

980 HJ AK BAR ASSN SUNSET REVIEW FILES NO. 3 and 4

RECOMMENDATIONS

The Alaska Bar Association will:

- (a) Make an affirmative effort to work with the School District to provide a career program that uses lawyers as volunteers. For example, on Career Day, students interested in law could spend an entire day with an attorney. The ABA could also provide speakers at the education fair.
- (b) Identify the law schools that have been making an affirmative effort to attract minorities and bring these schools together with the minority candidates. For example, U. of N.M., U. of Denver, U. of Minn., U.C. at Davis.
- (c) Affirmatively work with Alaska Legal Services to promote interest in law as a career in rural areas.
- (d) Define the role of paraprofessionals.
- (e) Educate the members of the bar regarding the merits of paraprofessionals and work to secure an informal commitment that a certain number of paraprofessional slots will be created. For example, one paraprofessional per ten attorneys in each firm.
- (f) Explore with the University of Alaska, the idea of the University acting as a

collaborator with an Outside law school as a means of providing in-state legal training.

- (g) Validate the Alaska bar exam to ensure that it is not culturally biased.

III

BONEY MEMORIAL FUND

At present, the Fund consists of a time certificate of deposit worth \$5,905. The ABA Tax Committee, and particularly Joseph Vitone, are presently investigating the tax status of the fund. Our Committee has considered various means of increasing the fund. The Committee has rejected the idea of allocating the interest from the client security fund to the Boney Fund on the grounds that \$26,000 in the client security fund is inadequate in itself as a security fund; nor would the interest generated by that fund contribute substantially to building up the Boney Fund. The Committee noted, however, that lawyers and law firms are required to maintain non-interest bearing trust accounts for funds belonging to their clients. In many cases, the interest accruing to any one client is negligible and cannot be identified. Ultimately, the banks are the only ones who profit.

RECOMMENDATIONS

Increasing the Fund

- (a) Future statements of dues owed to the ABA will contain an optional add-on charge

of \$10 to be applied to the Boney Memorial Fund.

- (b) Local bar associations will be formally approached for contributions to the Boney Memorial Fund.
- (c) The Bar Association will investigate the feasibility of passing a rule, to be approved by the Alaska Supreme Court, which will permit the trust monies to be kept in interest-bearing accounts and the interest to be turned over to the Boney Memorial Fund.
- (d) The ABA will offer to provide matching funds out of the Boney Memorial Fund with the Native regional corporations who give grants or loans for the study of law.

Disbursing the Fund

- (a) Structure the Boney Memorial Fund to provide loans to Alaskan students for the study of law. The awards would be based on merit and there would be a partial or complete forgiveness of the loan if the recipient agreed to practice in rural areas for a fixed number of years.
- (b) Allocate a portion of the Boney Fund for use in the newly-created Anchorage School District tutorial program for blacks and Alaskan Natives.

- (c) Compile a list of organizations presently giving money to minorities (e.g., BIA, CINA, Alaskan Native Brotherhood, for purposes of coordinating the loans made to minorities and maintaining an accurate count on the number of Alaskan ethnic minorities who are studying law.
- (d) Additionally, or alternatively, use the Boney funds to provide loans to take the bar review course and the bar exam. This loan would be repaid.

Dated: March ²³, 1979

By: Carolyn E. Jones, Chairperson
Chief Justice Jay Rabinowitz
Pat Anderson
Robert Erwin
John Hedland
Ron Kull

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May 11, 1979

RECEIVED

MAY 15 1979

GARRETSON & JARVI
ATTORNEYS AT LAW

Ken Jarvi, President
Alaska Bar Association
1049 West Fifth Avenue, Suite 101
Anchorage, Alaska 99501

RE: Final Report of
Self-Risk Management Committee

Dear Mr. Jarvi:

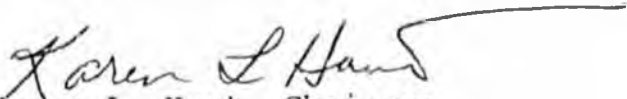
As required, attached hereto and incorporated herein as if fully set forth are the final reports of the Self-Risk Management Committee. This committee, formed as a result of Resolution 3 passed at the June, 1978 Annual Meeting of the Alaska Bar Association, has been comprised of Keith Brown, Charles Flynn, Roger Holmes, Karen Hunt, Ken Jarvi, Ronald Kull and Donna Willard. Each of these reports were published in the May, 1979 issue of the Alaska Bar Rag.

Also attached hereto and incorporated herein as if fully set forth is a copy of the membership survey which was mailed to the members during the week of May 7, 1979 and which results, tabulated, will be presented to the Annual Meeting in Sitka in June, 1979 and to the Board of Governors at their meeting preceding the Annual Business Meeting.

The recommendation of the committee is that the Alaska Bar Association sponsor INAX as the Bar-endorsed malpractice insurance carrier for attorneys practicing law in the State of Alaska.

It is the recommendation of the undersigned, as chairperson of the committee, that the Self-Risk Management Committee be disbanded because the work mandated by the membership in June, 1978 has been completed.

Respectfully submitted,


Karen L. Hunt, Chairperson
Self-Risk Management Committee

KLH/ps
Encl.

Year Long Study Fructified!

Risk Management Committee Makes Recommendations

Resolution #3 passed at the June, 1978 Annual Meeting required a study of malpractice self-insurance by the Alaska Bar Association. The inside pages of this issue of the *Bar Hug* presents the data and recommendations of the Self-Risk Management Committee which has studied the Norman self-insurance proposal and solicited proposals from the insurance market for the past year. The committee members Keith Brown, Charles Flynn, Roger Holmes, Karen Hunt, Ken Jarvi, Ronald Kull and Donna Willard have recommended one of the proposals to the membership. A survey to get membership response has been mailed to each member and the results will be presented at the Annual Business Meeting in Sitka on Saturday, June 9, 1979.

The Norman Resolution

The Resolution resulted from a presentation by Peter Norman, Risk Consultant of Vancouver, BC to the Board of Governors in Hawaii in February, 1978. Norman was hired by the Board of Governors to do a feasibility study of Bar Association self-insurance in Spring, 1978. A claims loss questionnaire was responded to by the membership in May, 1978. Norman reported to the Board of Governors in June 1978 recommending that the Association institute a mandatory and exclusive self-insurance program with a \$2,500 individual deductible. The Association would handle all claims up to \$25,000 exposure. Coverage up to \$75,000 would be purchased from an insurance company making the limit of liability \$100,000 per insured member.

The Norman Proposal

Norman was subsequently rehired as a consultant to verify the loss data, make a coverage proposal to the committee and to solicit a private carrier willing to provide the second layer of coverage from \$25,000 to \$100,000. Although Norman has declined to identify the carrier, he has advised the Association that he has a commitment from it to write the second layer and to enter into a reinsurance agreement with the Bar Association self-insurance fund for a present price of \$220 per member. In addition, Norman has recommended that each insured member pay the Bar Association Liability Fund \$480 to cover all expenses and pay claims from \$2,500 to \$25,000 and to pay all claims expenses up to \$100,000 liability limit.

The committee, with Board of Governors approval, also contacted representatives of each of the only ten carriers presently writing E & O coverage for lawyers in the country.

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Special Committee

[continued from page 1]

Study was also made of the Professional Liability fund in Oregon and the Southern States Bar Conference group approach to purchasing package coverage from a carrier for 13 southern states and Hawaii.

Only four carriers expressed any interest in writing E & O in Alaska: American Home Group through National American Fire, the present Bar-endorser carrier; INAX a subsidiary of INA which purchased GATX in March, 1978; ICA a lawyer-owned Texas insurance company writing coverage in Texas and New Mexico; and the Shand Morahan group comprised of Evanston, Northbrook, and Mutual Fire & Marine and American Banker.

National Union Fire and INAX made specific proposals which are presented in this issue. Shand Morahan declined to make a proposal within the time schedule required by Resolution #3, but has indicated through its Alaska broker that it does plan to enter the Alaska market in the future.

Loss data for Alaska attorneys was made available to each of the interested carriers. The data was gathered not only from the questionnaire results from 88.4 percent private attorneys and 65.83 percent public practice attorneys, but also from present and past carriers in Alaska; defense attorney conference with Norman; and the Insurance Division of the Alaska Department of Commerce.

The membership survey and committee recommendation will be considered by the Board of Governors at its meeting in Sitka June 5, 6 and 7, 1979.

Committee Recommends INAX

After a year of study of the current availability and cost of malpractice insurance in Alaska including the Norman proposal for Bar Association self insurance, the Self-Risk Management Committee comprised of Keith Brown, Charles Flynn, Roger Holmes, Karen Hunt, Ken Jarvi, Ron Kull and Donna Willard unanimously recommends that INAX be sponsored by the Bar Association as the Bar-endorsed malpractice carrier for Alaskan attorneys. Committee recommendation is based upon the following nine factors which the committee considered to be weighted in favor of the INAX proposal:

1. INAX covers paralegals, investigators, abstractors and law clerks at no additional charge to the policyholder, but they are not named insureds.
2. INAX coverage includes libel, slander and malicious prosecution claims.
3. Under the INAX policy, defense costs are paid in addition to coverage limits and are not deducted from liability limits.
4. INAX liability coverage is available in Alaska up to a 5 million dollar limit.
5. Under the INAX policy, if the policyholder does not agree to a settlement offer that is less than its policy limits, the company does not limit its liability to the amount for which the claim(s) could have been settled. It continues to defend. Additional defense costs will be paid by the company on a pro rata basis, but future settlement or judgment will be paid up to policy limits.
6. The INAX-furnished defense is not withdrawn should policy limits be exceeded but the company continues to defend and pays its pro rata share of expenses if liability limits are exceeded.
7. For the attorney who has been in practice with two or more years of prior malpractice exposure, the premium is less. The premium for zero or one year of prior acts exposure is greater under the INAX policy, but the committee weighted

Loss Control Program to be Considered

A mandatory feature of the Norman self-insurance proposal is a loss prevention program to attempt to prevent malpractice claims. The program is based upon the fact that the number, scope and cost of attorney malpractice suits in Alaska have doubled in the past five years. The resultant high damages paid have resulted in insurance carriers withdrawing or limiting their coverages; lawyers paying higher premiums or going bare; and the Bar Association attempting to find solutions to the underlying causes.

In order to effectuate a self-insurance program which can aid in loss prevention, the Self-Risk Management Committee recommends the following:

1. Mandatory reporting of all claims to the Bar Association office in order that the type of claims being alleged can be known for use in planning CLE seminars.
2. Because the majority of claims are made regarding errors or omissions in law office management, a rule change be proposed to the Supreme Court requiring each active practitioner to attend six hours of law office management CLE in a three year period. A bylaw change should be passed by the Board of Governors mandating that the Association present six hours of such CLE every year rotating the program between districts two and four, district three and district one.
3. The Board of Governors enact

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the cost break given to the more experienced attorney as affecting more members of the Association. Thus, the premium structure of the INAX policy was considered more favorable to most of the members.

8. INAX has recognized the value of and need for a loss prevention program in those areas where most claims arise. Thus it has developed and provides, at no cost to the Association or to the policyholder, an in-house loss prevention program which includes two annual CLE seminars with expert speakers, films, video and brochures.

9. INAX will select an in-state adjuster to develop knowledge and expertise in handling attorney malpractice claims.

The committee recommends INAX realizing that INAX did not have as favorable provisions as National Union Fire in three areas. INAX does require that the policyholder deductible be paid for each occurrence which results in claims made in one policy period. National Union Fire requires only one deductible per policy period regardless of the number of occurrences which gives rise to claims. Loss data indicates very few attorneys have more than one occurrence per policy period that results in malpractice

Loss Prevention Program Proposed

A mandatory feature of the Norman self-insurance proposal is a loss control program to attempt to control the scope and severity of malpractice claims once an act or omission has occurred but which act or omission may potentially be controlled to lessen or eliminate the damage to the client.

In order to effectuate a self-insurance program which can aid in loss control once an attorney is aware of a potential malpractice problem, the Self-Risk Management Committee recommends the following:

1. Because many malpractice claims may be capable of repair before reaching the lawsuit stage, the Board of Governors should propose a rule to the Supreme Court requiring attorneys to report possible claims to the Association as soon as the lawyer reasonably foresees a potential claim.
2. The Board of Governors should create a standing claims repair committee to which three lawyers are appointed to serve staggered terms of three years each. The committee should function as follows:
 - A. The lawyer gives notice of a potential claim to the insurer and to the committee which within five days selects a Repair Expert who has at least five years of experience in the area of potential claim. Said expert's fees to be paid as defense costs from the Association Self-Insurance funds. Client disclosure must also be made.
 - B. Within 20 days after his appointment, the Repair Expert takes whatever action, if any, is possible to repair the error or omission. Disclosure of all such activities must be made to the client.
 - C. Neither members of the Repair Committee, the Repair Expert nor any member of their firms can represent any party if repair is not accomplished and a lawsuit results.
 - D. The Bar Association indemnifies members of the Repair Committee and the Repair Expert should they be sued in any resultant lawsuit.
3. The Conciliation Panel procedures of new Bar Rule 16 should be developed to encourage discontented clients who have neither a fee dispute nor an ethical complaint to utilize the procedures to achieve resolutions of their complaints.

claims.

INAX does not have as favorable an extended reporting endorsement or tail available in that it only provides an unlimited tail for 225 percent of the last annual premium due 30 days after termination of the policy. National Union Fire provides the same unlimited tail at the same premium rate, but also provides an optional three year and six year tail at reduced charges. The National Union tail premium can also be paid in installments.

Finally INAX does not provide discounts for CLE as does National Union Fire. However, the committee determined that the CLE discount offered may be of limited value to many of the members because it requires the individual attorney to first pay at least a \$1,000 annual premium before the discount is applicable.

The committee evaluation of the Norman self-insurance proposal is reported elsewhere in this issue of the Bar Rag.

Self Insurance Is Not Recommended

Peter Norman, Risk Management Consultant hired by the Board of Governors, has made the following proposal to the Association recommending that it initiate a self-insurance malpractice program for Alaska attorneys. Norman's proposal requires mandatory participation by each attorney engaged in any form of private practice in the State of Alaska. Each attorney would be required to pay a flat fee per year of \$480 to a group fund managed by the Bar Association or to have the license to practice law.

The fund would pay costs, defense fees and damages for malpractice claims between the limits of \$2,501 and \$25,000. The fund would also pay defense costs on all claims up to \$100,000. The individual attorney would pay the first \$2,500. For an additional \$220, each attorney would be covered up to \$100,000 liability limit with coverage obtained by the Bar Association from an insurance carrier. The carrier would also provide stop-gap coverage in the event that fund monies were exhausted during the policy year.

Attorneys that wanted more than \$100,000 limits would need to secure the additional coverage from an insurance carrier. Prior acts would be covered up to the \$100,000 limit. Upon retirement or appointment to the Bench, an attorney could purchase "tail" coverage for \$100 per year for claims presented in the future for some act or omission during the policy period.

Participation Required

All attorneys licensed to practice law in Alaska would be required to participate in the program except government employed attorneys; corporation employed lawyers (this does not exempt professional corporations); public aid attorneys; and admitted attorneys not engaged in the private practice of law in Alaska. Exempted attorneys would be required to participate in the fund if they did any pro bono, family or friends' legal work, however.

The Bar Association would administer the fund, issue policies, bill for premiums, and investigate, adjust and otherwise handle the claims. The Association would also be responsible for either complying with the Alaska Insurance Code requirements or getting legislative exemption, in part or in whole, for its insurance program. If legislative exemption resulted in the insurance industry antitrust exemptions being non-applicable, the Association would also be responsible for complying with the state and federal anti-

Alaska Claims Follow National Trend

E & O claims against Alaska lawyers have followed three national trends. (1) The number of claims has drastically increased. (2) Majority of claims are based upon acts or omissions in meeting filing dates; ignoring statutes of limitations; or delayed advice to clients causing most of the claims. These claims are frequently classified as law office management problems. (3) Finally, damages paid in settlement or judgments have skyrocketed.

The major E & O carrier in Alaska for 1970-1975 was Mission Insurance Company. During that period Mission collected \$152,637 and paid out \$187,750 in claims and \$26,623 in defense expenses for a loss ratio of 140 percent.

In 1974 six claims were made. The figures for 1975 when National Union Fire became the Bar-endorsed carrier reveal that eight claims were made. In 1976 eight claims were made. The number of claims made in 1977 and 1978 jumped to 12 each year. Through March, three claims have been reported to the Bar-endorsed carrier for 1979.

No E & O lawsuit against attorneys has been tried to date. Settlements range from dismissed for no dollars to over a quarter of a million dollars. Defense costs have ranged from less than 10 percent of the settlement figure to as high as 50 percent of the settlement paid. The majority of closed cases incurred defense costs of approximately 25 percent of the settlement amount.

For the years 1974 through 1978 at least nine claims were made alleging missed statute of limitations or other filing dates. A possible additional 13 claims may have alleged similar negligence. Research has revealed 44 known claims in the past five years. Additional claims may not be known because they were not listed on the questionnaires or not discovered because the coverage was placed through out-of-state brokers and written by international carriers not admitted to write in the State of Alaska.

DISCLAIMER

The information contained within the Bar Rag regarding coverage terms and premium costs is information furnished to the Self-Risk Management Committee by the named brokers and/or insurance carriers and/or Peter Norman. Each broker and carrier was given an opportunity to review information and to advise of errors or misrepresentations. The Bar Association, Board of Governors and committee members disclaim any and all responsibility for the accuracy of the information presented. The reader relies upon the information to his/her detriment at his/her own risk.

trust laws. The tax exemption issues would also be the responsibility of the Association.

