

TUO4 HJ AK BAR ASSN SUNSET REVIEW FILE NO. 18

All of the above were documents in defendant's possession. Defendant's attorney asks Defendant if he wrote them, he admitted it, however explained they were written "after I read of the bank robbery - I was fantasizing how I would have done it, if it were me". Defendant's attorney cannot, in good faith, say that he believes defendant.

QUESTIONS:

1. Does Defendant's attorney have an ethical obligation to turn over the material - or part of it, to the District Attorney or police? (If so, should he withdraw from the case?)

2. If he keeps the material, should he keep it in his personal possession or return it to the car where it was found?

(a) See AS 11.30.330 (Sic)

(b) also note; car could be repossessed
soon

The Committee has considered the questions posed, and has formulated an opinion as to the present ethically-required course of conduct.

Our consideration and opinion is based solely upon the ethical requirements which may be imposed upon defendant's attorney. Defendant's attorney is a citizen and is subject to the law in the same manner and to the same extent as other citizens. As suggested, AS 11.30.315 may arguably impose some duty with respect to the physical evidence in the attorney's possession. That Statute provides as follows:

Destroying, altering or concealing evidence. A person who willfully destroys, alters or conceals evidence concerning the commission of a crime or evidence which is being sought for production during an investigation, inquiry or trial, with the intent to prevent the evidence from being discovered or produced, is guilty of a misdemeanor and upon conviction is punishable by imprisonment for not more than one year, or by a fine of not more than \$1,000, or by both.

The Committee has taken the statute into consideration, but obviously can render no definitive opinion as to its applicability, or the applicability of other civil and criminal law of the State of Alaska. The course of conduct outlined in this opinion is based upon ethical considerations, but if a different course of action is required by the statute, observance of the statutory requirement would also be ethically proper. See DR4-101(c)(2), which provides: "A lawyer may reveal: (2) Confidences or secrets when permitted under Disciplinary Rules or required by law or Court Order."

In addition, if the statute requires the revelation of the confidence or secret, such revelation is ethically required. DR7-102(A)(3) provides:

In his representation of a client, a lawyer shall not:
(3) Conceal or knowingly fail to disclose that which he is required by law to reveal.

It is the attorney's duty under Canon 4 of the Code of Professional Responsibility to preserve the confidences and secrets of a client. As DR4-101(c) points out, you may ethically reveal confidences or secrets of a client when required by law, but otherwise, such revelation of confidences or secrets is prohibited. As EC4-4 properly points out, this

duty to safeguard the confidences and secrets of a client is broader than the attorney/client evidentiary privilege, and "...exists without regard to the nature or source of information or the fact that others share the knowledge." Thus, it seems clear to us that the attorney is ethically obligated not to reveal the existence of the physical evidence which has come into his possession, unless required to do so by statute.

We have also considered informal Opinion #1057 of the American Bar Association Committee on Ethics, and find the analysis therein persuasive. The American Bar Association has advised that when a client, or one acting on behalf of a client, presents evidence of the type described to us to the attorney, the attorney should decline to take possession of it and should advise the client with respect to his obligations regarding the evidence under relevant state law. If the client then declines to follow the course that he is legally obligated to follow, the attorney should either decline employment or withdraw from employment previously accepted. In our opinion, this is the correct balancing of the interests of society, the attorney's duty as an officer of the court, and the attorney's duty to preserve the confidences and secrets of a client.

Therefore, in the situation posed, it is our opinion that the attorney is ethically required to contact the "friend" who tendered the evidence to him, return it to his possession, advise the "friend" of the existence and terms of AS 11.30.315, and advise the friend, if asked any additional questions, to secure his own counsel.

Whether or not the lawyer is required to withdraw from representation of the accused will depend upon the course of future events. DR 2-110(B)(2) provides as follows:

A lawyer representing a client before a tribunal, with its permission if required by its rules, shall withdraw from employment, and a lawyer representing a client in other matters shall withdraw from employment, if:

- (2) He knows or it is obvious that his continued employment will result in violation of a Disciplinary Rule.

DR 7-102(A) & (B) provide in part as follows:

In his representation of a client, a lawyer shall not: (A)

- (3) Conceal or knowingly fail to disclose that which he is required by law to reveal.
 - (4) Knowingly use perjured testimony or false evidence.
 - (5) Knowingly make a false statement of law or fact.
 - (6) Participate in the creation or preservation of evidence when he knows or it is obvious that the evidence is false.
 - (7) Counsel or assist his client in conduct that the lawyer knows to be illegal or fraudulent.
 - (8) Knowingly engage in other illegal conduct or conduct contrary to a Disciplinary Rule.
- (B) A lawyer who receives information clearly establishing that:
- (1) His client has, in the course of the representation, perpetrated a fraud upon a person or tribunal shall promptly call upon his client to rectify the same, and if his client refuses or is unable to do so, he shall reveal the fraud to the affected person or tribunal.

(2) A person other than his client has perpetrated a fraud upon a tribunal shall promptly reveal the fraud to the tribunal.

Obviously there is a potential for violation of one of the Disciplinary Rules in the future evolution of this situation. If the lawyer knows, or it becomes obvious, that such a violation has occurred, is occurring, or will occur, he will be obligated to withdraw.

Adopted by Board of Governors June 6, 1977

ETHICS OPINION 76-8

The Committee has been asked the following question:

With regard to an attorney admitted in Alaska who has been a law clerk to a Superior Court judge and who has entered private practice by joining an existing law firm, may he do any of the following:

- 1) Represent a client in court;
- 2) Give professional consultation or assistance to a client;
- 3) Perform legal research relating to a case of a client; or
- 4) Do factual research and investigation relating to a case of a client;

when that client has been represented by the law firm before the Superior Court judge to whom the law clerk had served under the following circumstances:

- A) When the client's case was merely pending before the judge;
- B) When the case was pending and the law clerk had had administrative contact with the case such as merely bringing the file to the judge at the time for his consideration of a motion made in the case; or
- C) When the case was pending and the law clerk had performed legal research and had drafted a memorandum on the law for the judge on an issue raised by either of the parties to the case?

The attorney would be entitled to perform the services enumerated 1, 2, 3, and 4 in the event that his contact with the case had been solely as described in paragraphs A and B. If this contact had been more substantive,

such as that described in paragraph C, he would not be entitled to participate in any way in the representation of the client in that case because of the appearance of impropriety associated with having dealt substantively with the case as an agent of the court, and then adopting an advocacy role in the same case.

DATED: Approved 3-31-79
B.O.G.

ETHICS OPINION 76-9

The Committee has been asked the following question:

Assume that an individual is involved in an automobile accident. Further assume that the individual believes that the other party was at fault in causing the accident and wishes to pursue recovery of damages through litigation. Assume further that the party then contacts counsel and after having the hourly fee versus contingent fee situation thoroughly explained, the party elects to enter into a contingent fee professional employment contract with the attorney for an appropriate percentage of the recovery which is reasonable and just. Now, then assume further that the party who has now taken the posture of being a prospective plaintiff in litigation is without sufficient funds or inclination to pay for an hourly fashion or flat fee basis for investigative services. Assume further then that either at the suggestion of counsel or independently, the party then enters into a contingent fee contract with an investigating firm; said contract providing that the investigating firm will do investigation of the incident itself and supply reports to counsel (and theoretically testify as to their investigation or the work product thereof) in return for a percentage of the ultimate recovery, said percentage being reasonable and just.

The question I wish to present to the Ethics Committee is whether or not the investigators contingent fee agreement directly with the client is violative of any canon of ethics. I am of course aware that it is unethical to retain the services of an expert witness on a contingent fee basis and can readily understand the reasoning behind such a view. My query thus is aimed at the concept of contracting on a contingent fee basis for services to be performed where it is possible although not planned that the other parties to the contract, to-wit, the investigator, will ultimately be paid a fixed percentage from the proceeds of the litigation or settlement.

In the Committee's opinion, it would be ethically improper for an attorney to instigate or participate in an arrangement such as the one described. In the Committee's opinion, this creates an undue opportunity for overreaching a client with respect to the costs of litigation, and has an inherent potential for abuse as a subterfuge to avoid the clear prohibition of the lawyer himself employing an investigator or other expert witness on a contingent fee. In addition, the Committee is persuaded by previous formal and informal opinions of the American Bar Association prohibiting similar fee arrangements on the basis that they constitute dividing legal fees with a non-lawyer.

Thus, it is the Committee's opinion that arrangements such as that described are not ethically permissible.

Dated: October 15, 1976

ETHICS OPINION 77-2

The Committee has been asked the following question: May an attorney hold a client's papers pursuant to the attorneys' lien statute, A.S. 34.35.430(a) without violating DR 2-110(a)(2), when the papers would be helpful to the client in pending litigation.

The Code of Professional Responsibility provides that ". . . a lawyer shall not withdraw from employment until he has taken reasonable steps to avoid foreseeable prejudice to the rights of his clients, including . . . delivering to the client all papers and property to which the client is entitled . . ." DR 2-110(a)(2). Ethical Consideration 2-32 adds that a lawyer should endeavor to minimize possible adverse effects and prejudice to his client when he withdraws. Yet the attorneys' lien statute gives the attorney a lien for compensation on the papers of a client that have come into the attorney's possession in the course of professional employment. A.S. 34.35.430(a).

The A.B.A. has determined that whether an attorney can hold the client's papers as a lien is a question of law rather than ethics. Opinion #209.

Since the disciplinary rule requires the return of papers "to which the client is entitled" an attorney does not violate DR 2-110(a)(2) by exercising the lien in a legally proper manner after justifiably terminating his employment with the client.

DATED this ___ day of _____, 1978.

ETHICS OPINION 78-77-3

The question has been asked whether an attorney or firm which represents a client in a civil case to collect a debt may also initiate a criminal prosecution for violation of a statute which makes failure to pay a crime.

The relevant Disciplinary Rule is DR 7-105 which provides:

A lawyer shall not present, participate in presenting, or threaten to present criminal charges solely to obtain an advantage in a civil manner.

In determining whether the prosecution violates this provision one must consider the conduct of the prosecuting attorney as well as his expressed purpose, if any, to see if the purpose is solely to obtain payment or some other advantage in the civil case.

The purposes of a criminal prosecution are 1) to rehabilitate the offender; 2) to isolate him from society in order to prevent further criminal conduct during confinement; 3) to deter the offender; 4) to deter other members of the community with similar tendencies; and 5) to demonstrate society's condemnation of the offender. State v. Chaney, 477 P.2d 441 (AK 1970).

Since DR 7-105 states that the abuse occurs only where the motive for the prosecution is solely to obtain an advantage in the civil case, a violation occurs only where the circumstances including any expressed intention support only that conclusion, and none of the five purposes referred

to above. However, communications from the lawyer to the offender that he may avoid the prosecution by paying are clearly prohibited. Evidence that the charge was dismissed by the prosecuting lawyer, at the request of the creditor's lawyer, or that the prosecutor's efforts ceased after payment while the criminal case was still open, are strong evidence that the prosecution was for the prohibited purpose.

DATED this _____ day of _____, 1978. .

Adopted by the Board 12/3/78

ETHICS OPINION 78-1

The question has been asked: When may an attorney record a phone conversation?

The American Bar Association has adopted a formal opinion which fully sets out the history of informal opinions rendered on this subject, and the reasons proscribing such conduct. D.R. 1-102(A)(4), which prohibits conduct involving "dishonesty, fraud, deceit, or misrepresentation," clearly prohibits recordings of any and all conversations without the consent of all parties. The opinion goes on to state that "No lawyer should record any conversation, whether by tapes or other electronic devices, without the consent and prior knowledge of all parties to the conversation."

The American Bar Association Opinion No. 337 is hereby adopted by the Ethics Committee.

