment to Bar Rule 44.1(f)(2)(A) that would change the reference from the "Code of Professional Responsibility" to the "Alaska Rules of Professional Conduct."

November 2007: The Board proposed an amendment to Bar Rule 63

that would require a nonlawyer who prepares or completes documents for compensation to obtain and maintain for five years a signed statement from the consumer that warns that the preparer is not a lawyer, that the document may not be legally enforceable, that the document should be reviewed by a lawyer admitted to practice in Alaska, and that the consumer may report any problems with the document to the Bar Association.

December 2007: The Board proposed an amendment to Bar Rule 6, Section 7(b) that would delete the appeal provision relating to residency requirements since the residency requirement has been abolished.

December 2007: The Board proposed an amendment to Bar Rule 5, Section 3 that would allow any state or federal judicial officer to sign an order of admission if eligibility is certified and would permit any state or federal judicial officer or any person authorized to administer oaths to administer the oath of admission to the Bar.

Bar Rules Adopted by the Supreme Court in 2007

Alaska Bar Rules

Effective April 16, 2007: The Court amended Bar Rules 8(3) and 22(p) to clarify the contents of excerpts of record to be filed in admissions and discipline appeals.

Effective October 15, 2007: The Court amended Bar Rule 61(d) to correct the name of the "Child Support Enforcement Division" to the "Child Support Services Division."

Effective October 15, 2007: The Court amended Bar Rule 5, Section 1(b) to add 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.

Effective October 15, 2007: The Court added Bar Rule 43.2 permitting practice by Emeritus Attorneys for qualified legal services organizations.

Effective October 15, 2007: The Court amended Bar Rule 3, Section 6 to change the reapplication deadline for the July Alaska bar examination to June 15th.

Effective January 1, 2008: The Court modified Bar Rule 65 to provide for a mandatory ethics continuing legal education requirement of three hours per year and a voluntary continuing legal education recommendation of nine hours per year. In addition, the Court clarified activities that qualify for continuing education credit and other aspects of the program. The Court also amended Bar Rule 66 regarding suspension for failure to comply with the mandatory requirement. These modifications came as the result of a concerted effort on the part of the Court and the Board to achieve a meaningful program.

Effective April 15, 2008: The Court amended Bar Rule 29 to permit appeals or petitions for hearing in disciplinary reinstatement matters.

APPENDIX B

Bar Sections & Committees

Substantive Sections and Chairs, 2007

At the end of 2007 there were 23 active sections.
The Sections, Chairs, and Co-Chairs at the end of 2007 follow:

Administrative Law

Kathy Atkinson

Admiralty Law

Steve Shamburek & Mark Manning

Alaska Native Law

Mike Robbins

Alternate Dispute Resolution

Glenn Cravez

Bankruptcy Law

Michelle Boutin & Gary Spraker

Business Law

Leonard Anderson

Corporate Counsel

Marcia Davis & Carol Johnson

Elder Law

Ilona Besseney & Una Gandbhir

Employment Law

Tom Daniel, Will Schendel & Rob Schmidt

Environmental/Natural Resources Law

Larry Albert, Larry Hartig & Russ Winner

Estate Planning/Probate Law

Tonja Woelber

Family Law

Lori Ann Colbert & SJ Lee

Health Law

Joan Wilson

Immigration Law

Kathy Atkinson

Intellectual Property Law

Jon Dawson & Elizabeth Hodes

International Law

Andy Haas, Nevhiz Calik & Julie Webb

Law & Community Health Forum

Hanley Smith

Municipal Law

Scott Brandt-Erichsen & Rhonda

Fehlen-Westover

New Lawyers

Teresa Buelow & Beth Trimmer

Real Estate Law

Joan Travostino

Tax Law

Charles Schuetze

Torts/Personal Injury Law

Jim Leik

Workers' Comp

Joe Kalamarides

CLE Committee Members

June 30, 2006 - June 30, 2007

Fairbanks

James DeWitt, Chair 6/2008

Gail Ballou 6/2008

Aimee Anderson Oravec 6/2007

Anchorage

Peter Ashman 6/2008

Nora Barlow 6/2009

Jason Bergevin 6/2007

David Carter 6/2007

Lea Filippi 6/2009

Bonnie Harris 6/2009

Barbara Jones 6/2008

Christine Thoreson 6/2008

Nehviz Calik 6/2009

Young Lawyer Rep

Zach Manzella 6/2008

Young Lawyer Rep

Juneau

David Ingram 6/2009

Kodiak

Judge Joel Bolger 6/2009

Judicial Representative

Bar Committees and Chairs

Alaska Bar Rag

Tom Van Flein

Alaska Rules of Professional Conduct

Jerome Juday

Bar Polls & Elections

Tim Middleton

Continuing Legal

Education

James DeWitt

Ethics

Bob Mahoney

Fair & Impartial Courts

Susie Dosik

Historians

Leroy Barker

Law Examiners

Mary Gilson

Law Related Education

Barbara Jones

Lawyers Assistance

Vacant

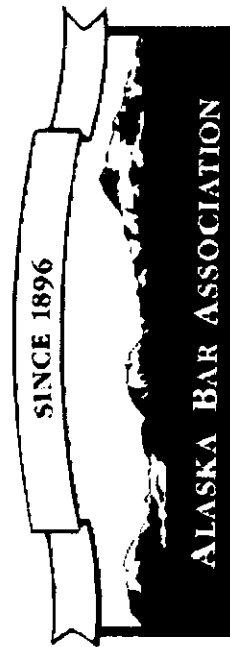
Lawyers Fund for Client

Protection

Paul Nangle

Pro Bono Services

Robert Stewart



550 West 7th Avenue, Suite 1900
Anchorage, Alaska 99501
Phone: 907-272-7469

HOUSE COMMITTEE REPORT

(7)

Date Referred to Committee: January 26, 2009

FURTHER REFERRALS: Finance

Date of Committee Action: 2/4/09

The JUDICIARY Committee considered:

HOUSE BILL NO. 88

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

HB 88 EXTEND BAR ASS'N BOARD OF GOVERNORS

commends it be replaced with HCS or CS for _____ (_____)

For Senate Bills with new title: Technical Title New Title: HCR _____ Same Title New Title

- attach amendments
- add new referral to _____ Committee
- Letter of Intent _____ Committee

List of Abbrev for Depts.:

- ADM
- CED
- COR
- CRT
- EED
- DEC
- DFG
- GOV
- DHS
- LWF
- LAW
- LEG
- MVA
- DNR
- DPS
- REV
- DOT
- UA

<u>NEW FISCAL NOTES</u>				
*Assigned by Chief Clerk's Office				
List by Dept(s):	*FN#	Fiscal	Indet.	Zero
LEG				✓

<u>PREVIOUS FISCAL NOTES</u>				
List by Dept(s):	FN#	Fiscal	Indet.	Zero

<u>Signing with recommendations</u>	Printed Last Name	DP	DNP	NR	AM
	Lynn			X	
	Gruenberg				-
	Goghiti			✓	
	Holmes	X			
	GATTU				X
Chair:				X	
Chair:					