

ALASKA LEGISLATURE COMMITTEE FILES, 1989-1990 86/2
6330 SENATE JUDICIARY 734

Bankruptcy	429	373
Commercial	345	292
Construction	19	14
Consumer	559	632
Discrimination	94	60
Eminent Domain	10	12
Environmental	3	3
Family	2,619	2,705
Felony/Misdemeanor	702	692
Foreign Language	2	10
Immigration	82	20
Insurance	92	89
Labor Relations	464	562
Landlord/Tenant	222	334
Malpractice	158	202
Mining	9	14
Negligence	729	873
Patent/Copyright	162	157
Public Interest	4	0
Real Estate	718	706
SSI Cases	40	22
Tax	102	103
Traffic	183	117
Trust/Wills/Estates	247	285
Workers' Compensation	<u>216</u>	<u>273</u>
	8,577	8,855
	+ 6%	+ 3%
	(Change from 1986)	(Change from 1987)

VII. THE COMMITTEES OF THE ALASKA BAR

A. The Bar Rule Committees

1. The Committee of Law Examiners

The President of the Alaska Bar appoints the thirty (30) members who comprise the Committee of Law Examiners. The terms are staggered, with each person serving for three years.

The Committee is charged with responsibility for preparing and grading the essay portion of the Alaska Bar Examination. Reports are made to the Board at least twice yearly with respect to the results of each examination. Included are a statistical analysis and any recommendations which the Committee might have with respect to the form and content of the examination. (See Part II of the Report for details concerning the Committee's annual work.)

The Committee consists of ten (10) members who draft the essay questions prior to the exam, and twenty (20) members who do the grading of answers after the exam. Carolyn E. Jones currently chairs this committee.

2. The Disciplinary Hearing Committees

There are three area discipline divisions, one in the Third Judicial District, one in the First Judicial District, and one serving the combined Second and Fourth Judicial Districts. The current composition of the discipline divisions includes 10 attorneys and 2 non-attorney or public members in the First District; 8 attorneys and 3 public members in the combined Second and Fourth Districts; and 27 attorneys and 8 public members in the Third District. All serve three year terms which are staggered.

Three members constitute a quorum for a hearing committee. They may only act with the concurrence of a majority of the sitting members. One of those participating must be a public member. Members may be replaced by the President for good cause and they may not represent respondent attorneys during their term.

To insure the fairness of the disciplinary hearing process, committee members are prohibited from acting in matters where they are a party or directly interested, a material witness, related to a respondent by blood or affinity within the third degree, have been a lawyer for a respondent within two years of

the filing of the petition, or for any reason, cannot give a fair and impartial decision. The circumstances and procedures considered by the committee members are almost identical to those which a judge must follow in disqualifying himself in court proceedings.

The hearing committee has the power and duty to swear and examine witnesses and to issue subpoenas; at the conclusion of an evidentiary hearing, the committee may direct the submission of proposed findings, conclusions, recommendations and briefs. Thereafter, the committee is required to submit a written report to the Disciplinary Board, together with its findings, conclusions, recommendations, any briefs submitted, and the record.

Once the Board has acted on the Committee's recommendation, each participating member is advised of the Board's decision. (See also Part III of this Report.)

3. The Conciliation Panels

There are three conciliation panels serving the First, Third and combined Second and Fourth Judicial Districts. Each panel consists of members of the Alaska Bar appointed by the President and subject to ratification by the Board. They serve staggered three year terms.

The conciliation procedure was created to deal with disputes which do not involve ethical misconduct or fee disputes. The conciliator's function is to resolve such disputes between attorneys and their clients in an informal manner.

Although the procedure is informal, the failure of any attorney to participate in good faith in an effort to resolve a dispute submitted to conciliation may constitute independent grounds for disciplinary action.

If a resolution is reached, the Conciliator reduces it to writing for signature by all parties. In any event, the Conciliator submits a written report to Bar Counsel, including a summary of the dispute, its outcome, and the Conciliator's opinion as to the merits and good faith or lack thereto of the attorney party.

4. The Attorney Fee Review Committee

The Bar Association, under the Alaska Bar Rules, maintains an Attorney Fee Review Committee to settle fee disputes between

attorneys and clients where such disputes have not been settled by statute or court rule or decision. Five subcommittees residing in Ketchikan, Juneau, Anchorage, Kenai and Fairbanks comprise the Committee. Each subcommittee consists of a "pool" of attorney and non-attorney members. Each subcommittee member serves for three years. From these subcommittees, a panel of two attorneys and one non-attorney is convened to hear a fee dispute. If the amount in dispute is less than \$2000, a single panel member will hear the matter.

The client initiates a fee arbitration proceeding by filing a petition describing the dispute and the efforts made to resolve the matter directly with the attorney. If Bar Counsel finds that reasonable efforts have been made to resolve the problem directly with the attorney, and that the Association has jurisdiction over the dispute, the petition will be accepted. Notification is sent to the client and the attorney that they have ten days to resolve the matter before it goes to the appropriate panel.

At the hearing, the parties can present both written and oral evidence. The panel has the ability to subpoena witnesses. If the client feels any member of the Committee cannot be fair and impartial, he may request that the member not participate in the hearing. For similar reasons, a member may disqualify himself.

At the hearing, basic rights of due process are followed, with some relaxation of the rules of evidence. Any party may be called to testify. A decision must be rendered by the panel within thirty days after the close of a hearing. An appeal may be taken from the decision to the Superior Court.

Forms and booklets explaining the Fee Review Committee's processes and procedures are available in the Association's office and are provided to the clerks of court in every location in the State.

Arbitrations pending January 1, 1988	47
Arbitrations <u>filed</u> during 1988.	(+) 64
Arbitrations <u>closed</u> in 1988	(-) 63
Arbitrations pending January 1, 1989.	48

5. The Client Security Fund Committee

The Bar Association maintains a fund for the purpose of making reimbursement to clients of attorneys who have suffered

Non-insured losses of money, property, or other things of value as a result of a dishonest act by an attorney. A dishonest act means an act of embezzlement, wrongful taking, or conversion of money, property, or other things of value. The monies of the Fund come from the membership of the Bar Association, as it is mandated that a portion of the annual dues paid by each member be deposited to the Fund.

A client begins the procedure by filing a form with the office of the Alaska Bar Association. The client may not be a spouse, relative, partner, associate, employee or insurer of the lawyer, a surety or bonding agency, or a governmental entity or agency. The sworn application contains the name and addresses of the lawyer, the amount of the client's alleged loss, the dates of the loss and discovery of the loss, the name and address of the client, a statement as to the facts, an agreement that the client will be bound by the Alaska Bar Rules concerning the Fund, and a statement that the loss was not covered by insurance or bond.

A Client Security Fund Committee of six members is appointed by the President, subject to ratification by the Board. Each member serves for three years, and the Chairperson is appointed by the President. Once an application is filed, an attorney appointed to aid the Committee will determine if, on its face, a legitimate claim for loss has been made. The claim will be denied only if both the appointed attorney and a majority of the Committee agree that the claim is not valid on its face. Otherwise, the claim goes to the Committee for a final hearing.

The Committee hears evidence, administers oaths, issues subpoenas and, with prior approval, hires experts to aid in its investigation. Because the technical rules of evidence are relaxed, the Committee may consider any previous disciplinary proceedings against the attorney, any criminal proceedings and any civil proceedings involving the lawyer. The determination of the Committee is advisory to the Board. The Board makes the final decision as to whether and how payment will be made.

The loss to be paid any one claimant is the lesser of (a) \$10,000 or (b) 10% of the Fund at the time the award is made. The total amount of all claims paid in one year shall not exceed 50% of the total amount in the Fund as of January 1 of that calendar year. The aggregate maximum amount which all claimants may recover arising from an instance or course of dishonest conduct of any one lawyer is \$50,000.

Before funds are paid to the claimant, s/he must assign the amount of the claim to the Bar Association so that the Bar may legally sue the attorney for recovery of all amounts paid to the client from the Fund. If the Bar Association chooses to

sue the lawyer on this assigned claim, it must give written notice of the suit to the claimant in case the claimant wishes to join such an action to recover any loss in excess of the amount awarded to the client from the Fund.

One claim is presently pending before the Committee.

6. Admission Waiver Programs

The Bar Association has three admission waiver programs allowing students and attorneys in special job classifications to perform certain legal services within the State of Alaska. These include:

a. Legal Intern Permit

An applicant for a legal intern permit files for a permit according to provisions set forth in the Bar Rules, stating that he is either 1) a student enrolled in an accredited law school who has completed one-half of his course work, 2) a graduate from an accredited law school who has never failed a bar examination or, 3) a law school graduate who has been admitted to another bar (so long as the person shows good standing has been maintained).

Once a permit is issued, the legal intern may do the following:

1. Appear in any district or superior court proceeding, to the extent permitted by the judge, if the lawyer of the client is present and able to supervise and has filed the necessary form with the court and the Bar Association;
2. Appear in district court in a number of matters, both civil and criminal, without the supervising attorney present, provided the supervising attorney has filed a form and certifies the intern is competent, the client gives written consent, or a governmental body has granted approval, and the judge or magistrate agrees.