Norman's proposal also mand aggressive loss prevention/loss control programs to be administered by the Bar Association. See articles elsewhere in this issue of the Bar Rag for an explanation of these two programs.

Norman suggests that there are several advantages to the members if the Board of Governors adopts his proposal. The primary advantage is Bar Association control over attorney malpractice problems in Alaska. Through the mandatory loss prevention and loss control programs, both the extent of and type of claims would be under the continuous scrutiny and management of the Association.

Coverage Always Available

A second advantage proposed by Norman is that minimum coverage of \$25,000 would always be available to each privately practicing attorney

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Self Insurance Not Recommended

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in Alaska thereby eliminating the risk that any attorney would need to be without malpractice insurance either because the cost was too great or carriers refused to write coverage in Alaska for that attorney.

Finally, Norman points to an annual premium of \$700 per year per attorney for \$100,000 coverage as a lower cost policy than what is available from the insurance carriers willing to write \$100,000 levels of coverage in Alaska for attorneys.

After spending a year studying the current malpractice insurance market and the Norman self-insurance proposal, the Self-Risk Management Committee is unanimous in not recommending that the Alaska Bar Association self insure its members for malpractice claims. The committee, comprised of Keith Brown, Charles Flynn, Roger Holmes, Karen Hunt, Ken Jarvi, Ron Kull and Donna Willard, found the following factors weighed against recommendation that the Bar adopt the Norman self-insurance program.

The program would have to be mandatory and exclusive malpractice coverage which would require that every member of the Bar Association who did any private practice for friends, family, etc. would have to

pay a premium and participate in the Fund.

The program would require the Bar Association to purchase a group deductible policy of \$25,000 per member from an insurance carrier. Oregon, with a membership of over 5,000 lawyers, has been unable to purchase such coverage although it has a group deductible of \$100,000.

Although the Association Fund would operate on the one hand as a group deductible in relationship to an insurance carrier, on the other hand the Bar Association would become an insurance carrier itself for the first \$25,000 of coverage thereby requiring it to either meet the minimum one million dollar capitalization requirement of the Insurance Code or to get statutory exemption from the Legislature.

Statutory Exemption

If statutory exemption were granted to the Bar Association by the Legislature, depending upon the scope of the exemption, the Fund could be subject to antitrust considerations. Because insurance companies are regulated by the insurance codes, they are exempt from antitrust legislation. If it is exempted from insurance code regulations, the Association becomes exposed to antitrust determinations particularly because to be economically feasible, the Fund must be mandatory and exclusive malpractice coverage for Alaska lawyers.

Also, if exempted from the code, individual attorneys lose the scope of Insurance Code protections developed for policyholders or regular insurance companies.

In order to avoid depleting the Fund in a single year when high damage claims are paid, reinsurance of the Fund must be obtained from the insurance market. Oregon has been unable to secure such coverage to date although it has over 5,000 attorneys participating at \$500 per attorney per year.

If reinsurance of the Fund cannot be obtained, the individual attorneys in Alaska in the private practice of law become subject to an additional assessment above the normal premium charge to cover the amounts necessary to pay the defense costs and damages incurred in one year. The defense costs for all claims up to the \$100,000 limit must be paid

by the Fund although it is liable only for the first \$25,000 in damages.

Costs to Association

Self-insurance requires the Bar Association to go into the insurance business which means incurring all of the policy writing, publishing and billing costs which would require the Association administration and Board of Governors to become experts in the insurance business.

Because the Fund would earn interest on the premium collected, tax liabilities will also be incurred by the Association. Bookkeeping, auditing and tax reporting costs would also have to be met from the premium charged. For merely \$25,000 of Fund provided coverage, these costs are uneconomical.

The premium for a \$2,500 individual deductible on every claim, \$22,500 Fund liability and \$75,000 carrier liability program is proposed at \$700 per lawyer. The sum of \$220 is the projected figure per member for the level of insurance from \$25,000 to \$100,000 with \$480 remaining in the Association Fund to pay all administrative costs, defense costs up to the \$100,000 limit and claims damages up to \$25,000 (minus the individual \$2,500 deductible). The cost is uneconomical when compared with the same limits and deductible from National Union Fire (\$720) or INAX (\$560) for attorneys with five or more years of experience. With less experience, the carriers' premiums are less.

The projected revenues collected for the fund for one year are \$399,000, calculated as follows:

| | | |
|---|---------|------------------|
| 750 private practice attorneys pay | \$480 = | \$336,000 |
| 100 part-time attorneys pay | \$480 = | 48,000 |
| 150 judges and/or retired attorneys (not practicing law anywhere) pay | \$100 = | 15,000 |
| | | \$399,000 |

The cost projections by Norman are as follows:

| | |
|---|----------|
| (a) Broker's fee for securing coverage from \$25,000 to \$100,000 | \$25,000 |
| (b) Norman's consulting fee (payable for two years) | 25,000 |
| (c) Administration cost for part-time secretary | 8,000 |

| | |
|--|------------------|
| (d) Accounting and office expenses | 8,000 |
| (e) Estimated adjusting and defense costs per year | 100,000 |
| (f) Maximum of six claims paid per year | 136,200 |
| | \$302,200 |

The committee considers these costs projections to be unrealistic because Norman is suggesting that actually to run the program, a part-time secretary, paid \$8,000 a year, can be an expert able to run an insurance company and be a claims handler for active files.

Defense Costs Not Included

Secondly, the defense cost allocation permits only approximately \$17,000 per file for legal defense fees at \$75 per hour for six active claims per year. No defense costs are included in this breakdown. Last year, one claim settlement plus the defense costs and fees would have required more monies than the amount allotted for all claims and all defense costs for the entire year. Likewise, given that the known number of claims for the past two years have been double the projected number, the committee thinks that the estimate of only six claims per year is unrealistic.

The considerations discussed above were the major reasons for committee rejection of the Norman self-insurance proposal. The final determination of the committee is to recommend that INAX be the Bar-sponsored malpractice carrier for attorneys in Alaska.

The premium charge for equal coverage is less expensive than the self insurance proposal and offers coverage options up to five million liability limits. Therefore, based upon availability of coverage and cost considerations, self-insurance was not, in the committee's opinion, economically necessary or feasible at this time.

Loss Control Program

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a bylaw change requiring the Association to present CLE seminars in every area of substantive law where two or more claims have been made. The Board of Governors should also strongly consider a proposal to the Supreme Court requiring attorneys who have a claim made against them to attend CLE in areas of substantive law where E & O is alleged.

4. The Board of Governors enact a bylaw change mandating the Association to present, as a part of the annual meeting, an annual update on current developments in the substantive areas of law.

E & O Insurance Programs Compared

| AREA COVERED | PRESENT BAR-ENDORSED AMERICAN HOME (NATIONAL UNION FIRE) | INAX | NORMAN |
|--|---|--|--|
| INSURED | <p>Sole proprietors, partners of a partnership, stockholders or members of professional corporations or professional associations.</p> <p>Any lawyer who is an employee of the named insured.</p> <p>Any lawyer who was previously a named insured (other than sole proprietor) who terminated his relationship with the firm, but only for professional services rendered prior to termination. Changes in firm must be reported to company within 30 days. For additional charge, paralegals, law clerks, abstractors and investigators may be covered.</p> | <p>The named insured and predecessor firms; any partner, officer, director, stockholder, or employed lawyer of the named insured or lawyer who, during policy period becomes such: any former partner, officer, director, stockholder, or employed lawyer acting in his professional capacity on behalf of the named insured; the heirs, executors, administrators, and legal representatives of each insured in the event of death, incapacity, or bankruptcy. The lawyer is covered for acts or omissions of his non-attorney staff without additional charge; however, they are not "additional insureds."</p> | <p>Mandatory participation required as a condition to maintain an active license to practice law in Alaska except for the following:</p> <ol style="list-style-type: none"> 1) Attorneys elected or employed exclusively on a full-time basis by a governmental entity. 2) Attorneys employed exclusively on a full-time basis by a public or private corporation, association or other business entity except for a professional corporation whose business is the practice of law. 3) Attorneys employed by legal aid services corporations who are eligible for professional liability insurance through the National Legal Aid and Defenders Association. 4) Attorneys not engaged either full-time or part-time in the private practice of law in Alaska. |
| COVERAGE | <p>Covers claims arising out of acts or omissions of the insured and any other person for whom the insured is legally responsible for professional services rendered, or which should have been rendered in the insured's capacity as a lawyer.</p> <p>When the insured acts as a fiduciary, such services shall be deemed professional legal services but only to the extent that the insured would have been legally responsible in the usual attorney-client relationship as attorney for a fiduciary, except for any loss sustained by the insured as the beneficiary or distributee of any trust or estate. Libel, slander and malicious prosecution are excluded.</p> | <p>Claims first made against the defined insured for any act or omission in professional services rendered or which should have been rendered in the insured's capacity as a lawyer or Notary Public.</p> <p>When the insured acts in a fiduciary capacity, such services shall be deemed professional services but only to the extent that the insured would be legally responsible in the usual attorney/client relationship as attorney for a fiduciary except for any loss sustained by the insured as the beneficiary or distributee of any trust or estate. Claims for libel, slander and malicious prosecution (personal injury) arising out of the conduct of professional services of the insured as a lawyer or Notary Public.</p> | <p>Claims arising from any act or omission of the defined insured arising out of the performance or failure to perform professional services for others, in the insured's capacity as an attorney except that, the insured when acting in a fiduciary capacity, shall be covered only for acts or omissions in the usual attorney/client relationship. Unknown as to whether libel, slander and/or malicious prosecution are covered.</p> |
| DEFENSE, SETTLEMENT AND SUPPLEMENTARY PAYMENTS | <p>The company shall defend.</p> <p>Written consent of the insured before settlement. If the insured refuses to settle as recommended by the company and elects to contest the claim, company's liability shall not exceed the amount for which the company would have been liable at that time.</p> <p>Company shall not be obligated to pay any claim, claims expense, or continue defense after limits of liability have been exhausted.</p> <p>Claims expense included within limits of liability, and if limits are exhausted the company shall have the right to withdraw, tendering control of defense to the insured.</p> | <p>The company shall defend even if suit is groundless, false, or fraudulent, make such investigation and negotiation as it deems expedient; but written consent of the insured is required before the company can settle a claim. If consent is refused, applicable policy limits are still available.</p> <p>Defense costs are payable in addition to the limit of liability, however, in the event of payment of a claim in excess of the limit, the company shall pay such proportion of claim expenses as the amount of the limit of liability bears to the total amount paid to dispose of the claim.</p> | <p>The Bar Association shall defend even if allegations are groundless, false or fraudulent, but the Bar Association may make such investigation and, with the consent of the insured, such settlement of any claim or suit as it deems expedient; if the insured and Bar Association fail to agree on whether settlement shall be made then such issue shall be decided by an arbitrator being a member of the Alaska Bar Association appointed by the Chief Justice of the Supreme Court of Alaska whose decision shall be binding. Total defense costs are deducted from first \$25,000 layer including costs incurred for damages payable from \$75,000 layer.</p> |
| CLAIMS MADE FORM | <p>Applies to acts or omissions if claim is first made during the policy period or extended reporting period. Claim is first made if:</p> <ol style="list-style-type: none"> a) during the policy period or extended reporting period insured knows or becomes aware of a possible claim and gives written notice to the company; b) if payable claim is made, any additional claims brought subsequently to that policy year resulting from the same or related acts shall be considered part of the claim first made during the policy year. <p>A claim is considered first made when company first receives notice.</p> | <p>Applies to acts or omissions if claim is first made during the policy period or extended reporting period. Claim is first made if:</p> <ol style="list-style-type: none"> a) during the policy period or extended reporting period insured knows or becomes aware of a possible claim and gives written notice to the company; b) if payable claim is made, any additional claims brought subsequently to that policy year resulting from the same or related acts shall be considered part of the claim first made during the policy year. <p>A claim is considered first made when company first receives notice.</p> | <p>Applies to claims first made during policy period if insured first knows or becomes aware of claim or possible claims and gives written notice to the Bar Association during such period.</p> |
| PRIOR ACTS | <p>Prior acts included if the insured did not know nor could have foreseen a possible claim before effective date of policy.</p> <p>If other valid and collectible insurance exists, this policy shall apply as excess with claims expense included in the limits of liability.</p> | <p>Prior acts covered if the insured had no knowledge, nor could have reasonably foreseen a possible claim before the beginning date of the policy when there is no other valid and collectible insurance applicable to the claim. If other valid and collectible insurance exists, this policy shall apply as excess.</p> | <p>Unlimited coverage if insured did not know and could not reasonably have foreseen claim prior to policy period and if no other insurance is applicable.</p> |
| POLICY PERIOD | <p>The period of time between the inception date and effective date of termination, expiration or cancellation of coverage, specifically excluding any extended reporting period.</p> | <p>The period from the effective date of the policy to the expiration date or earlier termination date, if any. Policies are issued for one year.</p> | <p>From the time when coverage has been effected through the Alaska Bar Association and for which a premium has been paid, until either the expiration date or until cancellation of coverage, whichever first occurs.</p> |
| TERRITORY | <p>Worldwide providing claim is made or suit is brought within the United States or Canada.</p> | <p>Worldwide.</p> | <p>Worldwide providing claim is made or suit is brought within the United States.</p> |

EXTENDED REPORTING ENDORSEMENT (TAIL)

In cases of cancellation or non-renewal by either the insured or the company, the insured may purchase an endorsement providing an unlimited extended reporting period for claims which occurred prior to the termination of the policy period but which are first made in the extended reporting period. The insured shall pay a premium equal to 225% of the last annual premium. A three year limited tail is available at 100% last annual premium. A six year limited tail is available at 150% last annual premium. Premiums may be paid in installment.

Unlimited extended reporting endorsement is available to the insured for 225% of the last annual premium in the event of cancellation or nonrenewal by the company of the insured. Covers claims which arise during the policy period but are reported during the extended reporting period. Payment of the additional premium is due within 30 days of the termination.

For an annual charge of \$100 unlimited tail is available. Because coverage is mandatory for all active members of the Bar Association in full or part-time private practice, tail is available only to members who cease practicing law or change to judicial status.

LIMITS OF LIABILITY

Claims expenses are included within the limits of liability. All claims expenses shall first be subtracted from the limits of liability with the remainder being the amount available to pay money damages. The first limit is applicable to all claims and expenses arising out of the same or related professional services without regard to the number of claims. The aggregate limit is available for all claims made in a policy period. Deductible applies only once during policy period regardless of number of claims during same period.

Claims expenses are not deducted from limits of liability. The "aggregate" amount is limit for all claims made during each policy year or last policy year plus extended reporting endorsement if purchased regardless number of lawyers in firm. Deductible is subtracted from total amount of damages and claims expenses paid and company is liable only for difference. Deductible is applicable to each claim made during policy period regardless of number of claims made during same period.

\$100,000 per occurrence includes \$2,500 deductible and the \$75,000 liability limit obtained by Bar Association from private insurance carrier for all damages arising out of all acts or omissions in connection with the same professional services regardless of the number of claims or claimants, and regardless of the number of certificates that have been issued to the partnership or corporation, its members or employees against who claim or claims are being made. Deductible is paid per claim.

CLAIMS EXPENSE

Fees charged by attorney(s) designated by the company. All other fees, costs, and expenses resulting from the investigation, adjustment, defense and appeal of claim if incurred by the company or by the insured with written consent of the company. Does not include salary charges of regular employees or officials of the company. Deductible applies to these expenses.

Legal expenses arising from the defense of any claim, including attorney's fees, arbitrator's fees, court costs, expert's fees, and costs incurred in connection with the attendance of witnesses at a trial or arbitration proceedings. The deductible applies to these expenses.

All adjusting costs and fees, defense costs and fees are borne by the self-insurance fund of the Bar Association.

The cost of investigation and adjustment of claims by salaried employees of the company (including attorneys) and fee adjusters shall be borne by the company.

EXCLUSIONS

1. Criminal or malicious acts.
2. Deliberate, dishonest or fraudulent acts.
3. Employer's claim against salaried employee.
4. Bodily injury or property damage.
5. Insured's activities as officer, director of any employee trust, charitable organization, corporation, company or business other than that of the named insured.
6. Punitive or exemplary damages.
7. Claim arising out of any other business enterprise owned, controlled or managed by the insured, including property.
8. Prior acts if the insured knew or could have reasonably foreseen a possible claim before effective date of policy.
9. Standard Nuclear Energy Liability Exclusion.
10. Libel, slander and malicious prosecution.

1. Criminal, or malicious acts.
2. Deliberate, dishonest or fraudulent acts.
3. Claims arising out of any other business enterprise owned, controlled or managed by the insured including property.
4. Insured's activities solely as a partner, officer, director, or stockholder of any firm or corporation not named in the declarations.
5. Bodily injury, sickness, disease, death or property damage.
6. Insured's activities as a public official or as an employee of a governmental body, subdivision, or agency thereof.
7. Standard Nuclear Energy Liability exclusion.
8. To discrimination by the insured on the basis of race, creed, age, or sex.
9. Lawyers who practice patent/copyright law for over 51% of total practice.
10. Lawyers who practice entertainment law for over 16% of total practice.
11. Lawyers who practice title/abstracting law for over 76% of total practice.
12. Punitive damages are not specifically excluded, but all intentional acts are excluded which may lead to coverage questions.

