988 HJ AK BAR ASSN SUNSET REVIEW FILE NO. 9

president, president-elect, two former presidents, and three members of the present Board of Governors of the Association; the Ombudsman, and a number of attorneys.

The Alaska Supreme Court has delegated to the Association the responsibility for admissions and discipline, and by statute the Association may propose court rules or rule changes. All attorneys practicing in Alaska are required to be members of the Association, and to pay dues (now $180.00 per year). Statutory authority is AS 08.08.010 - 250, commonly called the Integrated Bar Act, and some members of the Bar seem to feel that authority also resides in the inherent power of the Alaska Supreme Court.

The Committee found that the Association is conducting a number of worthwhile activities. Unfortunately, it is not clear that most of these are benefiting the general public, as opposed to Association members. (If, as it claims, the Association is not a State agency, it would be under no obligation to benefit the general public.)

In some ways one of the most disturbing revelations was the extent to which attorneys form a closed corporation. The Association comprises all attorneys in the State, only its members may practice law, it is in charge of admissions to the Bar and of discipline of its members, it nominates the three attorneys who sit on the Judicial Council, which in turn sends judgeship nominees to the Governor, judges must themselves be attorneys, the Association furnishes nine members of the Board of Directors of Alaska Legal Services Corporation. Only in the disciplinary hearing and attorney

fee review committees is there any lay presence. There seems to be at present no provision for the exercise of supervisory responsibility by the elected representatives of the people.

When, after completion of testimony, the Committee began its deliberations, the diversity of opinion was clearly evident. Apparently no one believed that the Alaska Bar Association should be extended for the maximum four years. Some members wanted to treat attorneys like other professionals, with a board to handle admissions and discipline; others preferred to make the Supreme Court directly responsible for those functions; and a third group preferred a short extension together with appropriate statute changes. The last viewpoint was finally adopted.

In compliance with AS 44.66.050(d), the Committee finds that:

(1) The Alaska Bar Association is intended to address the need for admission and discipline of attorneys in the State.

(2) The objectives are to upgrade the Bar in terms of education, competence, and professionalism of its members, and to perform some services for the general public.

(3) There are no other programs having similar or conflicting objectives.

(4) The responsibilities could be turned over to the Supreme Court or to a professional board in the Division of

Occupational Licensing. The Committee has considered these alternatives but believes that they are not feasible at this time.

(5) The Association could not be eliminated unless some other agency were responsible for the functions.

(6) The extension of the Association for one year will permit time for a more thorough review and there is no duplication of other efforts.

(7) Information which would improve the performance of the Association is included in other portions of this report or in legislation to be introduced by the House Judiciary Committee.

The House Judiciary Committee finds that:

(1) The Alaska Bar Association should be extended until June 30, 1981.

(2) Statutory changes are needed in the public interest. The Committee will propose a bill incorporating these changes.

Alaska State Legislature

House of Representatives

Committee on Judiciary

Official Business

Pouch V
State Capitol
Juneau, Alaska 99811

March 12, 1980

The Honorable Terry Gardiner
Speaker of the House
Alaska State Legislature
Pouch Y, State Capitol
Juneau, Alaska 99811

Dear Mr. Speaker:

In compliance with AS 44.66.010 - 060 and referral by the Speaker of the House on January 15, 1980, the House Judiciary Committee has conducted a review of the Alaska Bar Association. By letter of July 31, 1979, the Speaker had notified the Committee of the forthcoming referral, thereby permitting advance work to be done during the interim between legislative sessions.

The Alaska Bar Association has taken the position "that it is not a State agency, and that it is not subject to the Sunset review process." The Association refused the Legislative Auditor access to some of its records; therefore, no performance audit has been conducted.

On November 7, 1979 the Committee requested information on 87 points; by letter of January 30, 1980 and a 71-page booklet, The Alaska Bar Association, February 1980, the Association answered completely 73 of the 87 points. Another 13 points were addressed by the Alaska Bar Association, but were not answered completely because of stated lack of adequate or feasibly retrievable information. On one point, a request for a copy of the card index on discipline, the Alaska Bar Association refused to reply, stating that it could not release this confidential information to the House Judiciary Committee.

In addition to receiving testimony during interim hearings, the Committee held 2 hearings to receive public testimony in Juneau. Also, 2 teleconference hearings were held to obtain testimony from Anchorage, Fairbanks, Kodiak, Valdez, Ketchikan, Sitka and Nome. Written testimony was received from 6 persons and the Kenai Peninsula

Bar Association. Oral testimony was received from about 15 persons. Witnesses included the president, president-elect, two former presidents, and three members of the present Board of Governors of the Association; the Ombudsman, and a number of attorneys.

The Alaska Supreme Court has delegated to the Association the responsibility for admissions and discipline, and by statute the Association may propose court rules or rule changes. All attorneys practicing in Alaska are required to be members of the Association, and to pay dues (now $180.00 per year). Statutory authority is AS 08.08.010 - 250, commonly called the Integrated Bar Act, and some members of the Bar seem to feel that authority also resides in the inherent power of the Alaska Supreme Court.

The Committee found that the Association is conducting a number of worthwhile activities. Unfortunately, it is not clear that most of these are benefiting the general public, as opposed to Association members. (If, as it claims, the Association is not a State agency, it would be under no obligation to benefit the general public.)

In some ways one of the most disturbing revelations was the extent to which attorneys form a closed corporation. The Association comprises all attorneys in the State, only its members may practice law, it is in charge of admissions to the Bar and of discipline of its members, it nominates the three attorneys who sit on the Judicial Council, which in turn sends judgeship nominees to the Governor, judges must themselves be attorneys, and the Association furnishes nine members of the Board of Directors of Alaska Legal Services Corporation. Only in the disciplinary hearing and attorney fee review committees is there any lay presence. There seems to be at present no provision for the exercise of supervisory responsibility by the elected representatives of the people. The position of the Court System on the Alaska Bar Association sunset is included as an appendix to this report.

