

986 HJ AK BAR ASSN SUNSET REVIEW FILES NO. 8 and 9

# Bodily Injury Reparations

by Tony Smith

The Bodily Injury Reparations Advisory Committee published its report on March 27, 1979. The committee was established by Administrative Order 45 on December 12, 1977, with directions to study the availability and expense of personal injury insurance in Alaska and make recommendations as to the advisability of fundamental changes concerning: (1) the adequacy of present reparations systems; (2) legal principles of bodily injury reparation; (3) legal procedures and expenses; (4) functioning of bodily injury insurance systems; (5) the availability of insurance; and (6) possible alternative methods of bodily injury reparations.

The committee was composed of individuals representing the health care delivery system, the Alaska insurance industry, the legal profession, consumer groups and legislators. Mr. Perry Eaton, Vice President of United Bank Alaska, was initially committee chairman. In July 1978, he resigned and John Anthony (Tony) Smith was appointed chairman for the duration of the committee's deliberations.

## Rowan Group Survey

Members of the legal profession in reviewing the committee's recommendations and analyses should begin with the data and analysis gathered by the Rowan Group. The committee retained Rowan Group, Inc., to do an attitude survey of a random cross-section of the public. The entire analysis and narrative data is included in the appendix of the report and is worthy of consideration by anyone involved in the bodily injury process. Surveys of this nature are accurate within four percent and are an important information-gathering tool.

At the conclusion of the general public opinion poll, the Rowan Group did an in-depth analysis of those people in the initial survey who had suffered a bodily injury in an accident. The poll was conducted in Anchorage as a result of budgetary constraints, but the committee felt the conclusions were illustrative of the situation statewide.

The committee's analyses and recommendations are broken down into seven general areas. In some cases the committee made specific recommendations for action, and in others the committee recommended further follow-up analysis.

## Arbitration Recommended

In the subsection entitled "Legal Issues" the committee recommended that all bodily injury claims for \$25,000.000 or less be arbitrated; that interrogatories be limited and that the courts sanction attorneys for frivolous motions, discovery requests and pleadings; that Ad Damnum clauses be prohibited; that structured settlements involving periodic payments be encouraged; and that Rule 68 be

amended to allow a plaintiff's offer of settlement.

In the "Professional Malpractice" subsection the committee recommended that the statute of limitations in all professional services malpractice cases be two years with an additional two years for discovery, with the exception of minors, where there would be a total of eight years for discovery ending on the eighth birthday; or two years after the alleged occurrence of malpractice plus two years for delayed discovery (whichever occurs later); require that health providers maintain insurance with a minimum coverage of \$250,000.00; and the repeal of certain statutes which developed out of the medical malpractice commission.

## Alaska Compensation

In the "Workmen's Compensation" section the committee recommended that the Governor appoint a commission to study the implementation of a program entitled "Alaska Compensation" which would accomplish the merger of workmen's compensation and non-occupational benefits; that a more equitable method of appropriation cost of cumulative injuries be determined and there be a requirement that employment be demonstrated a causative factor in a cumulative injury claim; that workmen's compensation benefits be offset against any other employer-sponsored and paid benefit to the extent that not more than the employee's actual after-tax wage at the time of injury would be paid in total; that while the employee's sole remedy against his employer may be workmen's compensation, it shall not be applicable to the situation where there is clear and convincing evidence of an employer's wanton and willful disregard for the safety of his employees; that workmen's compensation claims limit the time for filing claims to twelve months from the date of injury, or in the case of occupational disease, twenty-four months from the date that the employee first has knowledge of the condition and its relation to his employment; and that a prehearing conference be required on all cases before presentation to the workmen's compensation board.

In the "Insurance" section the committee recommended that the State enact a no-fault insurance plan containing certain minimal requirements: that insurance companies be allowed to pay claims by draft; that there be available in Alaska under-insured motorists coverage; and that motor vehicle insurance for bodily injury and property damage be compulsory.

## Strike Force Recommended

The committee devoted an entire section to "Driving While Intoxicated." The committee found that a substantial number of accidents involving bodily injury are caused by drivers under the influence of alcohol. As a result the committee recommended that the State fund a "strike force" for the apprehension of those driving under the influence of alcohol and

that there be an amendment to Alaska Statutes to provide for the seizure and the immediate imprisonment and forfeiture of a driver's equity interest in a motor vehicle if the person's blood alcohol was found to be in excess of 0.15 percent.

In the "Health Care" section the committee recommended an increase expenditure of money for health, driver's safety, industrial safety, parenting, child abuse and drug abuse educational programs; the establishment of a health information center; the encouragement of a completion of a basic swimming course and water safety program for all junior high school students; the vigorous promotion of a basic first aid/CPR course as a required high school course and as part of any commercial driver's or pilot's license; the requirement that all motor vehicles operated and registered within the State be provided with a carbon monoxide detector; the establishment of computerized registry of serious injuries; that State, local governments and private enterprise structure benefit packages to provide better coverage for alternative and more economic sources and treatment of health care; that each hospital in the State provide upon admission an accurate up-to-date list of all charges in plain English and understandable to the consumer; and that Federal and State governments implementing broad based programs affecting health care should be encouraged to insure cost effectiveness.

## Minority Reports

There were minority reports on almost every issue included in the report. Doctors Arndt Von Hippel and Michael Armstrong, although many times voting with the majority, filed minority reports on almost everything including the historical background and development of the Bodily Injury Reparations Advisory Committee. While Dr. Von Hippel's feelings toward the legal profession are well known to many attorneys, his minority reports contain a number of interesting and thought-provoking ideas, statements and comments. This writer definitely feels that the legal profession would be remiss in dismissing Dr. Von Hippel's thoughts out of hand.

Ames Luce drafted a vigorous minority report on the no-fault automobile insurance proposal. Many of our brethren I am sure will find Ames' dissent more persuasive on the no-fault issue than the committee's recommendation. While this writer concurred in the no-fault proposal, Ames' minority report is a well written, cogent and persuasive argument for his side of the issue.

Carl Anderson, Alaska Pacific Assurance Company, was in the minority on a number of issues. Mr. Anderson joined the committee on December 18, 1978, after the committee's work was completed except for the finalizing of recommendations. He was appointed as a result of the untimely death of Mr. Hugh Fischer, president of Industrial Indemnity Insurance Company of Alaska. Had Mr. Anderson participated throughout the committee's deliberations it is possible that he might have altered some of the recommendations. His minority position certainly reflects the con-

sidered analysis of a leading member of the insurance industry in the State of Alaska.

The report was drafted, with committee review, by Debbie Halladay, the executive director of the committee, and Dr. Chris Calvert, the staff writer. Unlike many government reports the BIRAC report is well written and makes for interesting reading. This is largely the result of Ms. Halladay and Dr. Calvert. Dr. Calvert is a professor of English Composition at the University, having received his undergraduate and master's degrees in England, and his Ph.D. from the University of California. His Ph.D. dissertation was an analysis of the works of Kurt Vonnegut. He was therefore a very appropriate staff writer for a committee analyzing the bodily injury reparations system.

## Committee Membership

The committee was composed of: Arndt Von Hippel, M.D. (Anchorage heart surgeon), Michael Armstrong, M.D. (Anchorage internist and rheumatologist), Robert Ogden (administrator of Valley Hospital in Palmer), Hugh Fischer (president of Industrial Indemnity Insurance Company of Alaska), Lois Clary (executive vice president and treasurer, Clary Insurance Agency), John C. Smith (president of Northern Adjusters), Carl Anderson (Alaska Pacific Assurance Company), L. Ames Luce (Kelly and Luce), John L. Sund (Ellis, Sund and Whittaker), Edward L. Hite (risk manager for the Municipality of Anchorage), John Anthony (Tony) Smith (Smith, Taylor & Gruening), Tina Monigold (community affairs activist in Kodiak), Lie Wroe (AKPIRG), A. Douglas Hulen (Alaska Sales and Service), Senator John Butrovich, Senator Pat Rodey, Representative Larry Carpenter and Representative Lisa Rudd.

## The Nose (Knows The News)

THE ANCHORAGE COURT SYSTEM was buzzing recently over open confrontation between one of the Superior Court judges and a Senior Superior secretary. The Nose hears that the secretary described the judge as "that animal which fell into the pit on the Sabbath."

NOW THAT THE CLUB BAR has been closed, its attorney patrons have moved down the street to the Milky Way much to the grumbling of Ken Jensen, Joe Palmer and some of its other established patrons.

SPEAKING OF GRUMBLING, three Superior Court judges will be absent from the Anchorage Bench during the month of May. One on vacation and two attending the judges' school in Reno. Later on this summer four will be gone at one time.

THE NOSE UNDERSTANDS that Brian Shortell, Public Defender, will resign in August.

AN ANCHORAGE ATTORNEY was recently charged with a traffic offense. During his trial he interposed himself so often while his partner was defending him, that in absolute frustration his partner stormed out of the courtroom and left him to defend himself.

IF YOU CAN'T PASS THE BAR, drop in mid 600 Fritz Pettyjohn and Michael Keenan. Fritz bought Swiftwater Bills on International Airport Road. Mike recently purchased the Double Muskie in Girdwood.

THE NOSE HEARS Joe Bulfe, Anchorage D.A., was shown how to play the "numbers" game, by Margo Savell while in Hawaii.

## EXAMINER of QUESTIONED DOCUMENTS

(Court Qualified)

HANDWRITING IDENTIFICATION  
FORGERY DETECTION  
TYPEWRITING IDENTIFICATION  
ALTERATIONS, ERASURES & ADDITIONS

907-277-0120

Record a Call for your convenience

Member  
Independent Association  
of Questioned Document Examiners, Inc.  
World Association of Document Examiners  
International Graphoanalysis Society, Inc.



Leonard F. Schultz

3344 Mount Vernon Ct.  
Anchorage, Alaska 99501

## Classifieds

WE HAVE THE SPACE (office that is). A stone's throw from the new Federal Building, 1,000 sq. ft., at the corner of 6th Ave. & "C" Street. Take a look-make an offer. Call 277-6802 for information.

Office space to share with small firm. Large spacious office in the First National Bank Building, downtown Anchorage. Receptionist service included. Telephone: 274-6337. Harry Branson, Bernd Guestchow.

1978 Fiat 2 door 131 S. 1978 high performance engine. Low mileage, excellent condition...\$500.00 below book. Phone: 274-6337 or 277-1087.

## Incorporation

(Continued from page 3)

and the same should not be set forth in any by-laws.

### Planning Loss Periods

As was discussed in the preceding section concerning Code Sec. 1244 stock, the problem of debt-equity ratio has also surfaced in the area of "one class of stock" and number of "shareholders" in litigation involving sub S elections. The commissioner has taken the position that if corporate debentures or loans to the corporation are in reality hidden "equity" they create a new different class of stock, thus disqualifying the corporation. While there are cases indicating that the IRS is without authority to attempt to inject the debt-equity argument into litigation in an attempt to invalidate an election, such cases have been outside the 9th Circuit Court of Appeals. The tax court has held that a bona fide loan which does not have any incidents normally attributed to equity stock ownership may not create a second class of stock even if disproportionate to the actual stockholding equities of the shareholders. Great care was exercised in those cases to insure that all of the formalities of proper debts were followed. Again, as discussed in the section on 1244 stock, where equity is extremely small, and debt extremely large, there is a greater risk that a court could find that the debt represented actual-equity and thus a second class of stock. The admonition set forth above with respect to the small business stock should also be reviewed with regard to the sub-chapter S election. Where non-shareholders have loaned money to the corporation and it can be shown by the commissioner that such "loans" represent equity, in fact, the IRS will take the position that such non-shareholder creditors are in fact shareholders and the limitations on number of shareholders may thus be violated by the corporation and the election be deemed invalid. This is particularly true when viewed by analogy with other sections of the law when purported holders of debts from a corporation have been deemed to have been shareholders. One other problem has arisen with regard to qualifying shareholders, and that is if one of the shareholders becomes bankrupt. It has been held by the service that the trustee in bankruptcy does not qualify as a shareholder and therefore the election will be terminated. An assignment for benefit of creditors, on the other hand, and receivers, may be treated as "agents" of the shareholders, provided that the shareholder retains a significant beneficial interest in the stock. Should the stock ultimately be sold for the benefit of creditors or the receiver that could invalidate the election if the purchasers

will be a corporation, alien, or other non-qualified entity or person. The election to be treated as a sub-chapter S corporation must be made within the time period set forth by law. Litigation has occurred over such minor violations as filing the elections within the time-period but a postmark being made on the following day by the post-office, and under such situations the election has been deemed invalid. For calendar-year corporations in 1979 and for corporations subsequently an election may be made at any time during the first 75 days of a taxable year. An election cannot be filed by a corporation that is not in existence under state law. In order to file a consent, all shareholders who were shareholders on the latter of the first day of the corporation's taxable year or, on the day of election, must file a consent on Form 2553. New shareholders added after the date the election was made, must voluntarily refuse to consent to the election within 60 days of acquiring their stock, unlike the prior rules concerning sub-S corporations. There is language in the regulations that states that a corporation is in existence when the first of the following occurs: when it is formed, when it acquires assets, has shareholders, or begins doing business. The possibility that a corporation could transact business before it is formally constituted under state law, could be argued by the commissioner with uncertain results. Certainly a corporation is in existence when a charter is granted, when it has assets and conducts business. And the time period would then begin to run. The better way to plan for a corporate business is to first form the corporation, then begin negotiations for contracts, opening bank accounts, and doing other acts which would indicate the existence of the corporation. For calendar year corporations therefore, an election could be made during the first 75 days from the date that the corporation was formally incorporated under state law. Shares of stock should be issued prior to the expiration of the 75 day period in order that the shareholders may consent to election by the corporation.

Because most businesses operate at a loss at least initially, by careful planning and financial advice from accountants or other financial advisers, the shareholders may be able to determine the approximate period of time during which a company may be operating at a loss. They may thus elect sub-chapter S corporation taxation initially, with a short year-end covering the period of losses and low profits. Once a corporation begins making larger profits they may discontinue the sub S election for a subsequent year following a short year-end and elect to retain income in the corporation and thus avoid personal income taxes on corporate profits. Another election cannot be made for years

however. It should be kept in mind, that other than for capital gains, a sub-chapter S corporation is not a conduit such as a partnership. A corporation's income and expenses are first determined and then, if a profit is made, the shareholders pay taxes on the profit in a pro-rata amount according to the shares that they hold whether the money is actually withdrawn from the corporation. Conversely, if losses are sustained, the shareholders may use those losses to offset their other income, provided the losses do not exceed basis of the shareholder's equity and loans in the company. By utilization of careful planning, with the knowledge of 1244 stock and also the provisions under sub-chapter S dealing with corporations, counsel can assist clients in obtaining tax benefits for new businesses. Next month's article will be dealing with incorporating ongoing businesses.

The Association was established in 1963 to develop and improve the practice and procedures of family counselling as a complement to judicial procedures. Also to promote, maintain and preserve high professional and ethical standards in court-related marriage and divorce counselling. It does provide an interdisciplinary forum for the exchange of ideas and development of solutions to family counselling problems.

The conference will be in Anchorage at the invitation of the Alaska Court System and will be the first international forum of its kind to have a program in the state of Alaska. This Association ordinarily qualifies for continuing legal education credit and should prove of interest to most of the members of the Alaska Bar.

