

993 HJ AK BAR ASSN SUNSET REVIEW FILE NO. § 1 and 12

INTEGRATED

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NON INTEGRATED

BAR ASSOC.

#11

BOARD OF GOVERNORS

ALASKA BAR ASSOCIATION

P. O. BOX 279

ANCHORAGE, ALASKA 99510

AREA CODE 907/272-7469

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WILLIAM GARRISON, BAR COUNSEL

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DONNA C. WILLARD

March 2, 1979

Richard A. Bradley
Legislative Counsel
Legislative Affairs Agency
Pouch Y
Juneau, AK 99811

Dear Mr. Bradley:

I have your letter of February 28th concerning questions on bar organizations.

The following states have intergrated bars: Alabama, Alaska, Arizona, California, Florida, Georgia, Idaho, Kentucky, Louisiana, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Mexico, North Carolina, North Dakota, Oklahoma, Oregon, Rhode Island, South Carolina, South Dakota, Texas, Utah, Virginia, Washington, West Virginia, Wisconsin and Wyoming, as well as the District of Columbia.

In states not having integrated bars, admission and discipline functions generally are handled directly by the Supreme Court, through specific boards and commissions set up for this purpose. In a few cases, discipline is handled directly by the Attorney General's Office.

The third question in your letter obviously calls for some conclusions on my part which might or might not be self serving. During my career, I have worked for a voluntary bar association, in Kansas, and two integrated bars, here and in Idaho. In a voluntary bar situation you obviously have much more of a "social club" atmosphere. That is, a lawyer is free either to join or not to join. It naturally follows this must force the voluntary bar organization to do a better job for its members; otherwise, they will not pay their dues. On the other hand, in a voluntary bar state the discipline and admissions functions may or may not be effective. Again, the voluntary bar has no discipline authority other than to withhold membership. In my experience, it was the general rule that errant lawyers in a voluntary bar association state did not belong to the bar association in the first place, so the association literally had no disciplinary function other than a possible public censure. Naturally, the whole burden of expense on disciplinary and admissions enforcement in a voluntary bar state ordinarily will

Richard A. Bradley

March 2, 1979

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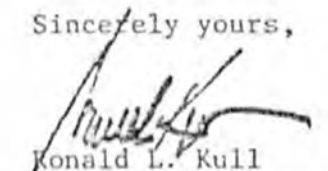
fall directly on the tax payer since this must be a state function. In an integrated bar state, although we are to a degree subsidized for admission and discipline, still the bar spends roughly twice this amount on these functions and of course funds of the Alaska Bar Association are not derived from tax revenue. Also, in an integrated bar state, the bar does have much more control over the activities of lawyers admitted to practice in that particular state. The mandatory membership also provides a better revenue base for other eleemosynary activities such as delivery of legal services, professional and public education and other worthwhile functions.

While the answers to questions one and two posed in your letter are entirely factual you may take the third section as my own view entirely and not in any way a pronouncement by the Alaska Bar Association.

If I can be of further assistance to you please contact me.

Thank you for your interest.

Sincerely yours,



Ronald L. Kull
Executive Director

RLK/wj

STATE OF ALASKA
THE LEGISLATURE

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

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

March 15, 1979

SUBJECT: Bar Association structure
[Work Order No. 6673]

TO: Representative Charles H. Parr

FROM: Richard A. Bradley, Legislative Counsel *B*

Your work order request asked three questions:

(1) Which states do not have integrated bar associations.

(2) For those states, where does the disciplinary and admissions authority lie.

(3) What are the pros and cons of an integrated bar.

I requested answers to the first two questions from the Alaska Bar since there did not seem to be ready answer to them in Juneau. The executive director of the bar advises:

(1) The following states have an integrated bar: Alabama, Alaska, Arizona, California, Florida, Georgia, Idaho, Kentucky, Louisiana, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Mexico, North Carolina, North Dakota, Oklahoma, Oregon, Rhode Island, South Carolina, South Dakota, Texas, Utah, Virginia, Washington, West Virginia, Wisconsin, and Wyoming. The District of Columbia also has an integrated bar.

(2) The admission and discipline function are generally handled through the Supreme Court in states without an integrated bar. The Court typically establishes a board or commission for this purpose. In a few cases, discipline might be handled directly through an Attorney General's office. [He offered no citations to statutes or rules for this conclusion, but it is undoubtedly accurate].

Representative Charles H. Parr
Page 2
March 15, 1979

Some clear regional patterns appear in this listing. Kansas and Colorado (and Hawaii) are the only states west of the Mississippi River that are not integrated. Arkansas and Tennessee are the only states of the Old South (the Confederacy) that are not integrated. No states of the Northwest Territory and only New Hampshire and Rhode Island in New England are integrated.

Having noted this phenomenon, I am somewhat reluctant to interpret it. But I would not be surprised if the integrated bar movement occurred after the development of relatively strong urban bar associations in the East and Midwest. Very likely these associations, which by definition are voluntary associations, may have addressed the professional needs of the bar in those areas. And the admission and discipline functions, which are relatively recent developments in American bar history, were then allowed to go to supreme courts. As you may know, the integrated bar in Alaska grew out of a perceived arbitrariness in discipline by the judiciary, and an almost undoubted arbitrariness in the admissions policy of the Attorney General.

As for your third question, the pros and cons of an integrated bar, the answers are more subjective, must necessarily be viewed as my own and derived from my experiences.*

(1) My view is that the organized (integrated) bar in Alaska is the most responsible and responsive professional regulatory board in Alaska. The other professions have not been as involved in progressive and responsible professional discipline; it is likely that no other profession in Alaska gives its examination for admission to the profession with the thoroughness and the sophistication that the Bar does. On the other hand, the fact of the rapidly increasing membership in the bar is perhaps the best indication that the examination is not utilized by the Board as a device for the exclusion of members -- practices other professions have been accused of.

* You should know that I have been somewhat active in bar activities and that I served one term on the Board of Governors of the Alaska Bar, from 1973 to 1976.

Representative Charles H. Parr
Page 3
March 15, 1979

(2) Integrated bars and voluntary bars do not compare well. It is essentially meaningless to talk of discipline or admission responsibilities for voluntary bars; rather, an attorney in the state (who was admitted by the Supreme Court) will likely be admitted to membership in voluntary bars if he pays his dues. And, he can resign or fail to renew membership as he pleases.

Thus, voluntary bars are viewed as "social clubs." Since the organization will fail if no one joins it, it may be viewed as doing a better job for its members.

But the success of such organizations should not mask the fact that they have none of the difficult and unpleasant responsibilities of admissions and discipline. They may "expel" members but that fact does not deprive the expelled member of his status as an attorney. Thus, it is usually noted that errant attorneys do not join or belong to a voluntary association.

(3) The expense of discipline and admissions will fall directly on the taxpayer in a voluntary association state since this will be a state function. While the Alaska Bar receives some funds from the Court System for discipline (or has in the past few years), the larger burden falls on the bar member who now pays \$170 for annual dues and \$10 for an annual client security fund payment.

By comparison note that physicians pay, in effect, an annual fee of \$50. AS 08.64.315(6). Their examination and admission processes are also either more perfunctory or the cost is absorbed by the state since those fees are lower than those imposed for lawyers. See AS 08.64.315.

(4) It is sometimes stated that the funds to support admissions and discipline of the Alaska Bar are not derived from tax revenue. In my view this statement is both true and false.

Representative Charles H. Parr
Page 4
March 15, 1979

It is false mainly because the legislature (or the Court under the typical court integration of a bar) requires the payment of the dues for continued membership in the association and membership must be maintained in the association to practice law. The membership fee is accordingly clearly a tax or license fee levied under the police power.

It may be true because there is no reason to assume that a legislatively set annual fee for lawyers will exceed that for other professions. If that assumption is indulged and if the level of service is maintained, tax revenues will be required to support admissions and discipline if the fees are set, for example, at the level charged physicians.

(5) The letter of Ron Kull, executive director of the bar, on which I rely for a portion of this memorandum, is enclosed for your information.

If I can assist further, please advise.

RAB:nem

Enclosure

STATE OF ALASKA THE LEGISLATURE

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


LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

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



Official Business

Alaska State Legislature

House of Representatives

Committee on Judiciary

file copy
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.

Ramcna 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
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

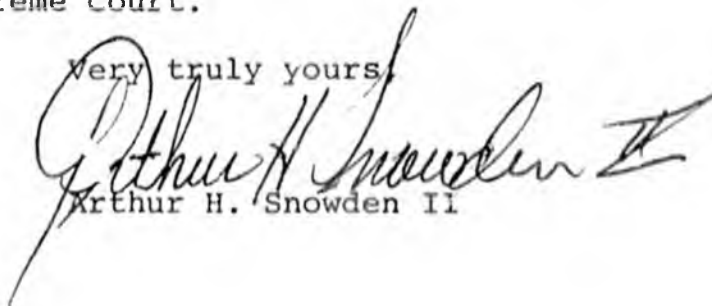
The Hon. Charles Parr, Chairman
House Judiciary Committee
Room 126, State Capitol Building
Juneau, Alaska 99811

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 controversy between the Legislative Budget and Audit Committee and the Alaska Bar Association before the Supreme Court.

Very truly yours,



Arthur H. Snowden II

STATE OF ALASKA
THE LEGISLATURE

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

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

May 26, 1980

SUBJECT: Alaska Bar Association
(CSHB 984)

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

FROM: Richard A. Bradley *B*
Legislative Counsel

The bill requested is enclosed.

I wish to call your attention to certain provisions of the bill which have been prepared in accordance with your request.

The amendment to AS 08.08.100 has been included as requested. The changes that were made beyond those requested by the committee conform the provisions to present statutory style. AS 08.08.090 was repealed as inconsistent with the amendment to AS 08.08.100.

Note, however, that there are some problems.

The present status may be briefly summarized. AS 08.08.100 provides that the regulations adopted by the board are not subject to the Administrative Procedure Act.

Alaska Bar Rule 62, adopted by the Supreme Court at the request of the board, provides that "bylaws and regulations for the governance of the Alaska Bar" may be adopted by the board "in accordance with this Rule." These provisions may be viewed as generally consistent with one another.

Alaska Bar Rule 62 is a briefly stated procedures section. While it does not contain all the details of the APA, essential due process will be granted to the extent that it is followed.

Representative Charles H. Parr

Page 2

May 26, 1980

But the amendment putting the Board of Governors procedure for the adoption of regulations under the APA is inconsistent with Bar Rule 62.

I have added a temporary law section and amended the title to alert the legislature that its amendment to AS 08.08.100 constitutes an amendment to Alaska Supreme Court Bar Rule 62. Acknowledging that effect should also comply with the requirements of Article IV, sec. 15 of the state Constitution as interpreted by the Supreme Court -- that any amendment to court rules be specifically recognized as such by the legislature. Leege v. Martin, 379 P.2d 447 (Alaska 1963).