- 1) Any dishonest, fraudulent, criminal or malicious act or omission of any insured.
- 2) To any claim made by an employer against an insured who is a salaried employee of such employer.
- 3) Bodily injury to, or sickness, disease or death of any person, or to injury to or destruction of any tangible property, including the loss of use thereof, unless arising out of the performance of professional services, which is covered hereunder.
- 4) Acts or omissions committed prior to the policy period if the insured on the effective date of this policy had knowledge that such acts or omissions might be expected to be the basis of a claim or suit.
- 5) Conduct of any business enterprise owned by the insured or in which the insured is a partner, or which is controlled, operated or managed by the insured, either individually or in a fiduciary capacity, including the ownership, maintenance or use of any property in connection therewith.
- 6) Any punitive or exemplary damages.

WAIVER OF EXCLUSION AND BREACH OF CONDITIONS

Coverage is provided for the "innocent partner." If a dishonest, fraudulent, malicious or criminal act is committed without the personal knowledge or personal acquiescence of other named insureds or personal passivity after acquiring such knowledge.

Coverage is also provided to the "innocent partner" relating to the giving of notice to the company with respect to which any other insured is in default.

After receiving knowledge, the insured will comply with such condition promptly.

Coverage is provided for the "innocent partner." If a dishonest, fraudulent, malicious or criminal act is committed without the personal knowledge or personal acquiescence of other named insureds or personal passivity after acquiring such knowledge.

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Coverage is also provided to the "innocent partner" relating to the giving of notice to the company with respect to which any other insured is in default.

After receiving knowledge, the insured will comply with such condition promptly.

OTHER INSURANCE

If the insured has other applicable insurance, the company shall respond pro rata. With respect to prior acts coverage, the insurance will only apply as excess over any other valid and collectible insurance and shall then apply only in the amount by which the applicable limits of this policy exceeds the sum of applicable limits of all other insurance. If this policy is treated as excess, any claims expense allowed shall be included in the limit of liability.

With respect to prior acts coverage, the insurance will only apply as excess over any other valid and collectible insurance and shall then apply only in the amount by which the applicable limits of this policy exceeds the sum of applicable limits of all other insurance.

If the insured has other insurance against a loss covered by this policy, except insurance specifically arranged to apply as excess over the insurance provided by this policy, the insurance hereunder shall apply only as excess insurance over any other valid and collectible insurance and shall not be called upon in contribution.

CONFORMANCE TO STATE STATUTES

No such provision.

Terms of this policy which are in conflict with the statutes of the State wherein this policy is issued are hereby amended to conform to such statutes.

Terms of this policy in conflict with Alaska Statutes are hereby amended to conform to such statutes.

MAXIMUM LIMITS AVAILABLE

\$1,000,000/\$1,000,000

\$5,000,000/\$5,000,000

\$100,000/\$100,000

[continued on page 10]

NOTICE OF CLAIM OR SUIT

As soon as the insured becomes aware of any act or omission which would reasonably be expected to be the basis of a claim or suit covered by the policy, written notice shall be given to the company as soon as practicable together with the fullest information obtainable.

If claim is made or suit is brought, all documents shall immediately be forwarded to the company.

If during the policy period or the extended reporting period, the company receives written notice of any act or omission which could be expected to give rise to a claim, any claim which subsequently arises shall be considered to be a claim reported during the policy year when written notice was received.

During the policy period or the extended discovery period, the company shall be given written notice of any act, error or omission which could reasonably be expected to give rise to a claim against the insured under this policy. Any claim which subsequently arises out of such act, error or omission shall be considered to be a claim reported during the policy year or extended discovery period in which the written notice was received.

Upon the insured or the named insured becoming aware of any act or omission which might reasonably be expected to be the basis of a claim or suit covered herein, written notice shall be given by or on behalf of the insured to the Bar Association as soon as practicable. If claim is made or suit is brought against the insured, the insured shall immediately forward to the Bar Association every demand, notice, summons or other process received by him or his representative.

ASSISTANCE AND CO-OPERATION OF THE INSURED

The insured shall cooperate with the company and upon request, assist in making settlements, in the conduct of suits, and in enforcing any right of contribution or indemnity against any person or organization other than an employee of any insured who may be liable to the insured.

The insured shall attend hearings and trials and assist in securing and giving evidence and obtaining the attendance of witnesses. The insured shall not, except at his own cost, voluntarily make any payment, assume any obligation or incur any expense.

The insured shall cooperate with the company and upon request, assist in making settlements, in the conduct of suits, and in enforcing any right of contribution or indemnity against any person or organization other than an employee of any insured who may be liable to the insured.

The insured shall attend hearings and trials and assist in securing and giving evidence and obtaining the attendance of witnesses. The insured shall not, except at his own cost, voluntarily make any payment, assume any obligation or incur any expense.

The insured shall cooperate with the Bar Association and, upon the Association's request assist in making settlements, in the conduct of suits, and in enforcing any right of contribution or indemnity against any person or organization other than an employee or any insurer who may be liable to the insured because of acts or omissions with respect to whom insurance is afforded under this policy, and the insured shall attend hearings and trials and assist in securing and giving evidence and obtaining the attendance of witnesses. The insured shall not, except at his own cost, voluntarily make any payment, assume any obligation or incur any expenses.

SUBROGATIONS

The company shall be subrogated to all the insured's rights of recovery against any person or organization other than an employee of an insured.

The insured shall assist however necessary to secure such rights and do nothing after the loss to prejudice them.

The company shall be subrogated to all the insured's rights of recovery against any person or organization other than an employee of an insured.

The insured shall assist however necessary to secure such rights and do nothing after the loss to prejudice them.

In the event of any payment under this policy, the Bar Association shall be subrogated to all insured's rights of recovery therefore against any person or organization other than (i) an employee of any insured, (ii) an employee or member of any insured partnership, (iii) any corporation or an employee or member of any corporation owned by the insured but only with respect to services in connection with the practice of law, and the insured shall execute and deliver instruments and papers and do whatever else is necessary to secure such rights. The insured shall do nothing after loss to prejudice such rights.

ASSIGNMENT

The interest hereunder of any insured is not assignable. If the insured shall die or be adjudged incompetent, this policy shall cover the insured's legal representative.

The interest of the insured shall not be assignable. In the event of the death or incompetency of the insured, this policy shall cover the insured's legal representative as an insured as respects any liability previously incurred and covered by this policy.

The interest hereunder of any insured is not assignable. If the insured shall die, be adjudged incapable of managing his affairs or become bankrupt or insolvent, this policy shall cover the insured's legal representative as an insured with respect to acts or omissions covered by this policy. Bankruptcy or insolvency of the insured or of the insured's estate shall not relieve the insurer of any of its obligations hereunder.

CANCELLATION

The insured may cancel by surrendering the policy or by giving written notice stating when cancellation should be effective. Return premium shall be computed short rate.

The company must give 30 day written notice of cancellation.

Return premium shall be computed pro rata.

The insured may cancel by surrendering the policy or by giving written notice stating when cancellation should be effective. Return premium shall be computed short rate.

The company must give 30 day written notice of cancellation.

Return premium shall be computed pro rata.

First \$25,000 level of insurance through the Bar Association is mandatory and exclusive. Cancellation by individual member and/or Bar Association not permitted. Second level of insurance covering claims in excess of \$25,000 up to \$100,000 limit will be subject to cancellation by carrier and/or Bar Association as per terms of the agreement entered into.

CLE DISCOUNTS

5% if premium in excess of \$1,000 and individual participates in Bar Approved CLE. 10% if premium in excess of \$1,000 and individual participates in Bar Approved CLE. 15% if premium in excess of \$5,000 and 50% or more of firm members participate in Bar Approved CLE.

None.

None.

LOSS PREVENTION PROGRAM

None.

In-house loss prevention program which provides at least two law office management seminars per year at company expense. Program includes expert speakers, video and brochures. Mandatory participation by Association; does not require attendance by policy holders however.

Mandatory loss prevention and loss control programs both as explained elsewhere in Bar Rag this issue.

RULE 82 ATTORNEY FEES

Covered by policy. No endorsement necessary.

Covered by policy. No endorsement necessary.

Unknown.

BROKER

Clay, Law, and Agency.

Dougan, Eader, Reynolds, and Wheller

None selected to date.

E & O Insurance Premium Information

AMERICAN HOME PRESENT PREMIUMS

| Deductible | Limit | No Prior Exposure | 1 Year Prior Exposure | 2 Years Prior Exposure | 3 Years Prior Exposure | 4 Years Prior Exposure | 5 years or more Prior Exposure |
|------------|----------|-------------------|-----------------------|------------------------|------------------------|------------------------|--------------------------------|
| - 0 - | 100,000/ | 400 | 510 | 630 | 720 | 810 | 900 |
| 1,000 | 300,000 | 320 | 432 | 504 | 576 | 648 | 720 |
| 2,500 | | 300 | 378 | 441 | 504 | 567 | 630 |
| 10,000 | | 260 | 351 | 410 | 468 | 527 | 585 |
| 25,000 | | 200 | 270 | 315 | 360 | 405 | 450 |
| 50,000 | | 160 | 216 | 252 | 288 | 324 | 360 |
| 100,000 | | 80 | 108 | 126 | 144 | 162 | 180 |

| Deductible | Limit | No Prior Exposure | 1 Year Prior Exposure | 2 Years Prior Exposure | 3 Years Prior Exposure | 4 Years Prior Exposure | 5 years or more Prior Exposure |
|------------|----------|-------------------|-----------------------|------------------------|------------------------|------------------------|--------------------------------|
| - 0 - | 200,000/ | 500 | 675 | 788 | 900 | 1013 | 1125 |
| 1,000 | 600,000 | 420 | 567 | 662 | 756 | 851 | 945 |
| 2,500 | | 400 | 540 | 630 | 720 | 810 | 900 |
| 5,000 | | 380 | 513 | 599 | 684 | 770 | 855 |
| 10,000 | | 360 | 486 | 567 | 648 | 729 | 810 |
| 25,000 | | 300 | 405 | 473 | 540 | 608 | 675 |
| 50,000 | | 260 | 351 | 410 | 468 | 527 | 585 |
| 100,000 | | 180 | 263 | 284 | 324 | 365 | 405 |

| Deductible | Limit | No Prior Exposure | 1 Year Prior Exposure | 2 Years Prior Exposure | 3 Years Prior Exposure | 4 Years Prior Exposure | 5 years or more Prior Exposure |
|------------|----------|-------------------|-----------------------|------------------------|------------------------|------------------------|--------------------------------|
| - 0 - | 500,000/ | 600 | 810 | 945 | 1080 | 1215 | 1350 |
| 1,000 | 500,000 | 520 | 702 | 819 | 936 | 1053 | 1170 |
| 2,500 | | 500 | 675 | 788 | 900 | 1013 | 1125 |
| 5,000 | | 480 | 648 | 756 | 864 | 972 | 1080 |
| 10,000 | | 460 | 621 | 725 | 828 | 932 | 1035 |
| 25,000 | | 400 | 540 | 630 | 720 | 810 | 900 |
| 50,000 | | 360 | 486 | 567 | 648 | 729 | 810 |
| 100,000 | | 280 | 378 | 441 | 504 | 567 | 630 |

| Deductible | Limit | No Prior Exposure | 1 Year Prior Exposure | 2 Years Prior Exposure | 3 Years Prior Exposure | 4 Years Prior Exposure | 5 years or more Prior Exposure |
|------------|------------|-------------------|-----------------------|------------------------|------------------------|------------------------|--------------------------------|
| - 0 - | 1 million/ | 700 | 945 | 1103 | 1260 | 1418 | 1575 |
| 1,000 | 1 million | 620 | 837 | 977 | 1116 | 1256 | 1395 |
| 2,500 | | 600 | 810 | 945 | 1080 | 1215 | 1350 |
| 5,000 | | 580 | 783 | 914 | 1044 | 1175 | 1305 |
| 10,000 | | 560 | 756 | 882 | 1008 | 1134 | 1260 |
| 25,000 | | 500 | 675 | 788 | 900 | 1013 | 1125 |
| 50,000 | | 460 | 621 | 725 | 828 | 932 | 1035 |
| 100,000 | | 380 | 513 | 599 | 684 | 770 | 855 |

- 1) No surcharges applied to any type practice.
- 2) **CLE deduction:** Deduct 5% if premium over \$1000 or individual participant in CLE. Deduct 10% if premium over \$1000 and individual participant in CLE. Deduct 15% if premium over \$5000 and at least 50% of firm participates in CLE.
- 3) To cover paralegals, law clerks, abstractors and investigators, add 50% of lawyers' average annual rate to total firm rate. (e.g. in a ten person firm, take average years of experience of lawyers, find premium rate applicable to that experience and add 50% of that charge to total firm premium.)
- 4) Broker has binding authority unless applicant has had three or more claims in five years of practice.
- 5) Company requires that coverage under one policy be purchased for all attorneys who share space, staff and/or otherwise give appearance of an existing partnership.

INAR PROPOSED PREMIUMS **

| Deductible * | Limit | No Prior Exposure | 1 Year Prior Exposure | 2 Years Prior Act's Exposure | 3 Years Prior Exposure | 4 Years Prior Exposure | 5 Years or More Prior Exposure |
|------------------|---------------------|-------------------|-----------------------|------------------------------|------------------------|------------------------|--------------------------------|
| \$1000 (Minimum) | 100,000/100,000 | 400 (Base) | 440 | 480 | 520 | 560 | 600 |
| | 250,000/250,000 | 560 | 600 | 640 | 680 | 720 | 760 |
| | 500,000/500,000 | 640 | 680 | 720 | 760 | 800 | 840 |
| | 1,000,000/1,000,000 | 720 | 760 | 800 | 840 | 880 | 920 |
| | 2,000,000/2,000,000 | 1000 | 1040 | 1080 | 1120 | 1160 | 1200 |
| | 3,000,000/3,000,000 | 1180 | 1220 | 1260 | 1300 | 1340 | 1380 |
| | 4,000,000/4,000,000 | 1332 | 1372 | 1412 | 1452 | 1492 | 1532 |
| | 5,000,000/5,000,000 | 1440 | 1480 | 1520 | 1560 | 1600 | 1640 |

* For \$7500 deductible subtract \$40 from the rate applicable to the number of years in practice and the limits wanted. For \$5000 deductible subtract \$60 from the rate applicable to the number of years in practice and the limits wanted. For \$10000 deductible subtract \$80 from the rate applicable to the number of years in practice and the limits wanted. For \$25000 and higher, application must be submitted to underwriters for rate determination.

- ** Surcharges on some types of practice
1. **Plaintiff:** If 50 to 75% of total practice add \$60 to applicable rate.
 2. **Patent/Copywrite:** If 25 to 50% of total practice add \$100 to applicable rate (if more, coverage unavailable).
 3. **Real Estate:** If 50 to 75% of total practice add \$40 to applicable rate.
 4. **Real Estate:** If 76 to 100% of total practice add \$100 to applicable rate.
 5. **Entertainment:** If 1 to 15% of total practice add \$40 to applicable rate (if more, coverage unavailable).
 6. **Title/Abstracting:** If 50 to 75% add \$100 to applicable rate (if more, coverage unavailable).
 7. **SEC:** Submit to underwriting because modification factors will vary depending on nature of practice.
 8. \$100 is maximum amount that can be added to applicable rate regardless of number of modification factors applicable to applicant.

Deductions possible:

1. If using a computerized system of docket control deduct \$60 from applicable rate.
2. If law firm has over 25 lawyers \$80 deduction from applicable rate may be available depending on length of establishment, loss experience and type of practice.
3. Paralegals, law clerks and secretarial staff are covered without additional charge.
4. Broker has binding authority unless applicant has SEC practice.
5. Company requires that coverage under one policy be purchased for all attorneys who share space, staff and/or otherwise give appearance of an existing partnership.

ALASKA BAR ASSOCIATION SELF-INSURANCE PREMIUMS

| Deductible | Limit | Premium regardless of years in practice or prior claims |
|------------|-------------------|---|
| \$7500 | 100,000/100,000 * | \$700 } Full-time or part-time private practice } (\$220 paid to insurance carrier; \$480 paid to Bar Association) |

* Of this limit, the individual attorney is responsible for \$2,500 payable for claims and/or expenses. The Alaska Bar Association is responsible for \$23,500 payable for claims and/or expenses. An insurance carrier will be responsible for \$75,000 payable for claims and for stop-gap re-insurance for the Bar Association fund.

- 1) At inception, no surcharge is added for prior claims, type of practice or law clerks, secretarial staff or paralegals.

MALPRACTICE SURVEY OF
ALASKA BAR ASSOCIATION
MAY, 1979

In response to the information and Committee recommendations published in the May, 1979 Bar Rag, I think the following action should be taken by the Alaska Bar Association regarding provision or endorsement of malpractice insurance for the members:

- Endorse American Home (National Union Fire) Insurance Company as the Bar Sponsored malpractice coverage.
- Endorse INAX Insurance Company as the Bar Sponsored malpractice coverage with its loss prevention/loss control program.
- Bar Association set up a \$100,000 limit group liability fund and loss prevention/loss control program to cover members for malpractice claims in accordance with the Norman proposal of \$2500 deductible per claim, \$22,500 claims coverage and defense costs paid by the Association and \$75,000 claims coverage purchased as a group policy from a private insurance carrier for a total premium of \$700 per year paid by lawyers in full or part time private practice. The program to be mandatory and exclusive malpractice coverage for all such lawyers in Alaska as a condition on their license to practice law. This program is dependent upon securing an amendment to the Alaska Insurance Code exempting the Bar Association from the \$1,000,000 capitalization requirement, securing a change in the Alaska Bar Rules providing for mandatory participation in the program and mandatory claim reporting. The program is also contingent upon securing adequate excess insurance protection and obtaining a favorable antitrust opinion. The program is also contingent upon initiating both the loss prevention and loss control program.
- Other (please explain in detail.)