The Committee received more complaints and more testimony on the subject of Bar examinations than on any other subject related to the Alaska Bar Association. A major defect in the administration of the Alaska examination is that it is prepared and graded by persons who, while skilled attorneys, are amateurs in testing. Professionalism is needed in both the preparation and grading of the

examination to ensure that the examination will score persons only on relevant factors. The training of the preparers and graders should be financed by the income derived each year from the administration of the bar examination (about $16,000 anticipated in 1980, not including the costs of any litigation which may arise from the examination).

There appears to be no discrimination against women in the Alaska Bar Association. Alaska has one of the highest percentages of women lawyers in the United States and, specifically, the highest percentage of women on its Board of Governors. In fact, the president of the Alaska Bar Association is a woman.

Although no apparent preference for non-minorities is shown, there is a disparity in the numbers of minorities versus non-minorities in the Alaska Bar Association. Ethnic minorities are poorly represented in the Alaska Bar Association. Present membership from these ethnic groups is as follows:

Alaska Native	5
Black	4
Asian-American	2
Hispanic	1

To the best of our knowledge, 12 Native people have been admitted to the Alaska Bar since Statehood. The only reliable statistics available are those reflecting current membership. Because the problem of low representation of minorities in the Alaska Bar Association has not been addressed adequately in the past, reasons for this situation cannot be determined at this time.

The Judiciary Committee recognizes that the percentage of minorities failing the Alaska bar examination, compared with the percentage of non-minority persons failing, is disproportionately high. The Committee believes that this disparity may be caused in part by cultural factors.

The Committee does not believe that the Alaska Bar Association intends to discriminate against minorities. The Committee commends the Board of Governors' Legal Educational Opportunities Committee for its work in gathering statistics regarding minorities in the Alaska Bar Association. The Committee urges the Board of Governors to

continue this work so that accurate minority pass rates may be established.

The Committee urges the Board of Governors to develop a program which will speak to the statistics reflecting minority representation in the Alaska Bar Association and the apparently low percentage of minority and non-minority individuals who pass the bar examination.

The Committee urges the Board of Governors to be aware of the disparity in minority participation in the bar and to direct its Committee of Bar Examiners to continually scrutinize the preparation and grading of the examination for possible cultural biases.

The Committee urges the Board of Governors to look into establishing some other criteria for evaluating an individual's competency to practice law in the State.

When, after completion of testimony, the Committee began its deliberations, the diversity of opinion was clearly evident. Apparently no one believed that the Alaska Bar Association should be extended for the maximum four years. Some members wanted to treat attorneys like other professionals, with a board to handle admissions and discipline; others preferred to make the Supreme Court directly responsible for those functions; and a third group preferred a short extension together with appropriate statute changes. The last viewpoint was finally adopted.

Findings required by AS 44.66.050(d) follow:

(1) an identification of the problems or the needs that the programs and activities of the board, commission or agency are intended to address;

Finding: The Alaska Bar Association is intended to address the need for admission and discipline of attorneys in the State.

(2) a statement, to the extent practicable, of the objectives of the program of the board, commission, or agency program, and its anticipated accomplishments;

Finding: The objectives are to upgrade the Bar in terms of education, competence, and

professionalism of its members, and to perform some services for the general public.

(3) an identification of any other programs having similar, conflicting or duplicate objectives;

Finding: There are no other programs having similar or conflicting objectives.

(4) an assessment of alternative methods of achieving the purposes of the program;

Finding: The responsibilities could be turned over to the Supreme Court or to a professional board in the Division of Occupational Licensing. The Committee has considered these alternatives but believes that they are not feasible at this time.

(5) an assessment of the consequences of eliminating the board, commission or program and consolidating its activities with another program, or of funding it at a lower level;

Finding: The Association could not be eliminated unless some other agency were responsible for the functions.

(6) a justification for the recommended continuation or extension of the board, commission or program, and an explanation of the manner in which it avoids duplication of or conflict with other efforts;

Finding: The extension of the Association for one year will permit time for a more thorough review and there is no duplication of other efforts.

(7) any other information which, in the opinion of the committee, would improve the performance of the board, commission or agency with respect to its representation of and responsiveness to the public interest;

Finding: Information which would improve the performance of the Association is included in

other portions of this report or in legislation to be introduced by the House Judiciary Committee.

The House Judiciary Committee finds that:

(1) The Alaska Bar Association should be extended until June 30, 1981.

(2) Statutory changes are needed in the public interest. The Committee will propose a bill incorporating these changes.

Charles H. Parr, Chairman

Nels A. Anderson, Jr.

Ramona L. Barnes

Fred E. Brown

Thelma Buchholdt

Hugh Malone

Terry Martin

Patrick M. O'Connell

Randy Phillips

Alaska Court System

State of Alaska

303 "K" STREET
ANCHORAGE, ALASKA
99501

ARTHUR H. SNOWDEN II
ADMINISTRATIVE DIRECTOR

(907) 274-8611

March 4, 1980

Representative Charles H. Parr
Pouch V
Juneau, Alaska 99811

Dear Representative Parr:

You have asked that I comment on behalf of the Court System concerning the sunset legislation of the Alaska Bar Association currently pending before your committee.

I have conferred with the Supreme Court with regard to your request and they asked me to comment as follows.

The Court strongly supports continued existence of the Alaska Bar Association as an integrated bar. The Court further suggests that the Bar Association and the Legislative Audit Committee reach a reasonable accommodation of the current dispute.

The Court has not given me brief to comment further on the subject. I hope these comments will help the committee.