The permit is good until one of the following events occur:

1. Six months have passed (the permit is renewable once for six more months);
2. The intern fails to take the first Alaska Bar Examination for which he or she is eligible;

3. The intern fails to pass any bar examination.

b. Alaska Legal Service Corporation Waiver

A person employed by or associated with Alaska Legal Services Corporation may receive permission to practice law in Alaska, for not more than two years, if the attorney is admitted to practice law -- or is eligible to be admitted to practice law -- in another state, territory, or the District of Columbia, and has not failed the Alaska Bar Examination. The permission to practice shall be withdrawn if the person at any time fails the Alaska Bar Examination or leaves the services of the Alaska Legal Services Corporation. The permission is only good for representation of Legal Services clients, and the person is subject to the disciplinary rules of the Alaska Bar Association.

c. United States Armed Forces Expanded Legal Assistance Program

A person who is an active duty member of the United States Armed Forces assigned to the Judge Advocate General Program, or the United States Coast Guard, may receive permission to practice law in Alaska for not more than two years if the attorney is admitted to practice -- or is eligible to be admitted to practice law -- in another state, territory or the District of Columbia, has graduated from an accredited law school, and has not failed the Alaska Bar Examination or does not leave military service.

B. The Substantive Law Sections

The Sections for 1988 are listed below:

Administrative Law
Alaska Native Law
Bankruptcy Law
Business Law
Criminal Defense
Criminal Prosecution
Economics of Law Practice
Estate Planning/Probate Law
Environmental Law
Employment Law

Family Law
Natural Resources Law
Real Estate Law
Taxation Law
Torts Law

The 15 Substantive Law Sections of the Alaska Bar provide a number of opportunities for professional growth and development through:

- o An exchange of information among lawyers with similar legal interests.
- o Continuing legal education programs.
- o Section News, a monthly newsletter of section events and topics of interest.
- o Review of legislative and court actions.
- o A forum to respond to the needs of the community and the profession.

Section membership is open to all active members of the Alaska Bar Association. \$5.00 of a member's bar dues is budgeted to the first section joined by a member. Members may join additional sections for \$10.00 per section. Non-bar members may join a section as a non-voting member for dues of \$10 per year per section. New and renewing section memberships are solicited each April by mail.

Each section is administered by an executive committee composed of at least five members who serve three-year staggered terms. The Chair of each section is elected by the section's membership. The primary responsibilities of the executive committee are to 1) administer the section, 2) publish the annual professional update at each annual meeting, 3) present a CLE seminar at least once every 2 years, and 4) preside at the annual section meeting and election of new executive committee members. Section activities are coordinated by the Bar Assistant Director.

The sections are encouraged to submit articles in their fields of expertise to the Bar Rag, and to Section News, the monthly newsletter published by the Bar office, and to aid the Continuing Legal Education Committee in the presentation of seminars. Over half of the sections have regularly scheduled monthly meetings at which members are briefed on important developments within their area of law, and members outside of Anchorage are encouraged to participate via teleconference. Section chairs also routinely distribute information and case citations to members.

The sections, as necessary, are requested to advise the Board on substantive issues. While the sections cannot speak on behalf of the Alaska Bar Association without prior Board approval, several sections regularly monitor and testify

concerning legislation both in Alaska and in Congress. The Board of Governors has, on occasion, and at the request of some sections, taken positions on certain issues and forwarded those views to the appropriate authorities.

As of December 31, 1988, over 800 bar members were involved in one or more sections. Section activity has increased significantly in 1988. A larger proportion of sections now meet regularly and contribute to the newsletter regarding case citations and legislation of particular interest. Most notably, in 1988, the Tort Law Section, Natural Resources Law Section, Criminal Defense and Criminal Prosecution Sections have increased their membership and activities. At the 1988 Annual Convention, 11 Sections met for their annual meeting and review of updates.

C. The Standing Committees

1. Bar Polls and Elections Committee

The function of this nine member committee is to prepare, at the direction of the Board, polls of the membership on any given number of subjects, e.g., the evaluation of persons seeking judicial appointments.

In addition to formulation of requested polls, the Committee compiles the results of the poll and presents them to the Board.

The other major responsibility of the Committee is to tabulate the results of the yearly elections to membership on the Board of Governors and the Alaska Legal Services Corporation Board of Directors. In addition, it conducts advisory opinion polls for use by the Board in its appointment of lawyer representatives to the Judicial Council, Judicial Conduct Commission, Ninth Circuit Judicial Conference and the ABA Delegate.

2. The Continuing Legal Education Committee

One of the most vital committees of the Alaska Bar is the Continuing Legal Education (CLE) Committee, which is responsible for presenting substantive education programs in order to keep Alaskan lawyers abreast of new developments in the law. The Committee is currently chaired by Bruce A. Bookman. (See Part IV of this Report.)

3. Ethics Committee

Chaired by Kenneth P. Jacobus, the Ethics Committee issues opinions, based on actual circumstances but phrased in hypothetical terms, in order to give guidance to Association members in complying with the Code of Professional Responsibility.

An opinion may be requested by a member in good standing who is concerned about proposed conduct. The Ethics Committee then decides whether the matter may be resolved by issuing an informal opinion or by preparing a formal opinion for consideration by the Board of Governors. Only the Board may issue and publish formal opinions. If a formal opinion is adopted, it is published in the Bar Rag, and circulated to all law libraries. Copies of individual Ethics Opinions are available from the Bar office and a complete set of Ethics Opinions is available in the office for review.

Additionally, Bar Counsel may give informal ethics advice to practitioners who request assistance.

4. Historians of the Alaska Bar

As one of the most unique bar associations, populated through the years by many colorful individuals, it was determined that before the incidents and events become lost, a group would be created to preserve the history of the Alaska Bar. Pamela Cravez chaired this committee in 1988.

5. Law Related Education Committee

The purpose of this fifteen member committee is to present programs to the community and school system which will aid in an understanding of the law and the legal system. The Committee is currently chaired by Philip R. Volland.

A. Bar-School Partnership Program

The Alaska Bar Association and the Alaska Department of Education co-applied and received a grant of over \$3,000 from the American Bar Association to participate in the Bar-School Partnership Program. This program was started by the American Bar Association in 1985 and includes 10 states, with three school districts and three local bar associations participating

in each State. In Alaska, the initial partnerships were established in Anchorage, Mat-Su and Kenai. In 1988, partnerships were established in Fairbanks and Juneau.

A team from the ABA visited Alaska in October to provide orientation and training for lawyers and teachers. They also provided extensive teaching materials for distribution to the lawyers and teachers. Workshops were held in Anchorage, Mat-Su and Kenai, with good attendance by both lawyers and teachers. At the workshops, the participants were shown teaching techniques and ideas, and methods for getting students involved in discussing and analyzing issues.

Kenai and Mat-Su have formed lawyer-teacher committees aimed at getting lawyers into the classroom, and to otherwise act as resources for teachers. In Anchorage, the Law-Related Education Committee added 4 teachers to the committee. They put together a directory of lawyers, for teachers, which includes what areas of law the lawyers would be willing to cover. The committee developed a credit course for teachers. The course, entitled "Law and Contemporary Issues," was accredited by Alaska Pacific University and held in the fall of 1988. Faculty was comprised of over 30 attorneys knowledgeable in different areas of the law. 101 teachers enrolled in the semester long course.

6. Statutes, Bylaws and Rules Committee

This standing committee of twelve persons is charged with responsibility for drafting proposed revisions of the statutes, bylaws, and rules which govern the Alaska Bar. The Board of Governors requests such proposals when it discovers an area that needs clarification or when new guidelines need to be adopted.

D. Special Committees

1. Model Rules Committee

In its August 1983 meeting, the House of Delegates of the American Bar Association adopted a comprehensive re-codification of the code governing a lawyer's conduct. Known as the Model Rules of Professional Conduct, this new statement of ethical requirements provides a clearer statement of a lawyer's responsibility to clients, the courts and the American legal system. The Model Rules have been adopted by a number of states.

The Board of Governors established an eight person study committee. The committee began regular work sessions in 1985 and presented comprehensive proposals and commentary in 1987 on the Model Rules for the review by the Board of Governors. The Board in turn, appointed a subcommittee of the Board of Governors to review the proposals and make recommendations to the Board. In the fall of 1988, the Board and the Committee started holding joint work sessions at each Board meeting to discuss and vote on the more controversial rules before adopting the rules for publication.

2. Substance Abuse Committee

John Reese chairs this committee which put together a program to assist lawyers who have problems with alcohol or drug abuse. Volunteer attorneys will review cases forwarded to the committee by any referring authority, will provide counselling or information to any person inquiring about the identification and availability of substance abuse programs, and perform interventions upon request by persons having a relationship with a substance abusing attorney.

3. Tutoring Committee

This committee consists of a pool of former law examiners, and other attorneys who have had experience in tutoring applicants to take the Alaska bar exam. An orientation/training session was held for prospective tutors on how to tutor an applicant. Emphasis is placed on how to write essay exams, rather than substantive law.

Any applicant who has failed a bar exam may request tutoring assistance, which will be provided at no cost to the applicant. Nineteen applicants requested tutoring assistance in 1988.

VIII. MEMBERSHIP SERVICES

A. ALPS (Attorney Liability Protection Society)

Due to the increasing fluctuations in the cost and availability of professional liability insurance, this committee, chaired by Keith E. Brown, explored alternatives for lawyers to obtain malpractice insurance.

After reviewing several options, the committee recommended to the Board of Governors that the Alaska Bar Association join a Multi-state lawyer-owned insurance company. Alaska joins in this endeavor with states including Delaware, Idaho, Kansas, Montana, Nevada, North Dakota, South Dakota, West Virginia and Wyoming. A corporation called Attorney's Liability Protection Society (ALPS) has been created to handle the formation functions. The ultimate goal is to increase the availability of coverage to Alaska lawyers at rates that are predictable and which avoid wild fluctuations based on policies and practices over which the lawyers have no control. Michael A. Thompson serves as Alaska's director on the ALPS Board of Directors. ALPS began issuing policies in spring of 1988.

In order to be eligible for coverage by the company, Alaskan lawyers are required to contribute \$2,200 as their capital share. Rates will be computed for each participating state based upon the claims experience in that state.