The preliminary meetings of the program committee have indicated interest in the following areas:

The pro and con of family court; use of prepaid legal services in the field of domestic relations; rights of children; criteria for custody investigations; interstate concerns, both in respect to Uniform Marriage and Divorce Act and the Uniform Interstate Custody Act; expert witnesses in custody disputes—Who are they and how are they used; the Military and its place in the civil domestic relations area.

We are interested in responses as to the desires of the members of the Alaska Bar for this program. To date the program has been given a letter of support from Governor Hammond and from Senator Stevens and there was an indication that Senator Gravel may be available to participate in the program. Any responses should be directed to Francis M. Stevens, Program Chairman, 1980 Conference, Family Conciliation Courts, 303 K Street, Room 214, Anchorage, Alaska 99501.

### 1980 CONFERENCE OF ASSOCIATION OF FAMILY CONCILIATION COURTS

By Frank Stevens

The Association of Family Conciliation Courts has selected the city of Anchorage for the annual meeting for the year 1980. Dates selected are May 21, 22, 23 and 24th. A local program committee has been involved in attempting to develop a program and we are asking members of the Alaska Bar to respond to the following suggestions, also to make any suggestions that they might wish to concerning program content. The Association of Family Conciliation Courts is an international association of judges, counselors, attorneys, and others concerned with court connected family counseling services.

## MICHIE BOBBS-MERRILL

PUBLISHES OFFICIAL EDITION OF THE ALASKA STATUTES  
PROFESSIONALLY PRESENTED IN 11 VOLUMES  
HIGHEST STANDARDS AND TRADITION OF LAW PUBLISHING  
PLEASE CONTACT:  
TINA ALEXANDERSON, SALES REP.  
P.O. BOX 682  
BOISE, IDAHO 83701  
TEL: 208-336-3630

## OFFICES UNLIMITED INC.

Providing Offices & Services In Anchorage

- Comfortably furnished private offices
- Receptionist/Secretary/Transcriber/Answering Service/Notary Public
- Routine office supplies & copies
- Use of an attractive conference room
- One monthly payment covers it all (Weekly rates available to the traveler)
- Convenient to airport and restaurants

It's a COMPLETE SERVICE FACILITY available to both the traveler and the 1-2 person, business having need of a first class office at a reasonable price without the hassles.

OUI, 4637 Old Seward Hwy, Suite 200, Anchorage, AK 99503, 907-279-0682

### DAYLY, MARTIN & FAY, INC. OF ALASKA d/b/a THE CLARY INSURANCE AGENCY

WITH SPECIALISTS IN:



- LAWYER'S LEGAL LIABILITY (endorsed by the Alaska Bar Association)
- GROUP LIFE & HEALTH
- AVIATION
- ALL FORMS OF BUSINESS INSURANCE
- ALL PERSONAL INSURANCE

### THE CLARY INSURANCE AGENCY

Your Full Service Insurance Agency

A Division of Dayly, Martin & Fay International

803 West Fifth, Anchorage

(907) 276-5454

with offices in Kenai and Seward

# Recent Fee Arb Decisions

By William W. Garrison

In December of 1977 Respondent was retained to represent Petitioner in a contested divorce action. A fee agreement was entered into at the initial conference whereby Petitioner would be billed at an hourly rate. Petitioner was informed that although Respondent would attempt to recover his fees from the defendant, Petitioner would nevertheless be ultimately responsible to Respondent for his attorneys' fees.

The complaint was filed and valuable services were rendered. Prior to March of 1978, without notification to Respondent, Petitioner reconciled with her husband. Respondent learned of the change in circumstances at some later date when Respondent contacted the defendant's attorney in an effort to obtain an answer to the divorce complaint.

In May Petitioner, without Respondent's assistance and again without Respondent's knowledge, filed a petition for dissolution which was granted in July. Petitioner's ex-husband also filed for bankruptcy thus precluding Respondent from obtaining an award for attorneys' fees.

Respondent sued Petitioner for his attorneys' fees in District Court. Petitioner filed for Fee Arbitration alleging that Respondent did not obtain a divorce in a timely manner and further that Petitioner felt that Respondent should obtain his attorneys' fees from her ex-husband. Respondent requested, in the event he prevailed, that the Fee Arbitration Committee award him attorneys' fees comparable to that which would have been awarded by the District Court.

The Committee found that Respondent was entitled to recover the fees and costs incurred for services rendered. The Committee denied an award which would have represented costs and attorneys' fees.

\*\*\*

Respondent was hired to represent Petitioner in a dispute between Petitioner and a contractor hired to construct a residential structure. An hourly fee agreement was entered into. Respondent conducted substantial negotiations and obtained major concessions for the benefit of Petitioner.

There was no major dispute over the amount of time expended by Respondent, however, Petitioner questioned whether Respondent's efforts were constructive. Petitioner's primary complaint was that Respondent refused to file a lawsuit against the contractor and further that Respondent's fees were not justified by the result. Respondent took the position that given the concessions granted that litigation would only be counterproductive and too expensive to justify.

The Committee found Respondent's position to be reasonable and in any event his failure to file an action did not detract from the services performed. The Committee found that Respondent had rendered services of value which equalled or exceeded the amount charged to Petitioner.

\*\*\*

Petitioner, in an effort to obtain a permanent visa for her brother, sought Respondent's services. At the initial meeting no clear fee agreement was reached, however, it was agreed that Respondent was to obtain further information and then consult with Petitioner regarding further legal services.

Respondent thereafter, on Petitioner's behalf, contacted and met with the Naturalization Service. Re-

spondent then scheduled a subsequent meeting with Petitioner to discuss the matter further. Unbeknownst to Respondent Petitioner's brother had returned to his native land. Petitioner did not meet again with Respondent although she knew that a meeting was scheduled.

Respondent presented Petitioner with a bill for \$240. Petitioner contends that she did not understand that she was obligated to pay Respondent for his legal services, believing only that Respondent was to determine whether legal services were required and then to contact Petitioner.

The Committee found that although an agreement had been reached at the initial conference whereby Respondent would undertake to obtain initial information no clear fee arrangement was entered into. Although Respondent rendered authorized legal services in pursuing permanent visa status the Committee found that it was Respondent's responsibility to clearly lay out the fee arrangement. The Committee reduced Respondent's fee to \$80.

\*\*\*

Respondent was retained to prepare certain legal documents for Petitioner. No hourly rate or fixed price was agreed upon.

Respondent spent one and one-quarter hours with Petitioner at the initial conference. One and one-half hours were spent drafting the initial agreement and a quarter hour was subsequently spent discussing the document and its ramifications with Petitioner.

The employment contract contemplated the preparation of additional documents which were prepared by Respondent but which were not received by Petitioner within the period of time previously specified to Respondent. There was no proof that Petitioner made use of the latter documents. One and one-half hours attorney's time was attributed to the preparation of these items. Respondent billed Petitioner for a total of four and one-half hours.

The Committee, given the fact that no fee agreement had been reached, first determined a reasonable hourly rate which could be attributed to Respondent's services. The Committee then found that Respondent's total hourly billing should be reduced by one and one-half hours.

Respondent-Attorney was retained to represent Petitioner in a contested divorce matter. The couple had four children, two of whom were born of the marriage. The divorce was quite complex including a dispute over a right to a substantial amount of money which Petitioner claimed belonged to her and the children. A guardian ad litem was appointed to protect the interests of the children. Respondent-Attorney was dismissed by Petitioner prior to a resolution of the dispute.

Respondent-Attorney billed Petitioner \$3,338.81. Petitioner alleged that Respondent-Attorney was not representing her best interests and further that Respondent-Attorney's acquaintanceship with opposing counsel compromised her cause.

The Panel found that Respondent-Attorney had rendered authorized legal services for the Petitioner and further that the services rendered were reasonable and conferred a valuable benefit upon Petitioner. The Panel, after reviewing time slips, ledger cards and statements, reduced the total amount of the fee charged by \$265.

## Environmental Law Committee

Following is a report on the activities of this Committee submitted in accordance with the requirements of the Bylaws of our Association calling for a report to be submitted prior to the annual business meeting of the Alaska Bar Association.

The Alaska Bar Association Environmental Law Committee has been extremely active this year. Thanks to Ken Jarvi's committee reorganizational efforts, we now have a full complement of active and enthusiastic members. The Committee has held ten meetings during the past year. At several of the meetings representatives of local government agencies and others interested in environmental law in Alaska have attended, given brief presentations, and exchanged ideas with the members.

At our organizational meeting, John A. Reeder was elected Vice Chairman and Jane Pearis was elected Recording Secretary. With the stag-

gered membership terms, the Committee is looking forward to continuity that has been lacking in the past.

The primary focus of the Committee's activity this year has been on the emerging area of coastal zone management in Alaska. In conjunction with the University of Alaska, the Committee is sponsoring a one-day seminar on the implementation of the Coastal Zone Management Act of Alaska, to be held at the Anchorage campus of the University on Saturday, May 19th.

In summary, I can say that this has been a productive year for the Environmental Law Committee. Although my term on the Committee is now expiring, I have every reason to believe that the committee will retain the momentum that we have gathered this year, and that we can continue to look forward to having this Committee be one of the most active committees in our Association.

## Lanier gave Arnold Palmer three tips to improve his timing.



### #1 Talk your way through paperwork.

Maybe you can't picture me behind a desk, but I've got one. And between my golf and business commitments, the paperwork can really pile up on it. That's why I have the attractive, easy-to-use Time Commander.™ It's Lanier's full-featured desktop dictating system. I use it to talk my way through stacks of letters, memos and reports.

### #2 Keep your paperwork moving when you are.

When I'm traveling, I keep ahead of paperwork with the Attaché.™ Lanier's smallest standard-cassette portable. I take it with me everywhere to dictate letters, memos and record ideas. One-button operation makes it easy.

### #3 Call (dealer name).

Since I started using Lanier, I have more time to spend on the golf course. Take a tip from Arnold Palmer. If paperwork is interfering with your timing, give Lanier a try. They have a wide variety of desktops and portables at prices you can afford.

Send us the coupon or call 276-6900

Please contact me with more information.

Name \_\_\_\_\_ Title \_\_\_\_\_

Company \_\_\_\_\_ Phone \_\_\_\_\_

Business Address \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

**LANIER**  
**BARRETT'S** ← 276-6900

3330 Arctic Boulevard, Anchorage, Alaska 99503

# Alaska Statutes

## Title 8. Business and Professions.

### Chapter 08. Alaska Integrated Bar Act.

#### Article 2. The Board of Governors and Officers.

##### Sec. 08.08.080. Powers of board.

Final power and authority to determine standards for admission to the practice of law in Alaska resides in the supreme court, which has the inherent power to intercede at any time in admission matters. In re Luna, Sup. Ct. Op. No. 1503 (File No. 2789), 569 P.2d 789 (1977).

Practice of law not defined. — There is no rule defining the practice of law. Nor is there a statute defining the term except in the context of the requirements of active practice of law as a qualification for justices. In re Robson, Sup. Ct. Op. No. 1573 (File No. 3448), 575 P.2d 371 (1978).

Activities constituted practice of law in violation of supreme court's suspension order. — Where a person held himself out as a lawyer; performed legal services and gave legal advice in setting up a prepaid legal service plan, completing and filing necessary forms; signed a letter of the type

usually written by an attorney with "attorney at law" printed aside his name; permitted another person to refer to him in court as his attorney without making any clarifying comments and typed and edited a newsletter indicating his availability to serve as attorney for a union and its members, the cumulative effect of these activities leads to the inescapable conclusion that he was engaged in the practice of law in violation of the supreme court's order suspending him from practice. In re Robson, Sup. Ct. Op. No. 1573 (File No. 3448), 575 P.2d 771 (1978).

Board exceeded its authority in requiring a cash deposit before allowing an unsuccessful applicant to the Alaska Bar to exercise his right to discovery in an appeal to the board. In re Luna, Sup. Ct. Op. No. 1503 (File No. 2789), 569 P.2d 789 (1977).

#### Article 3. Admission to Alaska Bar.

##### Section

##### 207. Law clerks

##### Sec. 08.08.207. Law clerks.

(b) The applicant shall obtain regular and full-time employment as a law clerk in the office of a judge of a court of record or an attorney or firm of attorneys licensed to practice law in Alaska and engaged in the general practice of law. The person by whom he is employed, or, if he is employed by a firm, the person under whose direction he is to study, must have been admitted to practice law in this state for at least five years at the time the application for registration is filed, and be otherwise eligible to act as tutor. Before the commencement of the study of law under this section, the applicant shall file with the university an application to register as a law clerk. The application shall be made on a form to be provided by the university and shall require answers to interrogatories the university may determine from time to time to be relevant to a consideration of the application. Proof of a fact stated in the application may be required by the university. If the applicant fails

or refuses to furnish any information or proof or answer any interrogatory required by the application, or independently by the university, in a manner satisfactory to the university, the application may be denied.

(c) Accompanying the application there must be submitted a statement under oath of the person by whom the applicant is employed as a law clerk, or, if he is employed by a firm, of the person under whose direction he is to study, certifying to the fact of the employment and that that person will act as tutor for the applicant and will faithfully instruct the applicant in the branches of the law prescribed by the courts of study adopted by the university. No person is eligible to act as tutor while disciplinary proceedings (following the service of a formal complaint) are pending against him, or if he has ever been censured, reprimanded, suspended or disbarred. If a registered law clerk finds it necessary to change his tutor during his period of study, a new application for registration as a law clerk is required and such credit given for study under his prior tutor as the university may determine.

(d) A law clerk whose registration has been approved by the university must pursue a course of study for three calendar years of at least 44 weeks each year, with a minimum each week of 35 hours of study (it being understood that the time actually spent in the performance of the duties of law clerk is to be considered as time spent in the study of law). The tutor must give personal direction regularly and frequently to the clerk, must examine him at least once a month on the work done in the previous month, and must certify monthly as to compliance with the requirements of this subsection and (e) and (g) of this section.

(e) The examinations shall be written and not oral, and shall be answered by the clerk without research or assistance during the examination. The monthly certificate of compliance submitted by the tutor shall be accompanied by the originals of all written examinations and answers given during the period reported. If the certificates, together with the required attachments, are not filed timely with the university, no credit may be given for any period of the default.

(f) If a registered law clerk does not furnish evidence of completion of his law studies within a period of six years after registration, the university may cancel the registration.

(g) The course of study to be pursued by a registered law clerk shall cover subjects, text books, case books, and other material the university may from time to time require.

(h) A registered law clerk who has attended either an approved or a nonapproved law school may, in the discretion of the university, receive credit for work done and obtain advanced standing. In no event will credit be given for fractional parts of semesters or terms, or for correspondence school work.

(i) As used in this section

(1) "law school" means a law school accredited, approved or meeting the standards of the Council of Legal Education of the American Bar Association or the Association of American Law Schools; or a school in Alaska offering a course of study which the university approves as the equivalent to a year's study in law school under this section;

(2) "university" means the University of Alaska.