Results of this survey will be available at the Annual Business Meeting in Sitka on June 8 and 9, 1979.

My present practice is:

- Private, full or part time.
- Employed full time by governmental entity or as in-house corporate counsel.
- Employed full time in a judicial, standing master, hearing officer, and/or administrative capacity within a court system.

RETURN TO ALASKA BAR ASSOCIATION, BOX 279, ANCHORAGE, AK 99510

F.
Committee
Reports

W. EUGENE GUESS, 1932-1978

ROBERT C. ELY
JOSEPH RUDD
THEODORE E. FLEISCHER
FRANCIS E. SMITH, JR.
HERBERT BERKOWITZ
MICHAEL G. BRIGGS
DAVID H. BUNDY
HARRIS SAXON
PHILLIP J. EIDE
GARY A. ZIPKIN
JOSEPH M. WILSON
PAUL DESTEFANO
GENE R. NICHOL
ROBERT H. WOLFE
LOUIS R. VEERMAN
CLIFF ORD W. HOLTZ
JOHN FOSTER

LAW OFFICES OF
ELY, GUESS & RUDD

A PROFESSIONAL CORPORATION
510 L STREET
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NORMAN C. GORSUCH
STEPHEN J. PEARSON
GORDON E. EVANS
MONTE L. BRICE

JOSEPH A. McLEAN
OF COUNSEL

May 8, 1979

RECEIVED
MAY 8 1979
ALASKA BAR
ASSOCIATION

Donna C. Willard
President-Elect
Alaska Bar Association
P. O. Box 279
Anchorage, Alaska 99510

Re: Statutes, By-Laws & Rules Committee

Dear Donna:

In response to your letter of April 19, 1979, this letter will constitute an annual report of the above committee.

During the past year, this committee has been engaged in consideration and drafting of proposed amendments to the Association's by-laws and to the Bar Rules. Principal projects included revisions to the discipline rules, which were adopted by the Supreme Court earlier this year, and the drafting of a definition of "the practice of law".

The committee's work generally is assigned to it by the Board, or the Executive Director, and the projects are routed through the chairman of the committee to various committee members. The committee's proposals are then sent to the Board for its consideration and review.

I would anticipate that the work of the committee during the next year will be conducted along the same lines as previously, although various members of the committee may wish to originate projects of their own.

Very truly yours,

David H. Bundy

DHB:gm

RECEIVED
MAY 4 1979

Richmond, Willoughby & Willard

TAXATION COMMITTEE ANNUAL REPORT FOR 1979

In late 1978, the Board of Governors of the Alaska Bar Association approved the formation of a Taxation Committee, and appointed the initial membership of the committee. Subsequently, on January 18, 1979, the Taxation Committee held its organizational meeting. The membership discussed the goals of the committee, and created the following subcommittees:

(1) Legislative Subcommittee. The four members of this committee (representing Anchorage, Fairbanks and Juneau) will attempt to keep a constant monitoring upon tax and tax-related legislation which is before the legislature. The Committee intends to review such legislation, and where appropriate, make recommendations to the legislature. In addition, we plan to recommend needed legislation in the tax area. We will work with the Taxation Committee of the CPA Society, and propose unified legislative recommendations, where possible. George Goerig and Ralph Duerre are Co-Chairmen of this subcommittee, and the other members are Franklin Fleeks and Steve Pearson.

In April, the Taxation Committee met and discussed tax legislation pending before the legislature in Juneau. The committee's conclusions and recommendations were subsequently drafted and sent to the Chairman of the Senate and House Finance Committees.

(2) New Tax Law Developments Subcommittee. The purpose of this subcommittee is to monitor new developments in the area of state taxation. This subcommittee will bring such developments before the Taxation Committee for general discussion. In addition, this subcommittee will coordinate the preparation of monthly tax articles which will be published in the Bar Rag. The purpose of the articles is to provide practical, useful tax information to the members of the Bar. William Van Doren and Bernard J. Dougherty are Co-Chairmen of this subcommittee, and all of the members of the Taxation Committee will work upon the projects of this subcommittee.

(3) Continuing Education and Public Education Subcommittee. This subcommittee will coordinate, organize and assist the presentation of continuing education programs in the field of taxation. In addition, this subcommittee will provide organization and personnel for the presentation of programs to the public relating to taxation matters. Peter Ginder is the Chairman of this subcommittee, and Stanley Reitman and David Shaftel are also members.

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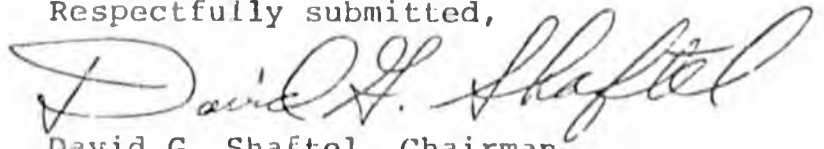
In addition to the above subcommittees, Stanley Reitman has agreed to serve as liason between the Tax Committee and the CPA Society, and has agreed to be the Law Library Resources representative.

The membership of the Taxation Committee for 1979 is:

| | |
|----------------------|--------------------|
| Peter Bartlett | A. Fred Miller |
| Bernard J. Dougherty | Steve Pearson |
| (Vice Chairman) | Stanley H. Reitman |
| Anthony D. Doyle | David G. Shaftel |
| Ralph Duerre | (Chairman) |
| Franklin D. Fleeks | William Van Doren |
| Peter Ginder | Joseph A. Vitkone |
| George F. Goerig | Thomas Yerbich |
| Bill Lawrence | |

The Taxation Committee has monthly meetings on the second Friday of each month at the conference room of Cole, Hartig, Rhodes, Norman & Mahoney.

Respectfully submitted,


David G. Shaftel, Chairman

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KENAI, ALASKA 99611

May 8, 1979

✓ Kenneth O. Jarvi, Esq.
President, Board of Governors
Alaska Bar Association
Anchorage, Alaska 99501

Ms. Donna Willard
President Elect, Board of Governors
Alaska Bar Association
Anchorage, Alaska 99501

RECEIVED

MAY 9 1979

**GARRETSON & JARVI
ATTORNEYS AT LAW**

Re: Tort Committee, Alaska Bar Association

Our Tort Committee has met three times this year, and as you know, we are one of the active forces behind having a lobbyist in Juneau. Attendant to that, Norman Gorsuch was hired by the State Bar. I have discussed with Mr. Gorsuch the legislative areas of concern and can report as follows:

- 1) That a bill which would reduce the civil liability of the State for highway road defects did not get out of its original committee of recommendation.
- 2) That the bad products liability bill that would set a short statute of limitations and curtail consumers' rights did not get out of committee of original referral. We will probably see this bill again, since there is a big push in the State of Washington, and that state may have passed a bill similar to that introduced here. I may have that information by the time of the Alaska Bar convention.
- 3) That no-fault auto liability insurance did not get out of its committee of original referral and it seems to have lost a lot of its appeal with the legislature.
- 4) That a bill to exempt gratuitous furnishers of alcoholic beverage from liability, according to my understanding, is still in committee and will not pass this year.

As you know, the legislature adjourned on Sunday, May 6, 1979.

We are told that hearings will be held this summer on the matter of Superior Court judgeships for Anchorage, and it seems to be agreed that we will get one Superior Court judge. Our Tort Committee

Kenneth O. Jarvi, Esq.
Ms. Donna Willard
May 8, 1979
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will probably try to fight for more - probably three Superior Court judgeships for the Third Judicial District.

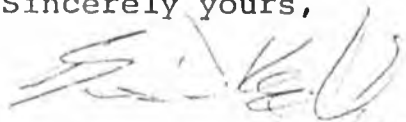
The intermediate Court of Appeals bill was defeated, but prospects for that bill also may be pretty good in the upcoming legislature.

We plan to hold one more meeting of our Tort Committee - if possible, before the State Bar convention - and I could report further at that time if you so desire. We would like to keep as much of our committee intact as possible, since we have a good working group.

We also recommend the lobbyist for next year, and we would like to remain active at the legislative level. I will try to keep a legislative file and note bills of concern that could be discussed with the Board of Governors for a position.

I hope this report is satisfactory and self-explanatory.

Sincerely yours,



Bernard P. Kelly, Chairman
Tort Committee

BPK:de

THE DAILY SENTINEL



WEEKEND EDITION — FRIDAY, JUNE 8, 1979

Sitka
Alaska

25¢

Meat Prices May Level Off, Says Agriculture Dept.

By BRIAN B. KING
Associated Press Writer
WASHINGTON (AP) — Consumers buffeted by rising costs may finally be getting a break with one key drain on the pocketbook — the grocery store.

Two government departments had encouraging news Thursday. The Agriculture Department said soaring retail meat prices are finally leveling off and should actually decline in coming months. Labor officials say wholesale food prices already are dropping.

About 2 billion pounds more pork, chicken and turkey on the market as a substitute for almost 1 billion pounds less beef than a year ago should bring the slight decline in retail meat prices, the Agriculture Department said.

Consumers with relatively smaller amounts of cash to spend also should dampen food-store price hikes through the rest of the year, the department said.

The Labor Department re-

ported that food prices declined 1.3 percent in May, led by a 6.9 percent decline in the price of beef and veal.

Prices paid to cattle producers have been dropping in recent months as shoppers have found greater supplies of pork and poultry available and have chosen to substitute them for beef on the dinner table, Agriculture Department specialists say.

The wholesale decline is "bound to have some effect at the retail level," said John Early, chief of the Labor Department's division of industrial prices.

And President Carter, speaking at a labor union convention Thursday, had an upbeat forecast about inflation in general: "It can be controlled if we are determined, patient, persistent and fiscally responsible," he said.

The Agriculture Department's report on meat prices noted that a "slowing in the rate of growth in consumers'

(should) slow their rate of increase during the third quarter...and decline seasonally during the fall."

Nonetheless, charts accompanying the report showed that department economists expect consumers to buy more meat between now and December than they have in the last three years.

The charts predict Americans will consume an average of 36.5 pounds of beef, lamb, pork and veal and 15.7 pounds of chicken and other poultry per person in the third quarter of the year, followed by 39 pounds per person of red meat and 16.9 pounds of poultry in the last three months.

The department maintains that "high demand" because of rising personal incomes is partly responsible for soaring meat prices, along with steady declines in beef production.

In early 1975, cattle producers began an 18-month process of sharp cutbacks in their herds, to offset more than two



OFFICIAL CEREMONY — Patricia Hull of Juneau and Louella Gaudreau of Fairbanks listen intently as Alaska Supreme Court Chief Justice Jay Rabinowitz swears them in as United States Senators. The duty was one activity for the Girls State session held this week in Sitka.

Other officers sworn in were U.S. Representative Mary Kiernan of Fairbanks, Lt. Gov. Suzy Renfro of Fairbanks, and Governor Rand Freeman of Fairbanks. In return, Rabinowitz was made an honorary member of Girls State. (Sentinel Photo by Conrad Walters)

Alaska Chief Justice Supports Intermediate Appeals Court

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Alaska Chief Justice Supports Intermediate Appeals Court

By LOIS BREEDLOVE
Sentinel Staff Writer

In an address to the Alaska State Bar Association Thursday, Alaska Supreme Court Chief Justice Jay A. Rabinowitz urged establishment by the state of an intermediate appellate court to relieve the case load of the state's highest court.

"To do quality work we're at the limit," Rabinowitz told the association, which is holding its annual convention here. The jurist said the delay between arguments and final opinion in civil and criminal cases is close to two years.

"That's intolerable," he stated forcefully. "It's the strongest reason for an appeals court."

The average delay is 539 days for civil cases, 612 for criminal, Rabinowitz said. He contrasted that to the American Bar Association's recommended range of 190 days.

"And we must make clear to the legislature the need for more trial judges," Rabinowitz said.

Under Alaska's two-level

system, appeals from the court of general jurisdiction, the Superior Court, go directly to the Supreme Court, which must hear all appeals. Under an appeals court system, criminal cases would be appealed first to the intermediate court of appeals and would be reviewed by the Supreme Court at its discretion.

"This won't take us out of criminal work," he assured the group.

The case load for the Supreme Court has increased 300 percent since 1973, Rabinowitz said. Alaska is one of the last states not to have an appeal court, he added.

"Washington, Oregon, Arizona, all obtained intermediate appeal courts at case loads similar to what our load is now," he told the lawyers.

In response to a question, Rabinowitz explained that other options had been considered and that he felt the appeals court was the best alternative. To break the Supreme Court up into panels, an option that was considered,

would dilute the effectiveness of the court, he said. Under that system each panel would handle some cases, but any justice could ask to review any decision.

"We'd be reading the same amount of briefs," Rabinowitz said, adding that the American Bar Association has come out against panels.

Another alternative would be to increase the size of the tribunal, he said. "That's not really effective," he commented. "You spend more time getting the necessary vote. Seven becomes unwieldy." The court now has five justices.

The chief justice also discussed the limit to be placed on fees to be paid attorneys handling conflict cases. In a case where there is more than one defendant, the public defender is required to appoint separate attorneys for all but the first defendant.

"I think you have an equal protection problem," said Mary Nordale, a Fairbanks attorney. "I'm shocked by that law," she added. Limiting the amount paid would in effect limit the time a lawyer could spend on a case, she said.

Rabinowitz explained that the court didn't have the funds to pay last year's charges by attorneys and would be able to pay only 75 percent. The legislature did not appropriate more funds, he added.

The annual meeting continues through Saturday.

Truck Convoy Shuts Down Seattle

The word went out to the truckers to meet at a truck stop, he

a radio station estimated the con- a dozen trucks Federal Way after time it reached d grown to 41 (two) and a half through town, a

Crawford said convoy broke a with the flow of

traffic and keep to the free-way's outside lane.

However, he said troopers issued no citations.

"They got what they wanted — publicity — and we got what we wanted — no accidents," Crawford said.

He said he pulled over two trucks in Seattle's North End and "asked them to have sympathy with the people caught in back."

The truckers complied until they hit the Snohomish County line, where they again slowed, backing up traffic through Everett. One witness estimated

traffic was backed up four miles.

The trucks arrived at their destination, Marysville, about 9 p.m., taking five hours to go 57 miles.

BLM to Make Decision On Land Conveyance

ANCHORAGE (AP) — The Bureau of Land Management will make conveyance decisions on more than 6.5 million acres of land for native corporations in 1979, according to Guy Mar-

moving right along in the hiring, training and organizational program which will increase conveyances to the state from an average of 2 million acres per year to thirteen million acres beginning in early

To: Charlie Parr, Chairman, House Judiciary Committee
From: Peggy Berck
Re: Report on Annual Meeting of the Alaska Bar Association
Date: ~~June 11, 1979~~ August 2, 1979

I. Introduction

The annual meeting of the Alaska Bar Association conducted in Sitka, June 6-9 was attended by about 200 of the Bar's 1,300 members. The meeting touched on a number of issues related to interim projects undertaken by the House Judiciary Committee. Of primary interest were formal bar discussions on the proposed Alaska Court of Appeals and personal talks with members on the issue of bar de-integration.

II. Court of Appeals

Former Atty. Gen. Norm Gorsuch began with the court of appeals debate early in the meeting during an oral presentation on his observations of the 1979 Alaska Legislature, noting that the bar had taken a supportive position in favor of the court during the session.

However, the University of Alaska's John Havelock followed Mr. Gorsuch with a programed review of recent Alaska Supreme Court cases directed at questioning both the need for such a court as well as its proposed subject matter jurisdiction.

According to Mr. Havelock, the high ~~court~~ ^{Court} issued 228 ~~max~~ opinions from May 1978 to May 1979. Mr. Havelok viewed the figure as a considerable increase from 1976 when 156 opinions were rendered. However, Mr. ~~Havelok~~ ^{HAVELOCK} noted that per curiam opinions were down from 16 in 1976 to eight during the period of his review. Per curiam opinions are brief, sometimes once sentence, opinions handed down by the court when the justices are all of one mind and no elaboration is required. Mr. ~~Havelok~~ ^{HAVELOCK} caterogized the 228 opinions he reviewed as consisting of 37 sentence appeals, 100 criminal appeals and 100 civil appeals. The ratio of sentence-civil-criminal appeals, he noted, have remained essentially the same over the past several years, and are significant in addressing jurisdictional authority of the proposed new court.

The largest single category ~~of~~ of cases addressed by the court, Mr. ~~Havelock~~ ^{Havelock} said, involved ~~xxxx~~ sentence appeals. Although sentence appeals do not take a great deal of time, Mr. Havelock said the court tended to over-write on such cases. The time devoted to sentence appeals along with the decrease in the use of per curiam and memorandums ^{"opinions and judgements,"} ~~and opinions~~ Mr. ~~Havelock~~ ^{Havelock}

~~Havelock~~ ^{HAVELOCK} said, have played a contributing factor in the court's current workload. ~~MOJ~~ ^{MOJ}'s are used by the court to dispose of appeals without formal opinions. ~~MOJ~~ ^{MOJ}'s affect only the parties to the suit in question and cannot be cited as precedent in contrast to per curiam opinions.

IN a review of individual cases during the past year, Mr. ~~Havelock~~ ^{HAVELOCK} said the criminal ~~decisions~~ decisions appeared to impact the population as a whole far greater than the civil cases. Of particular note, ~~he~~ ^{he} said, were a series of cases in the area of police search and seizure. In addition, ~~Mr. Havelock~~ ^{HAVELOCK} indicated surprise at his discovery that the court handled five individual cases dealing with a juvenile's waiver to prosecution as an adult.