Cordially,

Arthur H. Snowden, II

Arthur H. Snowden, II
Administrative Director

AHS:cm

cc: Donna Willard, Esq.
President, Alaska Bar Association

Alaska Court System

State of Alaska

303 "K" STREET
ANCHORAGE, ALASKA
99501

ARTHUR H. SNOWDEN II
ADMINISTRATIVE DIRECTOR

(907) 274-8611

March 12, 1980

The Hon. Charles Parr, Chairman
House Judiciary Committee
Room 126, State Capitol Building
Juneau, Alaska 99811

Dear Representative Parr:

In my letter of March 4, 1980, with reference to the sunset of the Alaska Bar Association, I stated in the last sentence that the Court hopes that the Bar Association and the Legislative Budget and Audit Committee can reach a reasonable accommodation of their present dispute.

I wish to make it clear that in commenting on this subject, in no way did I intend to comment or convey any information on the merits of the controvery between the Legislative Budget and Audit Committee and the Alaska Bar Association before the Supreme Court.

Very truly yours,

Arthur H. Snowden II

Arthur H. Snowden II

Alaska State Legislature

House of Representatives

Committee on Judiciary

Pouch V
State Capitol
Juneau, Alaska 99811

Official Business

March 12, 1980

The Honorable Terry Gardiner
Speaker of the House
Alaska State Legislature
Pouch Y, State Capitol
Juneau, Alaska 99811

Dear Mr. Speaker:

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In addition to receiving testimony during interim hearings, the Committee held 2 hearings to receive public testimony in Juneau. Also, 2 teleconference hearings were held to obtain testimony from Anchorage, Fairbanks, Kodiak, Valdez, Ketchikan, Sitka and Nome. Written testimony was received from 6 persons and the Kenai Peninsula

KENAI PENINSULA BAR ASSOCIATION
P. O. BOX 397
KENAI, ALASKA 99611
TELEPHONE 283-7564

February 19, 1980

Honorable Charles Parr
House of Representatives
House Judiciary Committee
State of Alaska
Pouch Y
Juneau, Alaska 99811

Dear Mr. Parr:

Enclosed please find a Resolution of the Kenai Peninsula Bar Association in which the Bar Association has voted that the legislature should "sunset" the Alaska Bar Association. The reasons for the association's action are enumerated in the attached Resolution.

I should point out that there was dissent in our local bar association with regard to whether or not the Alaska Bar Association should cease to exist. Thomas Wardell specifically wishes it to be known that he does not concur and would support the continuance of the Alaska Bar Association and would try to resolve any differences with the existing entity.

As President of the Kenai Peninsula Bar Association I feel that our relations with the Alaska Bar Association have been very good. I would lik to point out that the Alaska Bar Association has "reached out" to the Kenai Peninsula Bar Association to improve relations and services to our members here on the Kenai Peninsula. The following are examples of such efforts. Namely, I, the President, have been invited to attend each and every Board of Governors meeting; the opinions of our association have been sought on numerous issues which are before the Alaska Bar Association, representatives of the Alaska Bar Association including the President, the board members and, respectively, the bar counsel have volunteered to visit the Kenai Peninsula to address our members; the Alaska Bar Association has initiated a video tape program to allow Kenai attorneys to view Alaska Bar Association Continuing Legal Education seminars which are presented elsewhere in the state which has enabled our members to continue in their professional education without incurring the great costs of travel.

It is also my personal conviction that the many activities of the bar association such as bush justice, the publication of a legal newspaper, the extensive work by committees on changes in the substantive of law, the self regulation of professional ethics and fee arbitration are highly useful functions and benefit the populace of the State of Alaska.

I have personally viewed the fee arbitration process first hand. I was highly impressed by the degree of impartial objectivity on the part of the prosecutor and the fee arbitration panel and was personally very impressed by the quality of the legal opinion and decision which was issued.

It is my personal conviction that the legislature should carefully weigh whether or not problems within the Alaska Bar Association are real and if so, can they be corrected by some means other than to "sunset" the Alaska Bar Association.

The two areas that I am dissatisfied with are the bar exam admissions procedure with regard to review of marginal exam results. It has been the experience of some local bar applicants that the bar association will not grant a review of a paper which has a score of 69 where a score of 70 is mandatory to pass the exam. I believe that applicants should show a substantial ability to pass the Alaska Bar exam but I also believe that we do not need to "protect" the business of members of the bar from new admittees and I believe that fair procedures should be adopted by the Alaska Bar Association.

Another area of great consternation to many of the attorneys is the winter meetings in such places as Hawaii and Mexico. Holding these meetings in far off location bars the general members of the ba association from attending these important functions. Most young lawyers simply cannot afford to expend thousands of dollars on such an occasion.

I trust these comments will be of interest to you. Scheduled court appointments preclude me from appearing at the teleconference hearing before the House Judiciary Committee

Yours truly,

Roger E. Holl

ROGER E. HOLL
Attorney at Law

REH:aj

RESOLUTION

WHEREAS, the continued existence of the Alaska Bar Association is being considered by the Alaska State Legislature under the provisions of the "Sunset Law"; and

WHEREAS, this topic was discussed at length by the membership of the Kenai Peninsula Bar Association, consuming at least two weekly meetings; and

WHEREAS, the Kenai Peninsula Bar Association members agreed that the Alaska Bar Association has failed to adequately deliver to the members of the bar and to the members of the public the services that it was designed to render, as follows:

1. The dues collected from the membership are too high for the services rendered and are used ineffectively.

2. The Alaska Bar Association does not effectively or fairly administer the Alaska Bar Association admissions procedure.

3. The Alaska Bar Association does not effectively or efficiently examine disciplinary complaints.

4. The Alaska Bar Association fee arbitration procedure does not effectively resolve fee disputes.

5. The meetings of the Alaska Bar Association are often not accessible to the general membership in that some major meetings are held outside the State of Alaska

6. The cost of continuing legal education is becoming increasingly prohibitive in so far as those meetings which are held outside of the State of Alaska.

7. The funds allocated by the State of Alaska to the Alaska Bar Association could be used more effectively for other purposes.