(am §§ 1 — 8 ch 119 SLA 1978)

**Effect of amendment.** — The 1978 amendment, effective July 9, 1978, substituted "university" for "Alaska supreme court" in the third sentence of subsection (b), for "court" in the fourth and fifth sentences and in two places in the sixth sentence, of subsection (b), in the third sentence of subsection (c), in the first sentence of subsection (d), in the third sentence of subsection (e), in subsections (f) and (g), and in the first sentence of subsection (h). The amendment also substituted "university" for "supreme court" in the fourth sentence of subsection (b) and in the first sentence of subsection (c), and, in subsection (i), designated the

former provisions of this subsection as paragraph (1), deleted clause (1) and (2) designations, substituted "university" for "supreme court," and deleted "(1) of" preceding "this section," all in paragraph (1), and added the present paragraph (2).

**Editor's note.**

Section 9, ch. 119, SLA 1978, effective July 9, 1978, provides: "Sections 1 — 8 of this Act have the effect of changing section 5 of Rule 2 of the Alaska Bar Rules of the Rules of Court by transferring the responsibility for the program of law clerk study under AS 08.08.207 from the Supreme Court to the University of Alaska."

#### Article 4. Unlawful Acts.

##### Sec. 08.08.210. Who may practice law.

**Practice of law not defined.** — There is no rule defining the practice of law. Nor is there a statute defining the term except in the context of the requirements of active

practice of law as a qualification for justices. In re Robson, Sup. Ct. Op. No. 1573 (File No. 3448), 575 P.2d 371 (1978).

##### Sec. 08.08.230. Unlawful practice a misdemeanor.

**Practice of law not defined.** — There is no rule defining the practice of law. Nor is there a statute defining the term except in the context of the requirements of active

practice of law as a qualification for justices. In re Robson, Sup. Ct. Op. No. 1573 (File No. 3448), 575 P.2d 371 (1978).

#### Chapter 18. Construction Contractors.

**For discussion of legislative history, purposes and provisions of this chapter,** see *Balboa Ins. Co. v. Senco Alas., Inc.*, Sup. Ct. Op. No. 1468 (File No. 3076), 567 P.2d 295 (1977).

**Legislative intent.** — Through this

chapter, the legislature was seeking to guarantee payment of the contractor's employees' wages, taxes and suppliers. *Balboa Ins. Co. v. Senco Alas., Inc.*, Sup. Ct. Op. No. 1468 (File No. 3076), 567 P.2d 295 (1977).

ABA

Ombud

Subpeona /

Court Docs.

#9



# Alaska State Legislature

## House of Representatives

### Committee on Judiciary

Official Business

Pouch V  
State Capitol  
Juneau, Alaska 99811

September 5, 1979

Mr. John Lohff  
Executive Director  
Alaska Bar Association  
P.O. Box 279  
Anchorage, Alaska 99510

Dear Mr. Lohff:

It has come to my attention that on September 6, 1979, the Board of Governors intends to develop a position regarding the recent ombudsman subpoena. As a matter of courtesy I wish to inform the Board of Governors of forthcoming informational requests of a similar nature.

Recently the House Judiciary Committee was informed by the Speaker of the House that the House Judiciary Committee would be the committee of referral in the House regarding the 1980 sunset review of the Alaska Bar Association. Advance notice of this intended referral was provided in order that committee staff might have sufficient time to collect the data necessary for such review. As staff to the committee, I have been assigned this project.

As you are probably aware, the Alaska sunset law, AS 44.66.010, et seq., requires the House committee of referral to submit to the Speaker, not later than the 60th day of the legislative session, a detailed report on the activities of a board or program under sunset review. In accord with this statutory requirement, I wish to inform the Board of Governors that I intend to request information, similar to that requested by the ombudsman, that is, financial records, together with statistical reports concerning grievances filed with the association. Furthermore, additional data will be requested as the sunset law requires.

Within the next several weeks, I intend to request from the association the specific data that the committee will require for its sunset review of the association.

I feel certain that, working together on this matter, we will be able to provide the legislature with sufficient information to conduct a thorough and fair sunset review of the association.

Sincerely yours,



Margaret W. Berck  
Counsel to House Judiciary Committee

cc: Rep. Charlie Parr, Chairman

*Hand delivered Sept. 5<sup>th</sup>*

BOARD OF GOVERNORS  
ALASKA BAR ASSOCIATION

OFFICERS  
DONNA C. WILLIARD  
PRESIDENT  
ANCHORAGE  
WILLIAM B. ROZELL  
PRESIDENT ELECT  
JUNEAU  
JONATHAN H. LINK  
VICE PRESIDENT  
FAIRBANKS  
EDWARD G. KING  
SECRETARY  
KETCHIKAN

P.O. BOX 279  
ANCHORAGE, ALASKA 99510  
AREA CODE 907/272-7469

WILLIAM GARRISON, BAR COUNSEL

BOARD MEMBERS  
ALBERT H. BRANSON  
STANLEY T. FISCHER  
KAREN L. HUNT  
ELIZABETH P. KENNEDY  
EDWARD G. KING  
JONATHAN H. LINK  
WILLIAM B. ROZELL  
RICHARD D. SAVELL  
DONNA C. WILLIARD

September 17, 1979

Margaret W. Berck  
Counsel to  
House Judiciary Committee  
1016 West 6th Ave. #201  
Anchorage, Ak. 99501

Dear Ms. Berck:

As I related to you over the telephone, the Board of Governors for the Alaska Bar Association has met and has considered your correspondence dated September 5, 1979.

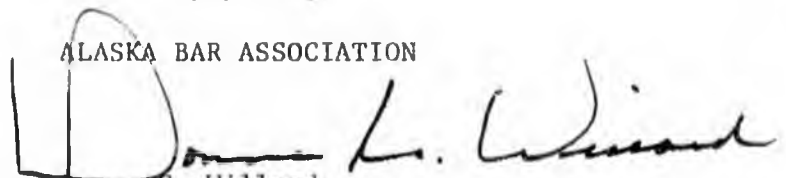
It is the position of the Board that requests from the House Judiciary Committee for materials not held to be confidential by the Alaska Bar Association will be provided in an effort to cooperate with the Committee's investigation.

It is, however, the position of the Alaska Bar Association that it is not a State agency and is not subject to the Sunset review process. Therefore, provision of any requested materials is not to be construed as a waiver of the jurisdictional issue or any other defense which the Bar Association might have regarding the applicability of the statutes with respect to Sunset review.

If there is any way in which I could be of any assistance to the Committee and you, please do not hesitate to contact me.

Sincerely yours,

ALASKA BAR ASSOCIATION

  
Donna C. Willard  
President

DCW/vg

cc: Board of Governors  
Bruce Gagnon  
Fred Tausend  
Keith Brown

Filed: Aug 22, 1979  
Dismissed because matter  
0/109

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA  
THIRD JUDICIAL DISTRICT

STATE OF ALASKA, OFFICE OF )  
THE OMBUDSMAN, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
DONNA C. WILLARD, President, )  
Alaska Bar Association, )  
 )  
Defendant )

79-5932  
7

Civil Action No. 3AN-

MEMORANDUM IN SUPPORT OF  
APPLICATION FOR ORDER COMPELLING  
COMPLIANCE WITH OFFICE OF THE OMBUDSMAN SUBPOENA

Statement of Facts

On June 12, 1979, the Office of the Ombudsman received two complaints concerning the Alaska Bar Association (Bar). Given case numbers A79-0641 and A79-0642, the first complaint was directed towards the adequacy of the Bar's investigation and resolution of citizen grievances against attorneys and the propriety of the salary and fringe benefits of the Bar Counsel. The second complaint alleged an improper use of Bar funds for travel and associated expenses not directly benefiting the Bar and further alleged an improper expenditure of Bar funds for the guest speaker at the 1979 Hawaiian Conference.

By letter dated July 16, 1979, the Ombudsman, Frank Flavin, advised Donna C. Willard, President of the Board of Governors of the Bar of the complaints and that the Office of the Ombudsman had commenced an investigation pursuant to AS 24.55.110. A copy of that letter is attached hereto as Exhibit "A". Basically, Mr. Flavin afforded Donna C. Willard the opportunity to voluntarily

1 cooperate with the investigation by providing copies of documents  
2 and by allowing an examination of the Bar's financial records.

3 By letter dated July 19, 1979, attached hereto as  
4 Exhibit "B", Donna C. Willard, while offering certain records to  
5 Mr. Flavin as a member of the Bar, further advised him that the  
6 Board of Governors "declines to recognize any jurisdiction" of  
7 the Office of the Ombudsman.

8 By letter dated July 31, 1979, a copy of which is  
9 attached as Exhibit "C", Frank Flavin reiterated the jurisdiction  
10 of his Office and further advised Donna C. Willard that any  
11 dealings with him in this matter were in his official capacity as  
12 Ombudsman and not individually as an attorney licensed to prac-  
13 tice law in the State of Alaska.

14 On August 2, 1979, Donna C. Willard was personally  
15 served with a Subpoena for Production of Documents issued by  
16 Padeen Moriarty, Acting Ombudsman. A copy of the Subpoena is  
17 attached hereto as Exhibit "D".

18 On August 10, 1979, three days prior to the date for  
19 production of documents pursuant to the Subpoena, the Office of  
20 the Ombudsman received a Response to Subpoena for Production of  
21 Documents from Donna C. Willard. That document is attached  
22 hereto as Exhibit "E". The main thrust of that exhibit is  
23 contained in two unsupported, conclusory statements concerning  
24 the jurisdiction of the Ombudsman. Suffice it to say, the response  
25 indicates that there would be no compliance with the Subpoena.  
26 While Donna C. Willard also asks that the Ombudsman defer action  
27 enforcing the Subpoena until after the September 6, 1979 meeting  
28 of the Board of Governors, Donna C. Willard in her letter of July  
29 19, 1979 (Exhibit "B") advised the Ombudsman of the Board's  
30 position that there was no jurisdiction over the Bar. In view of

31

32

1 the jurisdictional issue raised by the Bar and the Ombudsman's  
2 obligation to investigate complaints, the Ombudsman has sought an  
3 Order from the Court requiring compliance with the Subpoena.

4 The Office of the Ombudsman  
5 Has Jurisdiction to Investigate  
6 Acts of the Alaska Bar Association

7 The Office of the Ombudsman was established in July,  
8 1975 and has since that time been heavily utilized by its citi-  
9 zenry. The Office of the Ombudsman has two responsibilities:  
10 (1) to receive complaints from the public and to investigate and  
11 act upon such complaints; and (2) to improve public administra-  
12 tion. As an external critic of governmental operations, scrutiny  
13 by the Office of the Ombudsman is not always welcome.

14 In any event, AS 24.55.100 gives the Ombudsman "...  
15 jurisdiction to investigate the administrative acts of agencies".  
16 AS 24.55.150 sets forth those administrative acts which are  
17 appropriately the subject of investigation because they may be:

18 "... (1) contrary to law;

19 (2) unreasonable, unfair, oppressive,  
20 arbitrary, capricious, an abuse of  
21 discretion, or unnecessarily discrim-  
22 inatory, even though in accordance with  
23 law;

24 (3) based on a mistake of fact;

25 (4) based on improper or irrelevant  
26 grounds;

27 (5) unsupported by an adequate state-  
28 ment of reasons;

29 (6) performed in an inefficient or  
30 discourteous manner; or

31 (7) otherwise erroneous."

32 The term "administrative act" is defined in AS 24.55.330(1)  
as:

1 "... an action, omission, decision,  
2 recommendation, practice, policy, or  
3 procedure of an agency, but does not  
4 include the preparation or presentation  
5 of legislation or the substantive  
6 content of a judicial order, decision  
7 or opinion;"

8 The definition of the term "agency", the issue raised  
9 by the Bar in this case, is defined in AS 24.55.330(2) to include:

10 "a department, office, institution, corpora-  
11 tion, authority, organization, commission,  
12 committee, council or board of a municipality,  
13 or in the executive, legislative, or judicial  
14 branches of state government, and a department,  
15 office, institution, corporation, authority,  
16 organization, commission, committee, council  
17 or board of a municipality or of the state  
18 government independent of the executive,  
19 legislative and judicial branches; it also  
20 includes an officer, employee or member of  
21 an 'agency' acting or purporting to act in  
22 the exercise of his official duties, but  
23 does not include the governor, lieutenant  
24 governor, a member of the legislature, justice  
25 of the supreme court, judge of the superior  
26 or district court, magistrate, member of a  
27 city council or borough assembly, elected city  
28 or borough mayor, or a member of an elected  
29 school board;"

30 The extremely broad jurisdictional grant to the Ombudsman  
31 is certainly consistent with the legislative desire to provide,  
32 in the Office of the Ombudsman, an accessible and official clearing-  
house for citizen complaints. The Bar fits one or more of the  
entities defined as "agency" in AS 24.55.330(2). First, it is a  
creature of the state legislature having been created by the  
legislature as "... an instrumentality of the state ..." AS  
08.08.010. The legislature further established the Board of  
Governors and conferred upon it certain powers and duties.  
AS 08.08.030 and .080. Those powers relate in part to the holding  
of annual and special meetings, the collection and disbursement  
of funds and the organization and functioning of the Bar.

1 In essence, the legislature has charged the Bar with  
2 certain managerial functions relating to matters of public concern.  
3 That such functions are matters of public concern can hardly be  
4 contested. As the Court stated in In Re Paul, 17 Alaska Reports,  
5 360 (D.C. Alaska, 1957):

6 "For over 30 years there has been a  
7 constant growth in the system of integrated  
8 bars throughout the nation; in some states  
9 they have been created by statute, in some  
10 by court rule, but in all, the Bar of the  
11 state or other jurisdiction, has taken a  
12 leading role in policing their membership  
13 so that the standards of the lawyers would  
14 be kept at a high level in order that in  
15 their dealings with the public they would  
16 maintain proper comportment so as to  
17 protect the public interest and safeguard  
18 the general welfare of those with whom they  
19 dealt." Id. at 368.

14 The Court in Petition of Moody, 524 P.2d 1261 (Alaska 1974)  
15 also discussed the public benefits of an integrated bar stating  
16 that:

17 "The disadvantages to an individual in such  
18 a system are believed to be outweighed by  
19 the advantages achieved by the profession  
20 as a whole, and by the public to whose  
21 benefit it is that the profession be governed  
22 effectively by an authoritative organization."  
23 Id. at 1266.

22 As far as the jurisdiction of the Office of the Ombudsman  
23 over the Bar is concerned, given the absence of any statutory  
24 exemption which explicitly or even implicitly contravenes the  
25 broad jurisdictional grant, an investigation by the Office of the  
26 Ombudsman of alleged administrative abuses by the Bar is clearly  
27 contemplated by the legislature. In the case of Application of  
28 Peterson, 499 P.2d 304 (Alaska, 1972), Peterson petitioned the  
29 Alaska Supreme Court for admission to the Alaska Bar Association  
30 alleging that the hearing afforded him by the Bar after he failed  
31

1 the January and September, 1967 bar examinations was inadequate  
2 and that the scoring system utilized was unfair. The Court held  
3 that the "substantial evidence test" was the appropriate standard  
4 of administrative review stating that "...we have consistently  
5 adhered to the substantial evidence test as the appropriate scope  
6 of review with regard to appeals from administrative agencies."  
7 Id. at 307 (Emphasis added).