And finally, we are uncertain whether the legislature may amend rules of court regulating the Bar. This result occurs because the authority of the legislature over rules in Article IV, sec. 15 is limited to "rules of practice and procedure in civil and criminal cases in all courts" [compare Uniform Rule of the Legislature 38(e)] and perhaps to "rules governing the administration of all courts." Whatever the limits of those rules, it is generally agreed that the rules governing the practice of law are not included within their boundaries.

RAB:ljb

Enclosure

STATE OF ALASKA THE LEGISLATURE

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

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

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 *B*
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.

asked
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.

best Supreme Court would make the decisions
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. *who may practice law section*

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.

Power to make rule change by laws and regulations.
note that I propose no amendment to AS 08.08.100, a section *was added to make APA applicable.* 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.

March 29, 1980

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.

* *since up for sunset in 81 - with year wind down*
This provision must be read with sec. 23 of the bill which establishes a transitional period for the implementation of sec. 50. *only will have 1 lay person on board during the 82 review*

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 *not true*

*checked
to see
if
other
AS 08.04
AS 08.36
AS 08.40
AS 08.34*

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

March 29, 1980

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.

Why?
2. 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. *not true*

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

claimed that the rule is violative of the privileges and immunities clause of article IV of the Federal Constitution.² We agree with that contention.

A graduate of the University of Virginia Law School and member of the bars of Virginia and North Carolina, appellant was employed as in-house counsel to Western Electric Company in New York City. After working in New York for over two years, appellant qualified for, took and passed the New York State Bar Examination in July, 1977.³ Before he was notified of the results of the examination, however, appellant was unexpectedly transferred to North Carolina by his employer, where he presently resides.

Was
resident
before
exam

Apparently under the dual impression that his prior New York residence qualified him for admission to the bar⁴ and that, by virtue of his employment, he was engaged in the practice of law in New York, appellant filed an application for admission to practice with the Committee on Character and Fitness of the First Department (Judiciary Law, §90, subd 1; CPLR 9402; 22 NYCRR 520.9).⁵ In view of appellant's North Carolina residence, the Committee deferred action on his application. Appellant thereupon challenged the residency requirement by petitioning the Appellate Division for admission without certification of the Committee on Character and Fitness (CPLR 9404). The Appellate Division denied the application, holding CPLR 9406 (subd 2) constitu-

²"The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States" (US Const, art IV, §2, cl 1).

³At the time this controversy arose, eligibility to take the bar examination, like eligibility for admission to bar, was premised, at least in part, upon the residency of the applicant (22 NYCRR 520.2 [a][3]).

⁴Actually, appellant was required to satisfy two six-month durational residency requirements: one to take the bar examination (22 NYCRR 520.2[a][3]; the other to satisfy the admission requirements of CPLR 9406 (subd 2).

⁵In addition to meeting two durational residency requirements (fn 4, supra), three other conditions must be satisfied. Unless waived, the applicant must pass an examination conducted, semiannually, of the State Board of Law Examiners. Second, the applicant must possess the requisite character and fitness consistent with that required of an attorney. To assist in this evaluation, the applicant must furnish the Committee on Character and Fitness with affidavits attesting to his good moral character, fill out a detailed questionnaire and undergo a personal interview with a Committee member. Finally, the applicant must swear that he will support the Federal and State Constitutions (see, generally, Law Students Research Council v Wadmond, 401 US 154, 156-157).

tional (67 AD2d 215). Although appellant relies upon a number of constitutional provisions in support of his claim that the residence requirement for admission to the bar is unconstitutional,⁶ it is necessary only to address the claim that the rule denies nonresidents the same privileges and immunities accorded residents.

The principal purpose of the privileges and immunities clause, like the commerce clause,⁷ is to eliminate protectionist burdens placed upon individuals engaged in trade or commerce by confining the power of a state to apply its laws exclusively to nonresidents (Paul v Virginia, 75 US 168, 180; Tribe, American Constitutional Law, §6-32, at p 406). In essence, the clause prevents a state from discriminating against nonresidents merely to further its own parochial interests or those of its residents⁸ (Hicklin v Orbeck, 437 US 518; Mullaney v Anderson, 342 US 415; Toomer v Witsell, 334 US 385). While

⁶ It is asserted that CPLR 9406 (subd 2) denies appellant equal protection and due process of law (US Const, amdt 14). Although unnecessary to pass upon these claims, we note that similar challenges to six-month durational residency requirements have been rejected in the past (Matter of Tang, 39 AD2d 357, app dsmd 35 NY2d 857; Tang v Appellate Div., 373 F Supp 800, affd 487 F2d 138, cert den 416 US 906; Wilson v Wilson, 416 F Supp 984, affd 430 US 925; Suff'ng v Bondurant, 339 F Supp 257, affd sub norm Rose v Bondurant, 409 US 1020).

7

Many have recognized the "mutually reinforcing relationship" between the privileges and immunities and the commerce clauses (Hicklin v Orbeck, 437 US 518, 531; Toomer v Witsell, 334 US 385, 407-409 [Frankfurter, J., concurring]; Tribe, American Constitutional Law, §6-32, at p 404). The manifest distinction between the two is that the privileges and immunities clause is an affirmative grant of rights to individuals, whereas the commerce clause has been read to limit the power of the individual states to restrict the free flow of goods and services across state lines (see City of Philadelphia v New Jersey, 437 US 617, 621-622).

⁸ At one time, the privileges and immunities clause was thought to recognize what, within the philosophical terminology of the day, were termed "natural rights" (see Corfield v Coryell, 6 Fed Cas 546 [No. 3230]). Under this earlier theory, the purpose of the clause was to guarantee every citizen a group of fundamental rights which no state could transgress (see Calder v Bull, 3 US 386, 388). With the passage of time, however, it has become settled that the clause does not import that a citizen carries with him a set of well defined privileges and immunities no matter where he may travel. Rather, the clause is meant "to insure to a citizen of State A who ventures into State B the same privileges which the citizens of State B enjoy" (Toomer v Witsell, 334 US 385, 395).

the precise reach of the clause must await further clarification, it is settled that a state may not premise an individual's right to engage in his chosen occupation within its borders solely on residence. Thus, the clause has been consistently interpreted to prevent a state from imposing discriminatory burdens on nonresidents, whether by means of artificial trade barriers in the form of unequal licensing fees (Toomer v Witsell, supra), taxes imposed on out-of-state vendors (Ward v Maryland, 79 US 418), or employment preferences granted only to residents (Hicklin v Orbeck, supra).

This is not to say, of course, that the privileges and immunities clause forbids a state from ever differentiating between residents and nonresidents. Matters which directly implicate its sovereignty, such as voting (Dunn v Blumstein, 405 US 330) or entitlement to public office (Chimento v Stark, 414 US 802), furnish ready examples of areas in which a state may constitutionally condition eligibility upon residence. Moreover, where the disparate treatment does not implicate "those 'privileges' and 'immunities' bearing upon the vitality of the Nation as a single entity", there is no requirement that the state treat resident and nonresident alike⁹ (Baldwin v Montana Fish & Game Comm., 436 US 371, 383). But those areas exempt from privileges and immunities protection are narrow and do not embrace the grant of a license to practice law.

⁹As noted, the breadth of the privileges and immunities clause is presently unclear. In any event, there are certain rights deemed fundamental for privileges and immunities purposes which severely limit the power of the state to discriminate against nonresidents. In addition to the right to engage in one's chosen occupation, these fundamental rights include the right to own and alienate property within the state (Blake v McClung, 172 US 239), the right to equal treatment in the courts (Canadian Northern Ry. v Eggen, 253 US 553) and the right to seek services available in the state (Doe v Bolton, 410 US 179). A nonresident wishing to exercise at least these rights in a foreign state is entitled to the same privileges and immunities a resident of that state receives.

No extended discussion is necessary to demonstrate that the right to pursue one's chosen occupation free from discriminatory interference is the very essence of the personal freedom that the privileges and immunities clause was intended to secure (Hicklin v Orbeck, supra, at pp 524-525; Ward v Maryland, supra, at p 430). It is now beyond dispute that the practice of law, despite its historical antecedents as a learned profession somehow above that of the common trades, is but a species of those commercial activities within the ambit of the clause (cf. Bates v State Bar of Arizona, 433 US 350, 371-372; Goldfarb v Virginia State Bar, 421 US 773, 788). From the standpoint of both the public and the legal profession itself, the practice of law is analogous to any other occupation in which an independent agent acts on behalf of a principal.

Nor can it be maintained that CPLR 9406 (subd 2) works no invidious discrimination against nonresidents. An attorney admitted to practice in one state who desires to practice in New York must often give up an established practice and residence, move to New York and forfeit the right to engage in his or her chosen occupation for at least six months and often appreciably longer. One who desires to engage in a multistate practice, concentrating on a particular area of expertise, is effectively precluded from doing so by the requirements of CPLR 9406 (subd 2). Those attorneys now employed by large corporations, currently comprising more than ten percent of the legal profession (Barriater, Spr 1979, p 43), whose duties entail frequent interstate relocation are similarly penalized by the operation of the rule.¹⁰ The disparity of treatment between residents of the State and nonresidents is manifest: given two equally qualified candidates who have passed

but is 30 days invidious discrimination?

¹⁰These considerations, together with an often unstated feeling that durational residency requirements constitute protectionist trade barriers for the economic protection of local interests, have given rise to numerous calls to nationalize admission to the bar (e.g., Smith, Time for a National Practice of Law Act, 64 ABAJ 557; Brakel & Lon, Regulating the Multistate Practice of Law, 50 Wash L Rev 699; Note, 56 Cornell L Rev 831).

the bar examination (or, for that matter, meet the other requirements for admission on motion) and possess the requisite character and fitness, the rule would deny one admission based solely upon residence.

Where the state imposes a wide-ranging restriction which significantly impairs the efforts of nonresidents to earn a livelihood, the discriminatory action must surmount two distinct hurdles. First the governmental interest claimed to justify the discrimination must be carefully examined to determine whether that interest is substantial, that is, whether "non-citizens constitute a peculiar source of the evil at which the statute is aimed" (Toomer v Witsell, supra, at p 398). Assuming that nonresidents do indeed present a problem with which the state may legitimately address, the inquiry then focuses upon whether the means adopted to achieve that goal are narrowly drawn and are the least restrictive alternatives available (Hicklin v Orbeck, supra, at p 528).

It is undisputed that New York has a constitutionally permissible interest to assure that those admitted to the bar possess knowledge of the law as well as the character and fitness requisite for an attorney (Judiciary Law, §90; Law Students Research Council v Wadmond, 401 US 154, 159; Schware v Board of Bar Examiners, 353 US 232, 239). But appellant has not been excluded from membership in the bar due to any challenge to his knowledge of the law of this State or to his good character. Rather, the exclusion is based solely upon his residence in North Carolina -- a criterion which serves no purpose other than to deny persons the right to pursue their professional career objectives because of parochial interests.