8. The Alaska Supreme Court can and should handle the administration of services, the admissions procedure before the Courts of Alaska, the disciplinary complaints and other functions now handled by the Alaska Bar Association.

BE IT RESOLVED THEREFORE, for these and other reasons that the Legislature of the State of Alaska "sunset" the Alaska Bar Association and that the Alaska Supreme Court assume the functions of the Alaska Bar Association.

Thomas Wardell voted against this resolution and wishes that fact to be known.

DATED: At Kenai, Alaska this 19 day of February, 1980.

Roger E. Hall

Roger E. Hall, President
Kenai Peninsula Bar Association

STATE OF ALASKA
THE LEGISLATURE

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

LEGISLATIVE AFFAIRS AGENCY

M E M O R A N D U M March 31, 1980

SUBJECT: The practice of law in Alaska
(Work Order Number 8357)

TO: Representative Charles H. Parr
Chairman, House Judiciary Committee

FROM: Richard A. Bradley
Legislative Counsel

We have delivered to you the bill responding to your request for a bill disestablishing the integrated bar in Alaska.

Since it was delivered to you, an omission from the bill has come to our attention which should be corrected in any committee substitute requested.

In a series of places in the statutes, the law requires that certain things be done by a "member of the Alaska Bar Association." This phrase has historically been synonymous with "admitted to the practice of law in Alaska" but the bill requested will change that.

Accordingly, I proposed to add amendments to these sections in a committee substitute:

(1) AS 09.43.200;

(2) AS 18.85.060;

(3) AS 41.17.130; and

(4) AS 41.17.140.

Several sections already contain the appropriate language and would not be changed. See, AS 24.20.075, AS 42.06.060, and AS 47.37.080.

These sections turned up in a quick computer search. Others may exist and we will seek to identify them if a committee substitute is requested.

RAB:ljb

STATE OF ALASKA
THE LEGISLATURE

POUCH Y STATE CAPITOL
JUNEAU, ALASKA 99811
907 465 3800

LEGISLATIVE AFFAIRS AGENCY

M E M O R A N D U M March 29, 1980

SUBJECT: The practice of law in Alaska
(Work Order No. 8357)

TO: Representative Charles H. Parr
Chairman, House Judiciary Committee

FROM: Richard A. Bradley
Legislative Counsel

A bill responsive to the request of the committee is enclosed. Because the matters involved in the bill are complex, I have prepared this memorandum to offer observations to the committee on what it has requested and what I have delivered to you.

I chose not to follow the format of your request, a suggested repeal and reenactment of AS 08.08; rather, I have amended existing law where possible to reflect the changes made in AS 08.08.

The request of the committee directs that a bill be prepared abolishing the integration or unification of the Alaska Bar Association. The request then confers extensive police powers on the governing board of the resulting voluntary association.

I am concerned with the allocation of substantial police powers to a voluntary association. In my view, the mixed character of the resulting Alaska Bar Association offers the substantial possibility that what results will be found by the courts to be unconstitutional.

The bill imposes the responsibility of a public agency on a voluntary association. It is required to act in the same manner that a public agency would act. These safeguards cloud, in my judgment, the otherwise clear prohibition of the grant of police powers to a private, voluntary organization.

And I must confess, in candor, to the committee that the co-mingling of public responsibilities on a voluntary association has made difficult the task of drafting the bill before you. I will seek to identify the issues that have concerned me in the following analyses:

Section 10. The only change requested in this section is the substitution of "agency" for "instrumentality". The change is essentially semantic; I recognize, however, as does the committee, that "agency" is the customary word used to describe a unit of government. The change should help resolve the apparent concern of the committee which I discuss subsequent in this memorandum. For added emphasis, a subsection (b) is added to the section in place of the section requested by the committee as sec. 150.

Section 20. The provision is repealed and reenacted and the essential change is from a law requiring membership of all attorneys admitted to practice to a voluntary association.

Section 30. The provisions of sec. 30 are unchanged and the section does not appear within this draft.

Section 40(a). The only change in (a) is the deletion of any authority to the board regarding regulations. To my knowledge the bar has not adopted any regulations since statehood. What other regulatory agencies adopt as regulations, it proposes to to the Supreme Court as bar rules; by definition, "bar rules" are not administrative regulations.

The board has adopted by-laws regarding its internal procedures, particularly on the responsibilities of officers of the board and procedures for their election.

Note that I propose no amendment to AS 08.08.100, a section which excludes the bar from the application of the Administrative Procedures Act and that I propose to repeal AS 08.08.090 as inconsistent with Alaska Bar Rule 62.

Section 40(b). This subsection is amended consistently with the committee's request. See, sec. 50.

Section 50(a). An amendment decreasing the attorney members of the board from nine to six and providing nonattorney members to be appointed by the governor and confirmed by the legislature is added.

Section 50(b). The section is amended to implement the provisions of sec. 50(a).

Section 50(c). This section establishes the procedure for the selection of members, both appointed and elected, over a three year period.

This provision must be read with sec. 23 of the bill which establishes a transitional period for the implementation of sec. 50.

Section 60. The apparent request of the committee was that the officers of the association not be selected at the associations annual convention.

Section 70(a). This amendment was not requested by the committee in its present format. Elections [except under sec. 60] have traditionally been held by mail. As such, it seems logical to call a special election by mail to fill vacancies in the elected positions on the board. Whatever delay results from the conduct of the election by mail ballot is insignificant and the result seems preferable.

Section 70(b). The language of this subsection is as requested by the committee.

Section 70(c). The language is as requested by the committee.

Section 75. This section is added to the chapter and responds to the what was sec. 70 in the committees request. The language of the section is essentially as it was requested by the committee.

The request of the committee asked that the language be amended to require notice to the public of board meetings as is required of other professions. I checked certain other professional codes, including AS 08.04, regarding accountants; AS 08.36, regarding dentists; AS 08.40, regarding architects, engineers and land surveyors; AS 08.34, relating to the

practice of medicine; and AS 08.68, relating to the practice of nursing, and found no similar provision. Notwithstanding this conclusion, the language of the committee's request is included in the bill.