Adopted by the Board of Governors October 28, 1978

Formal Opinion 337

(August 10, 1974)

With certain exceptions spelled out in this opinion, no lawyer should record any conversation, whether by tape or other electronic device, without the consent or prior knowledge of all parties to the conversation.

CANONS, DISCIPLINARY RULES, AND ETHICAL CONSIDERATIONS CITED. CANONS 1, 4, 7, and 9. Disciplinary Rule 1-102(A)(4). Ethical Considerations 1-5, 4-4, 4-5, 7-1, 9-2, and 9-6.

Recent technical progress in the design and manufacture of sophisticated electronic recording equipment and revelations of the extent to which such equipment has been used in government offices and elsewhere make it desirable to issue a formal opinion as to the ethical questions involved.

Attorneys may desire to record conversations to which the following three classes of persons may be party: (a) clients; (b) other attorneys with whom they deal; (c) the public, including but not limited to witnesses and public officials. These would include conversations in which the attorney was not himself a party.

No prior formal opinion has been issued which deals directly with the problem. Informal opinions have addressed the issue only in part.

Formal Opinion 150, issued in 1936, held that a prosecuting attorney could not ethically use a recording of conversation between the defense attorney and his client in evidence in the prosecution of the defendant, even though such recording was legally admissible at the time of the opinion. The committee based its holding in part on the duty of attorneys in public employ to avoid the appearance of impropriety. The opinion also stresses the nature of the intercepted conversation (between the accused and his counsel) as to which the attorney and client were entitled to confidentiality.

Informal Opinion C-450, issued in 1961, requires disclosure to the court and opposing counsel before using a recording device in court.

Informal Opinion 11008, issued in 1967, holds that a lawyer may not make a recording of a conversation with a client without previous disclosure.

Informal Opinion 1009, issued on the same day, makes a similar ruling as to conversation with an attorney for the other party. This opinion cites Opinion 201 of the Michigan Ethics Committee, Henry S. Drinker, *Legal*

Ethics, page 197, and New York City Committee Opinions 878 and 900.

So far as clients and other attorneys are concerned, the prior informal opinions make the conclusion clear. Attorneys must not make recordings without the consent of these parties to the conversation.

A survey of state opinions listed in the *Digest of Bar Association Ethics Opinions* reveals the same pattern with only one opinion to the contrary: Texas Opinion 34, issued in November, 1953 and published without comment in 16 *Texas Bar Journal* 701 (1953).

1. Federal Law. It is not a federal offense to make secret recordings of conversations without disclosure. Sections 2310-20 of the Omnibus Crime Control and Safe Streets Act of 1968 were adopted specifically for the purpose of clarifying the existing law governing the interception of wire and oral communications. Section 2311 provides:

"It shall not be unlawful under this Chapter for a person not acting under color of law to intercept a wire or oral communication where such person is a party to the communication, or where one of the parties to the communication has given prior consent to such interception unless such communication is intercepted for the purpose of committing any criminal or tortious act . . . [or] any other injurious act." 18 U.S.C.A. Section 2311.

Special provision is made for the recording of privileged communications in Section 2317(2), which states:

"No otherwise privileged wire or oral communication intercepted in accordance with or in violation of the provisions of this Chapter shall lose its privileged character."

As interpreted by the Supreme Court in *United States v. White*, 401 U.S. 745 (1971), Sections 2310-20 of the Omnibus Crime Control Act permit a participant in a conversation to record a conversation and to use a device for transmitting the conversation to a third party, or any consent to letting a third party use a device to overhear the conversation. The Court stated that:

"Our opinion is carefully shared by Congress and the Executive Branch. Title III Omnibus Crime Control and Safe Streets Act of 1968, 82 Stat. 212, 18 U.S.C. Section 2310 et seq., and the American Bar Association, Project on Standards for Criminal Justice Electronic Surveillance Section 4.1 (Approved Draft 1971)."

This statement is vulnerable in that it equates the very broad provision of Sections 2310-20 with the A.B.A. Project, Section 4.1, which permits only the use of electronic surveillance by law enforcement officers.

Furthermore, Section 5.11 of the A.B.A. Project recommended that "no order should be permitted authorizing or approving the monitoring or recording of communications over a facility or in a place primarily used by licensed physicians, licensed lawyers . . . unless an additional

showing as provided in section 5.11 is made. However, the Court in *White* refused to overrule *Katz v. United States*, 389 U.S. 347, which in effect required a search warrant before the F.B.I. could intercept a phone conversation.

Since only four justices joined in the majority of the plurality opinion, the question cannot be considered closed so far as police practices are concerned.

2. State Law. The majority of states follow federal law as to participant recording of conversations, but at least ten states require the consent of all parties to the recording and impose civil and criminal penalties for violation.

3. F.C.C. Regulations. The F.C.C. regulations in effect since 1948, require telephone carriers to file tariffs with the F.C.C. to the effect:

1. Adequate notice be given to all parties to their conversation if being recorded.

2. That such notice be given by the use of an automatic tone warning device.

3. That the tone warning device be installed, and maintained by the telephone company using specified technical procedures. 11 F.C.C. 1031, 1050; 12 F.C.C. 1703, 1024 (1947).

These regulations are directed toward the telephone carriers and do not make recording of a conversation a criminal offense. However, the telephone carriers are legally bound by the regulations which reflect the public policy adopted by the Commission concerning the tape recording of conversations.

A carrier found in violation of the regulations is subject to a fine of \$500 for each day of continued violation, and an attorney who uses a "tap tone" device is subject to discontinuance of his telephone service for violation of the telephone company's tariff. There is no evidentiary sanction against the use of the "tap tone" device. *United States v. White*, 312 F. 2d 634 (2d Cir. 1963), cert. denied, 382 U.S. 955 (1965).

The position of the F.C.C. is made less certain by its issuance of an order forbidding telephone carriers to record conversations without the consent of all parties to the conversation. 21 Fed. Reg. 1272 (1956).

A recent New York State Bar Association opinion (Opinion 328, issued March 18, 1974) holds it unethical for a lawyer engaged in private practice to record conversations with any persons without their consent.

Authority as to recording by lawyers of conversations of "other persons," except for the New York opinion just rendered, is scant, and the legal position less clear. Federal and state laws and F.C.C. regulations are in conflict (see footnote on page 1448) and do not settle the ethical questions involved.

Two California bar opinions (Los Angeles Opinion 272 and California State Bar Opinion 1966-5) held that because of the public policy adopted by the F.C.C. in requiring the use of the "beep tone" in order to inform all parties that a recording is being made, and because a telephone user who violates F.C.C. regulations may be enjoined from such practice or may have his telephone service disconnected, it would be unethical for an attorney to record a telephone conversation without the use of a warning device.

While the law is not clear or uniform as to recording by lawyers of conversations of "other persons," it is difficult to make a distinction in principle. If undisclosed recording is unethical when the party is a client or a fellow lawyer, should it not be unethical if the recorded person is a lay person? Certainly the lay person will not be likely to perceive the ground for distinction.

At least by analogy to Formal Opinion 150, secret recording by attorneys of conversations of any person is unethical, even though legal under federal law.

Present Canon 9 of the Code of Professional Responsibility. "A lawyer should avoid even the appearance of professional impropriety," expresses in general terms the standards of professional conduct expected of lawyers in their relationships with the public, with the legal system, and with the legal profession, for all attorneys.

D.P. 1-102(A)(4) of the Code of Professional Responsibility states that "A lawyer shall not engage in conduct involving dishonesty, fraud, deceit, or misrepresentation." This disciplinary rule is substantially equivalent to but somewhat broader than Canon 22 of the former Canons of Professional Ethics which imposed on an attorney an obligation to be candid and fair before the court and with other lawyers. Informal Opinions C-480, 1978, and 1609 rely on Canon 22.

Canons 1, 4, 7, and 9 and ethical

Each in the view of the committee supports the conclusion that lawyers should not make recordings without consent of all parties. E.C. 1-5, E.C. 4-4, E.C. 4-5, E.C. 7-1, E.C. 9-2, and E.C. 9-6 all state in various ways the conduct to which lawyers should aspire. None would condone such conduct. The conduct proscribed in D.P. 1-102(A)(4), i.e., conduct which involves dishonesty, fraud, deceit, or misrepresentation, in the view of the committee clearly encompasses the making of recordings without the consent of all parties. With the exception noted in the last paragraph, the committee concludes that no lawyer should record any conversation, whether by tapes or other electronic device, without the consent or prior knowledge of all parties to the conversation.

There may be extraordinary circumstances in which the attorney general of the United States or the principal prosecuting attorney of a state or local government or law enforcement attorneys or officers acting under the direction of the attorney general or such principal prosecuting attorneys

might ethically make and use see recordings if acting within strict statutory limitations conforming to constitutional requirements. This opinion does not address such exceptions which would necessarily require examination on a case-by-case basis. It should be stressed, however, that the mere fact that secret recording in a particular instance is not illegal will not necessarily render the conduct of a public law enforcement officer in making such recording ethical. A

• The Committee on Ethics and Professional Responsibility announces the availability of a looseleaf binder designed especially for the opinions, both formal and informal, of the committee as they are released in looseleaf form. The binder is manufactured in the same cloth and color as the bound copy of the Reporter's Notes to the Code of Judicial Conduct. The binder may be obtained for \$4.50 from the committee at 1155 East Sixtieth Street, Chicago, Illinois 60637.

*Disapproved
Suppressed
by DE 2-11
(A) + (B)*

Hot file

ETHICS OPINION 78-2

The question has been asked whether an attorney or firm which cooperates with a reporter doing a story on an attorney's relocation and opening of a new firm violates ethical constraints against lawyer advertising.

Existing Disciplinary Rule 2-101(b) prohibits a lawyer from publicizing himself, or his partner, or associate, or any other lawyer affiliated with him or his firm, as a lawyer through newspaper or magazine advertisements. The purpose of this rule was to prohibit self-laudation or touting by a lawyer. Encouragement of laudatory statements in newspapers and magazines has been considered reprehensible conduct, unless the press and public have a proper and legitimate interest in a newsworthy incident about the career and activities of a lawyer.

Several formal and informal opinions have been rendered in the past on this question. Opinion No. 806, May 2, 1955, responded to an inquiry by a lawyer who asked whether or not he could cooperate with a "New Yorker" magazine article on his career. The opinion stated that

. . . a lawyer may with propriety answer questions and volunteer personal or professional non-privileged data in connection with the preparation of such an article regarding his career, so long as he insists that the article be dignified and in good taste and be written in such a tone as not to imply to the public that it is intended to constitute advertisement for professional employment.

Such cooperation was premised, however, on the assumption that the attorney's career and change in career was a newsworthy incident. The opinion reasoned that this would be particularly true in the case of a lawyer who occupied a prominent position, public or private, or where he was a candidate for election or appointment to public office.

In rendering the opinion, the Ethics Committee cautioned that in the event an article were submitted by the magazine in advance of publication, it would be the "duty of a lawyer to discourage the publication of an article where he knew in advance that it was sensational or undignified, or might be construed as advertising, and he should give no aid in its preparation."

In addition to Opinion No. 806, several informal opinions have addressed the question of a newspaper story of firm changes or relocation. Informal Decision 526 dealt specifically with the question of whether it is ethical for lawyers involved in changes of office location, to furnish the information to a newspaper which then carries the announcement as a news item. The Committee on Ethics responded to this question as follows:

We also refer to Informal Decision 447, dated May 26, 1961, in which we referred to Informal Decision 142A, wherein we specifically held that "notice of the removal of an office to another building should be printed by card mailed to regular clients and not by newspaper advertisement." In Informal Decision 447, this committee stated, "It is equally improper for a lawyer to request a newspaper to carry information of this sort as a news story. Canon 27 prohibits indirect advertising: such as furnishing or inspiring newspaper comments."