8 The Court obviously considered the Bar to be an administra-  
9 tive agency when it stated that:

10 "The legislature has expressly included  
11 the Board of Governors of the Alaska Bar  
12 Association as an agency subject to the  
13 adjudicative procedures of the Alaska  
Administrative Procedure Act, AS  
44.62.010-650." Id. at 306.

14 However, the Court did not find that the Bar was an agency because  
15 it was subject to the A.P.A. but rather that it was an agency  
16 which was subject to that Act. The subsequent action of the  
17 legislature in deleting the Bar from the list of agencies subject  
18 to the Administrative Procedure Act cannot seriously be relied  
19 upon to support a conclusion that the legislature was therefore  
20 indicating that the Bar was not an agency. Such an analysis was  
21 rejected by the Court in Chronicle Publishing Company v. Superior  
22 Court, 354 P.2d 637 (Calif. 1960). In Chronicle, the publishing  
23 company served interrogatories on the State Bar of California  
24 seeking information as to complaints and disciplinary actions  
25 taken against Victor E. Cappa, an attorney who had filed a libel  
26 action against it. In considering whether or not the State Bar  
27 could claim a privilege based upon a section of the Code of Civil  
28 Procedure relating to testimony of a "public officer" the Court  
29 stated:

1 "That the Legislature considered the State Bar  
2 as at least akin to a state public body or  
3 agency and hence its officers as 'public  
4 officers' is illustrated by the last para-  
5 graph of section 6001, where it appears that  
6 the Legislature felt the necessity of  
7 providing that laws prescribing procedures  
8 for state bodies, agencies, or classes, did  
9 not apply to the State Bar, thus indicating  
10 that the Legislature considered the State  
11 Bar in their category..." Id. at 645.

12 In McGregor v. Clawson, 506 S.W.2d 922 (Tex. 1974) the  
13 Court was faced with a question concerning the proper venue for a  
14 disbarment brought by the State Bar of Texas against McGregor, an  
15 attorney licensed in Texas. While the case turned on whether  
16 venue provisions in the State Bar Act prevailed over a more  
17 general civil rule, the Court did discuss the governmental  
18 status of the Bar.

19 "The State Bar Act is purely a creature  
20 of statute, prescribing the machinery  
21 and procedure by which the State Bar has  
22 been empowered to bring and maintain the  
23 disbarment suit in question. But for the  
24 statute, the State Bar and District  
25 Grievance Committee would have no exist-  
26 ence." Id. at 928.

27 The Court went on to say that:

28 "The State Bar and its Grievance Committees  
29 exist solely by virtue of the exercise of  
30 the power of the State, acting through its  
31 legislative department. They are administra-  
32 tive agencies of the State. ... The Legisla-  
33 ture could at any time terminate their  
34 existence and provide other and different  
35 means for handling of the matters now  
36 entrusted to them. They (the State Bar and  
37 Grievance Committee) are creatures of the  
38 State. An agency created by the State for  
39 the better ordering of government has no  
40 privileges, immunities or rights under the  
41 State and Federal constitutions which it  
42 may invoke in opposition to the will of  
43 its creator." Id. at 929.





# Ombudsman

Frank Flavin

State of Alaska

July 16, 1979

Reply to:

840 K Street, Room 203  
Anchorage, Alaska 99501  
(907) 276-4011

Pouch W0  
Juneau, Alaska 99811  
(907) 465-4970

P.O. Box 74358  
Fairbanks, Alaska 99701  
(907) 452-4001

Donna C. Willard, Esq.  
President  
Board of Governors  
Alaska Bar Association  
360 K Street  
Anchorage, Alaska 99501

Re: Ombudsman Complaints A79-0641  
and A79-0642

Dear Ms. Willard:

Please take notice that the Office of the Ombudsman has received the following complaints:

A79-0641: that the Alaska Bar Association has not adequately investigated or resolved grievances filed by citizens against attorneys subject to the Bar Association's grievance and disciplinary procedures and that the employment contract for the Bar Counsel is excessive in salary and vacation.

A79-0642: that members of the Board of Governors have expended excessive amounts of Bar Association funds for travel and associated expenses outside the State of Alaska for activities not directly benefitting the Alaska Bar Association or its membership; that the expenditure of Bar Association funds for the guest speaker at the 1979 Hawaii Conference was improper.

The Office of the Ombudsman has commenced this investigation pursuant to AS 24.55.110. The Office of the Ombudsman has jurisdiction over administrative acts of the Alaska Bar Association pursuant to AS 24.55.100 and AS 08.08.010.

Our investigators plan to examine the financial records of the Association on July 30, 1979, beginning at 8:00 a.m., at the Bar Association offices. If this time is inconvenient we will be glad to reschedule the inspection.

Pursuant to AS 24.55.160 we also request copies of the following documents:

- 1) Minutes of the Board of Governor's meetings for the last two fiscal years;
- 2) A copy of the employment contract for the Alaska Bar Counsel; and

EXHIBIT 'A'

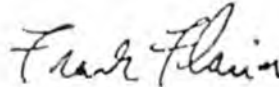
PAGE 1 of 2

- 3) A copy of statistical reports concerning the number and disposition of all grievances filed with the Bar Association in the last two years.

We would appreciate receiving the above information prior to July 30, 1979.

Thank you very much for your consideration in this matter.

Sincerely,



Frank Flavin  
Ombudsman

FF:rj

## ALASKA BAR ASSOCIATION

## OFFICERS

DONNA C. WILLARD  
PRESIDENT  
ANCHORAGE

WILLIAM B. ROZELL  
PRESIDENT ELECT  
JUNEAU

JONATHAN H. LINK  
VICE PRESIDENT  
FAIRBANKS

EDWARD G. KING  
SECRETARY  
KETCHIKAN

P.O. BOX 278  
ANCHORAGE, ALASKA 99510  
AREA CODE 907/272-7469

WILLIAM GARRISON, BAR COUNSEL

## BOARD MEMBERS

ALBERT H. BRANSON  
STANLEY T. FISCHER  
KAREN L. HUNT  
ELIZABETH P. KENNEDY  
EDWARD G. KING  
JONATHAN H. LINK  
WILLIAM B. ROZELL  
RICHARD D. SAVELL  
DONNA C. WILLARD

HAND DELIVERED

July 19, 1979

Frank Flavin  
Ombudsman  
840 K Street, Room 203  
Anchorage, Alaska 99501

RECEIVED  
JUL 19 1979  
ANCHORAGE  
OFFICE OF THE OMBUDSMAN

Dear Frank:

As you are aware, the Board of Governors is in receipt of your letter dated July 16, 1979, setting forth two complaints directed at the Board and staff of the Alaska Bar Association.

I found our meeting with you, on July 18, 1979, to be very informative and have relayed to the Board the information that you provided.

After due consideration, the Board wishes me to inform you that all members of this Association are entitled to inspect all books and records not catalogued as confidential. Therefore, we will be pleased to provide you, in the near future, for review at the Bar office, the following records:

1. The Minutes of the meetings of the Board of Governors, together with the Annual Meeting Minutes, for the past two years, after excise of Executive Session materials;
2. Statistical reports concerning the number and disposition of all grievances filed with the Bar Association for the past two years;
3. The financial records of the Association with respect to the 1979 Hawaii Mid-Winter CLE meeting and Board of Governors' travel and per diem expenses for 1979; and

EXHIBIT 'B'

PAGE 1 of 3

JUL 19 1979

ANCHORAGE  
OFFICE OF THE OMBUDSMAN

4. Upon request I will furnish, from my personal files, the brochures and other data concerning the various programs in connection with the American Bar, Western States, and Bar Leadership meetings.

There is no employment contract, in writing, with Bar Counsel. However, I can inform you that, on May 19, 1979, the Board unanimously approved a one year contract, retaining Mr. Garrison at an annual salary of \$45,000.00 and providing for thirty-five days of paid vacation. This constituted an additional twenty days of vacation over his 1978 contract, in lieu of any salary increase.

Furthermore, Mr. Garrison's right to take his vacation was restricted to times when no bar examination was in progress and when no heavy case load on admissions or discipline was pending.

Of further benefit to you may be the fact that Mr. Garrison has been admitted to the practice of law since 1966 and that, prior to being retained by the Bar Association in 1977, he was an Assistant District Attorney in this state for some five years.

With respect to the Minutes, which will take about two days to review for deletion of Executive Session material, they will be ready for your review on or before July 27, 1979, together with the Discipline reports.

In connection with both Discipline and Admissions matters, we are sure you realize that the Bar Association and the Board of Governors act only as agents of the Supreme Court of Alaska. Therefore, any further requests dealing with either areas should be directed to that entity.

I would request, with respect to the financial records, that your review await my return from the Ninth Circuit Judicial Conference when I shall finally have an opportunity to review and approve the audit which, as I informed you, is currently being conducted by a Certified Public Accountant. That task should be completed no later than August 3. Also, I would prefer to be present during your examination and would appreciate it if you would coordinate with me.

As I mentioned earlier, the foregoing information is being provided to you in your capacity as a member of the Alaska Bar Association. The Board believes, however, that the Association does not fall within the jurisdiction of the Ombudsman. Not only has the Superior Court in Horowitz v The Alaska Bar Association determined that we are not a state agency but also, similar rulings have been made at the administrative level. Specifically, admission to the State Employee Retirement System and to the State Employee Credit Union have both been denied.

EXHIBIT 'B'

Page 2 of 3

RECEIVED  
JUL 19 1979

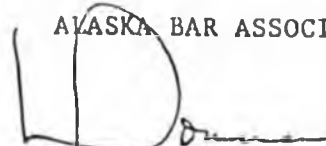
ANCHORAGE  
OFFICE OF THE OMBUDSMAN

Therefore, the Board, at this time, respectfully declines to recognize any jurisdiction which you may feel you have in your official capacity. Furthermore, nothing contained in this letter or any agreements which we might arrive at with you to provide materials constitutes a waiver of the Bar Association's right to assert the jurisdictional issue and any other defenses which it might have.

If I can be of any further assistance, please do not hesitate to call.

Sincerely yours,

ALASKA BAR ASSOCIATION



Donna C. Willard  
President

wj



# Ombudsman

Frank Flavin

State of Alaska

July 31, 1979

Reply to:

- 840 K Street, Room 203  
Anchorage, Alaska 99501  
(907) 276-4011
- Pouch WD  
Juneau, Alaska 99811  
(907) 465-4970
- P.O. Box 74358  
Fairbanks, Alaska 99707  
(907) 452-4001

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

Re: Ombudsman Complaints A79-0641  
and A79-0642

Dear Ms. Willard:

I have reviewed our statute and relevant court cases and feel strongly that the Alaska Bar Association is subject to the jurisdiction of the Office of the Ombudsman.

All previous and future contacts between myself or another member of this office are within the scope of the authority and duties of the Office of the Ombudsman.

I am treating these complaints as any other complaints in this office. Consequently, they have been assigned to Paddy Moriarty, Deputy Ombudsman and Supervisor of the Anchorage office, for investigation. Any future contacts will be made by her.

I have reviewed the specific information given by our complainants. While we are interested in all Board of Governor's travel for the past two fiscal years, the complainants specifically mentioned Atlanta, San Diego, Chicago and Hawaii.

Thank you for your patience and consideration in this matter.

Sincerely,

*Frank Flavin*  
Frank Flavin  
Ombudsman

FF:rj

STATE OF ALASKA

OFFICE OF THE OMBUDSMAN

In the matter of )

)

)

SUBPOENA FOR PRODUCTION OF DOCUMENTS

Ombudsman Complaint )

No. A79-0641, A79-0642

TO: Donna C. Willard  
President  
Board of Governors  
Alaska Bar Association

YOU ARE COMMANDED to appear at the office of the Alaska Bar Association at 310 K Street in Anchorage, Alaska, on Monday, August 13, 1979, at 8:30 a.m., and to produce the following documents to be used as evidence in this complaint:

1. The Minutes of the meetings of the Board of Governors, together with the Annual Meeting Minutes, for the past two years, after excise of Executive Session materials relating to grievances concerning attorneys;
2. Statistical reports concerning the number and disposition of all grievances filed with the Bar Association for the past two years;
3. The financial records of the Association with respect to the 1979 Hawaii Mid-Winter CLE meeting and Board of Governors' travel and per diem expenses for fiscal year 1979; and
4. Brochures, pamphlets or other written materials describing any meetings attended outside the state of Alaska by members of the Board of Governors.

DATED: 8/2/79

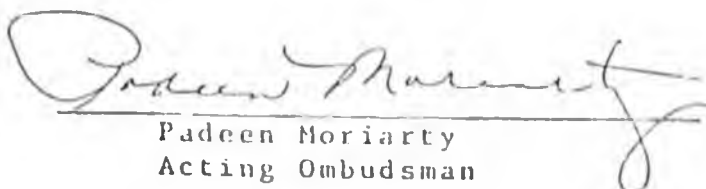
  
Padeen Moriarty  
Acting Ombudsman

EXHIBIT 'D'

Page 1 of 3

RETURN OF SERVICE OF SUBPOENA

I hereby return that I served the annexed subpoena on  
Donna C. Willard by delivering a copy  
thereof to her

DATED:

August 2, 1979

Cadence M. Allen

RETURN OF SERVICE OF SUBPOENA

I hereby return that I served the annexed subpoena on  
John R. LOAFF by delivering a copy  
thereof to him at Bar Assoc.

DATED: August 2, 1979

C. Bruce Allen

Received by John R. Loaff  
Date: 2 August 1979

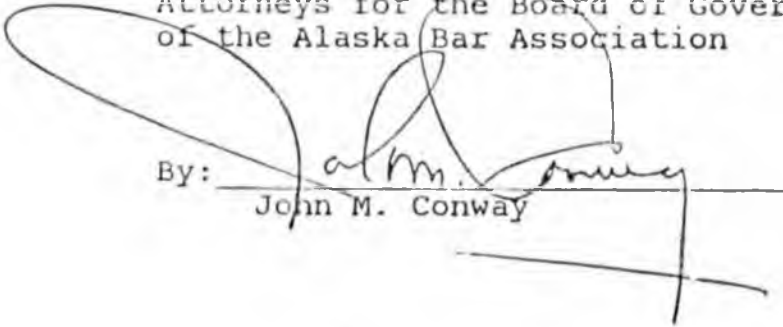


The Board of Governors will meet on September 6, 1979 to consider the Ombudsman subpoena. President Willard requests that all actions of the Ombudsman relating to enforcement of the subpoena be deferred until after the Board of Governors has had time to consider the subpoena and instruct Donna C. Willard as to the Board's response.

7. Category numbered 4 of the subpoena dated August 2, 1979 exists only in the form of personal, as opposed to official, records of Donna C. Willard.

DATED this 10th day of August, 1979.