Section 80. This section brings into focus my difficulty in determining what powers, particularly what police powers, are proper to a voluntary association.

Section 80(a). I added the reference to "this chapter" as requested by the committee.

Section 80(a)(1). I retained the provision regarding the "classification of membership." A voluntary association may well have levels of membership but they are typically not set out in statute. Because of the mixed status of the Alaska Bar, I retained the language.

Section 80(a)(4). I added the authority to establish fees to this subsection. The provision regarding investment, as requested by the committee, is also added. I deleted the reference to licensing fees because of my transfer of these responsibilities to the Supreme Court. See, sec. 20 of the bill, infra, which adds amendments to AS 22.05.

I omitted the draft sec. 80(a)(5) relating to the maintenance of a register of attorneys. The Supreme Court typically exercises this responsibility in states without an integrated bar. See, here also the provisions relating to the authority of the Supreme Court in sec. 18 of the bill.

I added (a)(7) [continuing legal education] and (a)(8) [specialization] in a format different from the request by the committee.

Section 80(b). The provision requested by the committee directing the board to make recommendations for amendments to this chapter as well as to law of a general nature are incorporated into sec. 85, the section dealing with the annual report of the board of governors.

Section 80(b)(1). The provision relating to "continuing legal education" is incorporated in sec. 80(a)(7) and is not repeated here.

Similarly, the "licensing" function is transferred to the Supreme Court and is not duplicated here.

Section 80(b)(4). The concept of fees for inactive members seems unnecessary to a voluntary association. Licensing fees as such are collected by the Supreme Court under the fees set by the legislature. See, sec. 22.05.180, added in this bill by sec. 20.

Section 85. This section reflects the elements contained within draft sec. 90.

Section 90. I do not believe the committee proposed to amend sec. 90. I propose to repeal it.

The section does very little other than provide that the active members of the association may amend the by-laws and regulations prescribed by the board of governors. This power has sometimes been exercised by the membership at the annual convention. The provision appears to be superceded by Alaska Bar Rule 62 which provides for "adoption of recommended rules, by-laws, and regulations."

Section 95. This provision defines the "practice of law" and contains the material proposed in draft sec. 140.

The language is minimally unchanged from the draft.

I offer no endorsement of its content; I consider it altogether inadequate as a definition of the practice of law. Several further comments may be made:

(1) For many, the practice of law is essentially undefinable. To a large extent, this premise concedes that large aspects of commercial activity exist in the shadow of the legal profession, but for historical, practical, or other reasons have been left unregulated or included in the regulation of other professions.

(2) Sec. 95(b) is a somewhat cynical statement suggesting that bankers, realtors, and others may practice law so long as they do not do it on a full-time basis. From a public policy perspective, the provision seems to suggest that incompetence will be implicitly permitted so long as it is not a full-time activity.

(3) The provisions of sec. 95 totally ignore paralegal activity; they also ignore the field of increasing economic importance occupied by individuals in narrow fields of expertise where assistance is offered to the public in obtaining licenses, permits, and the like.

(4) I offer no provisions to the committee which are better than those suggested in sec. 95. I am personally aware that the bar association locally, as well as the bar association nationally, has been concerned for some time with the practice of law and has not been able to come up with a better definition than that offered. I suggest it would be better to delete this provision than it would be to believe that it is comprehensive and effective.

Section 205. This section responds to sec. 170 of the committee's request.

This section and several other sections that follow it delete the requirement that applicants for admission to the Alaska Bar be a graduate of an accredited law school. These sections are contained within the draft identically to the committee's request. And, I offer no comment on their significance or implications.

Section 207. This section responds to sec. 180 of the committee's request and it is contained within the bill in the format requested by the committee.

Section 210. This section responds to sec. 150 of the committee's draft and is contained in the bill in the format requested by the committee.

Section 220. This section is repealed. The section is obsolete.

Section 230. This section responds to sec. 200 of the committee draft and is included within this bill in the format requested by the committee.

Section 18 of the bill adds a new article to AS 22.05. to deal with the responsibility of the Supreme Court over the annual license of attorneys and the maintenance of the register of licensed attorneys.

These sections are a substitute for sec. 120 and sec. 130 of the committee draft. I discussed my difficulty with Peggy Berck on the inclusion of the responsibilities to a voluntary association and suggested that the responsibilities be transferred to the Supreme Court. She agreed.

Section 45.50.495. The section cannot be fitted within the single subject requirement. It does not deal with the practice of law but rather with anti-trust activities of attorneys.

If the committee is concerned with the problem, I suggest repealing AS 45.50.481(1) in a separate bill.

Section 19 and section 20 amend Alaska Bar Rules in the format requested by the committee.

Section 21 repeals secs. 220, and 250.

Section 22 repeals sec. 3 of Alaska Bar Rule 2.

Section 23 is a transitional section which is designed to enable AS 08.08.050(c) added by sec. 5 by the bill to work.

Section 24 provides that the effective date of the act is January 1, 1981.

As noted, several sections of this bill amend Alaska Bar Rules. I wish to call to the committee's attention the question of whether the legislature may amend Alaska Bar Rules.

The source of the question is, of course, Article IV, sec. 15. of the Alaska Constitution, which provides:

> SECTION 15. The supreme court shall make and promulgate rules governing the administration of all courts. It shall make and promulgate rules governing practice and procedure in civil and criminal cases in all courts. These rules may be changed by the legislature by two-thirds vote of the members elected to each house.

The Supreme Court has had a number of opportunities to comment on the implications of this section, and it has

generally limited its comments to the judicial embellishment that the provision of the bill amending rules, either directly or indirectly, must be indentified in the bill and must be voted on separately. [It is for this reason that the fact of the Alaska Bar Rules amendment is noted in the bill title.]