Both of these informal decisions again assert the caveat, that in the event the newspaper decided on its own merits to carry a story on the relocation of an office as a newsworthy item, there would be nothing improper in responding to questions posed by the press.

While the Alaska Bar Association is currently conducting a review of its disciplinary rules on professional advertising as a result of Bates v. State Bar of Arizona, ___ U.S. ___, 97 Sup.Ct. 2591 (1977), proposed changes are generally limited to providing information essential to consumers in making decisions about the need for legal services. Disciplinary Rule D-101(a) and (b) continue to place restrictions on public communications about the lawyer. Public communications should not be "self-laudatory" and they should be presented in a "dignified manner".

In sum, under existing Disciplinary Rule D.R. 2-101(b), a lawyer should not encourage reporters or newspaper articles publicizing a lawyer's change in office location or a change in those associated with him. A lawyer may respond to questions about changes in his career if bona fide inquiries are made by reporters. The lawyer should discourage stories if in advance he knows the article will be self-laudatory. The proposed changes to the disciplinary rules on lawyer advertising would not change this conclusion.

ETHICS OPINION

78-3

The Committee has been asked the following question: Is there a conflict of interest if a law firm represents a defendant in an action filed on behalf of a plaintiff by an attorney, that, before trial, joined the defendant's law firm?

It is our understanding that the facts are these: Attorney A, an employee of Alaska Legal Services Corporation in a certain rural community, was retained by the plaintiff in an action for divorce, which also contained an issue of child custody. Attorney A consulted with the plaintiff, prepared the necessary documents, and initiated the action for divorce, and proceedings to secure custody of the children for the plaintiff. Prior to trial, Attorney A terminates his employment with Alaska Legal Services Corporation, and becomes an employee of the partnership of Y & Z, attorneys. The defendant had previously retained the firm of Y & Z as counsel. The partnership of Y & Z maintains an office in that same community, but it is our understanding that Y & Z are themselves only present part of the time. Attorney A is the only attorney employee in the partnership in the subject community. We have been asked to assume that Attorney A does not disclose or otherwise take advantage of any confidential communication to which he may be privy as a result of his previous representation of the plaintiff. In this factual situation, is the firm of Y & Z required to withdraw from the representation of the defendant?

The Code of Professional Responsibility properly counsels that the ". . . decision by a lawyer to withdraw should be made only on the basis of compelling circumstances . . ." EC 2-32. However, an attorney is required to withdraw from employment, after proper compliance with the rules of the court, when "he knows or it is obvious that his continued employment will result in violation of a disciplinary rule." DR 2-110(b)(2). If a lawyer is required to withdraw from employment, he is required to take all reasonable steps to avoid foreseeable prejudice to the rights of his client. DR 2-110(a)(2).

The primary ethical consideration which presents itself in this matter is whether the employment of Attorney A by Y & Z creates an appearance of impropriety in the subject child custody case.

It is clear that Attorney A could not personally undertake the representation of the defendant, for such representation would present a specific breach of his duty to preserve the confidences and secrets of plaintiff under Canons 4 and 9 as set out in our Opinion 75-2, (App. by Bd. of Gov. October, 17, 1975). In that prior opinion we quoted from ABA Opinion 165, August 23, 1936, which interpreted former Canon 6 as preventing acceptance of professional employment against a former client

. . . which will or even may require him to use confidential information obtained by the attorney in the course of [such former employment]. (emphasis in the original)

The question of whether or not the firm of attorneys, Y & Z, by whom Attorney A is now employed is disqualified, was, no doubt, posed because of the hardship to defendant, particularly if Y & Z is the only law firm in the community so that he or she must now retain counsel from the next nearest city which may be hundreds of miles distant. The question also raises implications regarding the mobility of attorneys in Alaska, particularly in communities in rural Alaska, where the prospect of such possible conflicts is high.

Notwithstanding these legitimate and somewhat unique concerns, the Committee is impelled to determine that the firm of Y & Z must withdraw from the subject litigation.

The continued representation of defendant by the firm Y & Z would create an irresistible appearance of disclosure by Attorney A of the confidences and secrets of plaintiff as prohibited by a combination of Canons 4 and 9. It is well settled that an

attorney may not accept litigation against a past client if such requires that the attorney contest the same issue for which he previously was an advocate in the prior litigation. Nor may a partner of such attorney accept such litigation even though he was not a partner at the time of the prior litigation.

ABA Formal Opinion 33.

A similar result was reached in ABA Informal Decision C-493 (November 22, 1961) in which the Committee stated:

[The former] Canon 6 also is designed to make it unethical to divulge confidences in situations where there may be conflict of interests between clients. This has been interpreted to prevent a lawyer from representing a client when there has been prior disclosure of confidences to himself or another member of his firm by a person who has an adverse interest to the proposed client in the litigation which the client proposes to undertake.

* * *

It is also true that it is not what the lawyer may have learned in the previous lawyer-client relationship but what others, the bar and the public, may have thought was learned that prevents assuming a new lawyer-client relationship with a former opponent.

The Alaska Supreme Court in Alcut Corp. v. McGarvey, 573 P.2d 473 (Alaska 1978), has confirmed this position, holding

We believe that an attorney may not represent a third party against a former client where there exists a substantial possibility that knowledge gained by him in the earlier professional relationship can be used against the former client, or where the subject matter of his present undertaking has a substantial relationship to that of his prior representation.

* * *

It is well established that where one member of a firm is disqualified from representing a client all are.

DATED this _____ day of July, 1978.

Charles P. Flynn
Chairman, Ethics Committee

Adopted by the Board 12/3/78

The Committee has been asked whether or not it is proper for an attorney, representing the plaintiff, in a personal injury context, to directly contact the claims supervisor for the defendant's insurer, despite objections by defense counsel. The Committee has likewise been asked whether it is appropriate for the plaintiff's attorney to continue a conversation with a claims representative of the defendant's insurer, when that contact is initiated by the claims representative.

Outside the personal injury context, the answer to the question posed is obvious. The plaintiff's attorney is not entitled to contact the defendant directly, without the prior consent of his counsel. Likewise, the plaintiff's counsel is not ethically permitted to continue a conversation initiated by the defendant, without prior consent of the defendant's counsel. The question posed for the Committee is whether or not a claims representative of an insurance company should be entitled to substantially the same consideration. In the Committee's opinion, the claims representative should receive such consideration.

In typical personal injury litigation, the defendant is insured. A portion of the contract of insurance entitles the defendant's insurer to control the litigation, and designate the counsel for defense of that litigation. This, coupled with the insurer's duty of good faith and fair dealing toward

its insured, effectively places the insured in the position of the insured for purposes of the suit. In the Committee's view all of the evils of direct contact between an attorney for one party and the opposing party are present in direct contact with a claims representative and the Committee can see no justification for drawing a special rule to include only insurance companies and their representatives. Thus, the Committee's opinion would be that the plaintiff's attorney in the situation posed is not entitled to either contact, or continue discussion with, a claims representative of the defendant's insurer.

Dated October 28, 1978

ETHICS OPINION 78-5

The problem presented is whether it is ethical for an employee of Alaska Legal Services to refer ineligible clients and fee-generating cases to individual lawyers within the community rather than to the statewide lawyer referral office in Anchorage.

DR2-103 is the applicable rule regarding recommendations of professional employment. In particular, DR2-103(A) states that a lawyer is not prohibited from being "recommended, employed or paid by, or cooperating with, one of the following offices or organizations that promote the use of his services... if there is no interference with the exercise of independent professional judgment in behalf of his client." The section then proceeds to list the organizations from which a lawyer is not prohibited from being recommended, including one operated or sponsored by a governmental agency (such as the federally funded Alaska Legal Services Corporation). Although the rule is stated in terms that a lawyer is not prohibited from accepting a recommendation from an organization like ALSC, it would seem to follow therefrom that an employee of ALSC is not prohibited from recommending the lawyer.

Although it was primarily concerned with the fee arrangements of legal aid societies, ABA Informal Opinion No. 1334 lends support to this conclusion. In that opinion, one of the questions presented was whether a legal aid society

could accept a client and then refer the matter to private counsel who, in turn, is compensated by the legal aid society. It was ruled that "no Disciplinary Rule forbids a lawyer with a legal aid society from making such a reference or forbids a lawyer from receiving such a reference on any fee basis that is mutually satisfactory and that is not clearly excessive or illegal." Obviously, there are differences between the situation addressed in the opinion and the present problem. In the opinion, the legal aid society had already accepted the client, whereas in the present situation, the referrals are being made to persons determined to be ineligible to receive benefits from ALSC. Also, in the opinion, the fees of the lawyer referred to by the legal aid society were paid by the society, rather than the client himself. However, such differences do not prevent the conclusion that an employee of such a legal aid society is not prohibited from referring a client to another lawyer, since the same rationale used by the Ethics Committee in Informal Opinion No. 1334 is equally applicable under the present circumstances, i.e., no Disciplinary Rule forbids a lawyer with a legal aid society from making such a reference.

An obvious concern with such a conclusion is the solicitation of such referrals by private lawyers. However, Disciplinary Rules 2-103(B) and 2-103(C) would address the activities of such lawyers. DR2-103(B) states that except by paying dues to certain approved organizations, a lawyer shall

not give anything of value to anyone to recommend his employment or as a reward for having made a recommendation resulting in his employment by a client. Additionally, DR2-103(C) states that a lawyer may not request anyone to recommend him, except. he may request referrals from a referral service approved by a bar association. Any violation of these two rules would subject the offending lawyer to disciplinary proceedings, which would appear to be more appropriate than prohibiting employees of a legal aid society from making such recommendations on a good faith basis.

In conclusion, no Disciplinary Rule is necessarily violated by the referral by employees of the Alaska Legal Services Corporation of ineligible clients to private lawyers rather than to the statewide lawyers referral program.

Approved

3/31/79

ALASKA BAR ASSOCIATION

ETHICS COMMITTEE

OPINION 79-1

RECEIVED

MAR 29 1979

517, 7222 & Kuit, 106

The question posed to the Committee is:

Is it proper for an attorney to charge interest on unpaid portions of a billing?

There are three opinions of the American Bar Association Committee on Ethics which are pertinent to this inquiry.

Formal Opinion No. 151 (February 15, 1936) held that it was improper to offer a discount to clients for prompt payment of fees. The opinion was premised upon then-in-effect Canon 12:

In fixing fees it should never be forgotten that the profession is a branch of the administration of justice and not a mere money-getting trade . . .

Informal Decision No. 741 (March 31, 1964) held that it would be improper to include the following language on an attorney's billing form:

Interest at the rate of six percent per annum will be charged on all accounts not paid within thirty days.

The Committee's rationale for Informal Decision No. 741 was that the practice might constitute a bargaining weapon which the attorney might use in reaching an agreement as to the amount of fees where the fees owed were in dispute. Furthermore, the Committee contended that even where the fees have been agreed upon, the claim of interest would appear to be an inducement to pay promptly, similar in effect to offering a discount for prompt

payment, a practice which was condemned in Formal Opinion No. 151, as discussed above.

On the other hand, Informal Decision No. 741 (1964) went on to state that in special cases it would be appropriate for an attorney to accept a promissory note for the amount of a fee, with interest to accrue until paid, and with the provision that the client could prepay without penalty. This practice would be acceptable, according to the Informal Decision No. 741, only where the client was able to pay but desired that payment be deferred for his convenience rather than of necessity.

Formal Opinion No. 338 (November 16, 1974) dealt generally, and approvingly, with the use of credit cards for the payment of legal services; it also contains the following statement:

It is also the Committee's opinion that a lawyer can charge his client interest providing that the client is advised that the lawyer intends to charge interest and agrees to the payment of interest on accounts that are delinquent for more than a stated period of time.