B. LEXIS

The Bar Association sponsors a group program to provide members with access to LEXIS, a computer-assisted legal research service offered by Mead Data Central, (MDC). Participating firms pay a \$25.00 monthly subscription fee. Additionally, all members' use of LEXIS aggregates to take advantage of volume discounts.

C. Group Insurance

The Bar Association sponsors a life insurance program for Bar members with Continental Insurance Company and its subsidiary, Loyalty Life. All members of the Association and employees of their firms are eligible. Unlike the previous life insurance program, the Bar staff does not administer the plan.

The Bar Association also sponsors a group medical program. Medical, dental, vision, life and disability coverage are available to firms ranging in size from sole practitioners to over one hundred employees. The plan is underwritten by Blue Cross of Washington and Alaska.

In 1988, the Board of Governors voted to sponsor a group Disability Insurance program offered by Crown Life Insurance Company.

D. The Alaska Bar Rag

The official publication of the Bar Association is the Alaska Bar Rag. The editor is Ralph R. Beistline. Beginning in November, 1988, the Bar Rag is now published bi-monthly.

E. Section News

This newsletter, which is compiled by the Assistant Director, is printed monthly and goes to all members of all of the substantive law sections.

IX. ADJUNCT INVOLVEMENT

A. The Alaska Bar Foundation

In October, 1972, the Board of Governors established the Alaska Bar Foundation for the purpose of fostering and maintaining the honor and integrity of the profession, improving and facilitating the administration of justice, promoting the study of law and continuing legal education, administering loans and scholarships, and maintaining a law library and research center.

The Foundation was established, pursuant to Section 501(c) (3) of the Internal Revenue Code, as a Not for Profit Corporation, and was incorporated in accordance with the laws of the State of Alaska.

The current Board of Trustees consists of Mary K. Hughes, Winston S. Burbank, John M. Conway, William B. Rozell and Sandra K. Saville.

The Foundation was originally supported by individual contributions. Since 1985, the dues notices have provided for a voluntary dues add-on contribution of \$9.00 to the Foundation. The voluntary add-on was requested in hopes of strengthening the Foundation's assets so that a sizeable fund could be developed over a period of time to be used for law-related education projects, community service programs and scholarships.

The Foundation currently has an active scholarship program. The first scholarships were offered in 1980; in 1988 eight scholarships were awarded: the George Boney Scholarship in the amount of \$1500, and an additional seven at \$1000 each.

1. IOLTA

The Alaska Supreme Court adopted amendments to DR 9-102 in 1986, effective March 15, 1987, establishing a voluntary IOLTA (Interest on Lawyers Trust Accounts) program for the state of Alaska. Beginning March 15, 1987, lawyers may place client trust money, previously held in co-mingled, noninterest-bearing checking accounts, into interest-bearing accounts. Included are those client funds which are expected to be held for such a short duration or which are so small in amount that they could not as a practical matter produce interest for the client if held in a separate interest-bearing account. Funds which reasonably may be expected to generate in excess of \$100 interest to the client may not be deposited in an IOLTA account.

The interest earned on each account is paid periodically to the Alaska Bar Foundation. Designated by the Alaska Supreme Court as the organization to administer the IOLTA program, the Foundation will use the interest income to make grants to non-profit providers of legal services to the poor.

The amount of funds generated by the IOLTA program in 1988 was approximately \$87,977.

The Foundation solicited Requests for Proposals for the first distribution of grants. The Alaska Pro Bono Program received a grant in the amount of \$20,500 to expand 3 areas of service: the Elderlaw Project, the Tuesday Night Bar Advice-Only Clinic and the Pro Se Clinics, and Landlord-tenant intake.

7. The Alaska Law Review

The Alaska Bar publishes, semi-annually, for the benefit of its members and at no additional cost, the Alaska Law Review. Strong emphasis is placed on topics related to the laws of Alaska and contributions to the Review by members of the Bar are actively solicited.

The Alaska Law Review is edited by law students at Duke University in Durham, North Carolina, and includes articles by practicing attorneys, law professors, and notes and comments by Duke law students.

In March, ten law students on the Review visited Alaska for a week to make contact with attorneys here and to gain a better insight into our state. They were hosted by local attorneys and firms, both in homes and at receptions.

C. Alaska Legal Services Corporation

Nine attorneys serve on the Board of Directors of Alaska Legal Services Corporation (ALSC), two from the First Judicial District, one from the Second Judicial District, three from the Third Judicial District, and one from the Fourth Judicial District. Each serves for a term of three years. The ninth attorney on the Board of Directors is the President of the Alaska Bar (or his/her designee). In addition, there are nine alternate members who serve when a regular attorney member is unable to do so. The attorney members are appointed by the Board of Governors after an advisory poll of the Bar membership is conducted.

The ALSC Board of Directors carries out the purpose of the Corporation, which is to provide legal assistance to persons lacking the financial capability to obtain private counsel. It meets at least four times a year and supervises the staff.

D. Alaska Code Revision Commission

The Alaska Code Revision Commission was established in 1976 to review and recommend revisions to the laws of Alaska. The Board of Governors appointed one attorney, Mary K. Hughes, to the Commission.

E. Alaska Commission on Judicial Conduct

Three attorney members who have practiced law in the State for at least ten years are appointed to the Alaska Commission on Judicial Conduct by the Governor from a list of recommendations submitted by the Board of Governors. These appointments are subject to legislative confirmation. The attorney members in 1987 were Patrick T. Brown, James L. Hanley and Vincent P. Vitale.

The Commission has the power to investigate malfeasance or misfeasance on the part of a member of the judiciary, and to recommend to the Supreme Court impeachment, suspension, removal from office, retirement or censure.

F. American Bar Association

Each state bar association has one representative in the House of Delegates of the American Bar Association. The delegate is elected by the active members of the Alaska Bar to serve a two year term. Alaska's current representative is Donna C. Willard.

Her function is to represent the views of the Alaska Bar on all matters which come before the House of Delegates for consideration.

G. Judicial Council

Three attorneys serve staggered six year terms on the Judicial Council. The Council's purpose is to recommend candidates for judicial office and to conduct studies for the improvement of the administration of justice in Alaska.

The attorney members are appointed by the Board of Governors after nominating petitions have been circulated and advisory polls conducted. In 1988, Daniel L. Callahan, William T. Council and James D. Gilmore served as the attorney members.

H. National Conference of Bar Presidents

At the time of their election to office, the President and President Elect of the Alaska Bar become members of the National Conference of Bar Presidents, which meets twice a year in conjunction with the meetings of the American Bar Association. In addition, all past Presidents of the Alaska Bar are members.

Its purpose is to educate and train bar leaders, to keep them abreast of current events, to improve the quality of delivery of legal services, and to improve the administration of justice.

I. Ninth Circuit Judicial Conference

The Ninth Circuit Judicial Conference was established by the Judicial Council of the Ninth Circuit Court of Appeals to consider the business of the courts in the circuit, advise means of improving the administration of justice, and implement decisions regarding the administration of the federal courts.

All the judges in the Ninth Circuit, the president of each state bar association, the United States Attorney, Magistrates, law school representatives, and private practitioners comprise its membership.

In addition to the President of the Bar, Alaska has three other lawyer representatives who are appointed by the presiding judge of the Federal Court in Alaska to serve staggered three year terms. The Bar Association participates in the selection of these three attorney members by soliciting nominations, conducting an advisory poll, and thereafter recommending to the Chief Judge three persons for each vacancy. In 1988, the representatives were Kermit E. Barker, Gary A. Zipkin and Leroy J. Barker.

The lawyer representatives serve without compensation and without reimbursement for expenses.

J. Rocky Mountain Mineral Law Foundation

The Rocky Mountain Mineral Law Foundation, one of the preeminent natural resource organizations in the United States, sponsors continuing legal education programs, publishes books and treatises, provides scholarships and, in general, encourages development of natural resources law.

Its Board of Trustees is comprised of law school representatives, private practitioners, and one appointee from each bar association in the Western states. Joseph J. Perkins, Jr., the Alaska Bar's current representative, serves at the pleasure of the Board of Governors.

K. Western States Bar Conference

Fifteen (15) states are members of the Western States Bar Conference. The conference meets once a year to share the ideas and experiences of the member state bar associations.

The president and president elect of each state bar, as well as all past presidents, are members of the Conference.

X. BUDGET

Table 3 contains the Bar's 1988 audit report. The 1988 report reflects a total revenue of \$1,227,676 with total expenses of \$1,131,603 for a excess of revenues over expenses of \$96,073.

Originally, the Association was budgeted for a loss in 1988 of \$43,028, with projected income of \$1,171,050 and expenses of \$1,214,078. More income than originally anticipated was generated by CLE and the Annual Convention, with each area producing about \$33,000 in revenue above budget. The Board of Governors, Administration, CLE, Discipline, Admissions and Fee Arbitration came in lower than their projected expense.

In 1988, the Board of Governors authorized the purchase of a new computer system. The WANG 2200 had reached the end of its "useful life" and WANG announced it would no longer maintain the system after September, 1989. A loan of \$167,000 was taken out to purchase WANG VS6E hardware and FOCUS software, as well as programming assistance. The equipment arrived in September, with the word processing operational in October. All staff now have a terminal on their desk. The controller is working with the contract programmers to design and code the data processing programs, with a target date of completion summer of 1989.