Perhaps most noteworthy in the civil area, Mr. ~~Havelock~~ ^{HAVELOCK} said, were three opinions on product liability law, another area of concern to the committee. ~~Mr. Havelock~~ ^{HAVELOCK} also noted that municipalities were involved as litigants in 16 to 20 percent of all civil cases handled by the high court, an increase over previous years. Mr. Havelock also said the court was spending too much time on the court rule relating to attorneys fees, noting that the court addressed the rule in 10 separate cases.

Mr. Havelock concluded with ~~xxxx~~ an expression of support for the House Judiciary Committee's decision to hold over the court issue until next year, maintaining that the concept had not been sufficiently discussed.

Chief

~~Chief~~ Justice Jay Rabinowitz appeared before the bar meeting later the

same day to pitch for the proposed court, saying there was a clear need for the interim panel. In direct response to Mr. ~~Havelock's~~ ^{HAVELOCK'S} presentation, the chief justice said there had been a definite increase in the use of per curiam and ~~the~~ ^{MOJ} opinions in those matters currently before the justices. He said the court system proposed the creation of a court of appeals rather than enlarging the ~~current~~ ^{current} supreme court, ^{or} ~~or~~ instituting the use of panels, as the better way to solve the current caseload problem. The ~~chief~~ ^{chief} justice cited a ~~study~~ ^{study} conducted by the American Bar Association which reached the same conclusion.

The bar addressed the issue of the proposed court of appeals in a resolution sponsored by the Tanana Valley Bar Association. The resolution as introduced would have placed the bar in support of ~~the~~ ^{the} HCSSB104 provided several significant changes are incorporated, including making the court a constitutional rather than a legislative court, but with the caveat that a legislative court could be implemented pending ~~adoption~~ ^{Adoption} of a constitutional amendment at the next general election. Other conditions in the proposed resolution would have required the court's jurisdiction to be limited to criminal cases; matters appealed to the intermediate court be remanded ~~back~~ back to the court of ~~original~~ original jurisdiction and the current bill's sunset clause be eliminated.

Chief Justice

Addressing the resolution, ~~Mr.~~ ^{Chief Justice} Rabinowitz said he could support all of the proposed resolution with the exception of ~~the~~ ^{the} subsection calling for establishment of a constitutional court. Other states, he contended, have established such courts purely through legislative enactment.

→ Chief Justice Rabinowitz also informed the Association of a new court rule, effective July 1, 1979, establishing maximum attorney's fees awards in criminal appointments. This issue will be explored in detail in my report on Legal Representation for Indigents.

Later in the day, I interviewed District Court Judge Hugh Connelly of Fairbanks concerning the issue of the proposed court of appeals. Judge Connelly played a major role in drafting the court of appeals resolution along with other members of a specially established subcommittee of the Tanana Valley Bar Association. On the issue of limiting the court to criminal cases, Judge Connelly said that although the criminal law is not as complex as certain civil law areas, it does require constant research to remain current with new judicial decisions. And he said a clear division between civil and criminal jurisdictions would permit the selection of judges for the court of appeals to be drawn from attorneys with expertise in the criminal law area.

However, Judge Connelly said he personally favored the system in Texas which has separate supreme courts for civil and criminal cases. Court system personnel have balked at such a system because of potential problems in cases where civil and criminal law overlap, but Connelly said he thought such an argument wasn't strong enough to allow the idea to be dropped without further study. ^{Judge} Connelly said the sponsors of the resolution believed a constitutional court was necessary because a legislative court lacks certain inherent powers. (I intend to prepare a separate memorandum on this issue).

Judge Connelly also said additional related issues were considered ^{by the} ~~by the~~ Tanana Valley Bar Association which were not incorporated into the resolution. Included, he said, were discussions on the use of five judges instead of three on the proposed court of appeals, a device intended to prevent one strong judge from determining the direction of the court. He also said the Fairbanks bar discussed whether the judicial qualifications of the appellate judges should be set forth in the constitution, the case for all other judges in Alaska.

In another discussion, Art Snowden, court system administrator, raised another point in favor of amending the jurisdiction as currently proposed in HCSSB104. He said the current proposed budget for the court permits only limited ~~travel~~ ^{travel}, requiring the court to sit mostly in Anchorage and placing a tremendous financial burden for those appealing lower court decisions ^{- both civil AND CRIMINAL -} to be forced to travel to Anchorage. Since most criminal appeals are handled by the public defender's office, that segment of the ~~opxx~~ population at least will not have to bear the additional expense necessitated by travel. ^{Should the New court be strictly limited to CRIMINAL jurisdiction.}

On Saturday, June 9, Resolution #10 on the court of appeals was presented to the membership for debate, amendment and enactment. Following a lengthy debate, the meeting voted to sever the subsection on requiring the court to be created by ~~a~~ constitutional amendment. After severing the subsection, the bar adopted a motion to strengthen the section to require a constitutional creation without even a temporary legislative enactment. Finally, the meeting passed the remaining limiting subsections after rejecting a motion to table the issue.

III Integrated vs. Non-integrated status of the Alaska Bar Association

During his legislative ~~reportzz~~ report to the membership, Mr. Gorsuch cited the upcoming July 1, 1980 ~~subset review~~ ^{review} of ~~the bar~~ ^{the} bar association as the most important legislative activity for the association during the next regular session.

On the issue of de-integration, Mr. Rozell, a member of the bar's board of governors and the association's president-elect, said the issue was not a life or death matter to him, but contended that an integrated bar was the best system for Alaska since the state bar is so small.

Mr. Rozell said he was a member of the New York Bar, which is non-integrated, and complained that the bar there doesn't even maintain a compilation of attorney ^{'s} offices. However, he said ~~the~~ New York has recently asked such information from attorneys and Mr. Rozell surmized that the action may well be a first step in establishing an integrated bar there.

In addition, Mr. Rozell contended that the Alaska Constitution may preclude the legislature from de-integrating the bar association. But on that point, Ms. Karen Hunt, another member of the board of governor's, disagreed. She said shifting the disciplining and admission functions of the association to the supreme court under any de-integration plan would be in accord with the constitution and court decisions which have held that the high court has the power to control practice of law in the state.

However, Ms. Hunt said the bar has been handling admissions and discipline for a long time and had a good record, asking: "Why should the state establish another bureaucracy with the costs to be borne by individual citizens when the association is performing those functions on its own without the expense to the citizens at large?" Her comment, however, appeared in conflict with Mr. Gorsuch's ~~statement~~ statement during his presentation that about \$65,000 of the court system's budget went to assist the bar with costs of ~~disciplining~~ disciplining members. I asked Ms. Hunt for a ~~breakdown~~ percentage breakdown between the state contribution and bar expenditures for disciplining, and she replied that the state paid about 50 per cent of the entire costs. She said admission costs were paid by the applications through a \$ 250.00 fee.

Business Meetings

Generally, the business meetings of the association were poorly run. Most ~~noteworthy~~ ^{Note worthy} was the failure of the board of governors to provide any back-up information on the effects of several proposed rule changes. Several ~~members~~ members specifically asked for back-up information, but the board was unable to provide it. ~~One member privately told me that, in fact, one member of the board even gave false information to the membership pertaining to alleged abuses relative to the use of firm names, a matter supposedly corrected through resolutions in BH 100 (see Appendix)~~

There was also no discussion at all of a report by the association's Committee on Legal Educational Opportunities which noted that only five Alaskan Natives (one retired) and three blacks currently are admitted to

practice in Alaska. The report outlined a number of methods which could be used by the bar to increase its membership of ethnic ~~minorities~~ ^{MINORITIES,} yet the Association failed to take any action on this important issue ^(Insert here).

In assessing ~~what~~ ^{what} action the committee may wish to take in connection with any future dealings with the bar, two additional facts which came to light during the course of the convention may be noteworthy.

First, the Alaska Bar Association currently is being sued by certain of its members for allegedly violating the public meeting law by holding a meeting in Hawaii. The ~~superior~~ ^{superior} court ruled that the bar was not subject to the public meetings law, but the issue is ~~now~~ ^{NOW} on appeal to the ~~supreme~~ ^{supreme} court. The association has expended ~~\$8000~~ ^{\$8000} in legal ~~fees~~ ^{fees} defending the suit. Those dissident members in the lawsuit were not in attendance at the convention.

Second, the legal profession currently is the subject of an FTC investigation into allegations of price fixing and restraint of trade. Dick Savelle, a member of the board of governors, alluded to the resolution in ~~opposition to a~~ ^{opposition to a} resolution offered from the floor to require the board to record its meetings and maintain the recording as a public record for two years. The ~~resolution~~ ^{resolution} passed despite the opposition of several members of the board.

Insert -----

I am not alone in my criticism^s of the bar's annual meeting. Mr. Havelock ~~was~~ ^{'s} article in the ~~July~~ ^{July} Bar Rag, the association's newsletter, likens the board, officers, and members of the association to Inspector Clousseau characters.

APPENDIX

Item No.

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32. Amendment to DR 2-102 (D), Re: Firm Names -- Passed.
43. Proposed Reciprocity Rule -- Tabled Indefinitely.
54. Resolution 1, INAX -- Passed.
65. Resolution 2, Prepaid Legal Services -- Failed.
76. Resoultion 3, Mandatory CLE Program -- Failed.
87. Resolution 4, Urging the Appointment of an Alaskan
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98. Resolution 5, Requiring ALSC Attorneys to Provide Representation
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109. Resolution 6, Cooperative Buying Association for Members -- No action.
110. Resolution 7, Requiring ALSC to Publish Board Meetings and
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121. Resolution 8, Reduction of Bar Dues for for First Five
Years of Membership -- No Action.
1312. Resolution 9, Prohibiting the Use of Secretaries, Law Clerks,
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1413. Resolution 10, Court of Appeals -- Passed.
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16. Annual Meeting Program
17. Annual Committee Reports

ABA
LEGAL
STATUS

#4

IN THE SUPREME COURT OF THE STATE OF ALASKA

BRUCE HOROWITZ, WILLIAM PARKER, JAMES)
LOVE, DAVID LOUTREL, WILSON A. RICE,)
JOHN E. DUGGAN, DONALD E. CLOCKSIN,)
THOMAS G. BECK, ELIZABETH RATNER,)
RANDALL SIMPSON, PHILIP R. VOLLAND,)
JEFFREY LOWENFELS,)

Appellants/Cross-Appellees,)

vs.)

THE ALASKA BAR ASSOCIATION,)

Appellee/Cross-Appellant,)

Supreme Court No. 4310/4311
Superior Court No. 3AN78-1198 CIV

BRIEF OF THE APPELLANTS

MICHAEL J. FRANK
RICHARD BROWN
GREGORY M. O'LEARY

Michael J. Frank

Attorneys for Appellants/
Cross-Appellees
524 W. Sixth Ave., Suite 204
Anchorage, AK 99501
Telephone: (907) 272-9431

Filed in the Supreme Court
of the State of Alaska this
15th day of January, 1979.

Robert D. Bacon
Clerk of the Court

Nadua Rodlessky
Deputy Clerk of the Court

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United States Constitution:

1st Amendment:

Congress shall make no law . . . abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

14th Amendment, Section 1:

[N]or shall any state deprive any person of life, liberty, or property, without due process of law....

Alaska Constitution:

Art. I, Section 2:

All political power is inherent in the people. All government originates with the people, is founded upon their will only, and is instituted solely for the good of the people as a whole.

Art. I, Section 5:

Every person may freely speak, write, and publish on all subjects, being responsible for the abuse of that right.

Art. I, Section 6:

The right of the people peaceably to assemble and to petition the government shall never be abridged.

Art. I, Section 7:

No person shall be deprived of life, liberty, or property, without due process of law.

Art. II, Section 13:

Every bill shall be confined to one subject. . . . The subject of each bill shall be expressed in the title.

Art. IX, Section 6:

No tax shall be levied, or appropriation of public money made, or public property transferred, nor shall the public credit be used, except for a public purpose.

Alaska Statutes

A.S. 01.05.006:

The bulk formal revision of the laws of Alaska which was authorized by A.S. 24.20.070 and prepared under the direction of the Alaska Legislative Council and published by The Michie Company, legal publishers, of Charlottesville, Virginia, and titled "Alaska Statutes," as set out in the 47 titles of the Alaska Statutes, but not including the table of contents, indexes, citations to Alaska Compiled Laws Annotated, 1949, and session laws, chapter, article, section, subsection and paragraph headings, annotations, collateral references, notes and decisions, is adopted and enacted as the general and permanent law of Alaska.

A.S. 01.05.031:

(a) Subject to the general policies which may be promulgated by the legislative council for the preparation and publication of the annual cumulative supplement to and replacement pamphlets for the Alaska Statutes and of the accompanying Temporary and Special Act pamphlets, the revisor of statutes shall revise for consolidation into the Alaska Statutes and the accompanying pamphlets all laws of a general and permanent nature and all laws of a temporary or special nature enacted by the legislature.

(b) The revisor shall edit and revise the laws for consolidation without changing the meaning of any law in the following manner:

A.S. 08.08.010:

There is created an instrumentality of the state known as the Alaska Bar Association, referred to in this chapter as the Alaska Bar. The Alaska Bar shall have a common seal, may sue and be sued, and may, for the purpose of carrying into effect and promoting the objects of the Alaska Bar, enter into contracts

and acquire, hold, encumber and dispose of real and personal property.

A.S. 08.08.080:

(a) Except as may be otherwise provided in the Alaska Bar Rules, the board may adopt reasonable provisions

(1) concerning membership and the classification of membership in the Alaska Bar;

(2) providing for employees of the Alaska Bar, the time, place and method of their selection, and their respective powers, duties, terms of office, and compensation;

(3) concerning annual and special meetings;

(4) concerning the collection, deposit, and disbursement of membership and admission fees, penalties, and all other funds;

(5) providing for the organization and government of local subdivisions of the Alaska Bar;

(6) providing for all other matters affecting in any way the organization and functioning of the Alaska Bar.

(b) The board may

(1) approve and recommend to the state supreme court additional rules for promulgation by the court including rules concerning admission and discipline and defining the practice of law;

(2) adopt reasonable bylaws and regulations consistent with the Alaska Bar Rules;

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

(4) fix the annual membership fee for active and inactive members.

A.S. 08.08.100:

The bylaws and regulations adopted by the board or the members of the Alaska Bar under this chapter are not subject to the Administrative Procedure Act (A.S. 44.62).

A.S. 08.08.110:

[Repealed by § 11 ch. 181 SLA 1976, this statute derived from § 8, ch. 196, SLA 1955 (the Integrated Bar Act) and gave the ABA power over admission suspension, and disbarment of attorneys.]

A.S. 08.08.120(a) and (b):

[Repealed by § 11, ch. 181 SLA 1976, this statute derived from § 8, ch. 196 SLA 1955 (the Integrated Bar Act) and governed the disqualification of individuals from hearing ABA disciplinary matters under certain circumstances.]

A.S. 14.40.160:

(a) The provisions of A.S. 44.62.310 apply to meetings of the Board of Regents. All meetings of the board, its committees or subcommittees, are open to the public and press except as otherwise provided in A.S. 44.62.310(c). The findings of an executive session shall be made a part of the record of the proceedings of the Board of Regents. All records of the meetings and proceedings shall be open to inspection by the public and the press at reasonable times.

(b) The board may determine the time and place of its meetings. However, 30 days notice is required for all regular meetings and 10 days notice is required for special meetings of the board, its committees or subcommittees called under the bylaws or rules of procedure of the board. Emergency meetings may be called without notice.

(c) The Board of Regents shall provide adequate facilities for members of the public to attend the meetings of the board, its committees or subcommittees.

A.S. 24.20.070:

[This statute gives the Legislative Council tentative authority to revise the laws of the state in bulk, and a continuing responsibility for statutory revision.]

A.S. 37.10.090:

[This statute gives the Alaska Attorney General authority to pursue an action to recover public monies illegally expended.]

A.S. 39.20.140

(a) The Department of Administration shall not pay an official or employee for per diem or transportation

costs unless his travel is clearly necessary to benefit the state.

A.S. 44.62.310:

(a) All meetings of a legislative body, of a board of regents, or of an administrative body, board, commission, committee, subcommittee, authority, council, agency, or other organization, including subordinate units of the above groups, of the state or any of its political subdivisions, including but not limited to municipalities, boroughs, school boards, and all other boards, agencies, assemblies, councils, departments, divisions, bureaus, commissions or organizations, advisory or otherwise, of the state or local government supported in whole or in part by public money or authorized to spend public money, are open to the public except as otherwise provided by this section. Except when voice votes are authorized, the vote shall be conducted in such a manner that the public may know the vote of each person entitled to vote. This section does not apply to any votes required to be taken to organize the afore-mentioned bodies.

(b) If excepted subjects are to be discussed at a meeting, the meeting must first be convened as a public meeting and the question of holding an executive session to discuss matters that come within the exceptions contained in (c) of this section shall be determined by a majority vote of the body. No subjects may be considered at the executive session except those mentioned in the motion calling for the executive session unless auxiliary to the main question. No action may be taken at the executive session.

(c) The following excepted subjects may be discussed in an executive session:

(1) matters, the immediate knowledge of which would clearly have an adverse effect upon the finances of the government unit;

(2) subjects that tend to prejudice the reputation and character of any person, provided the person may request a public discussion;

(3) matters which by law, municipal charter, or ordinance are required to be confidential.