The Alaska Bar Association Committee on Ethics notes in these opinions a definite liberalizing trend toward the allowance of interest on unpaid billings; more importantly, the Committee does not find any provision of the Code of Professional Responsibility which directly or indirectly prohibits or condemns the charging of interest on unpaid billings. The Committee believes that the public generally would in fact be surprised if interest were not charged on overdue billings as in the case of any other debt. If it is an attorney's intent to charge

interest on unpaid billings, he should of course inform his client of that intent to avoid later disputes, but the Committee can find no reason either in logic or under the provisions of the Code of Professional Responsibility which would indicate that the charging of interest is improper.

Approved
5/19/79

ALASKA BAR ASSOCIATION

Ethics Committee Opinion No. 79-2

The question posed to the Committee is:

Is it proper for an attorney or an attorney's agent to go to the trash receptacle used by opposing counsel and remove bags of trash containing, among other things, copies of pleadings, correspondence, etc., that were discarded in the normal course of opposing counsel's operations?

The basic facts appear to be that as a hotly-contested case, involving substantial amounts of money, neared trial and while settlement negotiations were in progress, one attorney dispatched an investigator or someone else on the attorney's behalf to go to the trash receptacle used by his opposing counsel and remove bags of trash that had been disposed there in the normal operation of the opposing counsel's office.

Since a lawyer who removes or causes removal of trash containing documents from opposing counsel's office violates, if not the express letter of the Code of Professional Responsibility, then at least the spirit of it, this Committee finds such actions to be improper. Such conduct violates EC1-5 inasmuch as it is not in keeping with "high standards of professional conduct" and is not "temperate and dignified". While it is not quite such a clear violation, in this Committee's opinion, digging through and removing opposing counsel's trash is "prejudicial to the administration of justice" and "adversely reflects on his fitness to practice law" in contravention of DR1-102(B)(5) and (6). A violation of DR7-106(C)(6) also exists inasmuch as counsel has engaged "in undignified or discourteous conduct which is degrading", in the Committee's opinion, "to the tribunal". Finally, such acts clearly contravene Canon 9's mandate that a lawyer should avoid even the appearance of professional impropriety. EC9-2 and 9-6. While the conduct does not appear to be illegal, it nevertheless "diminishes public confidence in the legal system or in the legal profession." EC9-2. Clearly, a lawyer engaging in such activities has failed to:

conduct himself so as to reflect credit on the legal profession and to inspire the confidence, respect, and trust of his clients and of the public; and to strive to avoid not only professional impropriety but also the appearance of impropriety. EC9-6.

Such an attorney might be ethically required to withdraw from the case if she or he came across any confidential information. As said by Henry Drinker:

A lawyer must also observe the customs of the Bar as well as the confidences of another lawyer, although indiscreetly given and improperly received, and although this may entail his withdrawal from the case. Drinker, Legal Ethics, 195 (1958).

See, also, Op. No. 107, Opinions of the Committees on Professional Ethics of the Association of the Bar of the City of New York and the New York County Lawyer's Association (1958 ed.). Formal Opinion No. 47 of the American Bar Association requires withdrawal by an attorney who, even inadvertently, receives an improper disclosure of the opposing party's confidences.

In conclusion, while this Committee takes no position on whether an attorney engaging in the actions considered herein should be subject to discipline, it does find the conduct to be improper.

Adopted by the Board of Governors, September, 1979.

APPENDIX G

GI

Lawyer Referral Service Information

ALASKA BAR ASSOCIATION

OFFICERS

DONNA C. WILLARD
PRESIDENT
ANCHORAGE

WILLIAM B. ROZELL
PRESIDENT ELECT
JUNEAU

JONATHAN H. LINK
VICE PRESIDENT
FAIRBANKS

EDWARD G. KING
SECRETARY
REICHMAN

P.O. BOX 279

ANCHORAGE, ALASKA 99510

AREA CODE 907/272-7459

WILLIAM GARRISON, BAR COUNSEL

BOARD MEMBERS

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WILLIAM B. ROZELL

RICHARD D. SAVELL

DONNA C. WILLARD

Dear Colleague:

In response to public demand for more information about the availability of legal services, the Alaska Bar Association has chartered a state-wide Lawyer Referral Service. It operates as follows:

1. Each participating attorney signs an agreement to participate in the state-wide Lawyer Referral Service (see Charter and Agreement attached).
2. For a fee of \$35.00, each lawyer may register in up to five categories of law in which he or she will accept referrals (see category list attached).
3. The State is divided into ten geographical areas and each area is kept separately for referrals (see category list).
4. Each participating attorney agrees to charge a maximum of \$25.00 for the first one-half hour consultation (see Agreement).
5. Monies generated by registration fees pay only part of the administrative costs of the Referral Service. In addition, the Alaska Bar Association runs weekly ads in area newspapers and lists the Lawyer Referral Service in practically all telephone directories in Alaska. Local Bar Associations are also encouraged to participate in funding the advertisements (see Charter).
6. Referral enrollment is on a yearly basis from June through May. A \$35.00 fee enrolls the attorney in this service.

7. Once yearly, all registration cards are filed in alphabetical order by category and geographical area and then shuffled to get random selection.

8. A caller/writer seeking a referral is given three names of attorneys registered in the category of needed service for the geographical area in which the caller seeks legal assistance.

9. If requested, a confirming letter is sent to the caller/writer to whom referrals have been made.

10. Statistical records on the number and category of referrals are maintained in the Alaska Bar Association's office, and a yearly report will be made to the Association (see Charter).

11. Because the Alaska Legal Services Corporation and the Public Defenders have difficulty knowing which attorneys are willing to accept pro bono referral work for each of those agencies, each registering attorney has the opportunity to list those categories in which he or she will accept pro bono referrals from those agencies.

This state-wide Lawyer Referral Service was chartered not only in an attempt to respond to the complaints which generated the Bates opinion, but also to the Justice Department and FTC complaints against the Bar. To date, the Service has been very successful, jointly benefiting the participating Alaska Bar members and their referral clients. Should you decide to participate, please fill out the enclosed registration cards and return them to us, along with your check.

Should you have any questions, please do not hesitate to contact this office.

Sincerely,

Randall P. Burns
Executive Director

wj

CHARTER

LAWYER REFERRAL SERVICE

I.

Name:

LAWYER REFERRAL SERVICE OF THE ALASKA BAR ASSOCIATION

II.

Purpose:

To provide the general public with the names of active members of the Alaska Bar Association who are in good standing and are willing and able to accept referral clients at a reasonable fee.

III.

Administration:

The Alaska Bar Association shall assume responsibility for the Lawyer Referral Service and under this charter shall operate the Referral Service in the manner deemed to be in the best interest of the public and the Bar, and shall request assistance from the Bar, propose changes in the Charter, arrange for publicity, register participating lawyers in appropriate categories, authorize all administrative requirements, maintain records of operation, make an annual report to the Bar, as well as performing all other functions necessary for the successful operation of the Lawyer Referral Service.

IV.

Operation:

A. Each caller/writer (hereafter simply referred to as "caller") shall be given the names of three attorneys in his or her geographical area who are registered in the category for which the caller seeks services. The order of the categories shall be random, but shall be systematically rotated. The categories shall be organized into the following geographical areas:

Anchorage
Matanuska-Susitna Valley
Juneau
Fairbanks
Ketchikan

Sitka
Kenai Peninsula
Valdez
Kodiak
Rural Alaska (Kotzebue,
Nome, Barrow, Bethel)

The attorney shall be registered in the geographical area indicated by his or her office address as listed on the registration card.

B. Each caller shall be advised that the fee for an initial one-half hour conference is a maximum of \$25.00, and that attorney/client agreement shall govern subsequent charges.

C. Each caller shall be advised to select one of the three attorneys referred and to telephone the participating attorney for an appointment. If the first attorney is unable to assume responsibility for the case, the caller shall be advised to contact the remaining two lawyers for advice.

D. A current list of names and addresses of callers shall be maintained in the Alaska Bar Association office.

E. All monies available from enrollment fees not required for administration costs shall be spent for state-wide newspaper advertising of the availability of Lawyer Referral Service to the public.

V.
Participation:

A. Enrollment in the service is voluntary, and all active members of the Alaska Bar Association are urged to participate. Enrollment shall be on an annual basis and the calendar year shall be from June 1 to May 31.

B. Each participating lawyer shall maintain "errors and omissions" insurance of at least \$50,000.00.

C. Each participating lawyer shall pay an enrollment fee of \$35.00 for listing in up to five categories in any calendar year. This fee shall be reserved exclusively for the operation of the Lawyer Referral Service.

D. The first half-hour conference may be charged at a maximum of \$25.00. Thereafter, attorney/client agreement shall govern subsequent fees.

E. Each participating attorney may register in up to five categories selected from the following list:

1. Admiralty
2. Administrative Law (Government Agencies)
3. Bankruptcy
4. Commercial Law (Real Estate Transactions, all forms of Business Organizations)
5. Consumer (Credit/Collections)
6. Criminal
7. Discrimination
8. Eminent Domain
9. Environmental Law
10. Family Law (Divorce, Child Custody, Adoption, Name Change, etc.)
11. Immigration
12. Labor Relations

13. Landlord-Tenant
14. Mining
15. Negligence (P.I., P.D., Professional Malpractice, Products Liability, Libel/Slander, Workmen's Compensation)
16. Patent-Copyright
17. Public Interest
18. Tax
19. Traffic
20. Trusts, Estates, Wills
21. Arts Law
22. Community Legal Assistance

This preference shall be honored by the Lawyer Referral Service.

F. The attorney registrant shall indicate on each category registration card file whether he or she will accept pro bono work referred from the Alaska Legal Services Corporation and/or the Public Defender's Office in that category.

REFERRAL ENROLLMENT CATEGORIES

1. Admiralty
2. Administrative Law (Government Agencies)
3. Bankruptcy
4. Commercial Law (Real Estate Transactions, all forms of Business Organizations)
5. Consumer (Credit/Collections)
6. Criminal
7. Discrimination
8. Eminent Domain
9. Environmental Law
10. Family Law (Divorce, Child Custody, Adoption, Name Change, etc.)
11. Immigration
12. Labor Relations
13. Landlord-Tenant
14. Mining
15. Negligence (P.I., P.D., Professional Malpractice, Products Liability, Libel/Slander, Workmen's Compensation)
16. Patent-Copyright
17. Public Interest
18. Tax
19. Traffic
20. Trusts, Estates, Wills
21. Arts Law
22. Community Legal Assistance

STATE-WIDE LAWYER REFERRAL SERVICE ENROLLMENT AGREEMENT

1. I am an active member, in good standing, of the Alaska Bar Association.
2. I wish to be a member of the State-Wide Lawyer Referral Service and agree to pay \$35.00 for up to five category registrations.
3. My practice is covered by Errors and Omissions Insurance totaling at least \$50,000.00 (policy issued by _____), and shall maintain such insurance at all times while participating in the Lawyer Referral Service.
4. Enclosed is the total amount of \$35.00 to cover the registration fee for the following categories:

_____	_____
_____	_____
_____	_____

5. I (am) (am not) willing to accept pro bono work referred by Alaska Legal Services or by the Public Defender's Office in the following categories in which I am enrolled:

_____	_____
_____	_____
_____	_____

6. I agree to a maximum charge of \$25.00 for the initial one-half hour consultation.
7. In the event that petition is filed for removal to inactive status for disability and/or if formal disciplinary proceedings are initiated against me, or if a criminal complaint is filed or an indictment returned alleging a serious crime (as defined in Alaska Bar Rule #23), I hereby agree to a suspension of referrals until final resolution of the matter.

SIGNED: _____

DATE: _____

GZ

Statistical Data on Lawyer Referral

Service Usage

1978 and 1979

The following is a list of referrals given through the Alaska Bar Association State-wide Lawyer Referral Service through 11/24/78.