Table 1

ALASKA BAR

A S S O C I A T I O N

David Mannheimer
1031 W. 4th Avenue, Suite 318
Anchorage, AK 99501
May 25, 1988

Robert H. Wagstaff
President, Board of Governors
Alaska Bar Association
Post Office Box 100279
Anchorage, AK 99510

Dear Mr. Wagstaff:

This letter is written pursuant to Section 3 of Rule 4 of the Alaska Bar Rules and constitutes certification of the results of the Alaska Bar Examination given February 23, 24 and 25, 1988. Attached is a copy of the Bar Examination essay questions, the guides utilized by the graders of those questions, and the essays selected as "benchmarks" (i.e., those essays representative of each of the five possible points on the grading scale for each of the ten essays). A copy of the Multistate Bar Examination (MBE) is not included for your review. This letter shall constitute the written report of the Committee of Law Examiners pursuant to Rule 4.

A total of 58 applicants participated in the February, 1988 Bar Examination. The performance of each examinee is also attached.

The examination consisted of three parts. The first day of the examination consisted of three "long" essay questions given in the morning and six "short" essay questions which were given in the afternoon. The research/analysis portion of the examination consisted of one essay question given on the morning of the third day. The MBE, a multiple-choice examination, was given on the second day of the examination.

In accordance with Alaska Bar Rule 4, Section 6, the Committee submitted the weighted, standardized essay scores of the applicants to the National Conference of Bar Examiners for combining with the MBE scores.

May 25, 1988


The components of the exam were weighted as follows: Essay portion, 50%; MBE, 50%; with the essay portion sub-weighted as follows: the three long essays, 30%; the six short essays, 45%; the research/analysis question, 25%. A combined score of 140 or above was passing.

The Committee read the essay and research answers during the months of March and April, 1988. The results of the February, 1988 examination were certified by the Committee today, May 25, 1988, after the evaluation was completed and the statistics were compiled.

Of the 58 applicants, 42 (72%) received a combined score of 140 or greater. Subject to other eligibility requirements contained in the Alaska Bar Rules, the Committee recommends to the Board of Governors that the 42 applicants achieving passing scores on the February, 1988 Alaska Bar Examination be certified to the Alaska Supreme Court for membership in the Bar and admission to the practice of law in Alaska.

Respectfully submitted,

COMMITTEE OF LAW EXAMINERS



David Mannheimer
Chair

vu

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2/88 EXAM PASS/FAIL RESULT

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Pass/Fail Results

	5	10	15	20	25	30	35	40	45	50
	↑	↑	↑	↑	↑	↑	↑	↑	↑	↑
FAIL	[[[[[[[[[[
(16)	[#####									
	[[[[[[[[[[
PASS	[[[[[[[[[[
(42)	[#####									
	[[[[[[[[[[
	[[[[[[[[[[
	↑	↑	↑	↑	↑	↑	↑	↑	↑	↑
# of Applicants	5	10	15	20	25	30	35	40	45	50

=====

2/88 EXAM APPLICANT PROFILE

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GENDER VS./ PASS-FAIL RESULT

		4	8	12	16	20	24	28	32	36	40
		↑	↑	↑	↑	↑	↑	↑	↑	↑	↑
		[[[[[[[[[[
Female	(20)	[#####	[#####	[#####	[#####	[#####	[#####	[#####	[#####	[#####	[#####
		[[[[[[[[[[
Fail	(6)	[#####	[[[[[[[[[
		[[[[[[[[[[
Pass	(14)	[#####	[#####	[#####	[#####	[#####	[#####	[#####	[#####	[#####	[#####
		[[[[[[[[[[
=====											
Male	(38)	[#####	[#####	[#####	[#####	[#####	[#####	[#####	[#####	[#####	[#####
		[[[[[[[[[[
Fail	(10)	[#####	[[[[[[[[[
		[[[[[[[[[[
Pass	(28)	[#####	[#####	[#####	[#####	[#####	[#####	[#####	[#####	[#####	[#####
		[[[[[[[[[[
		[[[[[[[[[[
# of Applicants		↑	↑	↑	↑	↑	↑	↑	↑	↑	↑
		4	8	12	16	20	24	28	32	36	40

2/38 EXAM APPLICANT PROFILE

NO. OF TIMES TAKEN/ PASS-FAIL RESULT

		5	10	15	20	25	30	35	40	45	50
		↑	↑	↑	↑	↑	↑	↑	↑	↑	↑
1st Time Taken	(41)	[#####	[#####	[#####	[#####	[#####	[#####	[#####	[#####	[#####	[#####
Fail	(6)	[#####	[#####	[#####	[#####	[#####	[#####	[#####	[#####	[#####	[#####
Pass	(35)	[#####	[#####	[#####	[#####	[#####	[#####	[#####	[#####	[#####	[#####
2nd Time Taken	(12)	[#####	[#####	[#####	[#####	[#####	[#####	[#####	[#####	[#####	[#####
Fail	(7)	[#####	[#####	[#####	[#####	[#####	[#####	[#####	[#####	[#####	[#####
Pass	(5)	[#####	[#####	[#####	[#####	[#####	[#####	[#####	[#####	[#####	[#####
3rd Time Taken	(1)	[#	[#####	[#####	[#####	[#####	[#####	[#####	[#####	[#####	[#####
Pass	(1)	[#	[#####	[#####	[#####	[#####	[#####	[#####	[#####	[#####	[#####
6th Time Taken	(2)	[##	[#####	[#####	[#####	[#####	[#####	[#####	[#####	[#####	[#####
Fail	(2)	[##	[#####	[#####	[#####	[#####	[#####	[#####	[#####	[#####	[#####
7th Time Taken	(1)	[#	[#####	[#####	[#####	[#####	[#####	[#####	[#####	[#####	[#####
Fail	(1)	[#	[#####	[#####	[#####	[#####	[#####	[#####	[#####	[#####	[#####
8th Time Taken	(1)	[#	[#####	[#####	[#####	[#####	[#####	[#####	[#####	[#####	[#####
Pass	(1)	[#	[#####	[#####	[#####	[#####	[#####	[#####	[#####	[#####	[#####
# of Applicants		5	10	15	20	25	30	35	40	45	50

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2/88 EXAM APPLICANT PROFILE

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Law School vs./ Pass-Fail Result

		1	2	3	4	5	6	7	8	9	10
		↑	↑	↑	↑	↑	↑	↑	↑	↑	↑
Antioch School of Law	(1)[#####	[[[[[[[[[[
F	(1)[#####	[[[[[[[[[[
Arizona State University	(1)[#####	[[[[[[[[[[
P	(1)[#####	[[[[[[[[[[
California Western	(1)[#####	[[[[[[[[[[
F	(1)[#####	[[[[[[[[[[
Cornell Law School	(1)[#####	[[[[[[[[[[
F	(1)[#####	[[[[[[[[[[
Drake University Law School	(1)[#####	[[[[[[[[[[
P	(1)[#####	[[[[[[[[[[
George Washington	(2)[#####	[[[[[[[[[[
F	(1)[#####	[[[[[[[[[[
P	(1)[#####	[[[[[[[[[[
Golden Gate University	(2)[#####	[[[[[[[[[[
P	(2)[#####	[[[[[[[[[[
Gonzaga University	(2)[#####	[[[[[[[[[[
F	(1)[#####	[[[[[[[[[[
P	(1)[#####	[[[[[[[[[[
Harvard University	(1)[#####	[[[[[[[[[[
P	(1)[#####	[[[[[[[[[[
Marquette University	(1)[#####	[[[[[[[[[[
P	(1)[#####	[[[[[[[[[[
Memphis State University	(1)[#####	[[[[[[[[[[
P	(1)[#####	[[[[[[[[[[
Northeastern University	(2)[#####	[[[[[[[[[[
P	(2)[#####	[[[[[[[[[[
Northwestern University	(1)[#####	[[[[[[[[[[
P	(1)[#####	[[[[[[[[[[
Pepperdine University	(2)[#####	[[[[[[[[[[
P	(2)[#####	[[[[[[[[[[
Southern Illinois	(1)[#####	[[[[[[[[[[
F	(1)[#####	[[[[[[[[[[
		[[[[[[[[[[
# of Applicants		↑	↑	↑	↑	↑	↑	↑	↑	↑	↑
		1	2	3	4	5	6	7	8	9	10

=====

2/88 EXAM APPLICANT PROFILE

=====

Law School vs./ Pass-Fail Result

		1	2	3	4	5	6	7	8	9	10
		↑	↑	↑	↑	↑	↑	↑	↑	↑	↑
		[[[[[[[[[[
The University of	(1)[#####	[[[[[[[[[[
P Kansas	(1)[#####	[[[[[[[[[[
University of Arizona	(1)[#####	[[[[[[[[[[
P	(1)[#####	[[[[[[[[[[
University of Arkansas	(1)[#####	[[[[[[[[[[
F	(1)[#####	[[[[[[[[[[
University of California	(2)[#####	[[[[[[[[[[
P	(2)[#####	[[[[[[[[[[
University of Chicago	(1)[#####	[[[[[[[[[[
P	(1)[#####	[[[[[[[[[[
University of Denver	(2)[#####	[[[[[[[[[[
P	(2)[#####	[[[[[[[[[[
University of Houston	(1)[#####	[[[[[[[[[[
F	(1)[#####	[[[[[[[[[[
University of Idaho	(1)[#####	[[[[[[[[[[
F	(1)[#####	[[[[[[[[[[
University of Kentucky	(1)[#####	[[[[[[[[[[
P	(1)[#####	[[[[[[[[[[
University of Maine	(1)[#####	[[[[[[[[[[
P	(1)[#####	[[[[[[[[[[
University of Maryland	(1)[#####	[[[[[[[[[[
P	(1)[#####	[[[[[[[[[[
University of Michigan	(1)[#####	[[[[[[[[[[
P	(1)[#####	[[[[[[[[[[
University of New Mexico	(1)[#####	[[[[[[[[[[
P	(1)[#####	[[[[[[[[[[
University of North	(1)[#####	[[[[[[[[[[
P Dakota	(1)[#####	[[[[[[[[[[
University of Notre	(3)[#####	[[[[[[[[[[
P Dame	(3)[#####	[[[[[[[[[[
University of Oregon	(2)[#####	[[[[[[[[[[
	[[[[[[[[[[[
# of Applicants		↑	↑	↑	↑	↑	↑	↑	↑	↑	↑
		1	2	3	4	5	6	7	8	9	10