There is nothing in the record to indicate that an influx of nonresident practitioners would create, or even threaten to create, a particular evil which the State would be competent to address. No valid reason is proffered as to why admission to practice law before

the courts of this State must be made dependent upon residency. Indeed, aside from an oblique reference to the purported "Cangers" said to be inherent in the licensing of nonresident lawyers, the State is at a complete loss to justify the blanket discrimination against nonresidents arising from the operation of CPLR 9406 (subd 2). Nevertheless, some have attempted to identify reasons supporting residency requirements for admission to the bar (see Note, 92 Harv L Rev 1461, 1480). On the whole, however, these justifications serve only administrative convenience and thus are not closely tailored to serve a legitimate State interest (cf. Sonsa v Iowa, 419 US 393, 406).

The rationale most often used to uphold residency requirements is the need of bar admission authorities to observe and evaluate the applicant's character (cf., e.g., Lipman v Van Zandt, 329 F Supp 391, 402; Webster v Wofford, 321 F Supp 1259, 1262; Note, 71 Mich L Rev 838, 850-852). But in this State, the applicant himself, in submitting his application for admission, is available to the Committee on Character and Fitness and is personally interviewed by one of its members. In some cases, nonresidents are permitted to furnish affidavits attesting to the applicant's character and fitness to practice law. Nor may the discrimination visited upon nonresidents be justified upon the ground that only resident attorneys will be amenable to the supervision of our courts (67 AD2d 215, 217; Matter of Tang, 37 AD2d 357, 360, app dismd 35 N.2d 851). To be sure, the State has a legitimate interest in controlling the attorneys who appear in its courts. Again, however, there are alternatives which are less restrictive than denial of admission to practice which would further this interest. For example, nothing prevents the State from enacting legislation requiring nonresident attorneys to appoint an agent for the service of process within the State (cf. Hess v Pawloski, 274 US 352; Doherty & Co. v Goodman, 294 US 621). Moreover, remedies currently available to

safeguard against abuses by resident attorneys -- contempt, disciplinary proceedings and malpractice actions -- could be applied with equal force against miscreant nonresident attorneys.

That the State has an obligation to ensure the competency and rectitude of its counselor-at-law is a proposition with which none may quarrel (In re Griffiths, 413 US 717). This obligation, however, may not be fulfilled at the expense of constitutionally protected rights (see Konigsberg v State Bar, 366 US 36). By denying otherwise qualified applicants their right to practice their chosen occupation based solely on their state of residence, CPLR 9406 (subd 2) works an unconstitutional discrimination against nonresidents. Any interest the State may have in regulating nonresident attorneys is ill served by the onerous burden imposed by the rule. A number of less drastic, and constitutionally permissible, alternatives are readily available to protect the interest of the State in supervising those who practice in its courts (see, e.g., Note, 92 Harv L Rev 1487-1489, supra).

Accordingly, the order of the Appellate Division should be reversed, without costs, and the matter remitted to the Appellate Division, First Department, for further proceedings on petitioner's application for admission to the bar.

* * * * *

Order reversed, without costs, and matter remitted to the Appellate Division, First Department, for further proceedings in accordance with the opinion herein. Opinion by Cooke, Ch.J. All concur.

Decided November 13, 1979

Random Potshots

"Can the Supreme Court Define the 'Practice of Law'?"

by John Havelock

On receiving his 25 year membership award at a September Bar lunch, Verne Martin recalled the circumstances of his first case. A dozen or so lawyers, the entire Anchorage Bar of the day, made a point of being on hand to congratulate Martin on his humiliation by a lay practitioner.

Willkey Jefferson, already a "living legend" 25 years ago, still enlarges his career. At perhaps its high point, Jefferson cost the Anchorage borough hundreds of thousands of dollars in legal defense expenses and costs of interest and bond sales disrupted by litigation. One might fairly ask "if the Bar couldn't put Willkey out of business, what is it doing asking the Supreme Court to adopt a definition of the "practice of law" reaching conduct far beyond Mr. Jefferson's busy practice?"

Unfazed By Cannon

The Bar Association was evidently unfazed by Canon Three of the ABA Code of Professional Responsibility which recites, "It is neither necessary nor desirable to attempt the formulation of a single, specific definition of what constitutes the practice of law."

Perhaps the adoption of AS 08.08.230 brought this knotty task to the fore. There the legislature, while going out of its way to announce that its actions were founded on "the legislature's inherent power," criminalized the unlicensed practice of law "as that term is defined in the Alaska Bar Rules..." It may be that there is no prohibition on unauthorized practice until such a definition is promulgated. Take note Willkey imitators but first consult a lawyer.

Draft Ruminations

The Board of Governors approved a draft rule at the end of March of this year, a draft upon which the Supreme Court still ruminates.

It is not without its difficulties. One of the problems is that the same section of statute which calls for a definition excludes from the definition "the use of paralegal personnel as defined by the rules of the Alaska Supreme Court." How does one define the principle without also defining the exception?

The legislative action places in confusing juxtaposition two "inherent" powers. It makes sense that the power of courts should include, without specific constitutional recita-

tion, the power to control who may appear in courts, the conduct of parties and their representatives therein and closely related conduct outside the court having a major impact on the judicial forum. But, absent specific legislative authorization, what stretch of imagination and power allows the court to control the modalities used in transactional counseling?

Fiduciary Flimflam

There is a public interest in the control of various classes of fiduciary conduct. The giving of legal advice and the preparation of documents having legal effect may be activities which the legislature has a legitimate interest in controlling in the interest of consumer protection at least to the point where First Amendment rights take over. But does the court have a legislative power over such transactional management? It seems unlikely.

Claiming The World

Arguendo, the court may have an inherent interest in controlling the management of disputes which may clearly be heading for the courts. But of the sea of law which envelopes virtually all transactional activity in the modern era, pre-litigation disputes are but a small fraction. To claim an interest in the management of all transactions which could become disputes which could come to court is to claim a legislative power covering the entire world of human affairs.

Court claims to regulate the rendering of advice beyond the context of litigation are on soft ground. Is the ground firmed up by a delegation under "the legislature's inherent power?" The Court itself would probably say no. At least it said that in the Sabre Jet case when the court disclaimed power granted by the legislature to license liquor dealers.

Turf Tussles

With the integrated bar now under intensive review and lawyers' turf claims challenged on several fronts, the court today may be reluctant to move into an arena where it could end up with a legislatively bloodied nose. No inside knowledge is claimed, but it does not surprise this observer that the definition of the practice of law has been sitting in the Justices' in-basket for some time.

BOG Meets for Four Days in September

The Board of Governors of the Alaska Bar Association met in Anchorage, Alaska on September 6, 7, 8 and 9, 1979. In addition to handling five bar examination matters and recommending to the Supreme Court disciplinary action in a matter before it as the Disciplinary Board, the Board also heard reports from Nancy Gordon, CLE Committee; Carolyn Jones, Legal Education Opportunities Committee and Mike Rubinstein, Executive Director of the Judicial Council.

The following actions were taken by the Board. Special committees on Specialization and Prepaid Legal Services were established to report to the Board in March, 1980 and report to the membership in June, 1980 at the Annual Meeting. A standing insurance committee was established and assigned the task of monitoring the Bar endorsed Professional Malpractice program and the Bar sponsored group health and life programs.

The proposal of Bill Erwin and Joe Kalamarides to prepare and write a Workmen's Compensation manual for members of the Alaska Bar Association was tentatively accepted by the Board. The Board considered budgeting \$5,000 in 1980 to pay for secretarial and manuscript preparation. Erwin and Kalamarides agreed to present a CLE program at which the manual would be distributed. They also agreed to present a CLE program at which the manual would be distributed. They agreed to present a budget to the Board in December.

The Board approved a line item budget procedure and determined that the budget for each year would be considered at the December meeting. By unanimous vote, the Board decided to publish for membership response an amendment to the By-laws of the association which would provide for the election of a Treasurer. In the interim, Pat Kennedy was selected to act as Fiscal Responsibility Officer until the Annual Meeting in 1980.

The Board adopted a policy requiring support staff evaluation in December for annual merit raises. To effectuate the policy, merit raises will be considered in December, 1979, which raises, if any, will be effective July 1, 1979 for the remainder of 1980.

Several rule changes were forwarded to the Supreme Court for its consideration. These changes make all time periods for Committee appointments consistent. The Board also approved an Association By-law change establishing an adjunct membership available to lawyers employed in the State of Alaska by the Federal Government and in-house Counsel. Without taking the Bar Exam, such attorneys can apply for

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To: Charlie Parr, Chairman, and Members of the House
Judiciary Committee

From: Margaret W. Berck, Staff

Date: September 13, 1979

Subject: Integrated and Nonintegrated Bar Associations

I. INTRODUCTION

Mechanisms for regulating the legal profession vary from state to state. Thirty states, including the State of Alaska, and the District of Columbia have established integrated bar associations to fulfill certain of these regulatory responsibilities. In order to practice law in an integrated bar state, one must be a member of the bar association. This mandatory membership requirement vests an integrated bar association with certain admission, licensing, and disciplinary functions. The 20 remaining states have nonintegrated bar associations. In these states membership in the state bar association is voluntary and such associations serve primarily as social clubs. In nonintegrated states, the regulation of the legal profession is generally the responsibility of the supreme court. The court typically establishes a board or commission for this purpose. In a few nonintegrated states, the attorney general's office is responsible for the disciplinary function.

II. THE ALASKA BAR ASSOCIATION

The integrated status of the Alaska Bar Association was established in 1955 through the legislative enactment of the Alaska Integrated Bar Act.¹ Prior to the integration of the Alaska Bar Association, the judiciary was vested with the disciplinary function, while the attorney general was responsible for the admissions function. The Alaska Integrated Bar Act was introduced by Representative Kalamarides as a result of numerous complaints arising out of the then-existing disciplinary and admission practices. In 1955 the territorial legislature, concluding that such matters could be better handled by the lawyers themselves, established the integrated bar in Alaska.

Pursuant to Alaska statute, the Alaska Bar Association is governed by a nine-member Board of Governors. The Board of Governors serve without salary and are elected by the membership at large. As statute requires the Board of Governors to be elected from the membership, there are no lay persons on the board. Rules concerning admission, discipline, and definition of the practice of law must be embodied in the Alaska Bar Rules.² Although the Board of Governors is empowered to approve and recommend Alaska Bar Rules, the Alaska Supreme Court is vested with the authority to promulgate those rules. The Board of Governors may adopt bylaws and regulations consistent with the Alaska Bar Rules; however, such bylaws and regulations are specifically exempt from the requirements of the Administrative Procedure Act.