Total Referrals: 2356

Anchorage: 2110 (includes Palmer, Wasilla area)

Other:

Anchor Point	1	Admiralty	24
Adak	1	Administrative	55
Barrow	1	Bankruptcy	95
Bethel	1	Commercial	292
Copper Center	2	Consumer	145
Clear	1	Criminal	192
Chitina	1	Discrimination	22
Cordova	3	Eminent Domain	0
Dillingham	3	Environmental	0
Fairbanks	98	Family	778
Gakona	1	Immigration	29
Glenallen	1	Labor Relations	65
Girdwood	4	Landlord/Tenn.	98
Homer	1	Mining	4
Healy	2	Negligence	344
Indian	2	Patent/Copy.	17
Juneau	3	Public Interest	3
Kodiak	2	Tax	36
King Salmon	2	Traffic	24
Ketchikan	1	Trusts/Estates/	
Kasilof	1	Wills	151
Kenai	3		
McKinley Pk.	1		
Petersburg	1		
Soldotna	7		
Sterling	3		
Seldovia	1		
Seward	5		
Tok	3		
Tyonek	1		
Talkeetna	2		
Unalakleet	2		
Usibelli	1		
Valdez,	4		
Wrangell	1		
Willow	1		

MEMORANDUM

Alaska Bar Association
Box 279, Anchorage, Alaska 9951

TO: John R. Lohff, Exec. Director
FROM: Vicki Goodrow, Bkg.
DATE: 10/25/79
SUBJECT: Lawyer Referral Quarterly Report 7/1/79 - 9/30/79

The following listing is the calls received by the Bar Association for Lawyer Referrals:

Family	366
Commercial	143
Negligence	95
Criminal	73
Traffic	70
Consumer	52
Administrative	36
Landlord/Tenant	35
Trusts/Wills/Estates	35
Bankrupcy	2
Labor	25
Tax	14
Admiralty	8
Discrimination	8
Immigration	5
Mining	1
Patent	<u>1</u>
TOTAL NUMBER OF CALLS IN QUARTER	994
WEEKLY AVERAGE -	76.5
DAILY AVERAGE -	15.3

cc: Donna Willard, Pres.

APPENDIX H

MEMORANDUM


P O BOX 277 ANCHORAGE ALASKA 99501

TO:

No. _____

DATE December 29, 197

BOARD OF GOVERNORS

FROM
Willie 

SUBJECT: PERSONNEL MANUAL

Attached is the personnel manual for the Bar Office.
Please insert in your Blue Manuals under Chapter III.

June: Please

ALASKA BAR ASSOCIATION

PERSONNEL MANUAL

October, 1978

FORWARD

This Personnel Manual has been prepared to inform you, the employee, of the Personnel Policies of the Alaska Bar Association and to assist you to perform your duties in a proper manner. Additions and revisions will be made from time to time, which can be inserted in the proper place in this manual.

Feel free to ask questions about any subject. Your suggestions regarding additional items will be welcome and will be given careful consideration.

This manual covers personnel regulations, operation procedures and job descriptions of the Alaska Bar Association office.

The success of any organization depends upon team work and cooperation of all its employees not only between individual employees working together but between the organization and each employee as well. It is important in this cooperative effort that each employee know as much as possible about what can be expected of the Alaska Bar Association and, in turn what the Alaska Bar Association can expect.

This manual has been prepared to bring about a better understanding of the privileges, as well as the responsibilities that go with employment with the Alaska Bar Association.

Every effort will be made to maintain a friendly and cheerful working atmosphere. Each individual can contribute to it and will be expected to do so.

CONFIDENTIALITY

A CARDINAL RULE OF THIS ORGANIZATION IS CONFIDENTIALITY. ALL FILES, RECORDS AND INFORMATION OF BAR APPLICANTS AND MEMBERS SHALL NOT BE DISCLOSED EXCEPT UPON THE EXPRESS DIRECTION OF BAR COUNSEL, THE EXECUTIVE DIRECTOR OR THE PRESIDENT OR THE BOARD OF GOVERNORS, AND UPON SUCH CONDITIONS AS MAY BE SET FORTH.

VIOLATIONS OF THIS RULE IS GROUNDS FOR IMMEDIATE TERMINATION.

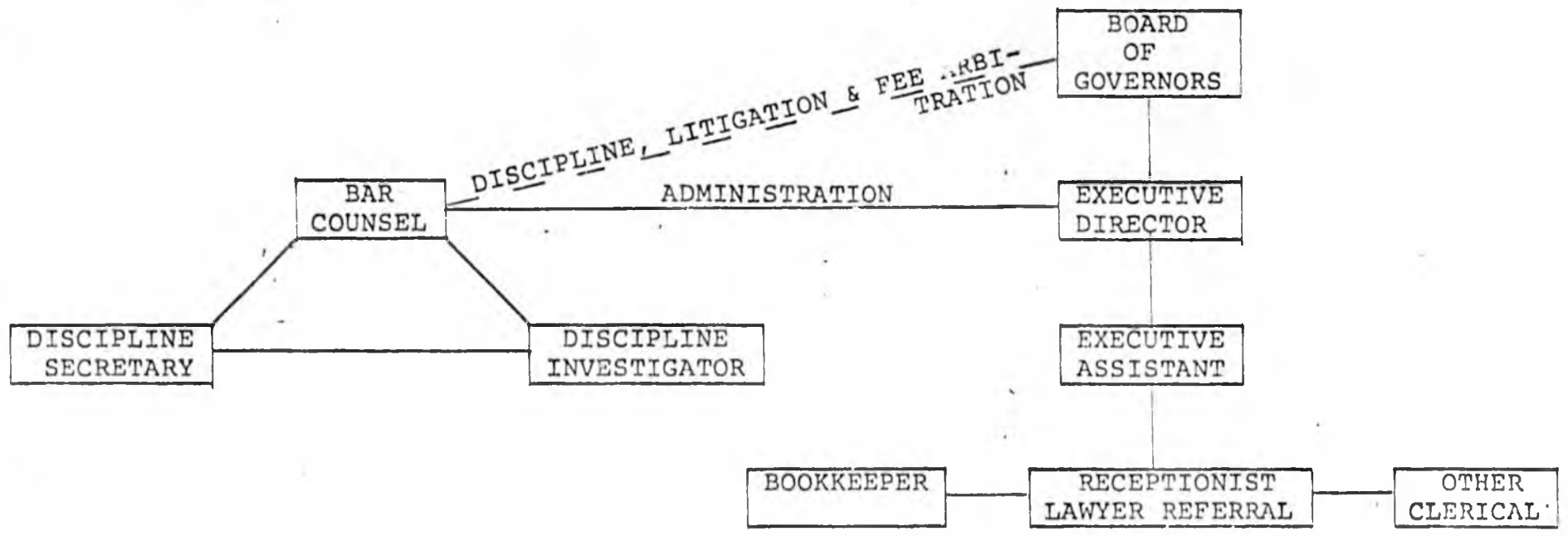
PURPOSE OF THE ALASKA BAR ASSOCIATION

The primary function of the Alaska Bar Association is to provide service to the members of the profession in Alaska, in order that they may better serve the public. Our services must be provided in a highly professional, yet cordial manner. The Alaska Bar Association provides the following services to its members: maintains records of all members of the Bar in good standing; disciplines and regulates lawyers; keeps members informed of the latest developments of law, legislation and legal management; provides various benefits to the members including insurance; assists with individual matters and distributes public information materials. The Bar Association performs services to the general public such as legal education, lawyer referral service, fee arbitration, discipline and the regulation of the unauthorized practice of law.

Each employee should become familiar with the basic functions and organi-

zational aspects of the Alaska Bar Association and should be familiar with the names of the Alaska Bar Association Board of Governors. These individuals are our employers and make all policy decisions.

ORGANIZATIONAL CHART
ALASKA BAR ASSOCIATION



ALASKA BAR ASSOCIATION

PERSONNEL POLICIES AND PROCEDURES

I. PERSONNEL POLICIES

Employment Classifications: The following are classifications of administrative staff of the Alaska Bar Association.

1. Permanent Full-Time: Those employees who work a full week, Monday - Friday, 8:30 A.M. to 5:00 P.M., and whose employment is not time-limited except by funding limitations established by the Board of Governors.
2. Permanent Part-Time: Those employees who work less than the full work week on a regularly scheduled basis and whose employment is not time limited except by funding limitations established by the Board of Governors.
3. Temporary: This category includes those positions for which the anticipated need does not exceed 120 calendar days or 960 hours. Such persons will be informed of and acknowledge the temporary nature of their employment at the commencement of their employment. The positions will be created on an "as needed" basis determined by the Executive Director and with approval of the Board of Governors.

PROBATIONARY PERIOD

New employees are on probationary status for a period of six months after hire or placement in a new position. During this time employment may be terminated by either the employee or the employer without giving cause upon two weeks notice. At the end of six months an evaluation is made of new employee's performance. If satisfactory, employee is given permanent status and is eligible for pay increase based on the performance of the individual. The probationary period may be extended if it appears necessary. Should the employee receive a rating of unsatisfactory, he or she will be terminated with two weeks notice.

Once an employee's probational status has ended and the employee has been notified of his or her permanent employment, he or she may have their employment terminated only as specified in the section entitled Termination.

PERSONNEL ACTIONS

Employment functions, work schedules, salary increases and terminations are established at the discretion of the Executive Director if not inconsistent with printed job descriptions and are, in any event, subject to the approval of the Board of Governors.

SALARY CHANGES

After an employee has been granted permanent status, his or her performance will be evaluated annually. Salary changes may thereafter be made annually with the above criteria in effect as Association funds permit. Evaluation of an employee's efficiency rating shall be made by the Executive Director or appropriate supervisor.

TERMINATION

The Executive Director may terminate the employment of an Administrative employee and Bar Counsel may terminate disciplinary employees on the date specified in a written notice delivered to the employee not less than two weeks prior to the date of termination. The Executive Director and Bar Counsel may terminate the employment of an employee without notice with pay in lieu of such notice or without notice for breach of ethics or rules of confidentiality. The Executive Director and Bar Counsel serve at the pleasure of the Board.

An employee may terminate his/her employment on a specified date in a written notice delivered to the Executive Director not less than two weeks prior to the date of termination. Failure to give such notice shall operate to forfeit accrued vacation or leave, not to exceed two weeks.

WORK SCHEDULES

The work day shall be 8:30 a.m. to 5:00 p.m. with 1 hour for lunch. Work schedules, including vacation schedules and other types of leave shall be established by the Executive Director or appropriate supervisor. Schedules will be developed by the Executive Director to assure continuous operation of the services of the Bar office. All work performed in addition to the normal work day hours shall require the express prior approval of the Executive Director or Bar Counsel. Work performed in excess of 7 1/2 hours per day or in excess of 37 1/2 hours per week shall be compensated at the rate of one and one-half the regular rate of pay.

LEAVE

Annual leave is provided to permit employees to be absent from their jobs without loss of pay. Employees are expected to give reasonable notice in requesting annual leave and to submit such request one month in advance so that work load may be scheduled among other employees.

Employees of the Alaska Bar Association shall accrue annual leave as follows:

ADMINISTRATIVE STAFF

Five-sixths working day for each full monthly pay period with less than two years service; 1-1/4 working days for each monthly pay period for 2 to 5 years.

LEAVE Cont'd

PROFESSIONAL EMPLOYEES

One and one-quarter working days for each full monthly pay period.

ALL EMPLOYEES

After five years service, 20 working days per year.

There shall be no accrual of annual leave during any monthly pay period when an employee is absent without approved leave.

A maximum of 15 days unused annual leave can be accrued where upon no additional annual leave will be earned, except for those employees with 5 years or more service.