=====

2/88 EXAM APPLICANT PROFILE

=====

Law School vs./ Pass-Fail Result

		1	2	3	4	5	6	7	8	9	10
		↑	↑	↑	↑	↑	↑	↑	↑	↑	↑
P	(2)	[#####	[[[[[[[[[
University of Oregon	(2)	[#####	[[[[[[[[[
P	(2)	[#####	[[[[[[[[[
University of Puget Sound	(5)	[#####	[[[[[[[[[
F	(3)	[#####	[[[[[[[[[
P	(2)	[#####	[[[[[[[[[
University of Texas	(1)	[#####	[[[[[[[[[
P	(1)	[#####	[[[[[[[[[
University of Wisconsin	(1)	[#####	[[[[[[[[[
P	(1)	[#####	[[[[[[[[[
University of Wyoming	(2)	[#####	[[[[[[[[[
F	(1)	[#####	[[[[[[[[[
P	(1)	[#####	[[[[[[[[[
Valparaiso University	(1)	[#####	[[[[[[[[[
F	(1)	[#####	[[[[[[[[[
Vermont Law School	(1)	[#####	[[[[[[[[[
P	(1)	[#####	[[[[[[[[[
Whittier College School of Law	(1)	[#####	[[[[[[[[[
F	(1)	[#####	[[[[[[[[[
Willamette University	(5)	[#####	[[[[[[[[[
F	(1)	[#####	[[[[[[[[[
P	(4)	[#####	[[[[[[[[[
		[[[[[[[[[[
# of Applicants		↑	↑	↑	↑	↑	↑	↑	↑	↑	↑
		1	2	3	4	5	6	7	8	9	10

ALASKA BAR ASSOCIATION

Carolyn Jones
1031 W. 4th Avenue, Suite 200
Anchorage, AK 99501
October 20, 1988

Larry R. Weeks
President, Board of Governors
Alaska Bar Association
Post Office Box 100279
Anchorage, AK 99510

Dear Mr. Weeks:

This letter is written pursuant to Section 3 of Rule 4 of the Alaska Bar Rules and constitutes certification of the results of the Alaska Bar Examination given July 26, 27 and 28, 1988. Attached is a copy of the Bar Examination essay questions, the guides utilized by the graders of those questions, and the essays selected as "benchmarks" (i.e., those essays representative of each of the five possible points on the grading scale for each of the ten essays). A copy of the Multistate Bar Examination (MBE) is not included for your review. This letter shall constitute the written report of the Committee of Law Examiners pursuant to Rule 4.

A total of 84 applicants participated in the July, 1988 Bar Examination. The performance of each examinee is also attached.

The examination consisted of three parts. The first day of the examination consisted of three "long" essay questions given in the morning and six "short" essay questions which were given in the afternoon. The research/analysis portion of the examination consisted of one essay question given on the morning of the third day. The MBE, a multiple-choice examination, was given on the second day of the examination.

In accordance with Alaska Bar Rule 4, Section 6, the Committee submitted the weighted, standardized essay scores of the applicants to the National Conference of Bar Examiners for combining with the MBE scores.

October 20, 1988

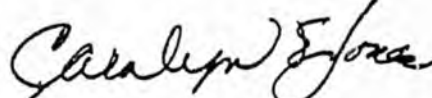
The components of the exam were weighted as follows: Essay portion, 50%; MBE, 50%; with the essay portion sub-weighted as follows: the three long essays, 30%; the six short essays, 45%; the research/analysis question, 25%. A combined score of 140 or above was passing.

The Committee read the essay and research answers during the months of August and September, 1988. The results of the July, 1988 examination were certified by the Committee today, October 20, 1988, after the evaluation was completed and the statistics were compiled.

Of the 84 applicants, 52 (62%) received a combined score of 140 or greater. Subject to other eligibility requirements contained in the Alaska Bar Rules, the Committee recommends to the Board of Governors that the 52 applicants achieving passing scores on the July, 1988 Alaska Bar Examination be certified to the Alaska Supreme Court for membership in the Bar and admission to the practice of law in Alaska.

Respectfully submitted,

COMMITTEE OF LAW EXAMINERS


Carolyn Jones
Chair

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7/88 EXAM PASS/FAIL RESULT

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Pass/Fail Results

	6	12	18	24	30	36	42	48	54	60
Fail	(32)	#####	#####	#####	#####	#####	#####	#####	#####	#####
Pass	(52)	#####	#####	#####	#####	#####	#####	#####	#####	#####
# of occurrences	6	12	18	24	30	36	42	48	54	60

JULY 1988

GENDER VS./ PASS-FAIL RESULT

		6	12	18	24	30	36	42	48	54	60
		↑	↑	↑	↑	↑	↑	↑	↑	↑	↑
Female	(31)	[[[[[[[[[[
Fail	(14)	[[[[[[[[[[
Pass	(17)	[[[[[[[[[[
Male	(53)	[[[[[[[[[[
Fail	(18)	[[[[[[[[[[
Pass	(35)	[[[[[[[[[[
# of occurrence		↑	↑	↑	↑	↑	↑	↑	↑	↑	↑

JULY 1988

NO. OF TIMES TAKEN/ PASS-FAIL RESULT

		7	14	21	28	35	42	49	56	63	70
		↑	↑	↑	↑	↑	↑	↑	↑	↑	↑
1st time taken	(68)	[#####	[#####	[#####	[#####	[#####	[#####	[#####	[#####	[#####	[#####
Fail	(20)	[#####	[#####	[#####	[#####	[#####	[#####	[#####	[#####	[#####	[#####
Pass	(48)	[#####	[#####	[#####	[#####	[#####	[#####	[#####	[#####	[#####	[#####
2nd	(7)	[#####	[#####	[#####	[#####	[#####	[#####	[#####	[#####	[#####	[#####
Fail	(5)	[#####	[#####	[#####	[#####	[#####	[#####	[#####	[#####	[#####	[#####
Pass	(2)	[#####	[#####	[#####	[#####	[#####	[#####	[#####	[#####	[#####	[#####
3rd	(3)	[#####	[#####	[#####	[#####	[#####	[#####	[#####	[#####	[#####	[#####
Fail	(2)	[#####	[#####	[#####	[#####	[#####	[#####	[#####	[#####	[#####	[#####
Pass	(1)	[#####	[#####	[#####	[#####	[#####	[#####	[#####	[#####	[#####	[#####
4th	(2)	[#####	[#####	[#####	[#####	[#####	[#####	[#####	[#####	[#####	[#####
Fail	(1)	[#####	[#####	[#####	[#####	[#####	[#####	[#####	[#####	[#####	[#####
Pass	(1)	[#####	[#####	[#####	[#####	[#####	[#####	[#####	[#####	[#####	[#####
5th	(1)	[#####	[#####	[#####	[#####	[#####	[#####	[#####	[#####	[#####	[#####
Fail	(1)	[#####	[#####	[#####	[#####	[#####	[#####	[#####	[#####	[#####	[#####
6th	(1)	[#####	[#####	[#####	[#####	[#####	[#####	[#####	[#####	[#####	[#####
Fail	(1)	[#####	[#####	[#####	[#####	[#####	[#####	[#####	[#####	[#####	[#####
8th	(1)	[#####	[#####	[#####	[#####	[#####	[#####	[#####	[#####	[#####	[#####
Fail	(1)	[#####	[#####	[#####	[#####	[#####	[#####	[#####	[#####	[#####	[#####
9th	(1)	[#####	[#####	[#####	[#####	[#####	[#####	[#####	[#####	[#####	[#####
Fail	(1)	[#####	[#####	[#####	[#####	[#####	[#####	[#####	[#####	[#####	[#####
# of occurrence		7	14	21	28	35	42	49	56	63	70

JULY APPLICANT ROSTER

LAW SCHOOL/ EXAM-P/F?

		2	4	6	8	10	12	14	16	18	20
		↑	↑	↑	↑	↑	↑	↑	↑	↑	↑
Arizona State University	(2) [#####	[[[[[[[[[[
P	(2) [#####	[[[[[[[[[[
Boston University	(1) [##	[[[[[[[[[[
F	(1) [##	[[[[[[[[[[
Brigham Young University	(1) [##	[[[[[[[[[[
P	(1) [##	[[[[[[[[[[
California Western	(2) [#####	[[[[[[[[[[
F	(1) [##	[[[[[[[[[[
P	(1) [##	[[[[[[[[[[
Case Western Reserve	(1) [##	[[[[[[[[[[
F	(1) [##	[[[[[[[[[[
Franklin Pierce Law	(1) [##	[[[[[[[[[[
F	(1) [##	[[[[[[[[[[
Georgetown University	(1) [##	[[[[[[[[[[
F	(1) [##	[[[[[[[[[[
Gonzaga University	(3) [#####	[[[[[[[[[[
F	(1) [##	[[[[[[[[[[
P	(2) [#####	[[[[[[[[[[
Harvard University	(3) [#####	[[[[[[[[[[
F	(1) [##	[[[[[[[[[[
P	(2) [#####	[[[[[[[[[[
Lewis & Clark College	(3) [#####	[[[[[[[[[[
F	(1) [##	[[[[[[[[[[
P	(2) [#####	[[[[[[[[[[
McGeorge School of Law	(3) [#####	[[[[[[[[[[
P	(3) [#####	[[[[[[[[[[
Northeastern University	(1) [##	[[[[[[[[[[
P	(1) [##	[[[[[[[[[[
O.W. Coburn School	(1) [##	[[[[[[[[[[
F	(1) [##	[[[[[[[[[[
Ohio State University	(1) [##	[[[[[[[[[[
F	(1) [##	[[[[[[[[[[
Southern Illinois	(3) [#####	[[[[[[[[[[
		[[[[[[[[[[

of occurrence

JULY APPLICANT ROSTER

LAW SCHOOL/ EXAM-P/F?