¹See AS 08.08.010, et seq.

²To date no rule has been developed which would define the practice of law.

The scheme for adopting Bar Rules and bylaws and regulations consistent with those Bar Rules reflects the roles of the Alaska Bar Association and the Supreme Court in regulating the legal profession. In essence, the Supreme Court has the ultimate rule-making authority in admissions, licensing, and discipline. The Board of Governors conducts adjudicatory hearings, but is primarily relegated to recommending appropriate action to the Supreme Court.

III. SHOULD THE INTEGRATED STATUS OF THE ALASKA BAR ASSOCIATION BE CONTINUED

During the 1980 legislative session, the House Judiciary Committee is scheduled to conduct a sunset review of the Alaska Bar Association. Pursuant to the sunset statute, this committee is required to submit to the Speaker of the House a report specifying its findings and recommendations as to the continuance or termination of the Association. This report must be submitted no later than the 60th day of the legislative session. As a result of these responsibilities, preliminary consideration should be given to the advantages and disadvantages of both integrated and nonintegrated bar systems.

A. Cost Factor

The primary disadvantage of the nonintegrated bar system is that it requires the establishment of a state bureaucracy to provide for the admission, licensing and disciplining of those authorized to practice law in the state. Any increased taxpayer costs resulting from such a move must be carefully analyzed.

Other professions regulated by state agencies are subject to nominal annual licensing fees. For example, a physician is subject to a \$50 fee, while lawyers, \$180. The extent to which these nominal

fees defray the costs of regulating the profession is significant. If taxpayers support most of the costs of regulating all professions but for the legal profession, what justifies this differentiation. Furthermore, should it be determined that it is more expensive to regulate lawyers than doctors, the burden on the taxpayer can be reduced by increasing the license fees for lawyers.

Costs resulting from the admission function of the Alaska Bar Association are absorbed by current application fees. Individuals seeking admission to the bar are required to pay \$5 for the application form and a \$250 examination fee. Should application fees be structured to absorb admission costs, no additional financial burden falls on the taxpayer.

Furthermore, it should be noted that the Alaska Bar Association is not completely independent of state financial resources. For many years the Alaska Bar Association was furnished with free office space, use of equipment and supplies provided by the court system. Several years ago, when the Bar Association was required to vacate those offices, moving expenses were provided by the court system. Currently office space for the Bar Association is being subsidized by the Department of Law at the rate of \$10,000 per annum, raising a question of conflict of interest.³

Additionally, for the past several years state funds have been provided to defray the association's expenses for disciplinary proceedings. In 1978 the Bar Association received \$58,600 from the state; in 1979, \$36,700, and the Allocation for 1980 is \$51,000.⁴ This state

³This information was disclosed by Richard Barrier, Manager, Fiscal Operations and Deputy Administrator, Alaska Court System.

⁴The reason disbursements in 1979 were lower than the previous year, and also lower than the 1980 allocation, was because the court system overpaid the Bar Association by some \$11,000 in 1978. It should be noted that the court system has never audited the Bar Association relative to these expenses.

funding comprises approximately one-half of the association's expenses for disciplinary proceedings.⁵

Obviously, a more detailed cost assessment is needed to determine the weight of this objection to the nonintegrated bar system. However, it appears that the existing state financial support combined with fixing appropriate license and admissions fees may eliminate this tax burden objection.

B. Legislative Authority

The Alaska Supreme Court contends that it has the inherent power to admit, discipline, and disbar Alaskan lawyers. The source of this power is never defined beyond the recitation that it is an exercise of the Supreme Court's inherent power and jurisdiction over attorneys as officers of the court. Under this theory it seems that the Alaska Supreme Court has permitted the delegation of certain of these responsibilities to the Alaska Bar Association. Shortly after the enactment of the Alaska Integrated Bar Act, the Supreme Court held that the act did not detract from its inherent powers to govern the practice of law in Alaska, but the act, to the contrary, merely adds helpful machinery. In upholding the validity of the act, the court noted various provisions deferring to its inherent authority. For example, it cited: that decisions of the Board of Governors are merely recommendatory; that the review of such decisions before the Supreme Court are not limited in scope; and that only final orders of the Supreme Court work disbarment or reinstatement.

In a subsequent decision, the Alaska Supreme Court held that one section of the act, which attempted to mandate that the Supreme Court give full accord to a recommendation of the Board of Governors, was an unconstitutional invasion of its inherent powers.

⁵Initial billings submitted to the court system to obtain these state funds contained the names of those individuals subject to ongoing disciplinary proceedings in violation of the confidentiality required by Bar Rule 31.

Although the Alaska legislature is empowered under the Alaska Constitution to prescribe the jurisdiction of the courts and to change the Rules of Court, such arguments most likely would not be persuasive in view of the Supreme Court's adamant posture on this issue. The Supreme Court has stated that the power of the courts to discipline attorneys has long been recognized and cannot be defeated by the legislative branch of government.

The Supreme Court's position has prompted the Alaska Bar Association to contend that it is not a state agency. This contention has been raised in two different lawsuits filed against the association. One suit alleges that the Bar Association conducted a meeting in violation of the public meeting law. The lower court found for the Bar Association and currently the matter is before the Alaska Supreme Court. The other suit arose out of an investigation by the Ombudsman pertaining to the adequacy of resolving citizen complaints against lawyers and the propriety of salary and fringe benefits for the Bar Counsel. The Bar Association's refusal to submit to the official jurisdiction of the Ombudsman has resulted in litigation presently pending before the Superior Court in Anchorage.

The Supreme Court's exclusive jurisdiction over Alaskan attorneys impacts the policy considerations before this committee. If the committee determines to sunset or de-integrate the Alaska Bar Association, without establishing any statutory mechanisms for admitting, licensing and disciplining attorneys, the Supreme Court would continue to bear the responsibilities for this regulation. Termination of the Alaska Bar Association would not de-regulate attorneys. On the other hand, should the committee determine to sunset or

de-integrate the Alaska Bar Association and establish statutory mechanisms for regulating attorneys, deference must be made to the Supreme Court's authority. Even should these statutory mechanisms not invade the Supreme Court's jurisdiction, nothing but good faith would require the Supreme Court to abide by them. It was in just such a context that 20 years ago the Supreme Court upheld the validity of the Integrated Bar Act and still abides by much of that act today.

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#12



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Bart Rozell, President-Elect
Alaska Bar Association
311 Franklin Street
Juneau, Alaska 99801

Dear Mr. Rozell:

This is in response to your request for information about law school accreditation by the American Bar Association.

A total of 45 jurisdictions (43 states plus the District of Columbia and Puerto Rico) require graduation from an ABA approved law school as a prerequisite for initial admission to the bar. For applicants who are lawyers in another jurisdiction, with at least five years' practice experience, the educational requirement is waived by 14 of these jurisdictions.

For all practical purposes, only California and Indiana are exceptions to the general rule. Graduation from an ABA approved law school makes a person eligible to take the bar examination in both California and Indiana. However, California has its own separate accreditation process, and the Indiana rule is that a person must graduate from a law school which is accredited in the state in which it is located.

Alabama limits bar admission to graduates of ABA approved law schools and graduates of three law schools located in Alabama. Delaware requires graduation from an ABA approved law school, except that graduates of the law schools of Oxford University or Cambridge University, England, are eligible as well. Michigan recognizes some Canadian law schools in addition to ABA approved law schools. New York actually limits admission to graduates of ABA approved law schools, but it is the Department of Education of New York which recognizes ABA approved law schools, and the court in turn recognizes the New York Department of Education's determination.

Bart Rozell, President-Elect
Page Two
March 14, 1980

Tennessee limits bar admission to graduates of ABA approved law schools and one other, namely the Nashville YMCA law school. (Georgia and Mississippi recently amended their bar admission rules to join the list of states which limit initial bar admission to graduates of ABA approved law schools.)

We believe the ABA Standards are minimum standards, which a law school should reasonably be required to meet for the protection of the public. The ABA accreditation process has never been used to limit the number of law schools. This is evidenced by the fact that the number of ABA approved law schools has increased by 31 schools within the last ten years, from 138 to 169 schools.

Enclosed as you requested are two copies of a pamphlet containing the Standards and Rules of Procedure for the Approval of Law Schools by the American Bar Association. Also enclosed are two sets of the Interpretations thereto.

If you need any additional information, please let me know.

Sincerely,



Frederick R. Franklin

FRF:bsm
7949D



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February 8, 1980

MEMORANDUM 7980-31

TO: Deans of ABA Approved Law Schools

FROM: James P. White, Consultant on Legal Education
to the American Bar Association

SUBJECT: Interpretations of the American Bar Association
Standards and Rules of Procedure for Approval
of Law Schools [Note: This Memorandum is an
addendum to Memorandum 7879-11, dated
September 25, 1978.]

The Council of the Section of Legal Education and Admissions to the Bar of the American Bar Association, at its December, 1979 meeting and February, 1980 meeting, considered recommendations for interpretations submitted by the Standards Review Committee and the Accreditation Committee. The following interpretations of the Standards for Approval of Law Schools by the American Bar Association were adopted by the Council:

Standard 103:

103 In order to obtain or retain approval by the American Bar Association, a law school must demonstrate that its program is consistent with sound educational policies. It shall do so by establishing that it is being operated in accordance with the Standards.

Interpretation: The intent of Standard 103, in part, is to put the obligation on the school to demonstrate that its program is consistent with sound educational policy and to establish that it is being operated in accordance with the Standards. Each law school, to retain approval, shall, in accordance with Rule III(1),

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furnish the Council with such information as is requested by the Council. The reinspection and annual questionnaires distributed by the Consultant on behalf of the Council provide the means through which each school demonstrates continuing compliance with the Standards. The annual questionnaire not only furnishes the Council with information regarding the status of each school, but, in meeting its concern with legal education as a whole, furnishes the Council with information regarding American law schools generally, so that the Council can determine the areas in which improvements are being made and the areas in which appropriate action should be taken and to provide the Council with information which reflects the norms of legal education. The annual questionnaire provides a uniform and regular method for the Council to meet its responsibilities, and, accordingly, each school shall furnish all the information requested on the annual questionnaire.

Standards 403 and 405:

403 The major burden of the educational program and the major responsibility for faculty participation in the governance of the law school rests upon the full-time faculty members.

(a) Students shall receive substantially all of the instruction in the first year of the full-time curriculum or the first two years of the part-time curriculum, and a major proportion of their total instruction from full-time faculty members.

(b) The proper use of qualified practicing lawyers and judges as part-time faculty members is an appropriate means of enriching the educational program.