Temporary employees shall not accrue leave credit. Employees filling permanent part-time or permanent seasonal positions shall accrue leave credit on a pro-rated basis.

Annual leave may be taken after six months employment with permission of the Executive Director.

Holidays occurring during a period of annual leave will be charged as holidays.

MEDICAL LEAVE

Medical leave is available at the discretion of the employee's appropriate supervisor.

The appropriate supervisor may require a physician certificate to support a request for medical leave.

PATERNITY/ MATERNITY LEAVE

An employee, otherwise qualified for leave of absence, may take a maximum of 9 weeks paternity/maternity leave immediately preceding and following childbirth. A maximum of 2 weeks of the leave is chargeable first to Medical Leave, and the remainder is chargeable to annual leave or leave without pay at the discretion of the employee. A physician certificate may be required to support the additional leave request.

A person taking paternity/maternity leave shall be treated as any other employee taking medical or annual leave.

COURT LEAVE

When an employee is called by proper authority to appear as a witness or to present himself/herself for jury duty, he/she will be granted court leave for a period of such service which falls during his/her regular work schedule.

The employee will present the court order, subpoena or summons to his/her supervisor when requesting court leave.

Court leave must always be substantiated by written evidence of attendance at court, showing dates and hours of service. When an employee is excused by the court for portions of the day, he/she is expected to return to work.

If any remuneration is received by the employee for performance of court services, he/she shall endorse the check to the Bar Association.

HOLIDAYS

The Alaska Bar Association observes the following holidays during the year:

- | | |
|--------------------------|----------------------|
| 1. New Year's Day | 6. Independence Day |
| 2. Lincoln's Birthday | 7. Labor Day |
| 3. Washington's Birthday | 8. Alaska Day |
| 4. Seward's Day | 9. Veteran's Day |
| 5. Memorial Day | 10. Thanksgiving Day |
| 11. Christmas | |

These holidays will be taken on the days observed by the State Court System.

OTHER BENEFITS

A health and life insurance policy is provided for the employees of the Alaska Bar Association. The health and life insurance policy becomes effective thirty days following employment. In addition, the following benefits are provided to permanent employees: Workmen's Compensation.

EMPLOYEE EVALUATION SYSTEMS
PURPOSE OF THE EVALUATION

Performance evaluation is of prime importance to both the supervisor and the employee, and should serve the following purposes:

- Find out if employee's work is up to standard.
- Help employee improve work performance.
- Let employee know how he/she is getting along.
- Give recognition for good work.
- Determine training needs.
- Assist in discharging or reducing incompetent employees

THE USE OF ITEMS

The use of items (, , -) is very important for a complete evaluation of performance. All items must be checked to indicate strengths or weaknesses of the performance.

OVER-ALL EVALUATION

OUTSTANDING - Total work performance is definitely superior and well above the standards of performance required for the position. Justification must be presented in writing to substantiate this evaluation.

COMPETENT - The work performance is consistently up to or somewhat above the requirements of the position. This is the performance which is expected of a trained and qualified employee.

NOTE: When employee's performance tends to be borderline within this category, a notation to this effect should be made in the Comments section.

IMPROVEMENT NEEDED - A significant part of the work is below the standards required for the position, and it is reasonable to expect that the employee will bring performance up to acceptable standard. This evaluation indicates that serious effort is needed to improve performance. Factual evidence must be presented to substantiate this rating, a plan for improving the employee's performance included with the report, and a new evaluation made within the subsequent period not to exceed six months.

UNSATISFACTORY - Total work performance is inadequate and definitely inferior to the standards of performance required for the position and plans for improvement have not been successful or an act has been committed which makes the employee unsuitable for service. This rating must be accompanied by discharge or reduction, if the employee is still in service, and must be substantiated with written factual evidence.

ALASKA BAR ASSOCIATION OFFICE

PERFORMANCE EVALUATION

NAME	DATE
------	------

POSITION	Report Coverage FROM _____ TO _____
----------	--

REASON FOR REPORT:

- _____ Progress Check (Probation)
- _____ Annual
- _____ General
- _____ Termination

GENERAL CATEGORY RATING:

- OUTSTANDING
- COMPETENT
- IMPROVEMENT NEEDED
- UNSATISFACTORY

TE EACH FACTOR SPECIFICALLY:

Strong Standard Weak

1. QUANTITY:

- Amount of work performed
- Completion of work on schedule

2. QUALITY:

- Accuracy
- Neatness of work product
- Thoroughness
- Oral Expression
- Written expression

3. WORK HABITS:

- Observance of working hours
- Attendance
- Observance of rules & regulations
- Planning and organizing work
- Compliance with work instructions

3. cont'd.

- Orderliness in work
- Application to duties

4. PERSONAL RELATIONS:

- Getting along with fellow employees
- Meeting and handling the public
- Personal appearance

5. ADAPTABILITY:

- Performance in nr situations
- Performance in emergencies
- Performance w/minimum instructions

6. EVALUATING FACTS AND MAKING DECISIONS

7. SUPERVISORY ABILITY: (supervisors only)

- Planning & assigning
- Training and instructing
- Disciplinary control
- Evaluating performance
- Leadership
- Making decisions
- Fairness and impartiality
- Approachability

Use COMMENTS space to describe employees strength and weaknesses. Give examples of work well done and plans for improving performance. (factor rating of outstanding, improvement needed or unsatisfactory must be substantiated by comments.) For definition of rating standards, see EMPLOYEE RATING SYSTEMS.

EMPLOYER COMMENTS:

EMPLOYEE COMMENTS:

OVER-ALL EVALUATION

____ Unsatisfactory ____ Competent ____ Improvement needed ____ Outstanding

RECOMMENDED FOR MERIT PAY INCREASE ____ YES ____ NO

REPORT DISCUSSED WITH EMPLOYEE:

BY: _____ DATE _____

THIS REPORT HAS BEEN DISCUSSED WITH ME:

EMPLOYEES SIGNATURE _____ DATE _____

COPY OF REPORT GIVEN TO EMPLOYEE:

BY: _____ DATE _____

GOAL PLAN

(Note: More than one goal can be established for each employee)

Name _____ Date _____

GOAL: UNMET _____ MET _____ SURPASSED _____

STATE GOAL(S):

Position responsibility(ies) related to goal(s):
(Job Description)

Objectives for meeting the goal(s):

Evaluation/results:

II. PERSONNEL PROCEDURES

MONTHLY TIME AND ATTENDANCE RECORDS

Every employee of the Alaska Bar Association is required to keep a record of the actual hours worked every day on a monthly time and attendance record (See Office Form #1). They should be completed as soon as possible after the last day in the month. The purpose of these attendance records is to determine accrual of employees annual leave and sick leave. Any absences, as well as overtime or compensatory time, should be recorded in the proper columns.

At the end of each month, the forms are to be signed by the employee as well as the supervisor and sent to the Bookkeeper.

LONG DISTANCE TELEPHONE CALLS

Each employee who places long distance calls must log the call with the necessary information on a Telephone Log Sheet (See Office Form #2). Incoming collect calls will be accepted by the Receptionist only on the authorization of a Supervisor. The call will be recorded on the Telephone Log Sheet.

The bookkeeper will reconcile the phone bill. Log sheets should be turned in to this person at the end of each month. This person should check each call on the bill to see if it was actually made.

ALLOWABLE TRANSPORTATION EXPENSES

When an employee uses a private automobile while in the conduct of Alaska Bar Association business, he/she may be reimbursed for his transportation expenses at the rate of 20 cents per mile. No additional reimbursement is made for auto insurance, repairs, depreciation, etc.; but employees may be reimbursed for miscellaneous expenses such as toll charges, local phone calls, parking meter or lot expenses, cab and local bus fare. Travel between an employee's residence and his office is not considered official travel. If forms of transportation other than a personal auto are used, actual cost is the basis of reimbursement; however, when an employee must travel out of his/her city of residence overnight, per diem will be paid at the rate of \$75 per day. In addition, costs for taxi, rental car if required, and bus fare between airports and hotels will be reimbursed.

ALASKA BAR ASSOCIATION
MONTHLY TIME AND ATTENDANCE RECORD

NAME _____

PERIOD ENDING _____

Days	Regular*	Overtime	Comp. Time	TOTAL	COMMENTS
1					
2					
3					
4					
5					
6					
7					
8					
9					
10					
11					
12					
13					
14					
15					
16					
17					
18					
19					
20					
21					
22					
23					
24					
25					
26					
27					
28					
29					
30					
31					

* Include holidays.

I certify that the reported information is correct

Signature/Date _____

RECORD OF
LONG DISTANCE TELEPHONE CALL

Date _____

Time _____ a.m.
p.m.

Total Min. _____

Collect

Prepaid

Charge to _____

Number Called (_____)
(Area Code and Number)

Person Called _____

of _____
(Company)

Address _____

Call Made by _____
(Person Calling)

Ext. # _____ Dept. _____

Remarks _____

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Form OA-3

#2

OFFICE FORM #2

APPENDIX

OFFICE PROCEDURES AND JOB DESCRIPTIONS: The following job descriptions list the responsibilities and procedures by which the functions of the Alaska Bar Association are accomplished, except in the case of professional employees, the supervisor may assign different responsibilities and initiate different procedures on a temporary basis to promote efficient operation to the Bar Office.

Executive Director (Professional)

Responsible for overall management of business of operations including clerical staff management, budgeting, accounting, admissions process, Board functions, and liaison with membership and general public.

Certifies applicants for Bar exams.

Supervises administration of Bar exam and grade computation.

Executes policies, programs, and projects initiated by Board of Governors. Keeps Board informed regularly of Bar office activities and general information from the APA and other sources.

Designs and administers new programs serving membership and general public.

Aggressively seeks improvements to the management of the Bar Association and increased benefits to members and public.

Bar Counsel (Professional)

The Alaska Bar Counsel shall be responsible for all litigation in which the Bar is named a party, anything to do with discipline, fee arbitration and also responsible for quarterly reports.

Re Admissions: He shall advise the executive director on the legal issues and shall represent the Bar in any proceedings arising therefrom.

If counsel and the executive director disagree, the question shall be brought before the Board.

Bar counsel may hire and fire his own secretary and has authority to prepare his budget and submit a study to the executive director. Again, if the two disagree, the question will be placed before the Board. The Board shall establish the salary ranges. The budget shall include a part-time investigator. The bar counsel and the executive director shall support each other with the mutual objective of betterment of the bar.

OFFICE PROCEDURES AND JOB DESCRIPTIONS

Executive Assistant

1. Pick up morning mail from Post Office, stamp in, sort, and distribute. (Delegate as appropriate to receptionist).
2. Handle Executive Director's dictation and correspondence.
3. Board of Governors:
 - a. Set up telephone conference calls.
 - b. Assist in setting up meetings, which includes hotel and travel arrangements and rooms for conferences. Coordinate these with the bookkeeper so proper fiscal records are maintained.
 - c. Prepare agenda and Board packets at least 10 days prior to meeting and mail packets to Board members, agenda included, and distribute agenda to the following:
 1. All law libraries around the State;
 2. Post on office bulletin board; and
 3. As designated by the Executive Director.
 - d. Type and File Minutes of Board meetings.
4. Committee Work
 - a. Keep list up to date.
 - b. Type letters of appointments as needed under the direction of the President.
 - c. Arrange committee meetings when requested.
5. Bar Applications
 - a. Assist when possible in accepting applications.
 - b. Review for completeness.
 - c. Assist with updating applicant roster and change of addresses.
6. Character Investigations
 - a. Assist with sending out questionnaires.
 - b. Assist with the recording of information received from questionnaires.
 - c. Check for completeness before exam i.e., receipt, attorney affidavits, fingerprint cards and photos.
 - d. Prepare Confidential Report under the direction of the Executive Director.