(d) This section does not apply to

(1) judicial or quasi-judicial bodies when holding a meeting solely to make a decision in an adjudicatory proceeding;

(2) juries;

(3) parole or pardon boards;

(4) meetings of a hospital medical staff; or

(5) meetings of the governing body or any committee of a hospital when holding a meeting solely to act upon matters of professional qualifications, privileges or discipline.

(e) Reasonable public notice shall be given for all meetings required to be open under this section.

(f) Action taken contrary to this section is void.

A.S. 44.62.312:

(a) It is the policy of the state that

(1) the governmental units mentioned in §310(a) of this chapter exist to aid in the conduct of the people's business;

(2) It is the intent of the law that actions of those units be taken openly and that their deliberations be conducted openly;

(3) the people of this state do not yield their sovereignty to the agencies which serve them;

(4) the people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know;

(5) the people's right to remain informed shall be protected so that they may retain control over the instruments they have created.

(b) Section 310(c)(1) of this chapter shall be construed narrowly in order to effectuate the policy stated in (a) of this section and avoid unnecessary executive sessions.

A.S. 44.62.330:

(a) The procedure of the state boards, commissions, and officers listed in this subsection or of their successors by reorganization under the constitution shall be conducted under §§ 330--630 of this chapter. This procedure, including, but not limited to, accusations and statements of issues, service, notice and time and place of hearing, subpoenas, depositions, matters concerning evidence and decisions, conduct

of hearing, judicial review and scope of judicial review, continuances, reconsideration, reinstatement or reduction of penalty, contempt, mail vote, oaths, impartiality, and similar matters shall be governed by this chapter, notwithstanding similar provisions in the statutes dealing with the state boards, commissions, and officers listed. Where indicated, the procedure that shall be conducted under §§ 330-630 of this chapter is limited to named functions of the agency.

* * *

(22) [repealed by § 11 ch. 181 SLA 1976, this section derived from Art. VII, sec. 2 of ch. 2, ch. 143 SLA 1959 (the Alaska Administrative Procedure Act) and made the ABA subject to the Administrative Adjudication requirements of the AAPA.]

A.S. 44.62.410:

The agency shall determine the time and place of hearing. The hearing shall be held in Juneau or Ketchikan, whichever is closer to the place where the transaction occurred or where the respondent resides, if the transaction occurred in or the respondent resides in the Southeastern Senate District; in Anchorage if the transaction occurred or the respondent resides within the South Central Senate District; in Fairbanks or Nome, whichever is closer to the place where the transaction occurred or where the respondent resides, if the transaction occurred in or the respondent resides in the Central or Northwestern Senate Districts. The agency may, if the transaction occurred in a senate district other than that of respondent's residence, select the place of hearing appropriate for either district. The agency may select a different place nearer the place where the transaction occurred or where the respondent resides, or the parties by agreement may select any place in the state.

A.S. 44.62.640:

(a) In §§ 10-320 of this chapter, unless the context otherwise requires,

* * *

(4) "state agency" means a department, office, agency, or other organizational unit of the executive branch, except one expressly excluded by law, but does not include an agency in the judicial or

legislative branches of the state government.

A.S. 44.62.650:

This chapter may be cited as the Administrative
Procedure Act.

Session Laws of Alaska

Chapter 196 SLA 1955

Be it Enacted by the Legislature of the Territory of Alaska:

Section 1, Title of Act. This Act may be known and cited as the Alaska Integrated Bar Act.

Section 2. Objects and Powers. There is hereby created an instrumentality of Alaska, for the purpose and with the powers hereinafter set forth, to be known as the Alaska Bar Association, hereinafter designated as the Alaska Bar, which Association shall have a common seal, may sue and be sued, and which may, for the purpose of carrying into effect and promoting the objects of said Association, enter into contracts and acquire, hold, encumber and dispose of such real and personal property as is necessary thereto.

. . .
Section 5. Board of Governors. There is hereby constituted a Board of Governors of the Alaska Bar to be first elected pursuant to rules promulgated by the Alaska Bar Commission and, subsequent to the first election, to rules promulgated by the Board of Governors.

. . .
Section 6. Alaska Bar Governed by Board of Governors. The Alaska Bar shall be governed by the Board of Governors, which shall be charged with the executive functions of the Alaska Bar, the enforcement of the provisions of this Act and all rules adopted in pursuance thereof. The members of the Board of Governors shall receive no salary by virtue of their office.

Section 7. Powers of Governors. The Board of Governors shall have power to adopt reasonable rules having the force and effect of law:

- a. Concerning membership and the classification of membership in the Alaska Bar into active, inactive and honorary members;
- b. Concerning the enrollment and privileges of membership;
- c. Providing for other officers of the Alaska Bar,

- d. Concerning annual and special meetings;
- e. Concerning the collection, the deposit and the disbursement of the membership and admission fees, penalties, and all other funds.
- f. Providing for the organization and government of divisional, municipal and other local subdivisions of the Alaska Bar;
- g. Defining the practice of law; and
- h. Providing for all other matters, whether similar to the foregoing or not, affecting in any way whatsoever the organization and functioning of the Alaska Bar. Any such rule may be modified or rescinded, or a new rule may be adopted, by a vote of the active members of the Association under rules to be prescribed by the Board of Governors.

Section 8. Admission, Suspension and Disbarment. The Board of Governors shall have power to adopt rules fixing the qualifications, requirements and procedure for admission to the practice of law, except as otherwise provided in this Act: to establish and enforce rules of professional conduct for all members of the Alaska Bar, which shall conform but need not be limited to the standards of the Code of Ethics of the American Bar Association; to appoint boards or committees to examine applications for admission; to investigate, prosecute, hear and finally determine all causes involving discipline, disbarment, suspension or reinstatement; and to prescribe rules establishing the procedure for the investigation and hearing of such matters, and establishing divisional or municipal agencies to assist therein to the extent provided by such rules. No person who shall have participated in the investigation or prosecution of any such cause shall sit as a member of any board or committee hearing the same.

. . . .
Section 14. Disciplinary Proceedings and Review. Upon finally determining any cause involving the discipline, disbarment, suspension or reinstatement of a member of the Alaska Bar, the Board of Governors shall certify its findings and recommendations thereon to the U.S. District Court for the Judicial Division wherein the accused member resides. Upon receiving the findings and recommendations, the Court shall, within thirty days thereafter, issue an order of disbarment, suspension, reinstatement, dismissal, or otherwise, in full accordance with the recommen-

dations of the Board of Governors, unless the accused member shall sooner petition the Court for review of the proceedings, findings and recommendations of the Board. In the event such petition is made, the Court shall proceed promptly with the review in the manner it may choose, and after completion of the review shall issue such order in the cause as the Court may, in its discretion, determine proper. Any hearings or other procedures before the Court shall be for the sole purpose of review of the determinations of the Board of Governors and shall not constitute a trial de novo of the cause. The procedure for review herein set forth shall be the exclusive method of appeal from the determinations of the Board of Governors in any matter involving the discipline, disbarment, suspension or reinstatement of a member of the Alaska Bar. A full stenographic record of all hearings on matters involving discipline, disbarment, suspension or reinstatement shall be kept. The Board of Governors shall have power to issue subpoenas and to invoke the aid of the U.S. District Court, if necessary, to compel the attendance of witnesses at hearings held pursuant to the powers granted herein.

. . .
Section 15. Alaska Bar Commission. Nine persons actively engaged (engaged) in the private practice of law in Alaska at the effective date of this Act shall, within ten days after the effective date of this Act, be appointed by the Governor of Alaska, with the advice and consent of a majority of the members of both Houses of the Legislature sitting in Joint Session, as members of the Alaska Bar Commission, which is hereby created.

. . .
Section 16. Repeal

. . .
It is the intent and purpose of this section to provide for an orderly transition from the governing of the practice of law in Alaska as at present, by the provisions herein specified for repeal, to its governing under rules and regulations, having the force of law, of the Board of Governors of the Alaska Bar. It is the further intent of this section to require the Board of Governors to act promptly in the promulgation of these rules and regulations and to make them effective on July 1, 1955. To accomplish the intent and purposes herein set forth this section shall be liberally construed.

Chapter 143 SLA 1959

Chapter 1. Rules and Regulations

Article I

General

Section 1. Short Title. This Act constitutes and may be cited as the Administrative Procedure Act.

Section 2. Definitions. In this chapter, unless otherwise specifically indicated:

(1) "State agency" means and includes all departments, offices, agencies, and other organizational units of the executive branch, except as may be expressly excluded by this Act or otherwise by law, but does not include an agency in the judicial or legislative departments of the State Government.

...

Article VI

Agency Meeting Public

Section 1. Agency Meetings Public. All meetings of governing bodies of all State and local government agencies, including municipalities, boroughs, school boards and all other boards, agencies, assemblies, councils, departments, divisions, bureaus, commissions or organizations (advisory or otherwise) of the State or local government, supported in whole or in part by public funds or entrusted with the expending of public funds, except juries and such other agencies as shall be expressly exempt by the Legislature, shall be public meetings, but the public may be excluded only from such portions thereof as deal with matters, the immediate knowledge of which would deleteriously affect the finances of the government unit, or that deal with subjects that tend to prejudice the reputation and character of persons. When meetings are held at which such excepted subjects are to be discussed, the meeting must first be convened as a public meeting, and the question of holding an executive session to discuss matters that come within the two exceptions shall be determined by a majority vote of the agency, and no subjects can be considered at such executive session except those as are mentioned in the motion calling for the executive session, and no action shall be taken at said executive session.

Article VII
Legislative Review of Rules

Section 1. The Legislature, by resolution adopted by vote of both houses shall have the power to annul any agency or department rule or regulation. The Legislative Council shall annually review all agency regulations to determine if the legislative intent is being correctly followed. A comprehensive report of said annual review with recommendations shall be submitted to the members of the legislature fifteen days prior to the start of its regular session each January.

Chapter 2. Administrative Adjudication.

Section 1. Definitions. In this chapter, unless the context or subject matter otherwise requires:

(1) "Agency" includes the State boards, commissions and officers enumerated in Section 2 and those to which this chapter is made applicable by law or executive order involving reorganization under the Constitution.

Section 2. Application of Chapter. (1) The procedure of the following enumerated State boards, commissions, and officers or of their successors under the State Organization Act of 1959 or under reorganization pursuant to the Constitution shall be conducted pursuant to the provisions of this chapter;

Board of Governors of the Alaska Bar

Section 9. Time and Place of Hearing. The agency shall determine the time and place of hearing. The hearing shall be held in Juneau or Ketchikan, whichever is closer to the place where the transaction occurred or where the respondent resides, if the transaction occurred or the respondent resides within the Southeastern Senatorial District; in Anchorage if the transaction occurred or the respondent resides within the South Central Senatorial District; in Fairbanks or Nome, whichever is closer, to the place where the transaction occurred or where the respondent resides if the transaction occurred or the respondent resides within the Central or Northwestern Senatorial Districts. The agency may, if the transaction occurred in a senatorial district other than that of respondent's residence, select the place of hearing appropriate for either district; the

agency may select a different place nearer the place where the transaction occurred or the respondent resides; or the parties by agreement may select any place within the State.

Chapter 178 SLA 1960

. . .
Sec. 3. Subsec. h., Sec. 7, Ch. 196, SLA 1955 is amended to read as follows:

h. Providing for all other matters, whether similar to the foregoing or not, affecting in any way whatsoever the organization and functioning of the Alaska Bar. Any such rule may be modified or rescinded, or a new rule may be adopted, by a vote of the active members of the Association under rules to be prescribed by the Board of Governors. Rules adopted by the Board of Governors are not subject to the provisions of the Administrative Procedure Act.

. . .

Chapter 48 SLA 1966

AN ACT

Requiring that the meetings of agencies of the state and its subdivisions be open to the public with certain exceptions.

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

Section 1. A.S. 44.62.310 is repealed and re-enacted to read:

Sec. 44.62.310. AGENCY MEETINGS PUBLIC. (a) All meetings of an administrative body, board, commission, committee, subcommittee, authority, council, agency, or other organization, including subordinate units of the above groups, of the state or any of its political subdivisions, including but not limited to municipalities, boroughs, school boards, and all other boards, agencies, assemblies, councils, departments, divisions, bureaus, commissions or organizations, advisory or otherwise, of the state or local government supported in whole or in part by public money or authorized to spend public money, are open to the public except as otherwise provided by this section.

(b) If excepted subjects are to be discussed at a meeting, the meeting must first be convened as a public meeting and the question of holding an executive session to discuss matters that come within the exceptions contained in (c) of this section shall be determined by a majority vote of the body. No subjects may be considered at the executive session except those mentioned in the motion calling for the executive session unless auxiliary to the main question. No action may be taken at the executive session.

(c) The following excepted subjects may be discussed in an executive session:

(1) matters, the immediate knowledge of which would adversely affect the finances of the government unit;

(2) subjects that tend to prejudice the reputation and character of any person, provided the person may request a public discussion;

(3) matters which by law, municipal charter, or ordinance are required to be confidential.

(d) This section does not apply to judicial or quasi-judicial bodies when holding a meeting solely to make a decision in an adjudicatory proceeding, or to juries, or to parole or pardon boards.

(e) Reasonable public notice shall be given for all meetings required to be open under this section.

(f) Action taken contrary to this section is void.

Chapter 78 SLA 1968

AN ACT

Relating to meetings of public bodies not required to be open to the public.

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

Section 1. A.S. 44.62.310(d) is amended to read:

(d) This section does not apply to

(1) judicial or quasi-judicial bodies

when holding a meeting solely to make a decision in an adjudicatory proceeding,

(2) juries,

(3) parole or pardon boards,

(4) meetings of a hospital medical staff or meetings of the governing body or any committee of a hospital when holding a meeting solely to act upon matters of professional qualifications, privileges or discipline.

Chapter 7 SLA 1969

AN ACT

Relating to the openness of meetings of public agencies.

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

Section 1. A.S. 44.62.310(d) is amended to read:

(d) This section does not apply to

(1) judicial or quasi-judicial bodies when holding a meeting solely to make a decision in an adjudicatory proceeding;

(2) juries;

(3) parole or pardon boards;

(4) meetings of a hospital medical staff;

or

(5) meetings of the governing body or any committee of a hospital when holding a meeting solely to act upon matters of professional qualifications, privileges or discipline.

Chapter 100 SLA 1972

[This Act in Section 1 repealed and reenacted A.S. 14.40.160 and in Section 2 amended A.S. 44.62.310(a) to require meetings of the University of Alaska Board of Regents to be open to the public.]

Section 3 of ch. 98 SLA 1972

[This Act amended A.S. 44.62.310 (the open meeting act) to add A.S. 44.62.312 and to include the legislature and its subordinate units within A.S. 44.62.310.]

I

JURISDICTIONAL STATEMENT

Judgment was entered by the Superior Court, Third Judicial District in this case on September 11, 1978. A timely notice of appeal was filed on October 11, 1978. The Supreme Court has authority to review this appeal by virtue of A.S. 22.05.010.

II

STATEMENT OF ISSUES
PRESENTED FOR REVIEW

1. Whether the meetings of the Alaska Bar Association are subject to the provisions of Alaska's open meeting act, A.S. 44.62.310.312. R. 3, 72-75,

2. Whether, if the meetings of the Alaska Bar Association are subject to the provisions of Alaska's opening meeting act, the meeting of the Association's Board of Governors held in Hawaii in February, 1978 and without public notice violated this act. R. 6, 71-75

3. Whether, if the meetings of the Alaska Bar Association are not subject to the provisions of Alaska's open meeting act, the meeting of the Association's Board of Governors held in Hawaii in February, 1978 and without public notice nevertheless violated plaintiffs' rights to due process of law. R. 6, 117-119.

BY THE CROSS APPELLANT

1. Whether "[t]he Trial court erred in denying the Defendant's Motion for an Award of Attorneys' Fees filed pursuant to Civil Rule 82." Cross-Appellant's Statement of Points on Appeal, October 20, 1978. R. 138-42.

III

STATEMENT OF THE CASE

A. Nature and Procedural History of the Case

Plaintiff-appellants (hereinafter plaintiffs) filed this suit for declaratory and other relief on February 22, 1978 challenging the defendant Alaska Bar Association's (hereinafter ABA) actions in holding a business meeting in the State of Hawaii in February, 1978. Record (hereinafter R.) 1-7. Plaintiffs asserted that the conduct of the meeting violated Alaska's open meeting act, their federal and state due process rights, and Alaska Const. Art. I, Sec. 2. R.6.

The ABA answered the Complaint on March 20, 1978, and plaintiffs' First Set of Interrogatories on May 24, 1978. R. 12-15, 43-49. The ABA moved, pursuant to Civil Rule 12(c), for judgment on the pleadings on May 25, 1978, claiming that since its by-laws and regulations were exempt from the operation of the Alaska Administrative Procedure Act (hereinafter AAPA), it need not comply with Alaska's open meeting act. R. 62-64.

On June 23, 1978 plaintiffs filed a brief opposing the ABA's motion, and a cross motion for summary judgment pursuant to Civil Rule 56, claiming the ABA's Hawaii meeting was not exempt from the requirements of the open meeting act, and that in any event the meeting violated plaintiffs' federal and state due process rights. R. 93.

After exchange of briefs on the motions, the Superior Court heard oral argument on August 2, 1978, and thereafter

from the bench orally dismissed plaintiffs' suit.