ATKINSON, CONWAY, YOUNG,  
BELL & GAGNON  
Attorneys for the Board of Governors  
of the Alaska Bar Association

By:   
John M. Conway

LAW OFFICES  
ATKINSON, CONWAY  
YOUNG, BELL  
GAGNON, INC.  
420 L STREET  
FIFTH FLOOR  
ANCHORAGE, ALASKA  
PHONE 279-5563

RESPONSE TO SUBPOENA  
Page 2

EXHIBIT 'E'

Page 2 of 2

EXH A CC

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA  
THIRD JUDICIAL DISTRICT

STATE OF ALASKA, OFFICE OF )  
THE OMBUDSMAN, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
DONNA C. WILLARD, President, )  
Alaska Bar Association, )  
 )  
Defendant )

Civil Action No. 3AN-

ORDER SETTING HEARING ON APPLICATION  
FOR ORDER COMPELLING COMPLIANCE WITH  
OFFICE OF THE OMBUDSMAN SUBPOENA

TO: Donna C. Willard, President  
Alaska Bar Association

Pursuant to the Application for Order Compelling  
Compliance with Office of the Ombudsman Subpoena and the supporting  
documents filed therewith, a hearing on said Application will be  
held before this Court in Courtroom "\_\_\_" in the Alaska State  
Court Building at Anchorage, Alaska, on the \_\_\_ day of \_\_\_\_\_  
1979, at the hour of \_\_\_\_\_ o'clock \_\_.m.

DATED at Anchorage, Alaska, this \_\_\_ day of August,  
1979.

\_\_\_\_\_  
Judge of the Superior Court

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA  
THIRD JUDICIAL DISTRICT

STATE OF ALASKA, OFFICE OF )  
THE OMBUDSMAN, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
DONNA C. WILLARD, President, )  
Alaska Bar Association, )  
 )  
Defendant )

Civil Action No. 3AN-

ORDER COMPELLING COMPLIANCE WITH  
OFFICE OF THE OMBUDSMAN SUBPOENA

This matter having come before the Court upon the Application for Order Compelling Compliance with Office of the Ombudsman Subpoena, and the Court having considered said Application, the pleadings and file herein and being fully advised in the premises;

IT IS ORDERED, ADJUDGED AND DECREED that Donna C. Willard, President, Alaska Bar Association, shall produce the documents requested in the Office of the Ombudsman Subpoena for Production of Documents at the office of the Alaska Bar Association on \_\_\_\_\_, 1979, at \_\_\_\_\_ o'clock  
\_\_\_\_.m.

DATED at Anchorage, Alaska, this \_\_\_\_ day of \_\_\_\_\_  
1979.

\_\_\_\_\_  
Judge of the Superior Court

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA  
THIRD JUDICIAL DISTRICT

STATE OF ALASKA, OFFICE OF )  
THE OMBUDSMAN, )  
Plaintiff, )  
vs. )  
DONNA C. WILLARD, President, )  
Alaska Bar Association, )  
Defendant )

Civil Action No. 3AN-

MEMORANDUM IN SUPPORT OF  
APPLICATION FOR ORDER COMPELLING  
COMPLIANCE WITH OFFICE OF THE OMBUDSMAN SUBPOENA

Statement of Facts

On June 12, 1979, the Office of the Ombudsman received two complaints concerning the Alaska Bar Association (Bar). Given case numbers A79-0641 and A79-0642, the first complaint was directed towards the adequacy of the Bar's investigation and resolution of citizen grievances against attorneys and the propriety of the salary and fringe benefits of the Bar Counsel. The second complaint alleged an improper use of Bar funds for travel and associated expenses not directly benefiting the Bar and further alleged an improper expenditure of Bar funds for the guest speaker at the 1979 Hawaiian Conference.

By letter dated July 16, 1979, the Ombudsman, Frank Flavin, advised Donna C. Willard, President of the Board of Governors of the Bar of the complaints and that the Office of the Ombudsman had commenced an investigation pursuant to AS 24.55.110. A copy of that letter is attached hereto as Exhibit "A". Basically, Mr. Flavin afforded Donna C. Willard the opportunity to voluntarily

1 cooperate with the investigation by providing copies of documents  
2 and by allowing an examination of the Bar's financial records.

3 By letter dated July 19, 1979, attached hereto as  
4 Exhibit "B", Donna C. Willard, while offering certain records to  
5 Mr. Flavin as a member of the Bar, further advised him that the  
6 Board of Governors "declines to recognize any jurisdiction" of  
7 the Office of the Ombudsman.

8 By letter dated July 31, 1979, a copy of which is  
9 attached as Exhibit "C", Frank Flavin reiterated the jurisdiction  
10 of his Office and further advised Donna C. Willard that any  
11 dealings with him in this matter were in his official capacity as  
12 Ombudsman and not individually as an attorney licensed to prac-  
13 tice law in the State of Alaska.

14 On August 2, 1979, Donna C. Willard was personally  
15 served with a Subpoena for Production of Documents issued by  
16 Padeen Moriarty, Acting Ombudsman. A copy of the Subpoena is  
17 attached hereto as Exhibit "D".

18 On August 10, 1979, three days prior to the date for  
19 production of documents pursuant to the Subpoena, the Office of  
20 the Ombudsman received a Response to Subpoena for Production of  
21 Documents from Donna C. Willard. That document is attached  
22 hereto as Exhibit "E". The main thrust of that exhibit is  
23 contained in two unsupported, conclusory statements concerning  
24 the jurisdiction of the Ombudsman. Suffice it to say, the response  
25 indicates that there would be no compliance with the Subpoena.  
26 While Donna C. Willard also asks that the Ombudsman defer action  
27 enforcing the Subpoena until after the September 6, 1979 meeting  
28 of the Board of Governors, Donna C. Willard in her letter of July  
29 19, 1979 (Exhibit "B") advised the Ombudsman of the Board's  
30 position that there was no jurisdiction over the Bar. In view of  
31

1 the jurisdictional issue raised by the Bar and the Ombudsman's  
2 obligation to investigate complaints, the Ombudsman has sought an  
3 Order from the Court requiring compliance with the Subpoena.

4 The Office of the Ombudsman  
5 Has Jurisdiction to Investigate  
6 Acts of the Alaska Bar Association

7 The Office of the Ombudsman was established in July,  
8 1975 and has since that time been heavily utilized by its citi-  
9 zenry. The Office of the Ombudsman has two responsibilities:  
10 (1) to receive complaints from the public and to investigate and  
11 act upon such complaints; and (2) to improve public administra-  
12 tion. As an external critic of governmental operations, scrutiny  
13 by the Office of the Ombudsman is not always welcome.

14 In any event, AS 24.55.100 gives the Ombudsman "...  
15 jurisdiction to investigate the administrative acts of agencies".  
16 AS 24.55.150 sets forth those administrative acts which are  
17 apprc ately the subject of investigation because they may be:

18 "... (1) contrary to law;

19 (2) unreasonable, unfair, oppressive,  
20 arbitrary, capricious, an abuse of  
21 discretion, or unnecessarily discrim-  
22 inatory, even though in accordance with  
23 law;

24 (3) based on a mistake of fact;

25 (4) based on improper or irrelevant  
26 grounds;

27 (5) unsupported by an adequate state-  
28 ment of reasons;

29 (6) performed in an inefficient or  
30 discourteous manner; or

31 (7) otherwise erroneous."

32 The term "administrative act" is defined in AS 24.55.330(1)

as:

1            "... an action, omission, decision,  
2            recommendation, practice, policy, or  
3            procedure of an agency, but does not  
4            include the preparation or presentation  
5            of legislation or the substantive  
6            content of a judicial order, decision  
7            or opinion;"

8            The definition of the term "agency", the issue raised  
9            by the Bar in this case, is defined in AS 24.55.330(2) to include:

10           "a department, office, institution, corpora-  
11           tion, authority, organization, commission,  
12           committee, council or board of a municipality,  
13           or in the executive, legislative, or judicial  
14           branches of state government, and a department,  
15           office, institution, corporation, authority,  
16           organization, commission, committee, council  
17           or board of a municipality or of the state  
18           government independent of the executive,  
19           legislative and judicial branches; it also  
20           includes an officer, employee or member of  
21           an 'agency' acting or purporting to act in  
22           the exercise of his official duties, but  
23           does not include the governor, lieutenant  
24           governor, a member of the legislature, justice  
25           of the supreme court, judge of the superior  
26           or district court, magistrate, member of a  
27           city council or borough assembly, elected city  
28           or borough mayor, or a member of an elected  
29           school board;"

30           The extremely broad jurisdictional grant to the Ombudsman  
31           is certainly consistent with the legislative desire to provide,  
32           in the Office of the Ombudsman, an accessible and official clearing-  
33           house for citizen complaints. The Bar fits one or more of the  
34           entities defined as "agency" in AS 24.55.330(2). First, it is a  
35           creature of the state legislature having been created by the  
36           legislature as "... an instrumentality of the state ..." AS  
37           08.08.010. The legislature further established the Board of  
38           Governors and conferred upon it certain powers and duties.  
39           AS 08.08.030 and .080. Those powers relate in part to the holding  
40           of annual and special meetings, the collection and disbursement  
41           of funds and the organization and functioning of the Bar.

1 In essence, the legislature has charged the Bar with  
2 certain managerial functions relating to matters of public concern.  
3 That such functions are matters of public concern can hardly been  
4 contested. As the Court stated in In Re Paul, 17 Alaska Reports,  
5 360 (D.C. Alaska, 1957):

6 "For over 30 years there has been a  
7 constant growth in the system of integrated  
8 bars throughout the nation; in some states  
9 they have been created by statute, in some  
10 by court rule, but in all, the Bar of the  
11 state or other jurisdiction, has taken a  
12 leading role in policing their membership  
13 so that the standards of the lawyers would  
14 be kept at a high level in order that in  
15 their dealings with the public they would  
16 maintain proper comportment so as to  
17 protect the public interest and safeguard  
18 the general welfare of those with whom they  
19 dealt." Id. at 368.

14 The Court in Petition of Moody, 524 P.2d 1261 (Alaska 1974)  
15 also discussed the public benefits of an integrated bar stating  
16 that:

17 "The disadvantages to an individual in such  
18 a system are believed to be outweighed by  
19 the advantages achieved by the profession  
20 as a whole, and by the public to whose  
21 benefit it is that the profession be governed  
22 effectively by an authoritative organization."  
23 Id. at 1266.

21 As far as the jurisdiction of the Office of the Ombudsman  
22 over the Bar is concerned, given the absence of any statutory  
23 exemption which explicitly or even implicitly contravenes the  
24 broad jurisdictional grant, an investigation by the Office of the  
25 Ombudsman of alleged administrative abuses by the Bar is clearly  
26 contemplated by the legislature. In the case of Application of  
27 Peterson, 499 P.2d 304 (Alaska, 1972), Peterson petitioned the  
28 Alaska Supreme Court for admission to the Alaska Bar Association  
29 alleging that the hearing afforded him by the Bar after he failed  
30

1 the January and September, 1967 bar examinations was inadequate  
2 and that the scoring system utilized was unfair. The Court held  
3 that the "substantial evidence test" was the appropriate standard  
4 of administrative review stating that "...we have consistently  
5 adhered to the substantial evidence test as the appropriate scope  
6 of review with regard to appeals from administrative agencies."  
7 Id. at 307 (Emphasis added).

8 The Court obviously considered the Bar to be an administra-  
9 tive agency when it stated that:

10 "The legislature has expressly included  
11 the Board of Governors of the Alaska Bar  
12 Association as an agency subject to the  
13 adjudicative procedures of the Alaska  
14 Administrative Procedure Act, AS  
15 44.62.010-650." Id. at 306.

16 However, the Court did not find that the Bar was an agency because  
17 it was subject to the A.P.A. but rather that it was an agency  
18 which was subject to that Act. The subsequent action of the  
19 legislature in deleting the Bar from the list of agencies subject  
20 to the Administrative Procedure Act cannot seriously be relied  
21 upon to support a conclusion that the legislature was therefore  
22 indicating that the Bar was not an agency. Such an analysis was  
23 rejected by the Court in Chronicle Publishing Company v. Superior  
24 Court, 354 P.2d 637 (Calif. 1960). In Chronicle, the publishing  
25 company served interrogatories on the State Bar of California  
26 seeking information as to complaints and disciplinary actions  
27 taken against Victor E. Cappa, an attorney who had filed a libel  
28 action against it. In considering whether or not the State Bar  
29 could claim a privilege based upon a section of the Code of Civil  
30 Procedure relating to testimony of a "public officer" the Court  
31 stated:

1 "That the Legislature considered the State Bar  
2 as at least akin to a state public body or  
3 agency and hence its officers as 'public  
4 officers' is illustrated by the last para-  
5 graph of section 6001, where it appears that  
6 the Legislature felt the necessity of  
7 providing that laws prescribing procedures  
8 for state bodies, agencies, or classes, did  
9 not apply to the State Bar, thus indicating  
10 that the Legislature considered the State  
11 Bar in their category..." Id. at 645.

12 In McGregor v. Clawson, 506 S.W.2d 922 (Tex. 1974) the  
13 Court was faced with a question concerning the proper venue for a  
14 disbarment brought by the State Bar of Texas against McGregor, an  
15 attorney licensed in Texas. While the case turned on whether  
16 venue provisions in the State Bar Act prevailed over a more  
17 general civil rule, the Court did discuss the governmental  
18 status of the Bar.

19 "The State Bar Act is purely a creature  
20 of statute, prescribing the machinery  
21 and procedure by which the State Bar has  
22 been empowered to bring and maintain the  
23 disbarment suit in question. But for the  
24 statute, the State Bar and District  
25 Grievance Committee would have no exist-  
26 ence." Id. at 923.

27 The Court went on to say that:

28 "The State Bar and its Grievance Committees  
29 exist solely by virtue of the exercise of  
30 the power of the State, acting through its  
31 legislative department. They are administra-  
32 tive agencies of the State. ... The Legisla-  
33 ture could at any time terminate their  
34 existence and provide other and different  
35 means for handling of the matters now  
36 entrusted to them. They (the State Bar and  
37 Grievance Committee) are creatures of the  
38 State. An agency created by the State for  
39 the better ordering of government has no  
40 privileges, immunities or rights under the  
41 State and Federal constitutions which it  
42 may invoke in opposition to the will of  
43 its creator." Id. at 929.

1  
2                                   The Office of the Ombudsman  
                                  Properly Subpoenaed Donna C. Willard

3                   AS 24.55.170(a)(1) confers upon the Office of the  
4 Ombudsman the power to issue subpoenas compelling production of  
5 documents. AS 24.55.170(b) further sets forth the procedures to  
6 be followed should the person subpoenaed refuse to comply. The  
7 Ombudsman has properly applied to this Court for an order compelling  
8 compliance.

9   Conclusion

10                   For the reasons set forth above, this Court should make  
11 and enter its Order requiring Donna C. Willard to comply with the  
12 Office of the Ombudsman's Subpoena for Production of Documents.

13                   DATED at Anchorage, Alaska, this 21st day of August,  
14 1979.

15   HEDLAND, FLEISCHER & FRIEDMAN, P.C.

16   Attorneys for the Office of the  
17   Ombudsman

18  
19 By: \_\_\_\_\_

20   Saul R. Friedman



The Board of Governors will meet on September 6, 1979 to consider the Ombudsman subpoena. President Willard requests that all actions of the Ombudsman relating to enforcement of the subpoena be deferred until after the Board of Governors has had time to consider the subpoena and instruct Donna C. Willard as to the Board's response.

7. Category numbered 4 of the subpoena dated August 2, 1979 exists only in the form of personal, as opposed to official, records of Donna C. Willard.

DATED this 10th day of August, 1979.