We assumed that based on the logic of the Bradner v. Hammond decision, 553 P.2d 1 (1976), the Supreme Court will determine that the provisions of this section will constitute the outer limits of the authority of the legislature to amend rules of the Supreme Court. Since the Alaska Bar Rules may not fairly be described as either "rules governing the administration of all courts," or "rules governing practice and procedure in civil and criminal cases in all courts," we believe that conservative legal advice to the committee would suggest that the legislature is without the authority to amend the Alaska Bar Rules.

If we may assist further, please advise.

RAB:ljb

Enclosure

STATE OF ALASKA
THE LEGISLATURE

POUCH Y, STATE CAPITOL
JUNEAU, ALASKA 99811
907 465 3800

LEGISLATIVE AFFAIRS AGENCY

M E M O R A N D U M March 31, 1980

SUBJECT: The practice of law in Alaska
(Work Order Number 8357)

TO: Representative Charles H. Parr
Chairman, House Judiciary Committee

FROM: Richard A. Bradley
Legislative Counsel

We have delivered to you the bill responding to your request for a bill disestablishing the integrated bar in Alaska.

Since it was delivered to you, an omission from the bill has come to our attention which should be corrected in any committee substitute requested.

In a series of places in the statutes, the law requires that certain things be done by a "member of the Alaska Bar Association." This phrase has historically been synonymous with "admitted to the practice of law in Alaska" but the bill requested will change that.

Accordingly, I proposed to add amendments to these sections in a committee substitute:

(1) AS 09.43.200;

(2) AS 18.85.060;

(3) AS 41.17.130; and

(4) AS 41.17.140.

Several sections already contain the appropriate language and would not be changed. See, AS 24.20.075, AS 42.06.060, and AS 47.37.080.

These sections turned up in a quick computer search. Others may exist and we will seek to identify them if a committee substitute is requested.

RAB:ljb

News-Miner 2/21/80

Sunset review questions need for bar association

By SUSAN FISHER
News-Miner Bureau

JUNEAU—While no witness has called for abolishing the Alaska Bar Association, there have been critical remarks raised during sunset review of the ABA.

Members of the House Judiciary Committee this afternoon will consider the testimony they have received the past few days.

Dominated by testimony from ABA active members in support of the association, the hearings netted a few critical remarks from some of its members.

Alaska has an integrated bar, meaning that all practicing lawyers must belong to the ABA and pay annual dues.

Kathryn Kolkhorst, who took leave as an assistant attorney general to testify as an individual, told legislators Thursday of her concerns and criticisms of the ABA-administered bar admissions test.

That same afternoon, State Ombudsman Frank Flavin outlined his office's difficulties in trying to handle ABA complaints directed to the ombudsman.

And in earlier testimony, legislators learned that while ABA is now trying to help Natives taking the bar admissions test, last year only two of 16 Natives passed the test.

Most of the earlier testimony had come from active ABA members participating in various committees and review projects.

The supporters cited the many different projects the ABA has undertaken as a public service, all done through volunteer efforts.

ABA receives $60,000 a year in state funds to handle attorney-judge discipline and grievance cases.

ABA's board of governors maintains it is not a state agency, and therefore not subject to sunset review, legislative audit or review by the ombudsman.

One member of the House Judiciary Committee expressed his own skepticism of the ABA. House Majority Leader Nels Anderson Jr., D-Dillingham, said he is not convinced the bar association should continue.

"It seems to me you have the fox guarding the henhouse all the way down," Anderson said. His reference is to the fact that the ABA administers the bar admissions test, decides lawyer ethics, and handles grievances and discipline.

Kolkhorst told the committee that the bar admissions test is composed 80 per cent of the California essay exam and multi-state questions, and 20 per cent essay on Alaskan law.

But the Alaskan lawyers who write the questions and the ABA members who serve as graders are not trained to do either, she said.

No point system is used on the Alaskan portion, there have been typographical and technical mistakes in the questions, and Kolkhorst has been told that graders do not abide by the analysis written by those preparing the questions.

Kolkhorst said the ABA earns $42,500 a year from applicants taking the test, yet spends only $26,000 in preparing and grading the tests.

The extra money, she suggested, should be used to train the lawyers writing the questions and grading them.

Kolkhorst attended law schools in Connecticut and Yale, but won admission on an appeal of her test before the Alaska Supreme Court, after twice failing it.

Flavin said the options the committee faces in deciding the sunset review are to continue the ABA in its present form, to de-integrate the association, or to continue ABA in some form of restructure.

"There's no public accountability" of the bar, Flavin testified.

The ombudsman received two major complaints about the ABA last year, one concerning the ABA's board of governors' meeting in Hawaii. Another involved the way the ABA handled a citizen's grievance against a lawyer.

Flavin took court action on the first matter to look at the board's expenses in the Hawaii meeting, but a judge upheld the ABA's position that it did not have to turn the records over to Flavin, since as a lawyer, Flavin could look at them as an individual member.

Some of the expenditures varied from those listed in bar association minutes, he said.

But Flavin did say that a de-integration of the bar probably would result in no greater protection for the public than at present.

Karen Hunt, an ABA governor, told the committee that many of the problems the bar association has had to deal with come from its tremendous growth.

Between January 1976 and this January, ABA membership shot up from 600 to more than 1,200, Hunt said.

A standing committee is now actively pursuing the problems of minorities who are failing the admissions test, she said, and the ABA does conduct a bar review exam.

List of pleadings attached to legal opinion requests addressed to Legislative Affairs Agency and Office of attorney general.

I. General- my letter 9/5/79; Bar's response: 10/17/79

II. Ombudsman v. Donna C. Willard

4. Memorandum in support
2. Exhibits attached to above - #A - #E
3. Memorandum in Opposition
4. Affidavit of Donna C. Willard 8/31/79
5. Reply Memorandum in Support of Application.