		2	4	6	8	10	12	14	16	18	20
		↑	↑	↑	↑	↑	↑	↑	↑	↑	↑
F	(2)[#####	[[[[[[[[[[
P	(1)[##	[[[[[[[[[[
Touro College School	(1)[##	[[[[[[[[[[
F	(1)[##	[[[[[[[[[[
University of Arizona	(1)[##	[[[[[[[[[[
F	(1)[##	[[[[[[[[[[
University of Arkansas	(1)[##	[[[[[[[[[[
P	(1)[##	[[[[[[[[[[
University of California	(3)[#####	[[[[[[[[[[
P	(3)[#####	[[[[[[[[[[
University of Colorado	(1)[##	[[[[[[[[[[
P	(1)[##	[[[[[[[[[[
University of Denver	(4)[#####	[[[[[[[[[[
F	(2)[#####	[[[[[[[[[[
P	(2)[#####	[[[[[[[[[[
University of Idaho	(2)[#####	[[[[[[[[[[
P	(2)[#####	[[[[[[[[[[
University of Illinois	(1)[##	[[[[[[[[[[
P	(1)[##	[[[[[[[[[[
University of Iowa	(1)[##	[[[[[[[[[[
P	(1)[##	[[[[[[[[[[
University of Michigan	(1)[##	[[[[[[[[[[
P	(1)[##	[[[[[[[[[[
University of New Mexico	(1)[##	[[[[[[[[[[
P	(1)[##	[[[[[[[[[[
University of Oregon	(9)[#####	[[[[[[[[[[
F	(2)[#####	[[[[[[[[[[
P	(7)[#####	[[[[[[[[[[
University of Puget Sound	(13)[#####	[[[[[[[[[[
F	(5)[#####	[[[[[[[[[[
P	(8)[#####	[[[[[[[[[[
University of South Dakota	(1)[##	[[[[[[[[[[
		[[[[[[[[[[
# of occurrence		2	4	6	8	10	12	14	16	18	20

JULY APPLICANT ROSTER

LAW SCHOOL/ EXAM-P/F?

			2	4	6	8	10	12	14	16	18	20
			↑	↑	↑	↑	↑	↑	↑	↑	↑	↑
P	(1)	[##	[[[[[[[[[[
University of Tennessee	(1)	[##	[[[[[[[[[[
F	(1)	[##	[[[[[[[[[[
University of Utah	(1)	[##	[[[[[[[[[[
P	(1)	[##	[[[[[[[[[[
University of Washington	(5)	[#####	[[[[[[[[[[
F	(1)	[##	[[[[[[[[[[
P	(4)	[#####	[[[[[[[[[[
Vermont Law School	(1)	[##	[[[[[[[[[[
F	(1)	[##	[[[[[[[[[[
Villanova University	(1)	[##	[[[[[[[[[[
P	(1)	[##	[[[[[[[[[[
Whittier College School	(2)	[#####	[[[[[[[[[[
F	(1)	[##	[[[[[[[[[[
P	(1)	[##	[[[[[[[[[[
Willamette University	(5)	[#####	[[[[[[[[[[
F	(4)	[#####	[[[[[[[[[[
P	(1)	[##	[[[[[[[[[[
William Mitchell College	(1)	[##	[[[[[[[[[[
F	(1)	[##	[[[[[[[[[[
			↑	↑	↑	↑	↑	↑	↑	↑	↑	↑
# of occurrence			2	4	6	8	10	12	14	16	18	20

Table 2

-73-

City	Available Attorneys (1988)	Registered in 1987	Registered in 1988	Plus/ Minus	Number 1983	of 1984	cases 1985	closed 1986	by year 1987	1988	Cases Pending
Haines	1	1	1			3	3				3
Juneau	135	126	111	-15	7	22	102	180	239	147	38
Ketchikan	32	18	19	1		2	2	14	19	12	11
Petersburg	3	2	2					1	1		1
Sitka	14	11	10	-1		3	3	3	3	9	5
Wrangell	3	1	1								1
Barrow	10	5	10	5			1	1	2	8	6
Kotzebue	6	2	1	-1		1	1	1	2	78	0
Nome	7	5	5				1	3	1	3	8
Aniak	1	0	1	1							0
Anchorage	1050	444	471	27	26	125	452	850	1167	1142	147
Cordova	1	2	1	-1		1		1		2	1
Dillingham	4	3	3	0				2			1
Eagle River	1	2	3	1			4	2		12	4
Homer	10	5	7	2			2	7	11	37	9
King Salmon	1	1	1	0				1			0
Kodiak	18	5	11	6		2	3	2	6	26	8
Palmer	15	5	5				1	5	9	4	3
Sold/Kenai	30	11	10	-1		1	4	7	15	27	7
Valdez	2	1	2	1				1	2	2	2
Wasilla	15	10	10			1	3	8	26	65	8
Willow	1	1	1				1		1		0
Bethel	5	7	2	-5				1	5		4
Fairbanks	132	102	100	-2		25	143	137	165	135	39
Kipnuk	1	0	1	1					2		0
OUT OF STATE		7	12	5			1	3		2	5
TOTALS:	1500	777	801	24	33	185	727	1223	1778	1711	311
		\$47.5	\$53.4								

Number of	Volunteers in past	In 1986:	In 1985:	In 1984:	In 1983:	:	Doctors:	Court Reps.:	C.P.A.'s:	P.Invest.:	Paralegals:
		683	563	405	259	:	116	37	7	7	10

Table 3

ALASKA BAR ASSOCIATION

BALANCE SHEETS
December 31, 1988

ASSETS	<u>General Fund</u>	<u>Client Security Fund</u>	<u>Total All Funds</u>
CURRENT ASSETS			
Cash	\$ 205,465	\$ 16,984	\$ 222,449
Time certificates of deposit, at cost			
Unrestricted	444,367	274,283	718,650
Restricted (Note 4)	167,000	-	167,000
Accounts receivable	529,318	-	529,318
Note receivable	10,000	-	10,000
Accrued interest receivable	21,256	7,000	28,256
Due from general fund	-	22,991	22,991
Prepaid expenses	23,851	-	23,851
	<u>1,401,257</u>	<u>321,258</u>	<u>1,722,515</u>
PROPERTY AND EQUIPMENT, at cost			
Video tape library and equipment	12,645	-	12,645
Office furniture, equipment and leasehold improvements	320,898	-	320,898
	333,543	-	333,543
Less accumulated depreciation and amortization	(167,525)	-	(167,525)
	<u>166,018</u>	<u>-</u>	<u>166,018</u>
OTHER ASSET, deposit	6,312	-	6,312
	<u>\$1,573,587</u>	<u>\$ 321,258</u>	<u>\$1,894,845</u>

The Notes to Financial Statements are an integral part of this statement.

	<u>General Fund</u>	<u>Client Security Fund</u>	<u>Total All Funds</u>
LIABILITIES AND FUND BALANCES			
CURRENT LIABILITIES			
Current portion of long term debt (Note 4)	\$ 43,845	\$ -	\$ 43,845
Accounts payable and accrued expenses	21,101	-	21,101
Due to Bar Foundation	3,033	-	3,033
Due to other funds	22,991	-	22,991
Deferred revenue	<u>749,373</u>	<u>22,990</u>	<u>772,363</u>
Total current liabilities	<u>840,343</u>	<u>22,990</u>	<u>863,333</u>
 LONG TERM DEBT, net of current maturities (Note 4)	 <u>44,435</u>	 <u>-</u>	 <u>44,435</u>
 COMMITMENTS (Note 3)			
 FUND BALANCES			
Unrestricted			
Designated by the Board for:			
Working capital	200,000	-	200,000
Asset acquisition	57,491	-	57,491
Undesignated	<u>431,318</u>	<u>298,268</u>	<u>729,586</u>
	<u>688,809</u>	<u>298,268</u>	<u>987,077</u>
	<u>\$1,573,587</u>	<u>\$ 321,258</u>	<u>\$1,894,845</u>

ALASKA BAR ASSOCIATION

STATEMENT OF REVENUES AND EXPENSES
For the Year Ended December 31, 1988

	General Fund	Client Security Fund	Total All Funds
Revenue			
Dues	\$ 697,310	\$ 22,470	\$ 719,780
Admission fees	114,775	-	114,775
Continuing legal education	139,535	-	139,535
Lawyer referral fees	55,883	-	55,883
Annual meeting	73,415	-	73,415
Interest on investments	58,368	19,392	77,760
Lexis service	15,637	-	15,637
Other	72,753	-	72,753
	<u>1,227,676</u>	<u>41,862</u>	<u>1,269,538</u>
Total revenue			
Expenses			
Admissions	136,905	-	136,905
Board of Governors	26,732	-	26,732
Discipline	295,584	-	295,584
Administration	256,660	-	256,660
Referrals	33,992	-	33,992
Continuing legal education	172,993	-	172,993
Fee arbitration	38,897	-	38,897
Lexis service	19,487	-	19,487
Newsletter	35,557	-	35,557
Annual meeting	58,825	-	58,825
Other	55,971	-	55,971
	<u>1,131,603</u>	<u>-</u>	<u>1,131,603</u>
Total expenses			
Excess of revenues over expenses	<u>\$ 96,073</u>	<u>\$ 41,862</u>	<u>\$ 137,935</u>

The Notes to Financial Statements are an integral part of this statement.