7. Mailings

- a. Prepare brochures, ballots etc. for printing.
- b. Plan for proper handling i.e., envelopes, postage, etc.
- c. Assist in collating, stuffing, etc. when time allows.

8. Judicial Polls

- a. Obtain information from Judicial Council
- c. Prepare ballot forms for mailing.
- c. Prepare necessary forms for ballot counting committee.
- d. Copy and mail results of polls, i.e., Judicial Council, Board of Governors, The Governor and each applicant.

9. Bar Exams

- a. Order exams for State.
- b. Set up locations, times, needs, etc. of exam for Anchorage area.
- c. Prepare instruction forms and letters to be mailed to applicants.
- d. Sort and ship necessary exams for each location.
- e. Assist during the exam where necessary.
- f. Distribute materials after exam, i.e., return to proper locations.
- g. Prepare Alaska Exams Questions under the direction of the Law Examiners chairman.
- h. Coordinate with graders and prepare graders' packets.
- i. Schedule appointments for failing applicants to review exams and provide the necessary materials.

10. Assist Executive Director in coordinating work flow and operations of the bar office among receptionist, bookkeeper and discipline secretary when available.

11. Miscellaneous

- a. Errands when necessary.
- b. Cover for receptionist when absent
- c. Assist with seminars i.e., fliers, phone calls, etc.
- d. Attend CLE seminars and meetings when necessary.
- e. Filing

Discipline Secretary

1. Grievance:

- A. Schedule appointments
- B. Assign numbers to new cases
- C. Send out letter to Respondent with copy of grievance
- D. Send Respondent's answer to Complainant
- E. Keep individual files in order
- F. Keep file cabinets in order
- G. Type misc. correspondence from dictaphone
- H. Type recommendations from dictaphone
- I. Send files to Review Committee members
- J. Pick files up from Review Committee members if not delivered back to us
- K. Close files
- L. Keep Discipline record file up to date
- M. Work on quarterly report
- N. Various filing

2. Hearing Committee:

- A. Open new files with same number as grievance file
- B. Type and send Petition for Formal Hearing
- C. Contact district chairman to set up hearing if not in Anchorage
- D. Contact court building and get room and recorder for hearing if in Anchorage
- E. Send out Notice of Formal Hearing
- F. Xerox complete file for each Hearing Committee member
- G. Mail these duplicate files out to Hearing Committee members with original file going to the Chairman
- H. Call court house to see if transcripts are ready on Anchorage hearings
- I. Keep in touch with the chairman on the status of the decision
- J. Take decision around for Committee member's signatures
- K. Make Certificate of Record
 - 1. Put file in proper order
 - 2. Type table of contents
 - 3. Type decision if not already typed
 - 4. Xerox complete file
 - 5. File original file with court
- L. Type briefs and file them with the court
- M. Various filing

3. Fee Arbitration:

- A. Schedule appointments
- B. Assign numbers to new cases
- C. Send out Notice of Acceptance of Petition for Arbitration with copies of complaint to Respondent and Complainant
- D. Tickle for 10 days and pull to be scheduled for a hearing
- E. If hearing is in Anchorage:

OFFICE PROCEDURES AND JOB DESCRIPTIONS Cont'd.

3. E.
 1. Send out Notice of Hearing to all Committee members
 2. Call Committee members to remind them of the meeting
 - F. If hearing is out of town:
 1. Call Chairman of the area to see where and what time to schedule before sending out Notice of Hearing
 2. Send out Notice of Hearing to Respondent, Complainant and Committee members
 3. Send file to Chairman
 - G. Keep in touch with the Chairman on the status of the Decision and Award
 - H. Type Decision and Award if not already typed
 - I. Take Decision and Award around for signature if not already signed.
 - J. Send copies of Decision and Award to Respondent and Complainant
 - K. Close file and file in closed drawers under Respondent's name
 - L. Keep Fee Arbitration book up to date
 - M. Various filing
 - N. All responsive pleadings and pertinent documents with respect to a Fee Arbitration proceeding are to be forwarded to the Petitioner.
4. Admissions
 - A. Type correspondence
 - B. Type briefs
 - C. Various filing
5. Law Library
 - A. Order necessary law books and periodicals
 - B. Post changes, supplements, and new orders to library
 - C. Maintain library in reasonable order
6. Misc.
 - A. Read the local newspapers daily for articles pertaining to the Bar Association
 - B. Make sure there are enough forms printed
 - C. Work on re-scheduling various meetings
 - D. Made various calls to REspondent and Complainant
 - E. Keep Bar Counsel's calendar up to date
 - F. Keep track of all files not in office area:
 1. Who checked out to
 2. When taken
 3. When returned
 4. Status of file when checked out
 - G. Help in other areas when no discipline work to do
 - H. Keep current a misc. correspondence file
 - I. Keep current an informal complaint correspondence file
 - J. Keep current an informal complaint correspondence closed file

OFFICE PROCEDURES AND JOB DESCRIPTIONS

Receptionist

1. Office order and appearance:
 - a. General
 - b. Bulletin Board
 - c. Coffee Service
2. Placing and answering phone calls:
 - a. Screen incoming calls for staff personnel and refer to appropriate secretary and take phone messages.
3. Lawyer Referral
 - a. Answers written request, incoming calls, maintains referral files and statewide referral register. Sufficient familiarity with the Lawyer Referral program is required to answer all questions regarding enrollement, etc.
 - b. Enrolls panel members and collects initial enrollment fee.
4. Visitors - greets persons with appointments or walk-ins
5. Mail - when delegated by Executive Assistant, picks up mail, opens and distributes it.
6. Office Mailings
 - a. General membership
 - b. Daily outgoing mail
7. Writes receipts for incoming money.
8. Prepares Legal Intern Permits for review and signature of Executive Director and maintains a copy for files.
9. Filing - maintains general membership and applicants files.
10. Membership Location Roster
 - a. Maintains roster
 - b. General membership - (notify UCLA/Alaska Law Review and court agencies of changes)
 - c. Bar exam applicants

11. Prepares Certificate of Good Standing for review and signature of Executive Director and maintains a copy for files.
12. Ballot Committee - records receipt of ballot.
13. Bar Applications and Admissions
 - a. Accept applications and set up files
 - b. Answer admission inquiry letters
 - c. Character investigations - assist in preparing character questionnaires and actual investigation.
14. Assist in arranging for, distribution of and collecting test for bar examination.
15. Postage Meter - responsible for filling and operation.
16. Addressograph (in addition to membership mailings)
 - a. Dues billings
 - b. Insurance billing
 - c. Bar Rag subscribers
 - d. Committee mailings
17. Xerox Machine - key operator

Bookkeeper

1. Billings and collections:
 - A. Annually (12/1 - 4/1) Alaska Bar Membership dues
 - B. Annually (6/1) Lawyer Referral panel fees
 - C. Annually - Insurance Trust annual administrative fee
 - D. Quarterly - Newsletter advertising
 - E. Quarterly - Insurance Trust Life Insurance premiums
 - F. Quarterly - Court System re. discipline contract
 - G. As needed - Checks and misc. registration fees
 - H. Annually - Billing and collection of advertising for Lawyer Referral Service from local Bar Association.

2. Management of funds Investment Program:
 - A. In consultation with Executive Director and Board of Governors Treasurer plan and invest/deposit Bar Association general funds in program which will earn maximum interest while maintaining funds adequate to meet current operating expenses in checking account.
 - B. Segregation of Client Security funds from general funds and investment to earn maximum interest for fund.
 - C. Investment of Alaska Bar Foundation Student Loan Fund to earn maximum interest when fund is in use.

3. Maintain personnel records.

4. Preparation of Management Information Reports
 - A. Monthly - Alaska Bar Financial Statements (accrual basis) and comparison to budgeted projections.
 - B. As needed - Financial statements re: CLE programs and Bar conventions.
 - C. Prepare yearly Budget
 - D. Budget readjustments on Quarterly Basis.

5. Administration of Bar Insurance Trust Fund Program
 - A. Requires familiarity with Bar Life Insurance policy provisions, enrollments and cancellation procedures - answer all questions regarding group program.

5. B. Supervise enrollments and collection of initial enrollment fees.
 - C. Notifies of cancellations when appropriate
 - D. PREPARES and remits monthly report and premium to group insurance carrier.
 - E. Maintains and posts accounts receivable insurance card monthly.
 - F. Deposit and record all premiums.
-
6. C.L.E.
 - A. In consultation with Executive Director and C.L.E. Committee
 1. Obtain cost estimates and organize facilities for presentation in Anchorage.
 2. Coordinate arrangements and scheduling, for presentations in Fairbanks, Juneau, Ketchikan, etc., and obtain attendance and cost estimates.
 3. Prepare budget and set enrollment fees.
 4. Prepare and organize flyer mailing (consult Executive Director for content of flyer if necessary.)
 5. Responsible for advance registration and door registration in Anchorage.
 6. Responsible for shipment of materials to other locations.
 7. Coordination with other locations re: advance registration.
 8. Recording of financial data for all presentations-accounting for all printed materials and return of unused materials to source - record of attendees and accounting plus payment to source of materials.
-
7. Bar Conventions and other events requiring registration
 - A. Maintain financial records
 - B. Record advance registrations
 - C. Be prepared to assume responsibility and accountability for printed materials
-
8. Maintain membership status records
 - A. Record changes in membership status per instructions of Executive Director and bill accordingly
 - B. Answer inquiries re: procedures for change in membership status (Requires familiarity with provisions of By-Laws on status change.)

OFFICE PROCEDURES AND JOB DESCRIPTIONS Cont'd.

9. Purchasing and supplies
 - A. Responsible for purchase and routing of supplies including coffee - expected to maintain familiarity with prices of supplies and to purchase at least cost to the Bar Association.
 - B. With approval of Executive Director responsible for purchase of other supplies and equipment after obtaining bids from suppliers.
 - C. Responsible for maintaining re-order signals at appropriate places in inventory of each type of supply (Letterhead to be tickled for change immediately after each Annual Bar Convention)

10. Furniture and equipment control
 - A. Maintain inventory
 - B. Advise Executive Director on costs, purchases, etc.
 - C. Record and maintain records of maintenance contracts, see that provisions of contracts are carried out, i.e., make sure that maintenance is provided.
 - D. Responsible for ordering equipment repair when necessary.

11. Audits - Cooperate with Association auditor in preparation of annual financial statements.
12. Stamps for employees
13. Maintain accurate accounts receivables and account payables ledgers.
14. Maintain Petty Cash fund
15. Maintain information sent and received in regards to suspension.
16. Start new admittees cards and send Bar pamphlets
17. Assist in preparing correspondence when time permits at direction of Exec. Asst.

EMPLOYEE EVALUATION SYSTEMS

The purposes of the employee evaluation system include the following:

1. Inform the employee of expected standards of performance.
2. Provide a guide for judging the employee's performance.
3. Provide the employee with concrete information about his/her supervisor's evaluation of performance at the Bar Association Office.
4. Provide the Employee's supervisor with data upon which to grant merit pay increases.

EVALUATION SCHEME

Receptionist - Evaluated by the Executive Director in consultation with the Executive Assistant.

Bookkeeper - Evaluated by the Executive Director in consultation with the Board of Governors' treasurer.

Executive Assistant -- Evaluated by the Executive Director in consultation with the Board of Governors' President.

Discipline Secretary - Evaluated by the Bar Counsel in consultation with the Executive Director only with respect to that part of the discipline secretary's assistance in the general bar office activities.

The evaluation of each employee is to be prepared by the appropriate supervisor based on observations, work habits and performance of the employee, and appropriate comments from the Board of Governors of the Bar Association.

The Goal of the Bar Association office is to provide effective, precise, rapid, helpful and cordial service to the Alaska Bar Association, and to the Alaska public while maintaining an enjoyable work environment for the employees of the Alaska Bar Association.