First: Review
Compile sunset requests
make requests for legal opinions
(include, authority of leg. to control practice of law outside the courtroom.

JUNEAU PLAN

second: make request.
discuss with J. Wilkerson

III. Haswell's

Note: doesn't include notes re: repeg brief

(pro) — ombudsman is case:

statute = creature of state legislature → instrumentality of the state

case = integrated bars perform public function: ie, police membership.

case = substantive evidence test - applied to bar as with other ~~agt~~ administrative agencies

statute by case: bar is subject to A.P.A., but by legislature: eliminated from APA list. Query: can it by elimination not be an agency. Caselaw in California + Texas so no go. [rejected argument + held state agencies]

(con) AK. sup. court has inherent powers (to regulate practice of law), hence ombudsman investigation intrudes on Sup. Ct, ∴ violation of separation of powers.

court can do by rule, not need legislature, to aid judiciary; yet in AK. leg can do away with, let court do it by Rule then.

The BA would be arm of judiciary only if est. by judiciary.

Can't interfere with judicial function — line of cases. AK. supreme court inherent power over disciplining admissions & sanctions.

statutory arguments — statute describing ombudsman's authority should be construed not to create constitutional problems. Johnston case. WBA not subject to state auditor.

if ombudsman given jurisd can disrupt judiciary by extensive investigation, allocation of time

IN THE SUPREME COURT OF THE STATE OF ALASKA

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

Appellants/Cross-Appellees,

vs.

THE ALASKA BAR ASSOCIATION,

Appellee/Cross-Appellant,

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

BRIEF OF THE APPELLANTS

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

Michael J. Frank

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

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

Robert D. Bacon
Clerk of the Court

Nadya Podlesney
Deputy Clerk of the Court

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TABLE OF AUTHORITIES

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TABLE OF CONSTITUTIONAL PROVISIONS AND STATUTES (QUOTED OR SUMMARIZED IN PERTINENT PART)

United States Constitution:

1st Amendment:

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

14th Amendment, Section 1:

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

Alaska Constitution:

Art. I, Section 2:

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

Art. I, Section 5:

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

Art. I, Section 6:

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

Art. I, Section 7:

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

Art. II, Section 13:

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

Art. IX, Section 6:

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

Alaska Statutes

A.S. 01.05.006:

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

A.S. 01.05.031:

> (a) Subject to the general policies which may be promulgated by the legislative council for the preparation and publication of the annual cumulative supplement to and replacement pamphlets for the Alaska Statutes and of the accompanying Temporary and Special Act pamphlets, the revisor of statutes shall revise for consolidation into the Alaska Statutes and the accompanying pamphlets all laws of a general and permanent nature and all laws of a temporary or special nature enacted by the legislature.
>
> (b) The revisor shall edit and revise the laws for consolidation without changing the meaning of any law in the following manner:

A.S. 08.08.010:

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

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

A.S. 08.08.080:

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

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

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

(3) concerning annual and special meetings;

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

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

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

(b) The board may

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

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

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

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

A.S. 08.08.100:

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

A.S. 08.08.110:

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

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

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

A.S. 14.40.160:

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

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

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

A.S. 24.20.070:

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

A.S. 37.10.090:

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

A.S. 39.20.140

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

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

A.S. 44.62.310:

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

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

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

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

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

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

(d) This section does not apply to

(1) judicial or quasi-judicial bodies when holding a meeting solely to make a decision in an adjudicatory proceeding;
(2) juries;
(3) parole or pardon boards;
(4) meetings of a hospital medical staff; or
(5) meetings of the governing body or any committee of a hospital when holding a meeting solely to act upon matters of professional qualifications, privileges or discipline.

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

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

A.S. 44.62.312:

(a) It is the policy of the state that
(1) the governmental units mentioned in §310(a) of this chapter exist to aid in the conduct of the people's business;
(2) It is the intent of the law that actions of those units be taken openly and that their deliberations be conducted openly;
(3) the people of this state do not yield their sovereignty to the agencies which serve them;
(4) the people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know;
(5) the people's right to remain informed shall be protected so that they may retain control over the instruments they have created.

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

A.S. 44.62.330:

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

of hearing, judicial review and scope of judicial review, continuances, reconsideration, reinstatement or reduction of penalty, contempt, mail vote, oaths, impartiality, and similar matters shall be governed by this chapter, notwithstanding similar provisions in the statutes dealing with the state boards, commissions, and officers listed. Where indicated, the procedure that shall be conducted under §§ 230-630 of this chapter is limited to named functions of the agency.

. . .

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

A.S. 44.62.410:

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

A.S. 44.62.640:

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

. . .

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

legislative branches of the state government.

A.S. 44.62.650:

This chapter may be cited as the Administrative Procedure Act.

Session Laws of Alaska

Chapter 196 SLA 1955

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

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

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

. . .

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

. . .

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

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

a. Concerning membership and the classification of membership in the Alaska Bar into active, inactive and honorary members;

b. Concerning the enrollment and privileges of membership;

c. Providing for other officers of the Alaska Bar,

d. Concerning annual and special meetings;

e. Concerning the collection, the deposit and the disbursement of the membership and admission fees, penalties, and all other funds.

f. Providing for the organization and government of divisional, municipal and other local subdivisions of the Alaska Bar;

g. Defining the practice of law; and

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

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

. . .

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

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

. . .

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

. . .

Section 16. Repeal

. . .

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

Chapter 143 SLA 1959

Chapter 1. Rules and Regulations

Article I

General

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

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

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

. . .

Article VI

Agency Meeting Public

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

Article VII
Legislative Review of Rules

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

Chapter 2. Administrative Adjudication.

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

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

. . .

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

. . .

Board of Governors of the Alaska Bar

. . .

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

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

Chapter 178 SLA 1960

. . .

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

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

. . .