405 The law school shall establish and maintain conditions adequate to attract and retain a competent faculty.

(a) The compensation paid faculty members should be sufficient to attract and retain persons of high ability and should be reasonably related to the prevailing compensation of comparably qualified private practitioners and government attorneys and of the judiciary. The compensation paid

faculty members at a school seeking approval should be comparable with that paid faculty members at similar approved law schools in the same general geographical area.

(b) The law school shall afford faculty members reasonable opportunity for leaves of absence and for scholarly research.

(c) The law school shall afford faculty members reasonable secretarial and clerical assistance.

(d) The law school shall have an established and announced policy with respect to academic freedom and tenure of which Annex I herein is an example but is not obligatory.

Interpretation:

(1) The dean of an approved school should be a tenured member of the full-time law faculty. This status is essential to the dean's carrying out his duties under Standard 403 and exercising the leadership which will result in the law faculty's assuming its responsibilities under the Standards.

(2) Standard 405, in requiring "conditions adequate to attract and retain a competent faculty" includes the dean who, in the history of American legal education, has almost always been a tenured member of the law faculty.

(3) Extraordinary circumstances may compel a departure from the principle stated in this interpretation. However, in no case shall a dean be appointed without tenure unless withholding tenure is the decision both of a majority of the full-time law faculty and the chief executive officer of the school's university or governing board.

JPW/mss



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December 10, 1979

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SECTION OF LEGAL EDUCATION AND ADMISSIONS
AMERICAN BAR ASSOCIATION

MEMORANDUM 7980-27

TO: Deans of ABA Approved Law Schools
FROM: James P. White, Consultant on Legal Education
to the American Bar Association
SUBJECT: Revision of Rule III(4) of the Rules of
Procedure for Approval of Law Schools by the
American Bar Association

The Council of the Section of Legal Education and Admissions to the Bar, at its December 1, 1979 meeting, amended Rule III(4) of the Rules of Procedure for Approval of Law Schools by the American Bar Association as follows:

Rule III

(4) Written complaints from faculty or students at ABA approved schools are received by the Council of the Section of Legal Education and Admissions to the Bar. Upon receipt of a complaint, the Consultant on Legal Education to the American Bar Association acknowledges receipt of the complaint and makes a request for any additional information which is deemed necessary.

~~If evidence indicates conditions, practices, or actions in violation of the Standards for Approval of Law Schools, if a complaint alleges facts which warrant further investigation, the Chairperson of the Council or the Chairperson of the Accreditation Committee may appoint a~~

Page 2
MEMORANDUM 7980-27
December 10, 1979

Hearing Commission to visit the institution to obtain additional information and to report to the Council and its Accreditation Committee. The aggrieved party may also be given an opportunity to meet with the Hearing Commissioner or members of the Hearing Commission.

Audit ~~Travel and associated actual expenses of inspectors and those involved in the hearing process authorized by the Consultant or the Committee or the Council are the obligation of the School.~~

The Council and its Accreditation Committee may then review the matter with notice to all concerned parties. If the Council finds that the school is in violation of the Standards, it may then take appropriate action under provisions of its Standards and Rules of Procedure for Approval of Law Schools for removal of the institution from the list of approved schools.

JPW/mss



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February 7, 1979

MEMORANDUM 7879-33

TO: Deans of ABA Approved Law Schools
FROM: James P. White, Consultant on Legal Education
to the American Bar Association
SUBJECT: Interpretations of the American Bar Association
Standards and Rules of Procedure for Approval
of Law Schools
[Note: This Memorandum is an addendum to
Memorandum 7879-11, September 25, 1978]

The Council of the Section of Legal Education and Admissions to the Bar of the American Bar Association, at its December, 1978 meeting, adopted the following as interpretations of the Standards for Approval of Law Schools by the American Bar Association:

Standard 205:

205 Within those general policies, the dean and faculty of the law school shall have the responsibility for formulating and administering the program of the school, including such matters as faculty selection, retention, promotion and tenure; curriculum; methods of instruction; admission policies; and academic standards for retention, advancement, and graduation of students.

Interpretation: The law faculty shall have a substantial degree of involvement in the process by which a law dean is selected, appointed, or (as to terms over one year) reappointed. The process should entail a joint effort by the law faculty and the university administration or governing board. Except in rare cases and for compelling reasons, a law dean shall not be appointed or reappointed over the objections of a majority of the law faculty.

(See Memorandum 7879-11, Pages 7-9, for additional interpretations of Standard 205.)

Standards 105 and 210:

- 105 An approved law school should seek to exceed the minimum requirements of the Standards.
- 210 Affiliation between a law school and a University is desirable, but is not required for approval. If the law school is affiliated with or a part of a University, the relationship shall serve to enhance the program of the law school. If the law school is an independent institution, it shall endeavor to secure the advantages that would normally result from being part of a University.
- (a) A University affiliation permits an educational program that extends beyond the traditional law school curriculum, the development of academic programs that involve other disciplines, and enables law students and faculty to enjoy the advantages of the University library and other facilities and to participate in the academic life of the University community.
- (b) If a law school is separate, either because it is unaffiliated with a University, or although affiliated, is so located as to be physically remote from the rest of the University, it should take appropriate measures to supply the advantages of University affiliation, for example, by providing a more extensive library, particularly on non-legal subjects, and by developing a working relationship with other institutions of higher learning in the community.
- (c) If the University's general policies relating to rank, advancement, tenure, and compensation do not provide adequately for the recruitment and retention of a qualified law faculty, separate policies should be established for the law school.

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MEMORANDUM 7879-33
February 7, 1979

Interpretation: In part, the intent of Standard 210, coupled with Standard 105, is that the resources generated by a university-affiliated law school should be fully available for the school to maintain and enhance its educational program. "Resources generated" includes tuition, endowment restricted to the law school, gifts to the law school, and resources such as grants, contracts, and property interests committed to the law school. Serious questions concerning the adequacy of a law school's financial support arise when resources generated by a university-affiliated law school are not made available to the school to maintain and enhance its educational program. The university should provide the law school with a satisfactory basis, in accordance with generally accepted accounting principles, for the use of such portion of the resources as may be employed to support non-law school activities and functions, such as central university services. In turn, the law school should benefit on a reasonable basis in the allocation of university resources.

(See Memorandum 7879-11, Pages 3-4 and 9-11, for additional interpretations of Standards 105 and 210.)

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SECTION OF LEGAL EDUCATION AND ADMISSIONS
AMERICAN BAR ASSOCIATION

September 25, 1978

MEMORANDUM 7879-11

TO: Deans of ABA Approved Law Schools

FROM: James P. White, Consultant on Legal Education
to the American Bar Association

SUBJECT: Interpretations of the American Bar Association
Standards and Rules of Procedure for Approval
of Law Schools
[Note: Supersedes Memorandum 7778-27, dated
February 1, 1978]

Many requests seeking information pertaining to interpretations of the American Bar Association Standards have been received by this, and other offices of the Section of Legal Education. We have tried to reply to these requests in a timely fashion. In this regard, this office has instigated the practice of compiling all interpretations so that they may be readily available to anyone who should desire this information. The following is a summary of the interpretations, and their author, which have been rendered regarding certain Standards. All interpretations contained in this memorandum have been reviewed by the Council of the Section of Legal Education and Admissions to the Bar of the American Bar Association.

Standards 102 and 103:

102 The American Bar Association believes that every candidate for admission to the bar should have graduated from a law school approved by the American Bar Association, that graduation from a law school should not alone confer the right of admission to the bar, and that every candidate for admission should be examined by public authority to determine his fitness for admission.

103 In order to obtain or retain approval by the American Bar Association, a law school must demonstrate that its program is consistent with sound educational policies. It shall do so by establishing that it is being operated in accordance with the Standards.

Interpretation 1: Support from the State Bar Association is not necessary in order for a school to be approved by the ABA, and a school which meets the Standards may be approved even though the local bar is opposed. However, actions and judgments by the bar or by individual members of the bar are not irrelevant. Charles D. Kelso, Chairman, July 3, 1974.

Interpretation 2: It is the responsibility of a law school approved by the American Bar Association or seeking ABA approval to demonstrate compliance with the Standards. The Council cannot determine if a school is being operated in accordance with the Standards if the school refuses to submit information requested by the Council. Refusal to supply information could be determined a violation of the Standards. Council, August, 1977.

Interpretation 3: It is the intent of the Standards that each approved law school or law school seeking provisional approval provide appropriate information to the Council and Accreditation Committee, including the completion of appropriate questionnaires and self-studies. Accreditation Committee, July, 1977 and Council, August, 1977.

Standard 104(a):

104 (a) A law school will be granted provisional approval when it establishes that it substantially complies with the Standards and gives assurance that it will be in full compliance with the Standards within three years after receiving provisional approval.

Interpretation 1 of 104(a): A law school seeking provisional approval by the American Bar Association must furnish separate financial operating statements for the last three fiscal years. If the applicant institution is a private institution, the statements shall be certified. Council, August, 1977.

Interpretation 2 of 104(a): A law school seeking provisional approval by the ABA shall provide appropriate supporting documents detailing the actual cost of

all facilities used solely for the support of the law school.

If the applicant institution is a private institution, the institution shall state the MAI appraised fair market value of facilities used solely for support of the law school. Council, August, 1977.

Interpretation 3 of 104(a): Substantial compliance means appropriate and substantial compliance with each of the Standards for Approval of Law Schools and further, that a law school gives assurance that it will be in full compliance within three years after receiving provisional approval. Council, June, 1978.

Interpretation 4 of 104(a): Plans for construction, financing, library improvement, salary increases and employment of faculty which are presented by a law school seeking provisional approval are not, in themselves, matters of substantial compliance with the Standards. Substantial compliance means substantial compliance at the time a law school seeks provisional approval and not future realization of existing plans. Council, June, 1978.

Standard 104(c):

104 (c) A law school that is provisionally approved may have this approval withdrawn if it is determined that it is not substantially complying with the Standards, or if more than five years have elapsed since the law school was provisionally approved and it has not qualified for full approval and the Council has not extended the time within which full approval must be obtained.

Interpretation: Provisional approval may be withdrawn if more than five years have elapsed since a law school was provisionally approved if the law school has not qualified for full approval by placing itself in full compliance with each and every Standard. Council, June, 1978.

Standard 105:

105 An approved school should seek to exceed the minimum requirements of the Standards.

Interpretation: A law school whose academic program does not meet its own stated goals and objectives does not comply with the Standards for Approval of Law Schools by the American Bar Association. Council, August, 1977.

Standards 201 and 209:

201 The law school shall have the resources necessary to provide a sound legal education and accomplish the objectives of its educational program, and shall be so organized and administered as to utilize fully those resources for those purposes.

209 The present and anticipated financial resources of the law school shall be adequate to sustain a sound educational program.