ATKINSON, CONWAY, YOUNG,  
BELL & GAGNON

Attorneys for the Board of Governors  
of the Alaska Bar Association

By: 

John M. Conway

LAW OFFICES  
ATKINSON, CONWAY,  
YOUNG, BELL  
GAGNON, INC.  
420 L STREET  
FIFTH FLOOR  
ANCHORAGE, ALASKA  
PHONE 279-5563

RESPONSE TO SUBPOENA  
Page 2

EXHIBIT 'B'

PAGE 2 OF 2



# Ombudsman

Frank Flavin

State of Alaska

July 16, 1979

Reply to:

840 K Street, Room 203  
Anchorage, Alaska 99501  
(907) 276-4011

Pouch W0  
Juneau, Alaska 99811  
(907) 465-4370

P.O. Box 74358  
Fairbanks, Alaska 99707  
(907) 452-4001

Donna C. Willard, Esq.  
President  
Board of Governors  
Alaska Bar Association  
360 K Street  
Anchorage, Alaska 99501

Re: Ombudsman Complaints A79-0641  
and A79-0642

Dear Ms. Willard:

Please take notice that the Office of the Ombudsman has received the following complaints:

A79-0641: that the Alaska Bar Association has not adequately investigated or resolved grievances filed by citizens against attorneys subject to the Bar Association's grievance and disciplinary procedures and that the employment contract for the Bar Counsel is excessive in salary and vacation.

A79-0642: that members of the Board of Governors have expended excessive amounts of Bar Association funds for travel and associated expenses outside the State of Alaska for activities not directly benefitting the Alaska Bar Association or its membership; that the expenditure of Bar Association funds for the guest speaker at the 1979 Hawaii Conference was improper.

The Office of the Ombudsman has commenced this investigation pursuant to AS 24.55.110. The Office of the Ombudsman has jurisdiction over administrative acts of the Alaska Bar Association pursuant to AS 24.55.100 and AS 08.08.010.

Our investigators plan to examine the financial records of the Association on July 30, 1979, beginning at 8:00 a.m., at the Bar Association offices. If this time is inconvenient we will be glad to reschedule the inspection.

Pursuant to AS 24.55.160 we also request copies of the following documents:

- 1) Minutes of the Board of Governor's meetings for the last two fiscal years;
- 2) A copy of the employment contract for the Alaska Bar Counsel, and

EXHIBIT 'A'

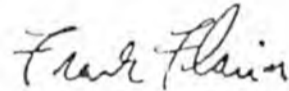
PAGE 1 of 2

- 3) A copy of statistical reports concerning the number and disposition of all grievances filed with the Bar Association in the last two years.

We would appreciate receiving the above information prior to July 30, 1979.

Thank you very much for your consideration in this matter.

Sincerely,



Frank Flavin  
Ombudsman

FF:rj

EXHIBIT 'A'

PAGE 2 of 2

BOARD OF GOVERNORS  
ALASKA BAR ASSOCIATION

OFFICERS  
DONNA C. WILLARD  
PRESIDENT  
ANCHORAGE  
WILLIAM B. ROZELL  
PRESIDENT ELECT  
JUNEAU  
JONATHAN H. LINK  
VICE PRESIDENT  
FAIRBANKS  
EDWARD G. KING  
SECRETARY  
KETCHIKAN

P.O. BOX 278  
ANCHORAGE, ALASKA 99510  
AREA CODE 907/272-7489

WILLIAM GARRISON, BAR COUNSEL

BOARD MEMBERS  
ALBERT H. BRANSON  
STANLEY T. FISCHER  
KAREN L. HUNT  
ELIZABETH P. KENNEDY  
EDWARD G. KING  
JONATHAN H. LINK  
WILLIAM B. ROZELL  
RICHARD D. SAVELL  
DONNA C. WILLARD

HAND DELIVERED

July 19, 1979

Frank Flavin  
Ombudsman  
840 K Street, Room 203  
Anchorage, Alaska 99501

RECEIVED  
JUL 19 1979  
ANCHORAGE  
OFFICE OF THE OMBUDSMAN

Dear Frank:

As you are aware, the Board of Governors is in receipt of your letter dated July 16, 1979, setting forth two complaints directed at the Board and staff of the Alaska Bar Association.

I found our meeting with you, on July 18, 1979, to be very informative and have relayed to the Board the information that you provided.

After due consideration, the Board wishes me to inform you that all members of this Association are entitled to inspect all books and records not catalogued as confidential. Therefore, we will be pleased to provide you, in the near future, for review at the Bar office, the following records:

1. The Minutes of the meetings of the Board of Governors, together with the Annual Meeting Minutes, for the past two years, after excise of Executive Session materials;
2. Statistical reports concerning the number and disposition of all grievances filed with the Bar Association for the past two years;
3. The financial records of the Association with respect to the 1979 Hawaii Mid-Winter CLE meeting and Board of Governors' travel and per diem expenses for 1979; and

EXHIBIT 'B'

PAGE 1 of 3

JUL 19 1979

ANCHORAGE  
OFFICE OF THE OMBUDSMAN

4. Upon request I will furnish, from my personal files, the brochures and other data concerning the various programs in connection with the American Bar, Western States, and Bar Leadership meetings.

There is no employment contract, in writing, with Bar Counsel. However, I can inform you that, on May 19, 1979, the Board unanimously approved a one year contract, retaining Mr. Garrison at an annual salary of \$45,000.00 and providing for thirty-five days of paid vacation. This constituted an additional twenty days of vacation over his 1978 contract, in lieu of any salary increase.

Furthermore, Mr. Garrison's right to take his vacation was restricted to times when no bar examination was in progress and when no heavy case load on admissions or discipline was pending.

Of further benefit to you may be the fact that Mr. Garrison has been admitted to the practice of law since 1966 and that, prior to being retained by the Bar Association in 1977, he was an Assistant District Attorney in this state for some five years.

With respect to the Minutes, which will take about two days to review for deletion of Executive Session material, they will be ready for your review on or before July 27, 1979, together with the Discipline reports.

In connection with both Discipline and Admissions matters, we are sure you realize that the Bar Association and the Board of Governors act only as agents of the Supreme Court of Alaska. Therefore, any further requests dealing with either areas should be directed to that entity.

I would request, with respect to the financial records, that your review await my return from the Ninth Circuit Judicial Conference when I shall finally have an opportunity to review and approve the audit which, as I informed you, is currently being conducted by a Certified Public Accountant. That task should be completed no later than August 3. Also, I would prefer to be present during your examination and would appreciate it if you would coordinate with me.

As I mentioned earlier, the foregoing information is being provided to you in your capacity as a member of the Alaska Bar Association. The Board believes, however, that the Association does not fall within the jurisdiction of the Ombudsman. Not only has the Superior Court in Horowitz v. The Alaska Bar Association determined that we are not a state agency but also, similar rulings have been made at the administrative level. Specifically, admission to the State Employee Retirement System and to the State Employee Credit Union have both been denied.

EXHIBIT 'B'

Page 2 of 3

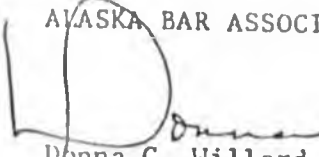
RECEIVED  
JUL 19 1979

ANCHORAGE  
OFFICE OF THE CLERK OF THE COURT  
Therefore, the Board, at this time, respectfully declines to recognize any jurisdiction which you may feel you have in your official capacity. Furthermore, nothing contained in this letter or any agreements which we might arrive at with you to provide materials constitutes a waiver of the Bar Association's right to assert the jurisdictional issue and any other defenses which it might have.

If I can be of any further assistance, please do not hesitate to call.

Sincerely yours,

ALASKA BAR ASSOCIATION

  
Donna C. Willard  
President

wj

EXHIBIT B'

Page 3 of 3



# Ombudsman

Frank Flavin

State of Alaska

Reply to:

- 840 K Street, Room 203  
Anchorage, Alaska 99501  
(907) 276-4011
- Pouch WD  
Juneau, Alaska 99811  
(907) 465-4970
- P.O. Box 74358  
Fairbanks, Alaska 99707  
(907) 452-4001

July 31, 1979

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

Re: Ombudsman Complaints A79-0641  
and A79-0642

Dear Ms. Willard:

I have reviewed our statute and relevant court cases and feel strongly that the Alaska Bar Association is subject to the jurisdiction of the Office of the Ombudsman.

All previous and future contacts between myself or any other member of this office are within the scope of the authority and duties of the Office of the Ombudsman.

I am treating these complaints as any other complaints in this office. Consequently, they have been assigned to Paddy Moriarty, Deputy Ombudsman and Supervisor of the Anchorage office, for investigation. Any future contacts will be made by her.

I have reviewed the specific information given by our complainants. While we are interested in all Board of Governor's travel for the past two fiscal years, the complainants specifically mentioned Atlanta, San Diego, Chicago and Hawaii.

Thank you for your patience and consideration in this matter.

Sincerely,

*Frank Flavin*  
Frank Flavin  
Ombudsman

FF:cl

STATE OF ALASKA

OFFICE OF THE OMBUDSMAN

In the matter of )

)

)

SUBPOENA FOR PRODUCTION OF DOCUMENTS

Ombudsman Complaint )

No. A79-C641, A79-0642

TO: Donna C. Willard  
President  
Board of Governors  
Alaska Bar Association

YOU ARE COMMANDED to appear at the office of the Alaska Bar Association at 310 K Street in Anchorage, Alaska, on Monday, August 13, 1979, at 8:30 a.m., and to produce the following documents to be used as evidence in this complaint:

1. The Minutes of the meetings of the Board of Governors, together with the Annual Meeting Minutes, for the past two years, after excise of Executive Session materials relating to grievances concerning attorneys;
2. Statistical reports concerning the number and disposition of all grievances filed with the Bar Association for the past two years;
3. The financial records of the Association with respect to the 1979 Hawaii Mid-Winter CLE meeting and Board of Governors' travel and per diem expenses for fiscal year 1979; and
4. Brochures, pamphlets or other written materials describing any meetings attended outside the state of Alaska by members of the Board of Governors.

DATED: 8/2/79

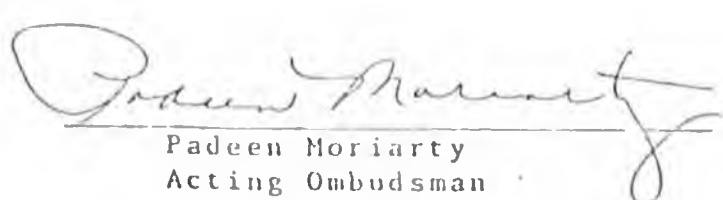
  
Padeen Moriarty  
Acting Ombudsman

EXHIBIT 'D'

Page 1 of 3

RETURN OF SERVICE OF SUBPOENA

I hereby return that I served the annexed subpoena on  
Donna C. Willard by delivering a copy  
thereof to him

DATED:

August 2, 1979

Cadence M. Allen

EXHIBIT 'D'

Page 2 of 3

RETURN OF SERVICE OF SUBPOENA

I hereby return that I served the annexed subpoena on  
John R. LOAFF by delivering a copy  
thereof to him at Bar Assoc.

DATED: August 2, 1979

Cedric M. Allen

Received by John R. Loaff  
Date: 2 August 1979

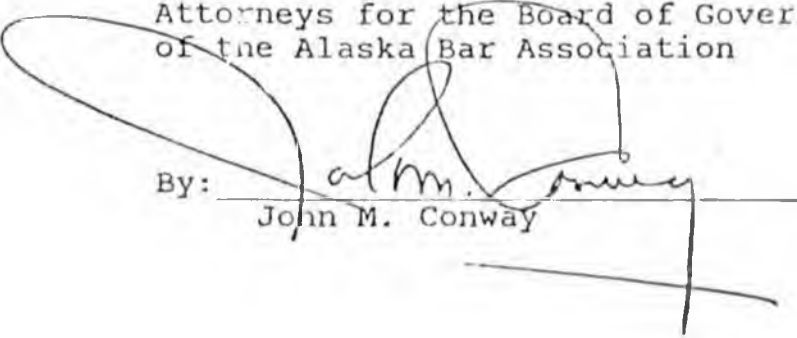


The Board of Governors will meet on September 6, 1979 to consider the Ombudsman subpoena. President Willard requests that all actions of the Ombudsman relating to enforcement of the subpoena be deferred until after the Board of Governors has had time to consider the subpoena and instruct Donna C. Willard as to the Board's response.

7. Category numbered 4 of the subpoena dated August 2, 1979 exists only in the form of personal, as opposed to official, records of Donna C. Willard.

DATED this 10th day of August, 1979.

ATKINSON, CONWAY, YOUNG,  
BELL & GAGNON  
Attorneys for the Board of Governors  
of the Alaska Bar Association

By:   
John M. Conway

LAW OFFICES  
ATKINSON, CONWAY  
YOUNG, BELL  
GAGNON, INC.  
420 L STREET  
FIFTH FLOOR  
NORWALK, ALASKA  
PHONE 278-2563

RESPONSE TO SUBPOENA  
Page 2

EXHIBIT 'E'

Page 2 of 2

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA  
THIRD JUDICIAL DISTRICT

STATE OF ALASKA, OFFICE OF )  
THE OMBUDSMAN, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
DONNA C. WILLARD, President, )  
Alaska Bar Association, )  
 )  
Defendant. )

Civil Action No. 3AN-

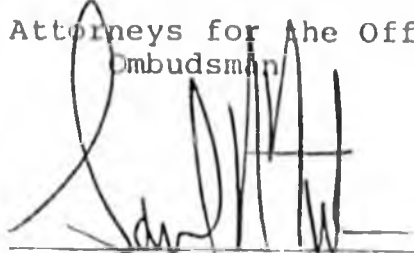
APPLICATION FOR ORDER COMPELLING  
COMPLIANCE WITH OFFICE OF THE  
OMBUDSMAN SUBPOENA

Comes now the State of Alaska, Office of the Ombudsman,  
by and through its attorneys, Hedland, Fleischer & Friedman, and  
respectfully applies to this Court, pursuant to AS 24.55.170(b),  
AS 44.62.590 and Rule 45(g) of the Alaska Rules of Civil Procedure,  
for an Order compelling the compliance of Donna C. Willard,  
President of the Alaska Bar Association with the Office of the  
Ombudsman Subpoena for Production of Documents served on her on  
August 2, 1979.

This Application is supported by the Affidavit of Frank  
Flavin, Ombudsman and the Memorandum filed herewith.

DATED at Anchorage, Alaska, this 22 day of August,  
1979.

HEDLAND, FLEISCHER & FRIEDMAN  
Attorneys for the Office of the  
Ombudsman

By:   
Saul R. Friedman

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT

STATE OF ALASKA, OFFICE OF	)
THE OMBUDSMAN,	)
	)
Plaintiff,	)
	)
vs.	)
	)
DONNA C. WILLARD, President,	)
Alaska Bar Association,	)
	)
Defendant	)

Civil Action No. 3AN-

AFFIDAVIT OF FRANK FLAVIN

STATE OF ALASKA	)
	) ss.
THIRD JUDICIAL DISTRICT	)

Frank Flavin, being first duly sworn upon oath, deposes and says:

1. That I am the Ombudsman of the State of Alaska, Office of the Ombudsman.
2. That on August 2, 1979, Padeen Moriarty, acting as Ombudsman because of my absence from the State of Alaska, executed a Subpoena for Production of Documents, a copy of which is attached hereto as Exhibit "A", page one.
3. That the official records of the Office of the Ombudsman, attached hereto as pages two and three of Exhibit "A", indicate that said Subpoena was personally served upon Donna C. Willard and was also served upon her through service on John R. Loaff at the Alaska Bar Association.
4. That on August 10, 1979, the Office of the Ombudsman received a Response to Subpoena for Production of Documents, a copy of which is attached hereto as Exhibit "B", contesting the

1 jurisdiction of the Office of the Ombudsman and further indicating  
2 that the Subpoena for Production of Documents requiring produc-  
3 tion on Monday, August 13, 1979 would not be complied with.