Chapter 48 SLA 1966

AN ACT

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

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

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

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

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

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

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

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

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

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

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

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

Chapter 78 SLA 1968

AN ACT

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

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

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

(d) This section does not apply to

(1) judicial or quasi-judicial bodies

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

(2) juries,

(3) parole or pardon boards,

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

Chapter 7 SLA 1969

AN ACT

Relating to the openness of meetings of public agencies.

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

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

(d) This section does not apply to
(1) judicial or quasi-judicial bodies when holding a meeting solely to make a decision in an adjudicatory proceeding;
(2) juries;
(3) parole or pardon boards;
(4) meetings of a hospital medical staff; or
(5) meetings of the governing body or any committee of a hospital when holding a meeting solely to act upon matters of professional qualifications, privileges or discipline.

Chapter 100 SLA 1972

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

Section 3 of ch. 98 SLA 1972

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

I

JURISDICTIONAL STATEMENT

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

II

STATEMENT OF ISSUES PRESENTED FOR REVIEW

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

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

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

BY THE CROSS APPELLANT

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

III

STATEMENT OF THE CASE

A. Nature and Procedural History of the Case

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

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

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

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

from the bench orally dismissed plaintiffs' suit.

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

On October 11, 1978 plaintiffs[1] filed a Notice of Appeal pursuant to Appellate Rule 7(b), along with a Designation of Record on Appeal and Statement of Points on Appeal. The ABA filed a cross-appeal on the issue of attorneys' fees on October 20, 1978. R. 138-14^

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

In 1966 A.S. 44.62.310 was repealed and reenacted. See ch. 48 SLA 1966.[3] The reenactment significantly changed the language of the original open meeting statute, passed as ch. I, Art. VI of ch. 143 SLA 1959 (the AAPA), as a comparison of the two will show. For example, the 1959 version excepted "juries and such other agencies as shall be expressly exempt by the Legislature," while the 1966 re-enactment, A.S. 44.62-.310(a) excepted no meetings "except as otherwise provided by this section." Apparently this change was made to insure that only "this section" be looked to for exemptions, and to guarantee that other statutes not be misconstrued as containing exceptions.

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

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

Repeal and re-enactment of a statute in part is ordinarily "treated" not as a repeal, but as an amendment, the re-enacted part continuing in full force. See, e.g., Chesapeake & Potomac Company of West Virginia v. State Tax Department, 239 S.E.2d 918 (W. Va. 1977); Allied Veterans Council v. Klamath County, 544 P.2d 190, 194 (Or. App. 1975); 77 A.L.R.2d 336. The key word here is "treated." The "re-enactment" still creates a new act, although for the sake of continuity the former act is "treated" as if never repealed. More importantly, a material change of language in the re-enactment must be regarded, unless otherwise indicated, as evidencing a purpose to change the force and effect of the existing law. Cf. Warren v. Thomas, 568 P.2d 400, 403 (Alaska 1977); In re Cutshaw, 432 P.2d 474, 477 (Ariz. App. 1967); In re Loaker Estate, 32 N.W.2d 10, 11 (Mich. 1948); Volkswagen of America, Inc. v. United States, 340 F. Supp. 983, 989 (Cust. Ct. 1972) aff'd, 494 F.2d 703 (Ct. Cust. & Pat. App. 1974); 1A Sutherland, sec. 22.33, at 191 and sec. 23.29, at 272. Here,

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

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

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

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

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

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

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

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

A.S. 44.62.640(a)(4).[5]

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

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

sion follows both from the genesis of the ABA's Board of Governors in the Alaska Bar Commission (see the Alaska Integrated Bar Act, sec. 15 of ch. 196 SLA 1955), and from the ABA's literal inclusion in the administrative adjudication chapter of the AAPA. Moreover, the subsequent 1960 amendment of the Integrated Bar Act (at sec. 3, ch. 178 SLA 1960) exempting ABA rules from the AAPA demonstrates the legislature's belief that the ill-defined ABA was an entity sufficiently in the nature of an executive agency to require legislative action to remove the ABA's rulemaking function from the ambit of the AAPA. Thus, through the operation of the broad "agency" definition quoted above, the ABA was also subject to the open-meeting requirements that were originally part of the AAPA at sec. 1, Article VI, ch. I of ch. 143 SLA 1959.[6]

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Finally, it should be emphasized that courts construe open meeting statutes liberally in favor of the public and strictly against public agencies. See, e.g., Carter v. City of Nashua, 308 A.2d 847, 853 (N.H. 1973); News & Observer Publication Company v. Interim Board of Education for Wake City, 223 S.E.2d 580 (N.C. App. 1976); Jones v. East Windsor Regional Board of Education, 362 A.2d 1228, 1232 (Sup. Ct. N.J. 1976); City of Miami Beach v. Berns, 245 So.2d 38, 40-41 (Fla. 1971) ("Our duty is to interpret this [open meeting] law as it is written and, if possible, do so in a manner to prevent its circumvention."); Bagley v. School District No. 1, Denver, 528 P.2d 1290, 1302 (Colo. 1974); Board of Public Instruction of Broward County v. Doran, 224 So.2d 693, 699 (Fla. 1969); Laman v. McCord, 432 S.W.2d 753, 755 (Ark. 1968); see also, A.S. 44.62.312. See generally, 38 A.L.R.3d 1070.

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

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

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

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

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

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

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

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

Id., at 169.

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

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

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

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

Id., at 86.

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

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

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

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

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

A. All Meeting Action Taken Is Void.

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

B. Public Funds Spent on the Meeting Are Recoverable.

A.S. 44.62.310(f) voids not just what occurs at unlawful meetings. It voids all "action." Thus, the ABA's expenditure of public monies[7] to finance the meeting and to reimburse the travel and other expenses of the Governors, was also unlawful and void. (See R. 48, 61 for the ABA's admission as to the expenditure of its monies to reimburse the Governors.[8]) This result is consistent with the thrust of Alaska Constitution,

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

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