(a) If tuition is a substantial source of the law school's income, the school is faced with a potential conflict of interest whenever the exercise of sound judgment in the application of admission policies or academic standards and retention policies might reduce enrollment below the level necessary to support its program. The law school shall not permit financial considerations detrimentally to affect those policies and their administration.

(b) The law school may not base the compensation paid any person for service to the law school (other than compensation paid a student or associate for reading and correcting papers or similar activity) on the number of persons enrolled in the law school or in any class or on the number of persons applying for admission to or registering in the law school.

Interpretation: A law school, organized on a not-for-profit basis, does not meet the requirements of Standard 201 and of Standard 209 when:

- (1) A law school is almost entirely dependent upon tuition income;
- (2) Operational and building conversion costs have exceeded income and have necessitated the borrowing of considerable sums of money;
- (3) Acquisition of a permanent law school plant is dependent upon loan commitments which are

themselves contingent upon the school's obtaining provisional accreditation by the American Bar Association; and

- (4) Budget projections designed to cover debt service and operational expenses over the years 1975-81 contemplate and are dependent on substantial increases in the size of the student body together with substantial increases in student tuition.

Council, June, 1978.

Interpretation of 201: Although a particular law school may satisfy minimal Standards, failure of a law school to achieve its own stated goals and objectives may place the school in violation of the Standards.
Council, August, 1977.

Standard 202:

202 The law school shall be organized as a non-profit educational institution and may not be operated for private profit.

Interpretation:

WHEREAS, the Council of the Section of Legal Education and Admissions to the Bar adopted the following resolutions on February 12, 1977:

- (1) "That at this time no change or material modification of Standard 202 of the Standards for Approval of Law Schools by the American Bar Association be recommended to the House of Delegates."
- (2) "That the Council declares its willingness for a period of two years following the adoption of this resolution to grant a Standard 802 variance of Standard 202 and the last clause of Standard 203 and the interpretations placed upon it, in connection with an application for provisional approval from any proprietary law school which believes it can show that it is in substantial compliance with all of the other Standards for Approval of Law Schools by the American Bar Association except Standard 202 and the last clause of Standard 203."

NOW, THEREFORE, BE IT RESOLVED, that the Council of the Section of Legal Education and Admissions to the Bar, in modification and clarification of the above resolutions, hereby determines that until the date of June 30, 1979, it will accept an application for provisional approval from any proprietary law school which can show that it substantially complies with all of the Standards for Approval of Law Schools by the American Bar Association except Standard 202 and the last clause of Standard 203 and gives assurance that it will be in full compliance with all of the Standards for Approval of Law Schools by the American Bar Association except Standard 202 and the last clause of Standard 203 within three years after receiving provisional approval;

BE IT FURTHER RESOLVED, that if the Council of the Section of Legal Education and Admissions to the Bar recommends to the House of Delegates of the American Bar Association that any proprietary law school be granted provisional approval, at that time, the Council will also recommend to the House of Delegates of the American Bar Association the repeal of Standard 202 and the last clause of Standard 203 from the Standards for Approval of Law Schools by the American Bar Association.

Council, June, 1977.

Standard 203:

203 The law school shall be governed by a Board whose members are dedicated to the maintenance of a sound educational institution, possess the capability of participating in the formulation and development of such an institution, and have no financial interest in the operation of the law school.

Interpretation: For some time, both members of the Accreditation Committee and representatives of law schools have expressed concern with regard to deans of free-standing law schools serving as a trustee of the law school. While the Standards do not prohibit the dean of a free-standing law school from serving as a trustee, I believe that substantial possibility of conflict of interest exists. The dean, as the chief executive officer of the institution, would, as a matter of course, always attend and participate in trustees' meetings. James P. White, Consultant, July 29, 1976.

Standards 204 and 205:

- 204 The Governing Board may establish general policies for the law school, provided they are consistent with a sound educational program and the Standards.
- 205 Within those general policies, the dean and faculty of the law school shall have the responsibility for formulating and administering the program of the school, including such matters as faculty selection, retention, promotion and tenure; curriculum; methods of instruction; admission policies; and academic standards for retention, advancement, and graduation of students.

Interpretation: The intent of Standards 204 and 205 is that the Governing Board of an educational institution establish policies and procedures for the institution but implementation of these policies and procedures is a matter for action by the dean and faculty of the law school. Thus, the Governing Board of the University additionally might and should develop a requirement for documentation as to the quality of teaching, scholarship, research and public service of a faculty member who is under consideration for promotion or the granting of tenure. The general university committee might undertake to examine the submission of the law school committee to determine that the submission was in a manner that insures that the law school has fully considered the matter, has complied with the Rules of Procedure and has fully documented its recommendation.

It is not appropriate for the general university committee to exercise an independent judgment with regard to the quality of scholarship, teaching or service of a particular faculty member upon which the law faculty makes a determination and recommendation as to a particular faculty member's status relating to promotion or the granting of tenure.

As I have observed, these Standards and their interpretations are long-standing and I believe carefully formulated. We would not presume to have a committee of law faculty pass on the merit or demerit of persons applying for promotion and the granting of tenure by a college of arts and sciences. Thus, it is not appropriate that such a committee pass on the merit or demerit of a recommendation of a law faculty member for promotion or the granting of tenure.

It is my opinion and the long-standing opinion of the Council and the Accreditation Committee of the Section of Legal Education and Admissions to the Bar that if a university committee exercises independent judgment as to the substantive performance of a law faculty member, then the action of that committee and the action of the university is in clear violation of Standard 205. Such action might, of course, place accreditation of the law school in some jeopardy. James P. White, Consultant, April 1, 1977.

Standard 205:

Standard 205 is previously cited above.

Interpretation 1: A law faculty as a professional faculty should not be required to be part of a general university bargaining unit. Council, July, 1975.

Interpretation 2: The intent of Standard 205 is that there be full communication between the dean and faculty that the dean and faculty together join in the establishment of general educational policies and the development of the School's educational goals and objectives. Accreditation Committee, July, 1977.

Interpretation 3: To facilitate the accomplishment of the objectives of the school, the dean and faculty must engage in and complete a self-study. This self-study, in its current form, is to be submitted by a school seeking provisional approval, by a provisionally approved law school having its annual inspection, and by a fully approved law school having a regular or special inspection. Council, June, 1978.

Interpretation 4: A university policy which permits review and overriding of decisions of the law faculty as to sanctions imposed upon law students found guilty of academic dishonesty appears to violate the intent of Standard 205. Accreditation Committee, July, 1978; Council, August, 1978.

Interpretation 5: Law faculty promotion and tenure decisions which are subject to review on their merit by a general university area advisory committee appear to violate Standard 205 and the Council's interpretation of that standard, permitting review of law school procedures, but prohibiting evaluation of qualifications for tenure and promotion review by non-law faculty committees. Accreditation Committee, July, 1978; Council, August, 1978.

Standards 205 and 206:

Standard 205 is previously cited above.

206 The dean and faculty of the law school shall have the opportunity to present their recommendations on budgetary matters before the budget for the law school is submitted to the Governing Board.

Interpretation: Action of the Board of Trustees of a university authorizing the president of a university to determine a fixed percentage of an entering class without the approval of the dean and faculty of the law school violates Standards 205 and 206 of the Standards and places a law school in a posture of violation of the Standards, which would result in the withdrawing of ABA accreditation. Council, December, 1975.

Standard 209(a):

Standard 209(a) is previously cited above.

Interpretation: Where a law school has a present student body which is only marginally qualified for the study of law and where this student body is considered with the school's reported plans to increase the size of its student body, at a time when the number of applications for admission to law school is declining, provoke a serious concern with regard to Standard 209(a). Accreditation Committee, May, 1977; Council, June, 1977.

Interpretation of 201 and 209: A law school must have sufficient resources specifically allocated to the school in order to sustain the school's sound educational program and to accomplish the objectives of its educational program as set forth in its self-study. Accreditation Committee, May, 1978; Council, June, 1978.

Standard 210:

210 Affiliation between a law school and a University is desirable, but is not required for approval. If the law school is affiliated with or a part of a University, that relationship shall serve to enhance the program of the law school. If the law school is an independent institution, it shall endeavor to secure the advantages that would normally result from being part of a university.

(a) A University affiliation permits an educational program that extends beyond the traditional law school curriculum, the development of academic programs that involve other disciplines, and enables law students and faculty to enjoy the advantages of the University library and other facilities and to participate in the academic life of the University community.

(b) If a law school is separate, either because it is unaffiliated with a University, or although affiliated, is so located as to be physically remote from the rest of the University, it should take appropriate measures to supply the advantages of University affiliation, for example, by providing a more extensive library, particularly on non-legal subjects, and by developing a working relationship with other institutions of higher learning in the community.

(c) If the University's general policies relating to rank, advancement, tenure, and compensation do not provide adequately for the recruitment and retention of a qualified law faculty, separate policies should be established for the law school.

Interpretation: The intent of Standard 210, coupled with Standard 105, is that the resources generated by a university-affiliated law school should be fully available for the school to maintain and enhance its educational program. "Resources generated" includes tuition, endowment restricted to the law school, gifts to the law school, and resources such as grants, contracts and property interests committed to the law school. The university should provide the law school with a satisfactory basis, in accordance with generally accepted accounting principles, for the use of such portion of the resources as may be employed to support non-law school activities and functions, such as central university services. In turn, the law school should benefit on a reasonable basis in the allocation of university resources. Accreditation Committee, July, 1978; Council, August, 1978.

Interpretation of 210(c): University tenure and promotion policies which are dependent upon the fiscal stability of the parent university may inadequately

provide for the recruitment and retention of qualified law faculty as required by Standard 210(c). Accreditation Committee, November, 1977.

Interpretation 1 of 201, 209 and 210: A not-for-profit law school's commitment to become affiliated with an established institution and a present definitive proposal for the sale of its property and its merger with another institution portend changes which must materially affect compliance with Standards 201, 209 and 210, and accordingly, substantial compliance with these Standards can adequately be established only after consummation of these fundamental changes in the school's organization and administration. Council, June, 1978.

Interpretation 2 of 201, 209 and 210: The financial resources of the law school may not be in conformance with Standards 201, 209 and 210 when particular concern is noted with regard to very high overhead costs assessed the law school by the university, especially in view of inadequate resources of the law school with regard to faculty salaries, support for faculty research, library staff and new acquisitions for the library collection. Accreditation Committee, May, 1978; Council, June, 1978.

Standard 211:

211 The law school shall maintain equality of opportunity in legal education without discrimination or segregation on the ground of race, color, religion, national origin, or sex.

(a) The denial by a law school of admission to a qualified applicant will be treated as made upon the ground of race, color, religion, national origin, or sex if the ground of denial relied upon is

(i) a state constitutional provision or statute that purports to forbid the admission of applicants to a school on the ground of race, color, religion, national origin, or sex; or

(ii) an admissions qualification of the school that is intended to prevent the admission of applicants on the ground of race, color, religion, national origin, or sex though not purporting to do so.