4  
5  
6 \_\_\_\_\_  
FRANK FLAVIN

7 SUBSCRIBED and SWORN to before me this \_\_\_\_ day of  
8 August, 1979.

9  
10 \_\_\_\_\_  
11 NOTARY PUBLIC in and for Alaska  
My Commission Expires: \_\_\_\_\_  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29

30 Affidavit of Frank Flavin

31 Page Two of Two

32

## OFFICE OF THE OMBUDSMAN

In the matter of )  
 )  
 ) : SUBPOENA FOR PRODUCTION OF DOCUMENTS  
 Ombudsman Complaint )  
 No. A79-0641, A79-0642

TO: Donna C. Willard  
 President  
 Board of Governors  
 Alaska Bar Association

YOU ARE COMMANDED to appear at the office of the Alaska Bar Association at 310 K Street in Anchorage, Alaska, on Monday, August 13, 1979, at 8:30 a.m., and to produce the following documents to be used as evidence in this complaint:

1. The Minutes of the meetings of the Board of Governors, together with the Annual Meeting Minutes, for the past two years, after excise of Executive Session materials relating to grievances concerning attorneys;
2. Statistical reports concerning the number and disposition of all grievances filed with the Bar Association for the past two years;
3. The financial records of the Association with respect to the 1979 Hawaii Mid-Winter CLE meeting and Board of Governors' travel and per diem expenses for fiscal year 1979; and
4. Brochures, pamphlets or other written materials describing any meetings attended outside the state of Alaska by members of the Board of Governors.

DATED: 8/2/79

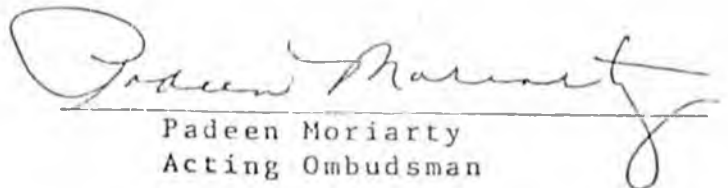
  
 Padeen Moriarty  
 Acting Ombudsman

EXHIBIT 'A'

Page 1 of 3

RETURN OF SERVICE OF SUBPOENA

I hereby return that I served the annexed subpoena on  
Donna C. Willard by delivering a copy  
thereof to Donna C. Willard

DATED: August 2, 1979

Cadence M. Allen

RETURN OF SERVICE OF SUBPOENA

I hereby return that I served the annexed subpoena on  
John R. LOAFF by delivering a copy  
thereof to him at Bar room.

DATED: August 2, 1979

Catherine M. Allen

Received by John R. Loaff  
Date: 2 August 1979

Extra CC

John M. Conway, Esq.  
ATKINSON, CONWAY, YOUNG,  
BELL & GAGNON  
Attorneys for the Board of Governors  
of the Alaska Bar Association  
420 L Street, Suite 500  
Anchorage, Alaska 99501  
Telephone: (907) 279-5563

**R E C E I V E D**  
AUG 10 1979

ANCHORAGE  
OFFICE OF THE OMBUDSMAN

STATE OF ALASKA  
OFFICE OF THE OMBUDSMAN

In the matter of )  
 )  
Ombudsman Complaint )  
No. A79-0641, A79-0642 )

RESPONSE TO SUBPOENA FOR PRODUCTION OF DOCUMENTS

DONNA C. WILLARD, President, Alaska Bar Association, responds to the subpoena directed to her under date of August 2, 1979 in the following manner:

1. The Alaska Ombudsman does not have jurisdiction to investigate the acts of the Alaska Bar Association.
2. To the extent, if any, that Alaska Statutes purport to confer jurisdiction on the Alaska Ombudsman to investigate acts of the Alaska Bar Association, such statutes are in conflict with the doctrine of separation of powers.
3. That Donna C. Willard will be absent from the State of Alaska on official business of the Alaska Bar Association from August 7, 1979 to August 16, 1979.
4. The President-Elect of the Alaska Bar Association is out of the State of Alaska on official business of the Alaska Bar Association until August 16, 1979.
5. The regularly employed bar counsel of the Alaska Bar Association is presently out of the State of Alaska.
6. Donna C. Willard has no authority to release information concerning the Alaska Bar Association without the prior approval of the Board of Governors of said association.

LAW OFFICES  
ATKINSON, CONWAY  
YOUNG, BELL  
GAGNON, INC.  
420 L STREET  
FIFTH FLOOR  
ANCHORAGE, ALASKA  
TELEPHONE 279-5563

The Board of Governors will meet on September 6, 1979 to consider the Ombudsman subpoena. President Willard requests that all actions of the Ombudsman relating to enforcement of the subpoena be deferred until after the Board of Governors has had time to consider the subpoena and instruct Donna C. Willard as to the Board's response.

7. Category numbered 4 of the subpoena dated August 2, 1979 exists only in the form of personal, as opposed to official, records of Donna C. Willard.

DATED this 10th day of August, 1979.

ATKINSON, CONWAY, YOUNG,  
BELL & GAGNON  
Attorneys for the Board of Governors  
of the Alaska Bar Association

By: 

John M. Conway

L.W OFFICES  
ATKINSON, CONWAY  
YOUNG, BELL  
GAGNON, INC.  
420 L STREET  
FIFTH FLOOR  
ANCHORAGE, ALASKA  
TELEPHONE 279-5563

RESPONSE TO SUBPOENA  
Page 2

BOARD OF GOVERNORS

ALASKA BAR ASSOCIATION

P.O. BOX 279  
ANCHORAGE, ALASKA 99510  
AREA CODE 907/272-7400

RANDALL P. BURNS, EXECUTIVE DIRECTOR  
WILLIAM GARRISON, BAR COUNSEL

OFFICERS

DONNA C. WILLARD  
PRESIDENT  
ANCHORAGE

WILLIAM B. ROZELL  
PRESIDENT ELECT  
JUNEAU

JONATHAN H. LINK  
VICE PRESIDENT  
FAIRBANKS

EDWARD G. KING  
SECRETARY  
KETCHIKAN

BOARD MEMBERS

ALBERT H. BRANSON

STANLEY T. FISCHER

KAREN L. HUNT

ELIZABETH P. KENNEDY

EDWARD G. KING

JONATHAN H. LINK

WILLIAM B. ROZELL

RICHARD D. SAVELL

DONNA C. WILLARD

\* March 14, 1980

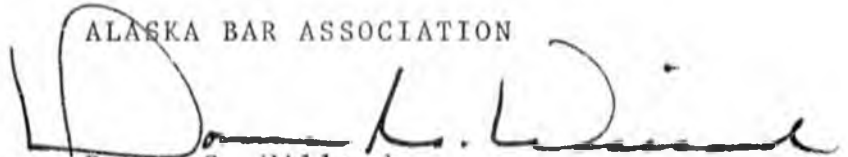
Hon. Charles H. Parr  
Pouch V  
Juneau, Ak. 99811

Dear Sir:

In accordance with previous representations, we are forwarding to you the 1979 Audit of the Alaska Bar Association which just been completed.

Sincerely,

ALASKA BAR ASSOCIATION



Donna C. Willard  
President

DCW/vg

R. STEWART McDONALD

CERTIFIED PUBLIC ACCOUNTANT

401 E. NORTHERN LIGHTS BOULEVARD  
SUITE 205  
ANCHORAGE, ALASKA 99503 (907) 277-6651

January 25, 1980

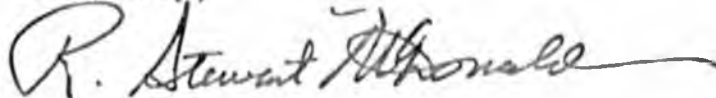
Board of Directors  
Alaska Bar Association  
Anchorage, Alaska 99501

I have examined the statement of financial position of the Alaska Bar Association General Fund, at December 31, 1979 and the related statements of income and changes in accumulated income for the year then ended. My examination was made in accordance with generally accepted auditing standards, and, accordingly included such tests of the accounting records and other such tests as I considered necessary in the circumstances.

The financial statements of the Alaska Bar Association for the year ended December 31, 1978, presented herewith, were examined by other auditors whose report dated February 1, 1979 expressed an unqualified opinion on those statements.

In my opinion, the 1979 financial statements referred to above present fairly the financial position of the Alaska Bar Association and its results of operations for the year then ended in conformity with generally accepted accounting principles applied on a basis consistent with that of the preceding year.

Sincerely,



R. Stewart McDonald  
Certified Public Accountant

RSM/ss

Attachments

Alaska Bar Association General Fund  
Statement of Financial Position  
At December 31, 1979 and 1978

<u>ASSETS</u>	<u>1979</u>	<u>1978</u>
Cash on hand and in checking account	\$ 44,436	27,527
Cash in savings accounts	60,952	113,398
Accounts receivable	890	11,872
Prepaid expenses	9,669	2,120
Fixed assets	33,832	31,624
Less allowance for accumulated depreciation	(19,273)	(15,334)
	<u>14,559</u>	<u>16,290</u>
Total assets	<u>\$130,506</u>	<u>171,207</u>

LIABILITIES AND ACCUMULATED INCOME

Liabilities			
Accounts payable	14,069		2,302
Notes payable	-0-		10,000
Revenues collected in advance	<u>94,500</u>	\$108,569	<u>97,659</u> 109,961
Accumulated income			
Reserve for working capital	13,577		13,577
Unappropriated	<u>8,360</u>	<u>21,937</u>	<u>47,669</u> 61,246
Total liabilities and accumulated income		<u>\$130,506</u>	<u>171,207</u>

See accompanying notes to financial statements.

Alaska Bar Association General Fund  
Statement of Changes in Accumulated Income  
For the years ended December 31, 1979 and 1978

	<u>Reserves for Working Capital</u>	<u>Unappropriated</u>	<u>Total</u>
Balance at January 1, 1978	\$13,577	68,789	82,366
Net loss for the year ended Dec. 31, 1978	-	(21,120)	(21,120)
Balance at December 31, 1978	13,577	47,669	61,246
Net loss for the year ended Dec. 31, 1979	-	(39,309)	(39,309)
Balance at December 31, 1979	<u>\$13,577</u>	<u>8,360</u>	<u>21,937</u>

See accompanying notes to financial statements.

Alaska Bar Association General Fund  
Statement of Revenues and Expenses  
For the years ended December 31, 1979 and 1978

	<u>1979</u>	<u>1978</u>
Revenues	<u>\$425,242</u>	<u>351,367</u>
Expenses		
Bar admission	32,610	29,875
Board of Governors	40,570	34,217
Grievances	107,482	74,351
Administraticn	161,992	142,689
Continuing legal education	33,151	16,196
Other expenses	<u>88,746</u>	<u>75,159</u>
Total expenses	<u>464,551</u>	<u>372,487</u>
Net loss	<u>\$(39,309)</u>	<u>(21,120)</u>

See accompanying notes to financial statements.

Alaska Bar Association General Fund  
Notes to Financial Statements  
December 31, 1979 and 1978

1. Summary of significant accounting policies:

- a) The Association's accounting records are maintained on the accrual method. Receipts of membership dues and other fees are recognized as revenue in the period to which they apply. Expenses are recognized in the period in which they are incurred.
- b) Library and equipment: Contributions of books are recorded at their estimated fair market value at time of receipt, and other items are recorded at cost. Depreciation expense is computed by the straight-line method over the estimated useful life of the assets.
- c) Income taxes: The Association is exempt from income taxes as an instrumentality of the State of Alaska.

2. Reserve for working capital:

- a) The reserve was created by the Board of Governors as a segregation of the General Fund Balance. The fund is not restricted to any specific purpose.

Alaska Bar Association General Fund  
Statement of Changes in Cash  
For the years ended December 31, 1977 through 1979

	<u>1977</u>	<u>1978</u>	<u>1979</u>
Cash balance at beginning of year	\$113,675	139,460	140,925
Cash collections			
Dues, fees and other income	278,406	348,804	436,224
Changes in prepaid income	12,299	30,749	(3,159)
Note payable	-	10,000	-
Total cash collections	<u>290,705</u>	<u>389,553</u>	<u>433,065</u>
Cash disbursements			
Operating expenses before depreciation	261,359	379,697	456,394
Purchase of fixed assets	2,016	7,839	2,208
Payoff of notes	1,545	552	10,000
Total cash disbursements	<u>264,920</u>	<u>388,088</u>	<u>468,602</u>
Net increase (decrease) of cash	<u>25,785</u>	<u>1,465</u>	<u>(35,537)</u>
Cash balance at end of year	139,460	140,925	105,388
Cash on hand represented by income attributable to future year	<u>63,459</u>	<u>97,567</u>	<u>94,500</u>
Cash surplus	<u>\$ 76,001</u>	<u>43,358</u>	<u>10,888</u>

See accompanying notes to financial statements.

Alaska Bar Association  
 Analysis of Revenue and Expenses  
 For the years ended December 31, 1979 and 1978

December 31, 1979	<u>Referral</u>	<u>Admissions</u>	<u>Grievances</u>	<u>Education</u>	<u>Convention</u>	<u>Other</u>	<u>Total</u>
Revenues							
Direct	\$ 3,475	38,760	50,400	50,694	52,970	211,478	
Interest						9,587	
Other						7,878	
Total revenue	<u>3,475</u>	<u>38,760</u>	<u>50,400</u>	<u>50,694</u>	<u>52,970</u>	<u>228,943</u>	<u>425,242</u>
Expenses							
Direct	14,777	32,610	107,482	33,151	52,816	-	
Board of Governors						40,571	
Administrative						161,992	
Legislative auditing						10,444	
Newsletters						6,586	
Contractual services (insurance)						3,212	
Committies						910	
Total expenses	<u>14,777</u>	<u>32,610</u>	<u>107,482</u>	<u>33,151</u>	<u>52,816</u>	<u>223,715</u>	<u>464,551</u>
Net income (loss)	<u>\$(11,302)</u>	<u>6,150</u>	<u>(57,082)</u>	<u>17,543</u>	<u>154</u>	<u>5,228</u>	<u>(39,309)</u>

\*\*\*\*\*

December 31, 1978

Revenues							
Direct	\$ 3,125	48,686	54,620	11,687	29,701	191,266	
Interest						7,443	
Other						4,839	
Total revenue	<u>3,125</u>	<u>48,686</u>	<u>54,620</u>	<u>11,687</u>	<u>29,701</u>	<u>203,548</u>	<u>351,367</u>
Expenses							
Direct	12,200	29,875	74,351	16,196	30,738	-	
Board of Governors						34,217	
Administrative						142,689	
Legislative auditing						8,762	
Newsletters						10,885	
Contractual services (insurance)						11,642	
Committies						932	
Total expenses	<u>12,200</u>	<u>29,875</u>	<u>74,351</u>	<u>16,196</u>	<u>30,738</u>	<u>209,127</u>	<u>372,487</u>
Net income (loss)	<u>\$( 9,075)</u>	<u>18,811</u>	<u>(19,731)</u>	<u>(4,509)</u>	<u>(1,037)</u>	<u>(5,579)</u>	<u>(21,120)</u>

See accompanying notes to financial statements.