USE OF THE EVALUATION SCHEME

When an employee first starts an evaluation period, the appropriate supervisor will schedule a conference with the employee to establish a mutual understanding of the employee's office procedures and job description. The standards of work performance will be established as well. At that time, the employee will individually or in discussion with the supervisor, establish goals for accomplishment during the rated period. These goals may range from improving performance, to maintaining previous standards, to developing more effective methods of accomplishing the job, to learning new skills for application on the job, on to most any area that promotes the Alaska Bar Association goals.

EMPLOYEE EVALUATION SYSTEMS

USE OF THE RATING SCHEME Cont'd

Any appropriate suggestions or modifications of employee performance noted during the evaluation period, shall be communicated in a tactful private conference between the employee and appropriate supervisor. A quarterly review of employee performance at a private conference shall be conducted.

At the end of the evaluation period the appropriate supervisor shall prepare a draft copy of the employee rating form and discuss this evaluation with the employee. The comments of the employee are to be noted on the evaluation form and any changes to the evaluation form shall be noted during the conference. Included in the evaluation shall be an analysis of the employee's effectiveness at meeting the performance goals established by the employee.

The final draft of the employee evaluation form shall be prepared in duplicate and shall include the matters discussed in the evaluation conference. One copy of the evaluation form will be maintained in the Bar office and one copy given to the employee.

EVALUATION TIMES

- A. At the end of the six months probationary period for a new employee.
- B. At the end of the first year of employment for a new employee.
- C. Annually after the first year of employment at a time so that the rating can be used for consideration of merit pay increases.
- D. Termination of employment.
- E. Other times as may be necessary or warranted.

II. OFFICE PROCEDURES

1. Filing System

Original
White - Carbon copies
Pink - Our file copy
Yellow - Reading file

2. Files - Color Coding of Tabs

Membership & applicants — Salmon
✓ Fee Arbitration — Green
✓ Discipline — White
✓ Disc. Hearing Committee — Orange
✓ Waivers — Black
✓ Administrative — Blue
Blank forms — Red

3. Ethics Opinions

- A. Filing - Upon receipt of an opinion, the original is filed in the Ethics Opinion file. A copy is placed in the green Ethics Opinion book.
- B. Update the Table of Contents in the green book.
- C. Send copies to all State Law Libraries advising that the opinion is a new Ethics Opinion approved by the Board of Governors and suggesting that "to keep your set of opinions up-dated, it will be necessary for you to add the new opinion to the Table of Contents." Also circulate to Board of Governors.
- D. Opinions must also be published in the Bar newspaper.

4. Admissions Applications

Applications should be processed daily, if at all possible. Receipts for admission fees should be written after the morning mail distribution, or immediately when an application is hand-delivered. Copies of receipts are processed as follows:

- A. White Copy - Give to applicant
B. Yellow Copy - Give to Bookkeeper with check
C. Pink Copy - Attach to application (Will be taped to folder when processing the application.)

There are three types of applications:

- A. Original Applicants
B. Attorney Applicants
C. Re-applicants

Process applications as follows:

- A. Review application in its entirety for the following items which are to be filed with the application (Original and attorney applicants.)
 1. Fee
 2. Two Photos
 3. Two completed fingerprint cards
 4. Signature and/or notarization on Application and Authorization and Release forms
 5. Location exam is to be taken
 6. Typing or writing exam
 7. Substitution of MBE scores
 8. Smoking or non/smoking section
- B. Check application for the following information:
 1. Adequate mailing addresses and zip codes on questions 6, 25, and 26
 2. Has applicant given three references on question 25 for each location listed under question 2
 3. Is certificate of Graduation included with application
 4. Is law school accredited by ABA
 5. Is residence information on application or an Affidavit of Residence attached
- C. If an attorney applicant, check all of the above plus:
 1. Has applicant included a Certificate from a Bar or court showing he was admitted to practice in another state and is a member in good standing of a state bar.
 2. Affidavits from prior employers or clients showing applicant has engaged in active practice of law for 5 of the last 7 years. (3 affidavits are required.)
- D. If a re-applicant:
 1. Remove folder from storage files
 2. Review for necessary fees
 3. Make sure original application is up-dated on the re-application where necessary, i.e. employment changes, residence, etc.
 4. Review for any missing documentation
- E. Prepare file folder on each applicant as follows:
 1. Type folder label showing applicant's last name first, in CAPS and month and year of exam to the right
 2. Prepare roster strips noting name (last name, first in CAPS, address and phone number)

OFFICE PROCEDURES Cont'd

- F. Prepare Form Letter #A4 for Executive Director's signature, and attach to front (outside) of folder
 - G. Set up folder as follows:
 - 1. Left side: Application or re-application forms and correspondence to or from applicants (Fingerprint cards should be on left side when returned from Department of Public Safety.)
 - 2. Right side: Summary Sheet (Form A5) and character investigation report when received
 - H. Folders are then submitted to Executive Director for review and signature
 - I. When folder is returned by Executive Director, mail the letter, place strip on roster board and file folders in proper drawer in alphabetical order
 - J. Character investigation can then commence
5. Preparing for Exams
- A. Have as much printing done as possible 3 to 4 weeks in advance. You will need the following printing done:
 - 1. Exam permits (Number of applicants doubled)
 - 2. Notice of Board approval
 - 3. Instructions to applicants and proctors (Number of applicants and proctors.)
 - 4. Denial letters (Have a supply of approximately 35 on hand.)
 - 5. Alaska Questions (See ordering and distribution instructions.)
 - B. Make sure supplies such as pencils, paper, staplers, etc. are available.
 - C. Cut typing paper for answer booklets for those applicants typing the exam
 - D. Check with Hotel 3 to 4 weeks in advance to make sure all arrangements are in order for room in which to administer exam.
6. Ordering and Distribution of Bar Exams
- A. Go thru roster and list by locations, i.e. Anchorage, Fairbanks, Juneau, and Ketchikan, the number of persons taking the exam number substituting MBE scores, number typing or writing and number taking General and Attorney exams

B. Approximately 4 to 6 weeks before the exam send orders as follows:

1. CALIFORNIA ESSAY QUESTIONS (Taken by all but the attorney applicants except those who have elected to take the MBE.)

Order from: California Bar Examiners, 555 Franklin Street, First Floor, San Francisco, CA 94102. They should be mailed to Alaska Bar Association 360 K Street, Suite 240, Anchorage, AK, 99501

2. MULTI-STATE BAR EXAMS (Taken by all except those substituting the MBE or attorney applicants who have elected to take the Essay portion.)

Order from: National Conference of Bar Examiners, Mr. Joe Covington, University of Missouri, Tate Hall, Columbia, Missouri 65201. Have these shipped directly to each location in the numbers needed.

3. If either of the above are ORDERED BY PHONE, YOU SHOULD CONFIRM BY LETTER IMMEDIATELY

C. When the exams are received in the Bar Office from the California Bar Examiners distribute as follows:

1. Call Chairman of the Law Examiners Committee to come over and check out the California questions, set up sessions and number the Alaska Questions.
2. Prepare Alaska Questions for printing. These questions are written by the Committee of Law Examiners. We do the rough draft and necessary changes as the Committee gets them ready. Order enough for all locations.
3. Do cover sheet for Alaska Questions by showing correct date and session (This cover should be the same as on the California questions.) Run on legal size paper, and print back to back. You may have more than one question on a page (See California exams.) Have the printer run back to back (print on both sides of paper.)

D. Once Chairman of Law Examiners has numbered and noted sessions, the following should be done:

1. Spread out the answer booklets and cover the word "California" with a stick-on tab on each booklet.
2. Do same as above on the questions.

3. Sort out number needed for each location for Ketchikan, Juneau, and Fairbanks. Do one location at a time and save Anchorage for last
4. Remove paper from answer booklets and insert paper for applicants typing the exam.
5. Call Air Borne Freight (243-4313) giving them information for shipping to the various locations and approximate number of boxes and weight
6. Pack and prepare for shipping via Air Borne Freight, to the various locations. Each location should receive:
 - a. The questions
 - b. The answer booklets
 - c. Roster of persons taking the exam in their location
 - d. Notice of Board approval
 - e. Instruction to applicants and proctors
7. Send to the Board members in each location, giving a street address to insure proper delivery by Air Borne Freight

7. Bar Examination Permits and Denials

- A. These must be issued at least 10 days prior to the first day of the exam.
- B. Approximately 15 days before actual deadline:
 1. Need a roster from Executive Director indicating (a) approvals to take exam, and (b) denials.
 2. Pull names of denials from the main roster and set up a separate roster on these people, names remaining will be approved applicant roster.

8. To Issue Permits:

- A. Number the persons on the approved roster, starting with the number 4000 and beginning in the middle of the roster. (i.e. start with 4000 in the J's or K's - go to the end of the roster and then continue on with the beginning of the roster in the A's.)
- B. Type permits (original and one carbon) by inserting the correct information as follows:
 1. Name
 2. Exam date
 3. Type of exam (Attorney or General)
 4. Write or type
 5. Location
 6. Permit number
 7. Date

- C. Have Executive Director sign each permit, then mail by registered mail enclosing Notice of Board Approval and instructions to proctors and applicants.
- D. Set up location roster from permits for:
 - 1. First District (Southeastern Alaska)
 - 2. Second and Fourth Districts (Fairbanks area)
 - 3. Third District (Anchorage, Valdez, Kenai, etc.)
- E. File copy of permit in applicant's folder.

9. To Issue Denials:

- A. Remove strips from main roster and set up separate roster for "Denials" as noted above.
- B. Type original and one carbon copy of letter referring to certificate of graduation or affidavit or residence being needed to complete file. If other than C/G or A/R is needed, adjust letter accordingly.
- C. File copy of letter in applicant's folder.
- D. As applicant brings in the necessary items and after approval by Executive Director issue exam permit and have Executive Director sign.

10. Distribution of Examination After Exam

When all materials are received in the Bar office from other locations:

- A. Remove all Alaska answers from boxes.
- B. Combine California essay answer booklets by session:
 - 1. Make sure in numerical order.
 - 2. Check for number inside of books (Remove if you find any)
 - 3. Cut down paper in answer booklets if necessary
- C. Prepare California essay booklets for shipping to California Bar Association, 555 Franklin Street, First Floor, San Francisco, California.
 - 1. Check booklets against roster.
 - 2. Enclose copy of roster with booklets.
 - 3. Ship via Air Borne Freight.
- D. Committee of Law Examiners will grade Alaska questions in Anchorage.
- E. Board meets to approve exam results. February exam is usually approved in May. July exam is usually approved in October.

F. After Board decisions:

1. Notify successful applicants (telephone, telegram, etc.)
2. All applicants must receive "Notification of Determination."

G. Prepare for printing and mailing:

1. Notice of Determination to passees.
2. Notice of Determination to failures.
3. Affidavit, i.e. Certificate of Compliance
4. Admission Ceremonies
5. Petition for Supreme Court

11. Mailings to Examinees

- A. Notice of Pass mail by regular mail.
Notice of Fail mail by certified mail.

B. To Admittees mail the following:

1. 1 copy of Notice of Determination (1 copy in file)
2. 1 copy of Affidavit
3. 1 copy of Oath of Attorney
4. 1 copy of Admission Ceremonies
5. 1 Registration card

C. To Failures mail the following

1. Notice of Determination

12. Post Results

13. Admissions Appeals

A. File for master on admissions appeals

1. File should contain originals of necessary documents
2. Keep a duplicate of file sent to master for our records.
3. Need a covering letter to master showing what is in his file.

14. Admission Appeals to Supreme Court

A. Table of contents must be done

1. Number every page in lower right corner.
(Must be in date order most recent on top)
2. If more than 1 folder - list File 1, File 2, etc.
3. Type table of contents noting names of documents, date, and page number.