ALASKA BAR ASSOCIATION

STATEMENT OF CHANGES IN FUND BALANCES
For the Year Ended December 31, 1988

	General Fund			Total
	Designated for Working Capital	Designated For Asset Acquisition	Undesignated	
Fund balances, beginning	\$200,000	\$ 50,451	\$342,285	\$592,736
Excess of revenue over expenses	-	-	96,073	96,073
Transfer of designated funds	-	7,040	(7,040)	-
Fund balances, ending	<u>\$200,000</u>	<u>\$ 57,491</u>	<u>\$431,718</u>	<u>\$688,809</u>

The Notes to Financial Statements are an integral part of this statement.

<u>Client Security Fund</u>	<u>Total All Funds</u>
\$256,406	\$849,142
41,862	137,935
-	-
<u>\$298,268</u>	<u>\$987,077</u>

ALASKA BAR ASSOCIATION

STATEMENT OF CASH FLOWS
For the Year Ended December 31, 1988

	General Fund	Client Security Fund	Total All Funds
CASH FLOWS FROM OPERATING ACTIVITIES:			
Cash receipts from:			
Member dues and program fees	\$1,176,923	\$ 22,470	\$1,199,393
Interest income	51,371	15,420	66,791
Cash payments for:			
Program expenses	(247,935)	-	(247,935)
Salaries and related expenses	(513,749)	-	(513,749)
Other general and administrative expenses	(336,363)	-	(336,363)
Interest expense	(3,207)	-	(3,207)
Net cash provided by operations	127,040	37,890	164,930
CASH FLOWS FROM INVESTING ACTIVITIES:			
Cash receipts from sale and redemption of certificates of deposit	786,452	216,400	1,002,852
Cash payments for:			
Purchase of certificates of deposit	(897,708)	(281,039)	(1,178,747)
Note receivable proceeds	(10,000)	-	(10,000)
Purchase of furniture and equipment	(131,190)	-	(131,190)
Net cash applied to investing activities	(252,446)	(64,639)	(317,085)
CASH FLOWS FROM FINANCING ACTIVITIES:			
Proceeds from long term debt	106,887	-	106,887
Principal payments on long term debt	(18,607)	-	(18,607)
Net cash provided by financing activities	88,280	-	88,280
Net decrease in cash and cash equivalents	(37,126)	(26,749)	(63,875)
Cash and cash equivalents at beginning of period	242,591	43,733	286,324
Cash and cash equivalents at end of period	<u>\$ 205,465</u>	<u>\$ 16,984</u>	<u>\$ 222,449</u>

(Continued)

The Notes to Financial Statements are an integral part of this statement.

ALASKA BAR ASSOCIATION

STATEMENT OF CASH FLOWS, Continued
For the Year Ended December 31, 1988

	<u>General Fund</u>	<u>Client Security Fund</u>	<u>Total All Funds</u>
RECONCILIATION OF NET INCOME TO NET CASH PROVIDED BY OPERATIONS:			
Net income	\$ 96,073	\$ 41,862	\$ 137,935
Adjustments to reconcile net income to net cash provided by operating activities:			
Depreciation	30,709	-	30,709
Decrease (increase) in accounts receivable	524	(250)	274
Increase in accrued interest receivable	(6,997)	(3,972)	(10,969)
Decrease in prepaid expenses	4,307	-	4,307
Decrease in accounts payable and accrued expenses	(7,310)	-	(7,310)
Increase in due to Bar Foundation	2,394	-	2,394
Increase in due to other funds	249	-	249
Increase in deferred revenue	7,091	250	7,341
	<u>30,967</u>	<u>(3,972)</u>	<u>26,995</u>
Total adjustments			
Net cash provided by operations	<u>\$ 127,040</u>	<u>\$ 37,890</u>	<u>\$ 164,930</u>

The Notes to Financial Statements are an integral part of this statement.

NOTES TO FINANCIAL STATEMENTS

Note 1. Significant Accounting policies

The accounting policies relative to the carrying value of the time certificates of deposit and property and equipment are indicated in the captions on the balance sheet. Other significant accounting policies are as follows:

Depreciation:

Depreciation is computed using the straight-line method which amortizes the costs of assets evenly over their estimated useful lives.

Income Taxes:

The Association is an instrumentality of the State of Alaska whose activities are exempt from taxation under the Internal Revenue Code.

Cash Flows

For purposes of the statement of cash flows, the Association considers all highly liquid debt instruments purchased with a maturity of three months or less to be cash equivalents.

Note 2. Employee Pension Plan

The Association established an Employee Pension Plan in April 1983, effective January 1, 1983. The plan is a defined contribution plan and covers all employees who have completed one year of service and who are twenty-one years of age. The Association's contributions are 5 percent of the compensation of each participant; contributions for 1988 totaled \$13,169.

Note 3. Lease Commitments

The Association leases its office facilities and certain office equipment under noncancellable long-term leases. The office lease expires December 31, 1990 and the equipment lease expires in July, 1989. The minimum future lease payments under these operating leases are as follows:

	1989	76,918
	1990	<u>78,965</u>
Total future minimum lease payments		<u>\$155,883</u>

NOTES TO FINANCIAL STATEMENTS, Continued

Note 4. Long Term Debt

Long term debt consists of a note payable to Rainier Bank Alaska, secured by time certificates of deposits. The note is payable in monthly installments of \$4,196, including 9.5 percent interest. The note balance at December 31, 1988 is as follows:

Loan balance	\$ 88,280
Less current maturities	<u>43,845</u>
	<u>\$ 44,435</u>

Required principal payments on the note are as follows:

1989	43,845
1990	<u>44,435</u>
	<u>\$88,280</u>

ALASKA BAR ASSOCIATION

REVENUE AND EXPENSE STATEMENT DETAIL

GENERAL FUND EXPENSES

Year Ended December 31, 1988

	<u>Admissions</u>	<u>Board of Governors</u>	<u>Discipline</u>	<u>Adminis- tration</u>	<u>Referrals</u>
Salaries and related expenses	\$ 64,074	\$ -	\$ 205,782	\$ 149,886	\$ 14,316
Rent	17,926	800	25,789	16,598	2,993
Grading	25,039	-	-	-	-
Litigation	-	-	1,917	-	-
Office supplies and expense	8,060	8,352	14,358	17,420	1,246
Telephone	1,256	764	3,600	2,842	4,392
Travel	-	16,816	7,442	6,234	-
Contract services	-	-	5,158	-	-
Equipment lease	2,962	-	9,916	3,015	1,481
Postage	-	-	-	19,130	-
Accounting fees	-	-	-	8,271	-
Insurance	-	-	-	16,088	-
Repairs and maintenance	1,750	-	5,832	4,163	875
Depreciation and amortization	3,473	-	11,578	8,244	1,737
Advertising	-	-	-	-	6,952
Miscellaneous	4,365	-	4,212	4,769	-
Bar exam questions	8,000	-	-	-	-
Seminar costs	-	-	-	-	-
Lexis service	-	-	-	-	-
Consultant review	-	-	-	-	-
Computer system training	-	-	-	-	-
Committee expenses	-	-	-	-	-
Duke/Alaska Law Review	-	-	-	-	-
Annual meeting expense	-	-	-	-	-
Substantive law sections	-	-	-	-	-
Loan interest and fees	-	-	-	-	-
	<u>\$ 136,905</u>	<u>\$ 26,732</u>	<u>\$ 295,584</u>	<u>\$ 256,660</u>	<u>\$ 33,992</u>

<u>Continuing Education</u>	<u>Fee Arbit- tration</u>	<u>Lexis Service</u>	<u>Newsletter</u>	<u>Other</u>	<u>Total</u>
\$ 49,771	\$ 26,336	\$ 3,220	\$ -	\$ -	\$ 513,385
14,217	4,643	645	-	-	83,611
-	-	-	-	-	25,039
-	-	-	-	-	1,917
2,389	3,052	623	-	-	55,500
1,180	773	-	-	-	14,807
2,756	-	-	-	-	33,248
-	-	-	35,557	-	40,715
1,728	1,481	267	-	-	20,850
-	-	-	-	-	19,130
-	-	-	-	-	8,271
-	-	-	-	-	16,088
1,021	875	158	-	-	14,674
3,703	1,737	237	-	-	30,709
-	-	-	-	-	6,952
-	-	-	-	1,262	14,608
-	-	-	-	-	8,000
94,229	-	-	-	-	94,229
-	-	14,337	-	-	14,337
-	-	-	-	2,067	2,067
-	-	-	-	6,690	6,690
1,999	-	-	-	4,537	6,536
-	-	-	-	26,500	26,500
-	-	-	-	58,825	58,825
-	-	-	-	11,708	11,708
-	-	-	-	3,207	3,207
<u>\$ 172,993</u>	<u>\$ 38,897</u>	<u>\$ 19,487</u>	<u>\$ 35,557</u>	<u>\$ 114,796</u>	<u>\$1,131,603</u>

Yes

A PERFORMANCE REPORT ON THE
BOARD OF GOVERNORS OF THE
ALASKA BAR ASSOCIATION

February 3, 1989

Audit Control Number

41-1352-89-R

Chief Justice, Alaska
Supreme Court

Warren W. Matthews

Alaska Bar Association

Executive Director

Deborah O'Regan

Board of Governors

President
President-Elect
Vice President
Secretary
Treasurer
Member
Member
Member
Member
Member
Member
Member

Larry R. Weeks
Jeffrey M. Feldman
Ardith Lynch
Andonia Harrison
Lew M. Williams
Daniel R. Cooper, Jr.
Kenneth P. Eggers
Elizabeth Kennedy
Susan C. Orlansky
Sandra Stringer
Michael A. Thompson
Alex Young



OFFICIAL BUSINESS

Alaska State Legislature

Senate

Office of the Secretary

PO BOX V
CAPITOL BUILDING
JUNEAU, ALASKA 99811

April 13, 1989

MEMORANDUM

TO: Senator Jan Faiks, Chair
Judiciary Committee

FROM: Nancy Quinton *NQ*
Secretary of the Senate

RE: Budget & Audit Report

President Kelly has referred "A PERFORMANCE REPORT ON THE BOARD OF GOVERNORS OF THE ALASKA BAR ASSOCIATION" (Sunset Legislation) to your committee for review.