R. STEWART McDONALD

CERTIFIED PUBLIC ACCOUNTANT

401 E. NORTHERN LIGHTS BOULEVARD  
SUITE 205  
ANCHORAGE, ALASKA 99503 (907) 277-6651

January 25, 1980

Board of Directors  
Alaska Bar Association  
Anchorage, Alaska 99501

I have examined the statement of financial position of the Alaska Bar Association Client Security Fund, Alaska Bar Foundation and Alaska Bar Insurance Trust at December 31, 1979. My examination was made in accordance with generally accepted auditing standards, and, accordingly included such tests of the accounting records and other such tests as I considered necessary in the circumstances.

The financial statements of the Alaska Bar Association for the year ended December 31, 1978, presented herewith, were examined by other auditors whose report dated February 1, 1979 expressed an unqualified opinion on those statements.

In my opinion, the 1979 financial statements referred to above present fairly the financial position of the Alaska Bar Association and its results of operations for the year then ended in conformity with generally accepted accounting principles applied on a basis consistent with that of the preceding year.

Sincerely,



R. Stewart McDonald  
Certified Public Accountant

RSM/ss

Attachments

Alaska Bar Association  
 Client Security Fund  
 Statement of Financial Position  
 At December 31, 1979 and 1978

<u>ASSETS</u>	<u>1979</u>	<u>1978</u>
Cash in savings	<u>\$45,361</u>	<u>33,044</u>
 <u>ACCUMULATED INCOME</u>		
Client security fund		
Balance, January 1,	33,044	21,014
Gross revenues from dues		
for the year ended		
December 31,	<u>12,317</u>	<u>12,030</u>
	<u>\$45,361</u>	<u>33,044</u>

See accompanying notes to financial statements.

Alaska Bar Foundation  
Statement of Financial Position  
At December 31, 1979 and 1978

<u>ASSETS</u>	<u>1979</u>	<u>1978</u>
Cash in bank	<u>\$6,319</u>	<u>6,102</u>
<u>LIABILITIES and ACCUMULATED INCOME</u>		
Accounts payable, Alaska Bar Association	\$ 263	263
George F. Booney Fund		
Balance at January 1,	5,739	5,407
Interest income	<u>317</u>	<u>332</u>
Balance at December 31,	<u>6,056</u>	<u>5,379</u>
Total liabilities and accumulated income	<u>\$ 6,319</u>	<u>6,102</u>

See accompanying notes to financial statements.

Alaska Bar Association  
Insurance Trust Fund  
Statement of Financial Position  
At December 31, 1979 and 1978

<u>ASSETS</u>	<u>1979</u>	<u>1978</u>
Cash	\$ <u>3,971</u>	<u>4,706</u>
<u>LIABILITIES</u>		
Insurance premiums paid in advance	\$ 3,971	3,297
Administrative fees due to General Fund	<u>          -</u>	<u>1,409</u>
Total liabilities	<u>\$ 3,971</u>	<u>4,706</u>
Revenue	\$15,912	16,380
Insurance premium paid	<u>15,912</u>	<u>16,380</u>
Net revenue over expense	<u>\$ -0-</u>	<u>-0-</u>

See accompanying notes to financial statements.

Alaska Bar Association Trust Fund  
Notes to Financial Statements  
For the year ended December 31, 1978

1. Organization:

The Trust Fund was organized March 11, 1976 pursuant to a trust indenture entered into by the Alaska Bar Association and its members. Operations began April 1, 1976.

The purpose of the Trust is to provide and maintain a broad range of health and welfare benefits for the Association's members, their employees and families through insurance policies issued by licensed insurance carriers. These benefits were available to the Association's members through the Association's Group Insurance Fund prior to the organization of the Trust Fund.

2. Significant Accounting Policies:

The following is a summary of the Trust Fund's significant accounting policies:

Insurance Premiums

Insurance premiums are recognized as revenue at the time the premiums are due and payable to the insurance carriers. Amounts received from subscribers in excess of amounts immediately due and payable to the carriers are deferred until the premium due date.

Administrative Fees

Administrative fees collected from subscribers are recognized as income when collected. At the time the fees are collected an expense is recorded to recognize the administrative support provided by the Alaska Bar Association.

Income Taxes

The Alaska Bar Association Trust Fund is subject to income taxation as a complex trust as defined by the Internal Revenue Code. A provision for income taxes will be provided should the Trust have taxable income in the future.



# Alaska State Legislature

## House of Representatives

### Committee on Judiciary

Official Business

Pouch V  
State Capitol  
Juneau, Alaska 99811

Anchorage phone: 277-7548  
Anchorage address:  
1016 W. 6th, Suite 201  
Anchorage, Alaska 99501

To: Billy Berrier, Legislative Affairs

From: Peggy Berck, <sup>MMB</sup> House Judiciary Committee

Date: October 17 1979

Re: Requests for Legal Opinions

-----  
I. Background.

In late July, 1979, the House Judiciary Committee was informed by the Speaker of the House that the House Judiciary Committee would be the committee of referral in the House regarding the 1980 sunset review of the Alaska Bar Association. Advance notice of this intended referral was provided in order that Committee staff might have sufficient time to collect the data necessary for this review.

In early September, 1979, the House Judiciary Committee informed the Alaska Bar Association of the Committee's role in the sunset review of the association and of the Committee's intent to request information from the association. (A copy of this letter is attached.)

On September 17, the Alaska Bar Association responded to the Committee. In essence, the association stated that it was not a state agency subject to sunset review. However, the association did state that it would provide non-confidential information to the Committee. I plan to submit the Committee's first series of informational requests the week of October 22. Should the association fail to cooperate, I shall immediately inform you of such fact. (A copy of the association's letter is attached.)

II Requests for Legal Opinions.

First, the House Judiciary Committee seeks a legal opinion regarding the Alaska Bar Association's position in this matter. This legal opinion should include, but not be limited to, the following issues:

1. Is the Alaska Bar Association a state agency subject to sunset review?

2. If the Alaska Bar Association is construed not to be a state agency, what authority does the House Judiciary Committee have to investigate the Alaska Bar Association?
3. Are the House Judiciary Committee and the State Auditor limited to obtaining non-confidential information from the Alaska Bar Association?
4. If the Alaska Bar Association is construed not to be a state agency, is the legislature empowered to repeal the Alaska Integrated Bar Act without affording the association the extensive review that is required in a sunset termination.?

To assist the preparation of this legal opinion I have collected the following materials: all memoranda filed in the ombudsman case and the briefs filed in the Horwitz appeal. Those materials are included with this request.

Second, the House Judiciary Committee seeks a legal opinion regarding the authority of the legislature to regulate the practice of law outside the court room. The Committee is aware of the fact that the Alaska Supreme Court contends that it has the ultimate power to govern the practice of law as a part of its inherent power to control officers of the court. However, the Committee desires to explore whether or not the Supreme Court's power is limited to regulating legal practices of a litigation nature. This issue was explored in an article by John Havelock in the recent issue of the Bar Rag and a copy is attached for your information.

### III. Suggested Deadlines for Opinions Requested.

First Opinion Request: no later than Nov. 6, 1979.

Second Opinion Request: no later than Nov. 15, 1979.

Thank you for your cooperation in this matter. If I can be of any further assistance to you please contact me at my Anchorage Office.

# Why Crooked Lawyers Go Free

"A grievance system that moves in secret, then winds up disciplining a minuscule percent of those whose conduct is complained about, can be neither effective nor credible." Here's what must be done

**I**F YOUR LAWYER mishandles your case, charges an exorbitant fee, or steals your money, what can you do about it? Short of suing for malpractice, you must take your complaint to a grievance committee made up of other lawyers. What are your chances of getting a fair hearing? According to all available statistics, they are so slim that you would be wasting your time. For example:

- In Pennsylvania, of the 9971 complaints filed against lawyers from 1973 through 1978, only one percent—120—resulted in public punishment. The attitude of Pennsylvania grievance authorities is reflected in the form letter all complainants receive. It says that "nearly all lawyers are reputable and sincere"; that the complaint "may drastically affect the

lawyer's ability to earn a living"; that he will "inevitably suffer from the accusation," even if he's innocent; and that complainants "should not expect to be given detailed reasons for the final disposition" of their charges.

- In New York City, of the 2721 complaints disposed of by the city bar's grievance committee in 1978, only 20 brought public punishment.

- In Texas, of the 8550 complaints filed against lawyers from 1975 through 1977, fewer than three percent resulted in any disciplinary action at all, and only one percent—77 cases—resulted in public punishment.

Figures like these are causing a growing demand that the bar's grievance committee system of dis-

ciplining itself be abolished and handed over to outside regulators. Lawyers, however, insist this is unnecessary because they are now cleaning up the mess by themselves. Are they?

For the answer, it's first necessary to penetrate the almost total secrecy with which they've surrounded their peer-review work. Fortunately, during the 1970s the profession allowed the public to get two peeks behind this screen.

**Silverman's Bomb.** In 1975, a panel headed by Wall Street lawyer Leon Silverman investigated the workings of the grievance committee of the Association of the Bar of the City of New York. This committee, responsible for policing 35,000 New York City lawyers, has often been cited as one of the country's best peer-review groups. But Silverman's report landed on it like a bomb. Two of the report's findings:

Although almost all complaints handled came from clients, the committee showed a distinct tendency to take the word of a lawyer over that of a client, even when the lawyer's record contained a long list of previous complaints. The report cited case after case in which serious complaints—*theft of client funds, neglect of client cases, excessive fees, incompetence, bribery*—were dismissed without any investigation at all, or with merely a phone call to the accused lawyer to ask him whether the complaint was true. One typical case concerned a lawyer charged with falsifying documents, with-

holding client funds and lying about his fee. The lawyer had a long history of similar complaints, which had produced two official warnings and one formal charge of misconduct. Nevertheless, without even investigating the complaint, the committee dismissed it as a "fee dispute."

Secrecy was another problem. In New York (as in almost all states) it is illegal to give out any information about a complaint against a lawyer—even the fact that there *is* a complaint—unless the lawyer has been found guilty by the courts. This meant that almost everything the committee did was kept secret from the press, the public and the rest of the bar.

From 1974 to 1975, the committee received 2428 complaints. Of these, the public learned about only four: two that produced public suspensions and two that produced disbarments. About 2300 complaints were secretly dismissed, and about 100 resulted in secret reprimands.

"It is little wonder," concluded the Silverman report, "that some attorneys do not feel impelled to be responsible to the disciplinary system. A system that moves in secret, then winds up disciplining a minuscule percent of those whose conduct is complained about, can be neither effective nor credible."

**Paper Tiger.** Are things any better in the rest of the country? In 1970 the results of a three-year nationwide study of lawyer discipline were published by a special panel of the American Bar Association (ABA)

ciplining itself be abolished and handed over to outside regulators. Lawyers, however, insist this is unnecessary because they are now cleaning up the mess by themselves. Are they?

For the answer, it's first necessary to penetrate the almost total secrecy with which they've surrounded their peer-review work. Fortunately, during the 1970s the profession allowed the public to get two peeks behind this screen.

**Silverman's Bomb.** In 1975, a panel headed by Wall Street lawyer Leon Silverman investigated the workings of the grievance committee of the Association of the Bar of the City of New York. This committee, responsible for policing 35,000 New York City lawyers, has often been cited as one of the country's best peer-review groups. But Silverman's report landed on it like a bomb. Two of the report's findings:

Although almost all complaints handled came from clients, the committee showed a distinct tendency to take the word of a lawyer over that of a client, even when the lawyer's record contained a long list of previous complaints. The report cited case after case in which serious complaints—*theft of client funds, neglect of client cases, excessive fees, incompetence, bribery*—were dismissed without any investigation at all, or with merely a phone call to the accused lawyer to ask him whether the complaint was true. One typical case concerned a lawyer charged with falsifying documents, with-

holding client funds, and lying about his fee. The lawyer had a long history of similar complaints, which had produced two official warnings and one formal charge of misconduct. Nevertheless, without even investigating the complaint, the committee dismissed it as a "fee dispute."

Secrecy was another problem. In New York (as in almost all states) it is illegal to give out any information about a complaint against a lawyer—even the fact that there *is* a complaint—unless the lawyer has been found guilty by the courts. This meant that almost everything the committee did was kept secret from the press, the public and the rest of the bar.

From 1974 to 1975, the committee received 2428 complaints. Of these, the public learned about only four: two that produced public suspensions and two that produced disbarments. About 2300 complaints were secretly dismissed, and about 100 resulted in secret reprimands.

"It is little wonder," concluded the Silverman report, "that some attorneys do not feel impelled to be responsible to the disciplinary system. A system that moves in secret, then winds up disciplining a minuscule percent of those whose conduct is complained about, can be neither effective nor credible."

**Paper Tiger.** Are things any better in the rest of the country? In 1970 the results of a three-year nationwide study of lawyer discipline were published by a special panel of the American Bar Association (ABA)

chaired by former Supreme Court Justice Tom C. Clark. Here is how the Clark report summed up its findings: "This committee must report the existence of a scandalous situation. With few exceptions, the prevailing attitude of lawyers toward disciplinary enforcement ranges from apathy to outright hostility."

Nationally, the Clark panel found, the grievance system was an impoverished antique, operated by volunteer lawyers in their spare time, usually without adequate clerical help or records, always in secret. Indeed, the panel singled out the New York committee—which at least kept records and had a paid staff—for special praise. One witness said that in small communities, where lawyers were all on a first-

name basis, discipline was "virtually impossible."

Another witness called the discipline system a "paper tiger." Case after case was cited of misconduct that either went unpunished or produced a secret slap on the offender's wrist. Lawyers with long strings of complaints against them were repeatedly let off as "first offenders" simply because the committee had no record of the previous complaints. In some jurisdictions, even the rare lawyer who was disbarred was allowed more appeals than a man convicted of murder, and frequently the final disbarment was issued so quietly that the lawyer could stay in practice merely by moving to another jurisdiction. (The Clark panel found so many disbarred lawyers still practicing that it recommended establishment of a "national discipline data bank" to keep track of them.)

**Whistling in the Dark.** Of the 39 reforms recommended by the Clark panel, one in particular put the finger on the real reason for the system's near-total failure. It involved this question: Who is in the best position to blow the whistle on crooked lawyers?

"Lawyers and judges," concluded the Clark committee, "are far better equipped than laymen to recognize violations of professional standards. However, relatively few complaints are submitted to disciplinary agencies by members of the profession. This fact has been cited as a major problem by nearly every disci-



Drive them up the wall with Impact One—AMF's top-of-the-line racquetball racquet. And to improve your game even further, we'll send you a Rollout™ Bleu racquetball and our booklet Racquetball for Winners™ for \$2.00. Send a check or money order with your name and address to Ad Dept., AMF, Voit, Santa Ana, CA 92704.