(b) The denial by a law school of employment to a qualified individual will be treated as made upon the ground of race, color, religion, national origin, or sex if the ground of denial relied upon is an employment policy of the school which is intended to prevent the employment of individuals on the ground of race, color, religion, national origin, or sex though not purporting to do so.

(c) Equality of opportunity in legal education includes equal opportunity to obtain employment. Each school should communicate to every employer to whom it furnishes assistance and facilities for interviewing and other placement functions the school's firm expectation that the employer will observe the principle of equal opportunity and will avoid objectionable practices such as

(i) refusing to hire or promote members of the groups protected by this policy because of the prejudices of clients or of professional or official associates;

(ii) applying standards in the hiring and promoting of such individuals that are higher than those applied otherwise;

(iii) maintaining a starting or promotional salary scale that is lower than is applied otherwise; and

(iv) disregarding personal capabilities by assigning, in a predetermined or mechanical manner, such individuals to certain kinds of work or departments.

Interpretation: The Council has directed the Consultant on Legal Education to the American Bar Association to advise each approved law school that it is the opinion of the Council that, in those cases where a law firm (or lawyer professional corporation) holds out to prospective lawyer employees, expressly or by implication, the possibility or probability of eventual advancement in partnership (or equivalent status in a lawyer professional corporation) after a period of salaried employment, it is an improper practice for such law firm (or corporation) to discriminate in advancement of its employees to partnership (or such equivalent status) on ground of race, color, religion,

national origin, or sex. Council, June, 1976.

Standard 212:

212 The law school should provide adequate staff, space and resources, in view of the size and program of the school to maintain an active placement service to assist its graduates to make sound career choices.

Interpretation: The Council does affirm that it encourages the establishment and effective operation of placement programs in all approved law schools. Council, August, 1978.

Standard 301(a):

301 (a) The law school shall maintain an educational program that is designed to qualify its graduates for admission to the bar.

Interpretation: Courses conducted specifically for improving student performance on bar examinations may be offered at law schools approved by the American Bar Association, but credit may not be given for courses conducted for this purpose. Council, August, 1977.

Standard 302:

302 (a) The law school shall offer:

(i) instruction in those subjects generally regarded as the core of the law school curriculum,

(ii) training in professional skills, such as counselling, the drafting of legal documents and materials and trial and appellate advocacy,

(iii) and shall provide and require for all student candidates for a professional degree, instruction in the duties and responsibilities of the legal profession. Such required instruction need not be limited to any pedagogical method as long as the history, goals, structure and responsibilities of the legal profession and its members, including the ABA Code of Professional Responsibility, are all covered. Each law school is encouraged to involve members of the bench and bar

in such instruction.

(b) The law school may not offer to its students, for academic credit or as a condition to graduation, instruction that is designed as a bar examination review course.

Interpretation 1 of 302(a)(ii): There is no ABA ruling that a student requesting enrollment in an advocacy course must be admitted to that course. The Standard in question states merely that the law school shall offer training in the professional skills. Frederick R. Franklin, Staff Director, June 14, 1974.

Interpretation 2 of 302(a)(ii): This section requires training in professional skills. To which of the many professional skills the curriculum will give special attention is left to the individual schools. Therefore, it is incorrect to say that this Standard requires an approved school to offer a course in Trial Practice. The only subject matter in which approved law schools must provide instruction is in professional responsibility. Council, August, 1975.

Interpretation of 302: The academic program of a law school violates Standards 302 and 303 when the program of study lacks fundamental core subjects, and provides inadequate training in writing, research, study techniques, and trial tactics and provides very few seminars and small class courses. Council, August, 1978.

Standard 304:

304 (a) The law school shall maintain and adhere to sound standards of legal scholarship, including clearly defined standards for good standing, advancement, and graduation.

(b) The scholastic achievement of students shall be evaluated from the inception of their studies. As part of the testing of scholastic achievement, a written examination of suitable length and complexity shall be required in every course for which credit is given, except clinical work, courses involving extensive written work such as moot court, practice court, legal writing and drafting, and seminars and individual research projects.

(c) A law school shall not, either by initial admission or subsequent retention, en-

roll or continue a person whose inability to do satisfactory work is sufficiently manifest that his continuation in school would inculcate false hopes, constitute economic exploitation, or deleteriously affect the education of other students.

Interpretation of 304(b): The examination should be by either written examination or term paper. The examination should not be an oral examination, nor should it be a progress report graded by fellow students. The intent of the Standard is to have a meaningful faculty assessment of the student's work product. James P. White, February 12, 1975.

Interpretation of 304(c): A law school's admission standards and procedures may not fulfill the requirements of Standards 304(c) and 501 in that they may result in admissions inconsistent with the objectives of its educational program and the enrollment of persons unable to do satisfactory work and may be inconsistent with the requirement of faculty control in the admissions process. Accreditation Committee, July, 1978; Council, August, 1978.

Standard 305:

305 (a) Subject to the qualifications and exceptions contained in this Chapter, the law school shall require, as a condition for graduation, the completion of a course of study in residence of not less than 1200 class hours, extending over a period of not less than ninety weeks for full-time students, or not less than one hundred and twenty weeks for part-time students.

(i) "In residence" means attendance at classes in the law school.

(ii) "Class hours" means time spent in regularly scheduled class sessions in the law school, including time allotted for final examinations, not exceeding ten percent of the total number of class session hours.

(iii) "Full-time student" means a student who devotes substantially all of his working hours to the study of law.

(b) To receive residence credit for an academic period, a full-time student must be enrolled in a schedule requiring a minimum of ten class hours a week and must receive credit for at least nine class hours and a part-time student must be enrolled in a schedule requiring a minimum of eight class hours a week and must receive credit for at least eight class hours. If a student is not enrolled in or fails to receive credit for the minimum number of hours specified in this subsection, he may receive residence credit only in the ratio that the hours enrolled in or in which credit was received, as the case may be, bear to the minimum specified.

(c) Regular and punctual class attendance is necessary to satisfy residence and class hours requirements.

Interpretation: A law school must undertake to enforce appropriate rules in order to assure that full-time division students satisfy requirements for full-time study. Council, June, 1978.

Interpretation 1 of 305(a): In computing the weeks of residence study, the time devoted to class instruction and examination is counted. The period devoted to vacation and registration is not counted. If a school has fifteen weeks in each semester, then it meets the ABA requirement of at least 90 weeks for a three-year, full-time program. Millard H. Ruud, Consultant, November 6, 1973.

Interpretation 2 of 305(a): Time spent in regularly scheduled class sessions does not include the time allotted to reading periods. The Council resolution was that "reading periods"--a period of time usually designated prior to examinations during which no classes are scheduled and the student has "free time"--cannot be included within the required 1200 class hours as defined in Standard 305. Council, June, 1976.

Interpretation 3 of 305(a): Classes for full-time students should extend over not less than 90 weeks and classes for part-time students should extend over not less than 120 weeks; that a week as defined in 305(a) means a week in which classes are regularly scheduled to meet at least Monday through Friday; and that the 90 and 120 week requirements does not include time allotted for reading periods. Council, August, 1976.

Interpretation 1 of 305(a)(ii): "Class hours" means time spent in regularly scheduled class sessions in the law school, including time allotted for final examinations, not exceeding 10 percent of the total number of class session hours and not including time allotted for reading periods and not exceeding one week of examinations.

Interpretation 2 of 305(a)(ii): "Class hours" means time spent in regularly scheduled class sessions in the law school, including time allotted for final examinations, not exceeding 10 percent of the total number of class sessions, not exceeding one week, and not including time allotted for reading periods. Council, June, 1976.

Interpretation of 305(a)(iii): A student may not work in excess of 15 hours per week while attending a school on a full-time basis. These restrictions also apply during the summer in the same manner as they do during the normal year if the student is enrolled for summer session. James P. White, October 28, 1974; December 12, 1974. Council, February, 1975.

Interpretation of 305(a), (b) and (c): These Standards should be interpreted by the school in which a student is enrolled and not by the ABA when the Standard relates to a school's individual program. The reason for this is that it would not be proper for the ABA to intervene in the school's operation of its individual curriculum by making rulings directly to its students. James P. White, in responding on May 13, 1975, to a letter from a student at Catholic University Law School.

Interpretation of 305(b): The ABA has long-standing interpretations of the Standards that transfer credit may be given for work taken only at another ABA approved school. There is a pending proposal which would add a new section, 308, to the Standards, which would allow the transfer of credit from a prior foreign law school where the "admitting" school is satisfied that the quality of the educational program of the prior foreign law school is at least equal to that required for an approved school. James P. White, Consultant, November 5, 1975.

Interpretation of 305(a) and (b):

- (1) It is the interpretation of the Council of the Section of Legal Education and Admissions to the Bar that a "class hour" as stated in

Section 305 of the Standards for Approval of Law Schools is to be defined as a unit of class room instruction of 50 to 60 minutes in duration. An additional fraction of a class hour may only be computed in increments of 10 minutes or more. Examples of acceptable units of instruction are 50, 60, 70, 80, and 90 minutes in duration.

- (2) "The Council at its August 6, 1977 meeting also approved a 75 minute teaching unit (one and one-half 50 minute units) as an acceptable teaching unit for compliance with this aspect of 305. In all other instances a 5 minute increment would be counted to the lower ten, e.g., 55 minutes would be counted as 50 minutes, etc."
- (3) In addition, Section 305 mandates 750 minutes of class room instruction per semester credit or at least 500 minutes of class room instruction per quarter credit.
- (4) However, even if a school meets or exceeds the minimum number of class room minutes required by 305 the school still must meet the minimum week standard imposed by 305.
- (5) Thus, a school on the semester system must offer at least 750 minutes of class room instruction over a 15 week period per semester credit to meet 305. A school on the quarter system must offer at least 500 minutes of class room instruction over a 10 week period per quarter credit to meet 305.

Council, August, 1977.

Interpretation of 305(c): This Standard is very specific, which is indicative of the fact that the ABA considers the matter of class attendance to be of importance. "It is the interpretation of the American Bar Association that regular and punctual class attendance is an important part of the learning process." "This Standard is a very direct statement in regard to attendance." "The implementation of the rule is left to the good judgment of the various faculty and the administration of each law school." James P. White, Consultant, August 14, 1974, and October 30, 1975.

Standards 305 and 306:

Standard 305 is previously cited above.

306 If the law school has a program that permits or requires student participation in studies or activities away from the law school or in a format that does not involve attendance at regularly scheduled class sessions, the time spent in such studies or activities may be included as satisfying the residence and class hours requirements, provided the conditions of this section are satisfied.

(a) The residence and class hours credit allowed must be commensurate with the time and effort expended by and the educational benefits to the participating student.