On August 11, 1978, the ABA filed a motion seeking attorneys fees pursuant to Civil Rule 82. Plaintiffs opposed this motion on the grounds that their lawsuit constituted public interest litigation. R. 129. On September 11, after finding that the suit did in fact constitute public interest litigation, the Superior Court denied the ABA's motion. TR. 9-10. Judgment was entered immediately thereafter. R. 136-137.

On October 11, 1978 plaintiffs¹ filed a Notice of Appeal pursuant to Appellate Rule 7(b), along with a Designation of Record on Appeal and Statement of Points on Appeal. The ABA filed a cross-appeal on the issue of attorneys' fees on October 20, 1978. R. 138-142.

B. Statement of Facts Relevant to the Issues Presented for Review.

The thirteen plaintiffs are residents of Alaska, and all but two are attorneys and members of the ABA, R. 2, 12, which is an instrumentality of the State. A.S. 08.08.010. The ABA collects mandatory membership dues, and receives monies under contract with the State of Alaska Court System for the provision of attorney disciplinary services. R. 2, 12, 86.

The ABA Board of Governors (hereinafter Governors) held a regular business meeting in Kauai, Hawaii from February 20 through February 23, 1978. R. 2, 13, 43-44. The

¹ One plaintiff, Sue Ellen Tatter, is not an appellant.

Governors were reimbursed from ABA funds for their travel and per diem expenses, and the ABA so admits. R. 2-3, 13, 48, 61.

The ABA also admits it gave no public notice of the business meeting. R. 45, Response to Interrogatory 5(e).

Among topics discussed at the Governors' meeting were a residency requirement for bar examination applicants, for ABA offices, and for pro bono publico appointments; mandatory pro bono publico work; cutting of ABA dues; continuing legal education; expenditure of surplus funds; agenda of the June, 1978 ABA meeting; responsibilities of the Alaska Bar Counsel; ABA office facilities needs; contributions to the City of Fairbanks; lay members on the ABA Board of Governors; the Bar Brief; ABA committees; this lawsuit; malpractice insurance; and a Civil Procedure Handbook. R. 52-57. At the meeting various motions were made, and some were voted upon. R. 52-57. The Governors also held Executive Sessions during the meeting. R. 52-59.

The aforementioned facts are not in dispute between the parties and are fully reflected in the Complaint and Answer, at R. 1-15, the plaintiffs' First Set of Interrogatories at R. 16-42, the Answers thereto, at R. 43-61, and the ABA published materials attached as Exhibits to plaintiffs' summary judgment opening brief, at R. 79-92.

IV. ALASKA'S OPEN MEETING ACT PROHIBITED THE ALASKA BAR ASSOCIATION FROM HOLDING A MEETING FINANCED WITH PUBLIC FUNDS IN HAWAII.

The Alaska open meeting act requires all meetings of a broad range of public bodies to be "open to the public," and requires reasonable public notice prior to such meetings. A.S. 44.62.310 (a) and (e). The ABA Governors held a regular business meeting in Hawaii, inaccessible to the vast majority of the Alaska public, although there was no reasonable connection between the location of the meeting and the agenda to be acted upon. See the Agenda at R. 8-11. The ABA, further, admits it held the meeting without public notice and the meeting was not a "public meeting." R. 45, 48, Responses to Interrogatories 5(e) and 10. Thus, if the open meeting act applies to the ABA, then the Hawaii meeting was illegal, and all action taken during it is void under A.S. 44.62.310(f).

In the discussion which follows, the plaintiffs will first demonstrate that the intrinsic construction of the relevant statutory provisions provides the ABA with no exemption from the open-meeting requirements of A.S. 44.62.310. The plaintiffs will then turn to the legislative history of the open meeting act and the Integrated Bar Act, which shows, consistently with the intrinsic statutory construction principles, that the legislature did not intend to exempt the ABA from the open meeting act. Finally, plaintiffs will demonstrate that canons of extrinsic statutory construction also require application of the open meeting act to the ABA.

A. On Its Face, the Open Meeting Act Applies to the ABA.

Courts must first seek the meaning of a statute in its language; if the meaning is plain, the court's sole function is to enforce the statute. Application of Babcock, 387 P.2d 694, 696 (Alaska 1963); Paulin v. Zartman, 542 P.2d 251 (1975), reh. 548 P.2d 1299 (Alaska 1975). This rule is subject, of course, to the most fundamental one to which all other rules are subordinate, and that is that the legislature's purpose and intent govern all statutory interpretations. United States v. Hardcastle, 10 Alaska 254, 266-267 (1942); National Railroad Passengers Association v. National Association of Railroad Passengers, 414 U.S. 453 (1974); Thomas County Taxpayers Association v. Finney, 573 P.2d 1073 (Kan. 1978); 2A J. Sutherland, Statutes and Statutory Construction, (hereinafter Sutherland), sec. 46.07, at 65-66 (4th ed. Sands 1973). The intent of the legislature evidences itself in the words used to express it in that part of the statute involved, as construed with reference to the whole instrument. State v. City of Anchorage, 513 P.2d 1104, 1110 (Alaska 1973).

Generally, a clear and unambiguous statutory provision is one which has meaning uncontradicted by other language in the same act. 2A Sutherland, sec. 46.04, at 55.

Here, the open meeting act requires all meetings of virtually all categories of public entities to be open to the public "except as otherwise provided by this section." A.S. 44.62.310(a). No exception for ABA meetings is made "by this

section." The ABA does not deny that it, at least literally, fits one or more of the categories of entities described.

Thus, looking only at the language of A.S. 44.62.310, the ABA and its meetings are subject to the statute. The intent of the legislature, evidenced in the strongly worded state policy regarding meetings in the open meeting act, at A.S. 44.62.312, fully supports this conclusion. City of Anchorage, supra; Hardcastle, supra.

Moreover, while application of more particularized intrinsic statutory construction rules is unnecessary when the plain meaning rule applies, Babcock, supra, at 696 n. 6, a conclusion that the open meeting act applies to the ABA is consistent with each of these other rules.

For example, a general rule is that the interpretative construction made must give effect, if possible, to every word, clause, and sentence of the statute, so that each part has a useful purpose. 2A Sutherland, sec. 46.06, at 63; Issakson v. Rickey, 550 P.2d 359 (Alaska 1976); Hardcastle, supra, at 267, 272. An interpretation of the phrase "except as otherwise provided by this section" and the categories of entities the open meeting act describes, which includes coverage of ABA meetings, fully satisfies this rule.

Such an interpretation also satisfies the rule that exceptions to the coverage of a statute will not be implied, particularly where there is an express exception clause in the statute, as there is here. 2A Sutherland, sec. 47.11, at 90n.

6 and 7; Israel-British Bank (London) Ltd. v. F.D.I.C., 536 F.2d 509, 513 (2d Cir. 1976). Exception clauses, moreover, are strictly construed. Hafling v. Inland Boatmen's Union of the Pacific, 585 P.2d 870, 875 (Alaska 1978).

The interpretation further satisfies the rule that "all sections of an act are to be construed together so that all have meaning and no one section conflicts with another." In the Matter of the Estate of Hutchinson, 577 P.2d 1074, 1075 (Alaska 1978). If the exception clause ("except as otherwise provided by this section") of the open meeting act² is to be construed consistently with those sub-sections of the act (A.S. 44.62.310(b)-(d)) which expressly state which meetings and entities are excepted from the act's coverage, then the ABA must not be impliedly excepted from the act's coverage. Indeed, an implied exception for the ABA would contravene the policy section of the act, A.S. 44.62.312, particularly since the ABA would become the only instrumentality of the State so impliedly excepted.

B. The Exemption From the AAPA Provided the ABA's Bylaws and Regulations on Its Face Does Not Exclude the ABA From Coverage Under the Open Meeting Act.

The crux of the ABA's defense to this suit is that A.S. 08.08.100, which makes the ABA's by-laws and regulations

² The open meeting statute, passed originally as part of the AAPA, became a separate "act" in 1966. See ch. 48 SLA 1966. Even were the open meeting law still part of the AAPA, however, the statutory construction rule mentioned in the text above would still only be satisfied by construing the statute to include the ABA within its coverage. See part I-R-1 & 2 of this brief, infra at 10-13.

"not subject to the Administrative Procedure Act (A.S. 44.62)," frees it from coverage under the open meeting act, since it has by-laws covering meetings and complied with them for the Hawaii meeting. See R. 62-64, 99-100. This defense erroneously assumes the open meeting statute is a mere section of the AAPA, instead of an independent act. Even were this assumption correct, however, the AAPA on its face plainly does not exempt the ABA's meetings from coverage under the open meeting act.

1. The Open Meeting Act Is Not Part of the AAPA.

In 1966 A.S. 44.62.310 was repealed and reenacted. See ch. 48 SLA 1966.³ The reenactment significantly changed the language of the original open meeting statute, passed as ch. I, Art. VI of ch. 143 SLA 1959 (the AAPA), as a comparison of the two will show. For example, the 1959 version excepted "juries and such other agencies as shall be expressly exempt by the Legislature," while the 1966 re-enactment, A.S. 44.62-.310(a) excepted no meetings "except as otherwise provided by this section." Apparently this change was made to insure that only "this section" be looked to for exemptions, and to guarantee that other statutes not be misconstrued as containing exceptions.

³ The Michie Co. Reporter (and perhaps the official revisor, i.e., the Legislative Council) erroneously report in the notes to A.S. 44.62.310 that ch. 48 SLA 1966 was an amendment to A.S. 44.62.310. The revisor, of course, has no authority to change the meaning of a statute. See A.S. 01.05.006; A.S. 01.05.031(b); A.S. 24.20.070.

Moreover, while the 1959 version was silent on excepting meetings of judicial or quasi-judicial bodies, the 1966 re-enactment expressly excepted them under certain circumstances; while the 1959 version was silent as to prior public notice, the 1966 re-enactment mandated it; and while the 1959 version was silent on the question of violations of the open meeting statute, the 1966 re-enactment voided actions taken contrary to it.

Repeal and re-enactment of a statute in part is ordinarily "treated" not as a repeal, but as an amendment, the re-enacted part continuing in full force. See, e.g., Chesapeake & Potomac Company of West Virginia v. State Tax Department, 239 S.E.2d 918 (W. Va. 1977); Allied Veterans Council v. Klamath County, 544 P.2d 190, 194 (Or. App. 1975); 77 A.L.R.2d 336. The key word here is "treated." The "re-enactment" still creates a new act, although for the sake of continuity the former act is "treated" as if never repealed. More importantly, a material change of language in the re-enactment must be regarded, unless otherwise indicated, as evidencing a purpose to change the force and effect of the existing law. Cf. Warren v. Thomas, 568 P.2d 400, 403 (Alaska 1977); In re Cutshaw, 432 P.2d 474, 477 (Ariz. App. 1977); In re Loakes Estate, 32 N.W.2d 10, 11 (Mich. 1948); Volkswagen of America, Inc. v. United States, 340 F. Supp. 983, 989 (Cust. Ct. 1972) aff'd, 494 F.2d 703 (Ct. Cust. & Pat. App. 1974); 1A Sutherland, sec. 22.33, at 191 and sec. 23.28, at 272. Here,

while it is sensible to treat the repeal and re-enactment as continuing the open meeting requirements in force, it is also consistent to acknowledge the significant revisions and additions to the law as evidence the legislature meant to set it apart from the AAPA. In so doing it closed any real or imagined loopholes for agencies whose meeting "by-laws or regulations" might be exempt from AAPA coverage.

This interpretation is consistent, furthermore, with sec. 1 Art. I, ch. I of ch. 143 SLA 1959 (the AAPA), which declared that "This Act constitutes and may be cited as the Administrative Procedure Act."⁴ The words "This Act" obviously refer to, in the words of ch. 143 SLA 1959, "AN ACT Establishing administrative procedures. . . ." and not to the later 1966 "ACT Requiring that the meetings of agencies of the state and its subdivisions be open to the public with certain exceptions." Ch. 48 SLA 1966.

Indeed, the just quoted title of the open meeting act's repeal and re-enactment at ch. 48 SLA 1966 also evidences complete separation of the act from the AAPA. The subject of a legislative bill must be expressed in its title, Alaska

⁴ The codification, at A.S. 44.62.650, now reads, "This chapter may be cited as the Administrative Procedure Act." Of course, the revisor's change of the word "Act" to "chapter" may not change the meaning of the law. A.S. 01.05.031. In any event, "This chapter" obviously refers to ch. 143 SLA 1959 as amended, and not to ch. 48 SLA 1966, the chapter repealing and re-enacting the open meeting statute.

Const. Art. II, Sec. 13, in order to give notice of the contents of the legislation. Hardcastle, supra, at 269-270. Thus, courts can consider the title of an act to resolve any questions as to the Act's intent. 2A Sutherland, sec. 47.03 at 73 and n. 6; Sullivan v. Green Manufacturing Company, 575 P.2d 811, 815 (Ariz. App. 1977). The legislature labeled ch. 48 SLA 1966 a separate "act" designed to govern open meetings and did not label or include it as part of the AAPA. Thus, the exemption of the ABA's "by-laws and regulations" from the AAPA does not remove the ABA from coverage by Alaska's open meeting act.

2. Even Were the Open Meeting Act Part of the AAPA, the AAPA Does Not on Its Face Exempt the ABA from the Open Meeting Requirements.

Assuming arguendo that the open meeting act at A.S. 44.62.310-.312 is still part of what the legislature considers the AAPA, A.S. 08.08.100 on its face plainly exempts only the ABA's "by-laws and regulations" from the AAPA, and not the ABA, i.e., the agency itself, from the AAPA. As defined in the AAPA, a State agency means

a department, office, agency, or other organizational unit of the executive branch, except one expressly excluded by law, but does not include an agency in the judicial or legislative branches of the state government.

A.S. 44.62.640(a)(4).⁵

The ABA was rendered generally subject to the provisions of the AAPA upon its enactment in 1959. This conclu-

⁵ See this section as originally worded at ch. I, Art. I, sec. 2(1) of ch. 143 SLA 1959.

sion follows both from the genesis of the ABA's Board of Governors in the Alaska Bar Commission (see the Alaska Integrated Bar Act, sec. 15 of ch. 196 SLA 1955), and from the ABA's literal inclusion in the administrative adjudication chapter of the AAPA. Moreover, the subsequent 1960 amendment of the Integrated Bar Act (at sec. 3, ch. 178 SLA 1960) exempting ABA rules from the AAPA demonstrates the legislature's belief that the ill-defined ABA was an entity sufficiently in the nature of an executive agency to require legislative action to remove the ABA's rulemaking function from the ambit of the AAPA. Thus, through the operation of the broad "agency" definition quoted above, the ABA was also subject to the open-meeting requirements that were originally part of the AAPA at sec. 1, Article VI, ch. I of ch. 143 SLA 1959.⁶

Thus, while the legislature may have eventually freed the ABA from the AAPA's administrative adjudication and rule making requirements, it never expressly freed it from the remaining requirements of the AAPA, including those concerning open meetings of public bodies. This conclusion is consistent with the requirement that exclusions from the AAPA must be express, see Alaska State Housing Authority v. Dixon, 496

⁶ This section is now codified, with later amendments, at A.S. 44.62.330(a). Not until 1976, via ch. 181 SLA 1976, was the ABA's inclusion on the list of agencies subject to the Administrative Adjudication chapter of the AAPA repealed. See A.S. 44.62.330(a)(22); Application of Peterson, 499 P.2d 304, 306 (Alaska 1972) (holding the ABA subject to AAPA administrative adjudicatory rules). The ABA was first exempted from the AAPA's rule making provisions (at Art. IV, ch. I of ch. 143 SLA 1959) by sec. 3 of ch. 178 SLA 1960.

P.2d 649, 651 (1972), and with the intrinsic statutory construction rule requiring that exclusion clauses, such as the AAPA's in A.S. 44.62.640(a)(4), be strictly construed. The adjunct rule prohibiting implied exclusions where express exclusions are required also supports this conclusion. Hafling, supra at 875. Moreover, a restrictive construction of the exemption of ABA rulemaking is consistent with legislative intent concerning the open meeting act, as expressed in A.S. 44.62.312.

To accept the ABA's broad interpretation of its "by-laws and regulations" AAPA exemption would also affront the principle that delegations of sovereign power, in this case the power to regulate the practice of law and lawyers, are to be strictly construed. 3 Sutherland, sec. 64.01 at 106 and n. 1 & 2; A.S. 44.62.312(a)(3) and (4); Alaska Const. Art.1, Sec. 5. Cf., People v. Centr-O-Mart, 214 P.2d 378, 379 (Cal. 1950); City of Jackson v. Mississippi State Building Commission, 350 So.2d 63, 65 (Miss. 1977).

Furthermore, if the ABA and its by-laws and regulations were exempt from the AAPA, the legislature's express reservation of power to overrule administrative regulations, embodied in the AAPA at A.S. 44.62.320(a), would be nullified, but only as to the ABA among all state instrumentalities. This result, aside from affronting the public sovereignty, would ignore the interpretative rule mandating that "[w]here a reasonable construction of a statute can be adopted which realizes the legislative intent and avoids conflict or incon-

sistency with another statute. . .," that construction should be adopted. Gordon v. Burgess Construction Company, 425 P.2d 602, 604 (Alaska 1967); see also, Hafling, supra, at 875. The ABA's construction of the AAPA and open meeting act causes conflicts; the plaintiffs' construction avoids them.

The ABA's construction also assumes that its statutory right in A.S. 08.08.080(b)(2) to promulgate by-laws and regulations free of the rule-making requirements of the AAPA was designed to permit its monopolization of every field of ABA activity it decided to regulate, including meetings. In fact, A.S. 08.08.080(a)(3) indicates that "the board [of Governors] may adopt reasonable provisions . . . concerning annual and special meetings." If this sub-section is to have any meaning at all, it must be construed as an indication that meeting "provisions," even if in by-law form, would not be exempted from a statute governing the class of all public meetings.