(b) The studies or activities must be approved in advance, in accordance with the school's established procedures for curriculum approval and determination.

(c) Each such study or activity, and the participation of each student therein, must be conducted or periodically reviewed by a member of the faculty to insure that in its actual operation it is achieving its educational objectives and that the credit allowed therefore is, in fact, commensurate with the time and effort expended by, and the educational benefits to, the participating student.

(d) At least 900 hours of the total time credited towards satisfying the "in residence" and "class hours" requirements of this Chapter shall be in actual attendance in regularly scheduled class sessions in the law school conferring the degree, or, in the case of a student receiving credit for studies at another law school, at the law school at which the credit was earned.

Interpretation 1: In any joint degree program between the law school and another school or college, (i) at least 900 hours out of the minimum of 1200 hours of study required for the law degree must be in courses in residence in the law school; (ii) all, or any part, of the remaining 300 hours required to make up the minimum of 1200 hours of study, may be in studies or courses outside the law school and may be used to satisfy re-

quirements for each of the degrees in the joint degree program provided that all of such hours applied in satisfaction of the requirements for the law degree must be in studies or courses that satisfy the requirements of Section 305 or 306 and have been specifically approved by the law school as appropriate for the law school. Interpretation of Committee on Standards, February 1, 1974.

Interpretation 2: This Standard "requires that at least 900 hours (60 semester hours) must be in actual attendance in regularly scheduled class sessions in the law school. The remaining hours may be in studies or activities away from the law school provided such study or activity is conducted or periodically reviewed by a member of the faculty of the law school." Frederick R. Franklin, Staff Director, November 1, 1974.

Interpretation of 306(c): Lack of substantial supervision given by a law school faculty to law students working with practicing lawyers throughout a state does not conform with Standard 306(c). Accreditation Committee, November, 1977.

Standard 307:

307 Upon request, the Council may authorize a fully approved law school to establish a course of study leading to a degree other than the first professional law degree. Programs in addition to the first professional law degree may not detract from the law school's ability to maintain a sound educational program leading to that degree. A law school shall not undertake a program in addition to the first professional law degree unless the quality of its program leading to the first professional law degree exceeds the requirements of the Standards.

Interpretation: The Accreditation Committee and Council in denying previous applications with regard to the proposed establishment of an LL.M. program gave as reasons for the denial:

- (1) Inadequate full-time faculty sufficient to conduct the J.D. program of the School of Law.
- (2) Lack of sufficient full-time faculty to direct and conduct a full-time LL.M. program.

- (3) Lack of a fully adequate physical plant.
- (4) Lack of an adequate law library to support both a J.D. and LL.M. program.
- (5) A J.D. curriculum lacking sufficient diversity and richness in course offerings.

Accreditation Committee, August, 1977; Council, August, 1977.

Interpretation 2: The quality of the first-degree-in-law program of a law school must exceed the requirements of the Standards as required, in order for the law school to establish a graduate law program in compliance with Standard 307. Council, June, 1978.

Standard 308:

308 The law school may admit with advanced standing and allow credit for studies at a law school outside the United States if the studies

(i) either were "in residence" as provided in Section 305, or qualify for credit under Section 306, and

(ii) the content of the studies was such that credit therefor would have been allowed towards satisfaction of degree requirements at the admitting school, and

(iii) the admitting school is satisfied that the quality of the educational program at the prior school was at least equal to that required for an approved school.

The maximum advanced standing and credit allowed may not exceed one-third of the total required by these Standards for the first professional degree.

Interpretation 1: Section 308 states the only circumstances under which an approved school may admit with advanced standing and allow credit for studies at a law school that is not on the list of law schools approved by the American Bar Association. Credit may not be allowed for studies at a law school in the United States that is not on the list of law schools approved by the American Bar Association. Credit may be allowed for studies at a law school in the United States that is

on the list of law schools approved by the American Bar Association in the discretion of the admitting school. Credit may be allowed for studies at a law school outside the United States only to the extent authorized by Section 308. Standards Committee, December, 1976; Council, February, 1977.

Interpretation 2: A candidate school for provisional approval may accept student transfer credit from an approved law school, but may not accept student transfer credit from unapproved law schools. Accreditation Committee, November, 1977; Council, December, 1977.

Standards 401-405:

- 401 The members of the faculty shall possess a high degree of competence, as demonstrated by education, classroom teaching ability, experience in teaching or practice, and scholarly research and writing.
- 402 (a) The law school shall have not fewer than six full-time faculty members, in addition to a full-time dean and a law librarian. It shall have such additional members as are necessary to fulfill the requirements of this Chapter and the needs for its educational program, with due consideration for
- (i) the size of the student body and the opportunity for students to meet with and consult faculty members on an individual basis,
 - (ii) the nature and scope of the educational program, and
 - (iii) adequate opportunity for effective participation by the faculty in the governance of the law school.
- (b) A full-time faculty member is one who during the academic year devotes substantially all his working time to teaching and legal scholarship, has no outside office or business activities and whose outside professional activities, if any, are limited to those which relate to his major academic interests or enrich his capacity as scholar and teacher, or are of service to the public generally, and do not unduly interfere with his responsibilities as a faculty member.

403 The major burden of the educational program and the major responsibility for faculty participation in the governance of the law school rests upon the full-time faculty members.

(a) Students shall receive substantially all of their instruction in the first year of the full-time curriculum or the first two years of the part-time curriculum, and a major proportion of their total instruction from full-time faculty members.

(b) The proper use of qualified practicing lawyers and judges as part-time faculty members is an appropriate means of enriching the educational program.

404 (a) To the extent that a faculty member is teaching only regularly scheduled class sessions over fixed periods of time, he shall not teach more than

(i) an average of eight scheduled class hours per week, counting repetitions during the same academic period as one-half for this purpose, or

(ii) an average of ten scheduled class hours per week, counting repetitions during the same academic period at full value.

(b) To the extent that a faculty member's teaching assignment is not limited to regularly scheduled class sessions over fixed periods of time, his total teaching responsibilities may not exceed a maximum comparable to that set forth in subsection (a).

(c) If the institutional responsibilities of a full-time faculty member include extensive participation in activities of the academic community, research, or public service, the maximum assignments permitted by this section shall be correspondingly adjusted.

405 The law school shall establish and maintain conditions adequate to attract and retain a competent faculty.

- (a) The compensation paid faculty members should be sufficient to attract and retain persons of high ability and should be reasonably related to the prevailing compensation of comparably qualified private practitioners and government attorneys and of the judiciary. The compensation paid faculty members at a school seeking approval should be comparable with that paid faculty members at similar approved law schools in the same general geographical area.
- (b) The law school shall afford faculty members reasonable opportunity for leaves of absence and for scholarly research.
- (c) The law school shall afford faculty members reasonable secretarial and clerical assistance.
- (d) The law school shall have an established and announced policy with respect to academic freedom and tenure of which Annex I herein is an example but is not obligatory.

Background and Discussion of Educational Effect

A. Background. A series of actions by the Accreditation Committee, over the period 1975-78, together with the Committee's analysis of statistics from the last decade of law school growth in the United States, indicate a deterioration in legal education of the values and academic opportunities which Standards 201 and 401-405 are designed to insure. It has become clear that ratios of students to full-time faculty have increased remarkably. Attention to this fact and to the educational effects of the size of the full-time law faculty has occupied increasing amounts of the Committee's time, and has increased its determination to become more rigorous.

Every approved school is required by Standard 105 and Rule III(3) to improve its educational program beyond the minimum requirements of Standards 201, 401-405. Under Standards 201, 401-405, this duty is subject to inquiry in terms of ratio and of the effect of faculty size.

B. Educational Effect. Inquiry into the effect of the size of a full-time faculty takes into account every aspect of Standards 201 and 401-405 and should consider, among other effects, the following:

(1) Effect on Teaching Load. Standard 404 sets maximums for teaching loads in terms of "regularly scheduled sessions...per week." In addition to demonstrating compliance with Standard 404, a school should be prepared to demonstrate an acceptable allocation of students to each member of the full-time faculty. One method of analyzing the allocation of students is in terms of student-hour loads (students times hours per week in class). In a less statistical perspective, a school should take into account that heavy student-hour loads have an adverse effect on scholarship and on time for the reflection which good teaching requires.

(2) Effect on Small-Group Classes. Legal educators have traditionally found special value in classes of fewer than 30 students each. The Committee has recently, and in several cases, required extensive documentation on size of classes in schools which are before it, in an effort to find out whether the average student spends a significant amount of class time in groups where collaborative teaching techniques (simulation, clinical work, close discussion) are possible, and there can be hope for personal relationships with teachers. In most cases, these small classes are in either specially-sectioned required or core courses or in elective courses, and, typically, they are taught by full-time faculty. The intellectual difference is that required or core courses are in basic subjects (contracts, torts, corporations) and electives are in the more specialized areas to which a maturing teacher tends to devote special interest (legal history, estate planning, business planning, juvenile law, mass communications law, products liability). There are two disadvantages in a program which does not seek this small-class effect:

(a) Faculty are denied the experience of teaching small groups of students, with the attendant rapport and personal growth which the small group provides for a teacher.

(b) Faculty are denied the intellectual experience of ordering and teaching a subject which is more complex and specialized than elementary law school instruction.

Both disadvantages have student-centered implications. Legal educators assume that a full-time, experienced teacher knows how to use the advantages of small groups and specialized subject matter. The result of the teacher's opportunity in these courses will be better and more innovative teaching methods, methods which benefit students in ways students do not benefit from larger classes.

The typical law student should spend a substantial part of his or her education in small classes taught by full-time teachers. Students who are denied this experience are denied one of the principal benefits which Standards 401-405 are meant to give them.

(3) Effect of Pervasive Large Classes. A normal effect of a favorable student/faculty ratio is that some elementary law courses are taught in small groups. The advantages to student and teacher are similar to those of small classes in elective courses, but the advantages are more pervasive since the basic-course small class reaches all students. It is therefore peculiarly important to give some play to small-group teaching methods in basic courses. Some law schools provide these advantages in elementary courses (first-year courses in contracts and torts, for example) by employing enough faculty to provide every student with one or more small-group classes. The learning effect beyond communication of information is almost certainly different in a class of 30 than in a class of 150. The psychological effect of learning in a group which is small enough to invite collaboration is one of the principal reasons law schools try to provide small classes. Classes of more than 50 students tend to be taught with impersonal methods (lecture, largely), and relatively structured syllabi.

(4) Effect on Student/Faculty Contact. The dominant model in law teaching is an academic model. The model of the academy assures personal contact between teachers and students. Standards 401-405 contemplate that a full-time teacher on a law faculty be able to spend time with each of his students in each of his courses. Heavy student-hour loads, and assignments which make significant student-teacher consultation difficult, tend to a law school climate in which only the