Thus, the AAPA does not exempt the ABA from the obligation to comply with the open meeting act.

C. The Legislative History of the Pertinent Statutes Demonstrates that the Open Meeting Act Applies to the ABA.

In cases of statutory ambiguity, courts often look to the legislative history of a statute to aid in its interpretation. 2A Sutherland, sec. 48.01, at 182 n. 7 and 8; Hotel, Motel, Restaurant, Construction Camp Employees & Bartenders Union Local 879 v. Thomas, 551 P.2d 942, 944 (Alaska 1976).

While plaintiffs do not believe the pertinent statutes here are ambiguous, nonetheless a review of their legislative history supports plaintiffs' construction of them in the previous sections of this brief.

The Alaska Bar Association Integrated Bar Act became law as ch. 196 SLA 1955. In sec. 7(d) the Governors were given power "to adopt reasonable rules . . . concerning annual and special meetings." There was no separate section giving the ABA power to enact "by-laws and regulations," but in sec. 8 the Governors were given power to enact admission, suspension and disbarment "rules." In sec. 14 an attorney disciplinary procedure was set up.

Four years later the Alaska Administrative Procedure Act was passed. Ch. 143 SLA 1959. As has been described above, the Act had three aims: to prescribe procedures for agency rule-making (ch. 1, Art. I-V, VII), to regulate public meetings (ch. 1, Art. VI), and to prescribe procedures for administrative adjudications (ch. 2). (It is significant that the AAPA has always required administrative adjudications to be held in the State of Alaska. Sec. 9, ch. 2 of ch. 143 SLA 1959, A.S. 44.62.410.) The ABA was not exempt from any portion of the AAPA when passed. See the discussion in part I-B-2 above, at 13. Thus, in 1959 the open meeting Article of the AAPA clearly applied to the ABA.

In 1960 the Integrated Bar Act was amended to exempt the ABA from the rule-making requirements of the AAPA.

Sec. 3, ch. 178 SLA 1960. The amendment read in pertinent part: "Rules adopted by the Board of Governors are not subject to the provisions of the Administrative Procedure Act." The ABA expressly remained subject to the Administrative Adjudication provisions of the AAPA, since ch. 2, sec. 2(1) of ch. 143 SLA 1959 remained unchanged. The 1960 amendment to the Integrated Bar Act also made no change in the open meeting Article of the AAPA. To accept, however, the ABA's interpretation of the power granted to it via this 1960 amendment would mean that it could have passed regulations exempting itself from the AAPA adjudication provisions, as it claims it did with respect to the open meeting requirements.

In 1966 the open meeting provisions, by then codified as A.S. 44.62.310, were repealed and re-enacted, as told in section I-B-1 of this brief above. Ch. 48 SLA 1966. Major changes were made in the thrust of the provisions, not the least of which was to require exceptions to the law to be made "by this section." Meetings of judicial and quasi-judicial bodies in certain situations were excepted at this time. Note that judicial and quasi-judicial bodies were not previously covered by what was called the AAPA by virtue of the AAPA's definition section 2, ch. I, Art. I of ch. 143 SLA 1959. If the legislature had felt that the open meeting act was inextricably part of the AAPA, then there would have been no need to exempt judicial bodies from the act's coverage. This 1966 legislation is entitled to significant weight in declaring the

intent of the 1959 open meeting provisions. Hafling, supra at 874.

In 1968 and 1969, via ch. 78 SLA 1968 and ch. 7 SLA 1969, hospitals and parole boards were excepted from the open meeting act by amendments to it.

In 1972, the University of Alaska Board of Regents was included within the purview of the open meeting act in ch. 100 SLA 1972, which amended A.S. 44.62.310(a) and A.S. 14.40-.160. This legislation may have been necessitated by the University's unique constitutional origin, which arguably placed it inside none of the judicial, executive, and legislative branches of government and thus outside the purview of the AAPA, and outside the open meeting act's coverage. See University of Alaska v. National Aircraft Leasing, Ltd., 536 P.2d 121, 128 (Alaska 1975) (a unique "constitutional corporation").

In 1972 the legislature also added A.S. 44.62.312, enunciating the State policy regarding meetings. The Judiciary Committee Report on this addition, sec. 3 ch. 98 SLA 1972, stated that it was meant to make

clear that state law requiring that meetings of public agencies be open to the public applies to the legislature and its subordinate units. The bill also reemphasizes state policy against closed meetings of public bodies. (Emphasis supplied).

Jud. Comm. R. SB No. 253, House Journal (February 2, 1972), at 158.

In 1976 A.S. 08.08.100 was amended, changing the AAPA exemption for the ABA's "rules" to its "by-laws and regulations." Ch. 181 SLA 1976. The ABA argued in the Superior Court that this change represented a ratification of its by-laws concerning meetings, by-laws which they assert they fully complied with for the Hawaii meeting. R. 97, 99-101. However, ch. 181 SLA 1976 made numerous minor changes in the use of the word "rule" in the Integrated Bar Act, no doubt to insure there would be no confusion with the Supreme Court developed Alaska Bar Rules, inaugurated in February, 1972. See ch. 181 SLA 1976. This becomes clear when it is noted that 181 SLA 1976 repealed A.S. 08.08.110, which had governed attorney bar admission, suspension and disbarment, in favor of those procedures adopted in the Alaska Bar Rules. See also A.S. 08.08.120(a) and (b). Cf. the result reached in Dorrier v. Dark, 540 S.W.2d 658, aff'd on reconsid., 537 S.W.2d 888 (Tenn. 1976).

There is nothing in the legislative history of the AAPA, the open meeting act, or the Integrated Bar Act supporting the ABA's position in this case. Rather, it is clear that legislative history supports plaintiffs' construction of the pertinent statutes.

D. Other Extrinsic Statutory Construction Rules Demonstrate that the Open Meeting Act Applies to the ABA.

Since the plain meaning rule applies, extrinsic statutory construction aids, like legislative history, need not be employed to decide this case. Nonetheless, the outcome

of the application of each such rule supports the conclusion that the ABA is subject to the open meeting act.

For example, the in para materia construction rule requires that the "reasonable meeting provisions" phrase of A.S. 08.08.080(a)(3) be read consistently with the open meeting act itself, since they both deal with meetings. See generally, 2A Sutherland, sec. 51.01 at 287; sec. 51.03, at 298-300 n. 1 and 2; Gordon, supra, at 604; Jackson v. State, 541 P.2d 23 (Alaska 1975). "Reasonable" provisions, thus, must include public notice, and must insure the meetings are "open" to the public. This view is consistent with the presumption that whenever the legislature enacts a statute, it has in mind previously enacted statutes on the same subjects, and all of them should be construed consistently. Hafling, supra, at 877.

A second extrinsic statutory construction rule requires special acts to control general ones dealing with the same subject matter, no matter their order of passage, unless there is evidence of contrary legislative intent. 2A Sutherland, sec. 51.05, at 315 n. 3 and 4; Thompson v. IDS Life Insurance Company, 549 P.2d 510, 513 (Or. 1976); Preiser v. Rodriguez, 411 U.S. 475 (1973); Monte Vista Lodge v. Guardian Life Insurance Company of America, 384 F.2d 126, 129 (9th Cir. 1967), cert. den. 390 U.S. 950 (1968). Cf., Hafling, supra, at 877 n. 22. Here the special act, the detailed open meeting act, must control A.S. 08.08.080(a)(3).

Finally, it should be emphasized that courts construe open meeting statutes liberally in favor of the public and strictly against public agencies. See, e.g., Carter v. City of Nashua, 308 A.2d 847, 853 (N.H. 1973); News & Observer Publication Company v. Interim Board of Education for Wake City, 223 S.E.2d 580 (N.C. App. 1976); Jones v. East Windsor Regional Board of Education, 362 A.2d 1228, 1232 (Sup. Ct. N.J. 1976); City of Miami Beach v. Berns, 245 So.2d 38, 40-41 (Fla. 1971) ("Our duty is to interpret this [open meeting] law as it is written and, if possible, do so in a manner to prevent its circumvention."); Bagley v. School District No. 1, Denver, 528 P.2d 1299, 1302 (Colo. 1974); Board of Public Instruction of Broward County v. Doran, 224 So.2d 693, 699 (Fla. 1969); Laman v. McCord, 432 S.W.2d 753, 755 (Ark. 1968); see also, A.S. 44.62.312. See generally, 38 A.L.R.3d 1070.

Thus, other extrinsic construction rules support a holding that the ABA is subject to the open meeting act.

E. Comparison of the Open Meeting Act Requirements With the ABA's Conduct Demonstrates the Act Was Violated.

Since the open meeting act applies to meetings of the ABA, its conduct in holding the Hawaii business meeting must be judged under it. The ABA admits that no "public notice" was given for the meeting, R. 45, Response to Interrogatory No. 5(e), and that the meeting was not public. R. 48, Response to Interrogatory No. 10.

Thus, A.S. 44.62.310(e) was violated. Cf., Sullivan

v. Credit River Township, 217 N.W.2d 502, 505-6 (Minn. 1974).

Secondly, the meeting was not held in Alaska. It thus was not "open to the public," and was consequently violative of A.S. 44.62.310. Courts have been quick to find that meetings of public officials held outside their sovereign boundaries violate applicable open meeting statutes. For example, in Quast v. Knutson, 150 N.W.2d 199 (Minn. 1967) the court held that a school board which met 20 miles outside the school district's boundaries violated an open meeting law requiring "all meetings . . . [to] be open to the public." Id., at 200. Accord, State v. Rural High School District No. 3, 220 P.2d 164 (Kan. 1950).

In Paradise Valley v. Acker, 411 P.2d 168 (Ariz. 1966), the court held invalid a common council meeting held in Phoenix and outside Paradise Valley, a suburb adjacent to the Phoenix city limits. The Arizona statute involved required that meetings "shall be public." The court said the statute

means public to the citizenry directly concerned, in this case to the citizens of Paradise Valley, Arizona, without the necessity of their leaving the incorporated limits of the municipality to attend a town council meeting. It does not seem reasonable that a meeting held outside of the town limits can comply with the statutory requirement. If a valid meeting can be held in Phoenix, then why not elsewhere, be it close or far distant.

Id., at 169.

Of similar effect is City of Lexington v. Davis, 221 S.W.2d 659 (Ky. App. 1949), holding illegal a city board

meeting held in the bedroom of its seriously ill mayor in the face of a statute requiring all meetings to be public. While the court found no deliberate effort on the part of the board to conceal facts, to exclude anyone, or to mislead the public, it said that "a public meeting presupposes the right of the public freely to attend. . . . Anything which tends to 'cabin, crib or confine' the public in this respect . . ." violates the statute. Id., at 661.

Finally, in State v. Kessler, 117 S.W. 85 (Mo. App. 1909), the court, after voiding action taken at a school board meeting held in a city outside the school district's boundaries in violation of the mandate of an open meeting statute, stated:

Without any statutory enactment on the subject, it is obvious that considerations of public policy demand that the official meetings of public bodies be held within the limits of their territorial jurisdiction; otherwise public servants might do in secret what they would not attempt to do under public scrutiny, and thereby much injury might be done to the public welfare. It would be just as proper for the state legislature to hold its sessions outside the state or for a county court to meet and transact business in another county. . . .
(Emphasis supplied)

Id., at 86.

Alaska's citizens cannot protect their "right to remain informed," A.S. 44.62.312(a)(5), if their public agencies hold business meetings outside the State of Alaska. Cf. Bigelow v. Howze, 291 So.2d 645, 647 (Fla. App. 1974) ("[A] public meeting could not have feasibly been held on this subject in Tennessee."); Berns, supra, at 41 ("A secret meeting occurs

when public officials meet at a time and place to avoid being seen or heard by the public.") This conclusion is rooted in the nation's earliest expression of public meeting policy:

He has called together legislative bodies at places unusual, uncomfortable, and distant from the depository of their public records, for the sole purpose of fatiguing them into compliance with his measures.

Charge against King George III, United States Declaration of Independence, July 4, 1776.

V. BECAUSE THE ABA GOVERNORS' HAWAII BUSINESS MEETING VIOLATED THE OPEN MEETING ACT, ALL ACTION TAKEN IN THE MEETING IS VOID, AND ALL PUBLIC FUNDS SPENT ON THE MEETING ARE RECOVERABLE.

A. All Meeting Action Taken Is Void.

The open meeting act is explicit: "Action taken contrary to this section is void." A.S. 44.62.310(f). Thus, all actions of the ABA in connection with the Hawaii business meeting of the Governors, including motions, votes and agenda topic discussions, are void. That such votes, etc., occurred has been admitted by the ABA. R. 53-59.

B. Public Funds Spent on the Meeting Are Recoverable.

A.S. 44.62.310(f) voids not just what occurs at unlawful meetings. It voids all "action." Thus, the ABA's expenditure of public monies⁷ to finance the meeting and to reimburse the travel and other expenses of the Governors, was also unlawful and void. (See R. 48, 61 for the ABA's admission as to the expenditure of its monies to reimburse the Governors.⁸) This result is consistent with the thrust of Alaska Constitution,

⁷ The ABA is financed with dues monies and contract monies from the Alaska Court System. The latter are obviously "public" funds. Mandatory dues or license fees, imposed by a State instrumentality, are "state funds no less than revenues deposited in the State Treasury" State Licensing Bd. of Contr. v. State Civ. Serv. Comm., 110 So.2d 847, 851 (La. App. 1959); see also, A.S. 08.08.010, making the ABA an instrumentality of the State.

⁸ Cf. A.S. 39.20.140, which prohibits the Department of Administration from paying a State employee for transportation outside Alaska unless the employee's travel is "clearly necessary to benefit the state."

Art. IX, Sec. 6, which prohibits the expenditure of public funds except for a public purpose.

If public funds are expended for an unlawful purpose, citizens have standing to seek reimbursement for the public treasury in the amount of the funds so spent. City of Chicago ex rel. Cohen v. Keane, 357 N.E.2d 452 (Ill. 1976). Cf. A.S. 37.10.090. As public officers are fiduciaries, the funds they manage are held in trust, the officers are insurers of the funds, and strict care must be used in their handling. People v. Savaiano, 359 N.E.2d 475, 480 (Ill. 1977); Brewer v. Hawkins, 455 S.W.2d 864 (Ark. 1970); State ex rel. O'Connell v. Egan, 371 P.2d 638 (Wash. 1962); Secretary of State v. Hanover Insurance Company, 411 P.2d 89 (Or. 1966).

In Kerby v. State ex rel. Frohmiller, 157 P.2d 698, at 703 (Ariz. 1945) the court denied the secretary of state the right to "charge for expenses by a public officer for services without the State, where the law does not authorize the performance of such service beyond the State's boundaries." The court further indicated that the reasonableness, practicability, or expediency of unlawful expenditures is no justification. Id. As in Kerby, the ABA can point to no authority justifying its violation of the open meeting act and its consequent unlawful expenditure of public monies.

VI. THE ACTIONS IN HOLDING A BUSINESS MEETING IN HAWAII, AND WITHOUT PUBLIC NOTICE, VIOLATED PLAINTIFFS' DUE PROCESS RIGHTS.

The Fourteenth Amendment, United States Constitution and Article I, Sec. 7, Alaska Constitution guarantee that no citizen may be deprived of life, liberty or property by a state instrumentality without due process of law.

Arbitrary government conduct, whether in the form of legislative enactments or agency actions, is violative of the principles of substantive due process. Cf. Concerned Citizens of South Kenai Peninsula v. Kenai Peninsula Borough, 527 P.2d 447 (Alaska 1974); Mobil Oil Corporation v. Local Boundary Commission, 518 P.2d 92 (Alaska 1974). Here, plaintiffs assert that the ABA's action in holding a business meeting in Hawaii, and without public notice, violated the due process guarantees afforded them even if Alaska's open meeting act did not apply to the ABA.

The standard for judging arbitrariness was enunciated by the Supreme Court in Concerned Citizens, supra, a decision upholding the constitutionality of a local ordinance. In disposing of plaintiffs' due process claims the court noted that: "Substantive due process is denied when a legislative enactment has no reasonable relationship to a legitimate governmental purpose." 527 P.2d at 452. The constitutional principles binding a local government must apply with equal force to state instrumentalities. Thus, in determining

plaintiffs' due process claims the question is whether the ABA's act of holding a business meeting in Hawaii bore a reasonable relationship to the ABA's legitimate public purposes. Given the statutory functions of the ABA, clearly no such reasonable relationship exists.

The ABA has been vested by statute with regulatory responsibilities directly affecting the justice system and of interest to all segments of the Alaska population. Through its Board of Governors it decides who will and will not practice law. A.S. 08.08.080(a)(1). The Legislature has also given it a voice in determining what acts constitute the practice of law and what rules will govern the operation of the State's courts. A.S. 08.08.080(b)(1). Indeed, it is responsible for all "matters in any way affecting the organization and functions of the Alaska Bar." A.S. 08.08.080(a)(6).

The importance of these functions to the public at large should be self-evident. Items before the Governors in Hawaii--especially such questions as mandatory pro bono, laymen on the Board of Governors, formation of a political action group, malpractice insurance, and surplus funds (which are, after all, public monies) --are clearly of interest to all citizens of the State. See R. 10-11, 50-60.

A Governors' meeting removed from the scrutiny of Alaska's public and media does nothing to further the ABA's broad policy responsibilities. It also ignores the agency's