NQ/hc

Enclosure

STATE OF ALASKA

THE LEGISLATURE
BUDGET AND AUDIT COMMITTEE

AUDIT DIVISION
P.O. BOX W
JUNEAU, ALASKA 99811-3300

February 3, 1989

Members of the Legislative Budget
and Audit Committee:

In accordance with the provisions of Titles 24 and 44 of the Alaska Statutes (sunset legislation), the attached report is submitted for your review.

A PERFORMANCE REPORT ON THE
BOARD OF GOVERNORS OF THE
ALASKA BAR ASSOCIATION

February 3, 1989

Audit Control Number

41-1352-89-R

The purpose of this audit is to examine the activities of the Board of Governors of the Alaska Bar Association (ABA, the Bar, or the Association) to determine if there is a demonstrated public need for its continued existence, and if the Board has been operating in an efficient and effective manner.

The audit was conducted in accordance with generally accepted governmental performance auditing standards. Audit scope and methodology will be discussed in the Report Objectives, Scope, and Methodology section of this report. Audit results may be found in the Report Conclusion, Findings and Recommendations, and Analysis of Public Need sections of this report.



Randy S. Welker, CPA
Legislative Auditor
Division of Legislative Audit

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REPORT OBJECTIVES, SCOPE, AND METHODOLOGY

In accordance with the intent of Titles 24 and 44 of the Alaska Statutes (sunset legislation), we have examined the activities of the Board of Governors of the Alaska Bar Association to determine if there is a demonstrated public need for its continued existence, and if the Board has been operating in an efficient and effective manner.

Legislative intent requires consideration of this report during the legislative oversight hearings to determine whether the Board of Governors of the Alaska Bar Association should be reestablished. The law now specifies that the Board will terminate June 30, 1989 and have one year from that date to conclude its affairs.

The policy and audit approach utilized by the Division of Legislative Audit for performance reports can best be described as "audit by exception." This methodology focuses audit effort on areas of an auditee's operation that have been identified by a preliminary survey as having a high degree of probability for needing improvements.

Therefore, by design, finite audit resources are used to identify where and how improvement can be made and little time is devoted to reviewing well-run operations or programs. Consequently, this report highlights those areas needing improvement and does not emphasize those operations and programs that are properly functioning.

Discussion of the objectives, scope, and methodology of our review follows.

Objectives

The Alaska Bar Association was created in 1955 as an instrumentality of the State to ensure that only qualified members of the legal profession of good moral character are allowed to practice in this State. The primary objective of this audit, therefore, is to determine whether that need for protection of the public continues to exist today.

The secondary objective is to review the major processes instituted by the Alaska Bar, namely the examination of prospective members, admission, and discipline procedures, for effectiveness in meeting the public need. The tertiary objective is to evaluate those processes in particular, and Bar operations in general, for economy and efficiency of operation.

Scope and Methodology

Recent state and national trends in the legal profession (i.e., increases/decreases in numbers of: students attending law school, applicants for admission to practice, cases litigated, etc.) were analyzed to determine public need. Resources utilized to determine these trends included statistical information obtained from the Alaska Bar Association, the Alaska Court System, the American Bar Association, and assorted trade publications and HALT (an Organization of Americans for Legal Reform).

The review of Alaska Bar Association operations included all activities for calendar years 1986, 1987, and 1988. Examination and admission statistics (i.e., pass/fail rates, required passing scores, multi-state bar exam (MBE) scores, etc.) were obtained, reviewed, and compared with national statistics for consistency. Individual applicant records were reviewed for compliance with established Bar rules and procedures, accuracy of reporting, and timeliness of processing.

The attorney discipline process was analyzed for conformance with standards recommended by the American Bar Association and compared with procedures adopted by other states in the Pacific Northwest. A sample of individual discipline files were reviewed for compliance with established Bar rules and procedures, and timeliness. Current discipline statistics produced by the Alaska Bar were reviewed against historical data to determine trends in caseload and processing time.

Activities of the Board of Governors were examined through a review of meeting minutes and discussion with Association staff. Board composition and appointments were also reviewed for conformance with statutory requirements.

ORGANIZATION AND FUNCTION

The practice of law in the State of Alaska is regulated by the Board of Governors of the Alaska Bar Association. The Board consists of twelve members; nine attorneys elected by the active membership of the Association, and three non-attorney, public members appointed by the Governor and confirmed by the legislature in joint session.

The powers and duties of the Board are conferred by the Alaska Integrated Bar Act (AS 08.08) and the Alaska Bar Rules promulgated by the Supreme Court of Alaska.

The two primary functions of the Alaska Bar Association are the admission and discipline of its members. To accomplish these and other functions, the Association has a 1989 operating budget of \$1,277,501. Funding is provided primarily by membership dues (\$310 per year), admission fees, lawyer referral fees, continuing legal education, and interest income.

The Association's office is located in Anchorage and is staffed with twelve full-time employees and one temporary part-time employee.

REPORT CONCLUSION

This review contains policy issues raised as a result of our evaluation of the Board of Governors of the Alaska Bar Association. The final policy decisions affecting ABA are not within the scope of this report, but require legislative consideration. In debating these issues, the oversight committees should take into consideration the findings and recommendations and other information presented in this report so the potential impact of policy changes can be evaluated.

Report Conclusion

In our opinion, the Board of Governors of the Alaska Bar Association should be reestablished. Since the first three attorneys were admitted to the practice of law in Alaska in 1884 membership has grown to the current level of 2,707. In addition to the number of applicants seeking admission to practice, court statistics indicate increasing numbers of lawsuits being filed annually. It would appear that more members of the general public are interacting with the legal profession and that financial resources both expended on and resulting from those interactions have greatly increased. These factors result in a greater potential for harm to the general public, thereby indicating a need for continuing governance of the profession.

The public interest requires that the public be secure in its expectation that those who are admitted to the bar are worthy of the trust and confidence clients may reasonably place in their attorneys. The Board of Governors provides this protection by reasonably assuring that persons licensed to practice law are qualified and by assuring that those licensed act in a competent and ethical manner through a sophisticated complaint investigation process.

Furthermore, nothing came to our attention during our review that showed the public's best interest would be better served by any different regulatory method.

Overall, it is our opinion that the Board operates in an effective and economical manner. However, we have made recommendations which, if implemented, will improve the efficiency and effectiveness of the Board's operations (see the Findings and Recommendations section of this report).

FINDINGS AND RECOMMENDATIONS

Recommendation No. 1

The Board of Governors of the Alaska Bar Association should comply with Alaska Bar Rules governing appropriate sanctions in attorney discipline cases and public access to disciplinary proceedings.

In January 1988 the Board of Governors acting as the formal disciplinary board of the Bar violated several Alaska Bar Rules governing disciplinary enforcement. In concluding a disciplinary matter before them which had been heard in formal public hearing, the Board imposed a sanction of private reprimand for a violation of Alaska Bar Rule 15(4) (failure to respond to a grievance).

The disciplinary rules which the Board is currently operating under became effective January 1985. These rules were changed upon recommendation of the American Bar Association evaluation of Alaska procedures. Pertinent changes included Rule 21 which states that after the filing of a petition for formal hearing, hearings held before either a hearing committee or the Board will be open to the public. Under the new Rule 16, private reprimands are no longer possible at the Board level except in cases where the respondent and discipline counsel agree by stipulation to that sanction. Since the stipulation precludes the need for a petition for formal hearing, the proceeding remains confidential.

Subsequent to the Board's decision which was reaffirmed after discipline counsel's appeal, proposed changes to Bar Rule 16 allowing private reprimand by the disciplinary board were forwarded to the Supreme Court. Those proposed changes were recently referred back to the Association for reconsideration with the following comment. "It seems somewhat incongruous to have the hearing process open to the public but to allow a private reprimand following such a hearing."

This Board action was indeed incongruous and has generated confusion among Association staff as to public access to the outcome of this proceeding. Since private reprimands are maintained as confidential documents which the public does not have access to, it appears the intent of the Board was to seal these records as confidential after they became public under current Bar rules.

We recommend that in all future proceedings the Board of Governors strictly conform with adopted Rules of Court applicable to disciplinary proceedings.

Recommendation No. 2

The Board of Governors of the Alaska Bar Association should recommend a proposed change to Alaska Bar Rules clarifying and limiting the Board's authority to engage in lobbying and other political activities.

The Alaska Bar Association is a mandatory bar in that in order to practice law in Alaska a lawyer must be a member in good standing of the Association. This requirement makes it difficult for an attorney to disassociate himself/herself from a political stance adopted by the Board of Governors or the Association. In light of this fact, the appropriateness of lobbying and other political activities by the Board or Association is questioned.

Some of the actions taken by the Board and Association which would be considered questionable include a decision to lobby in support of the continuation of the Alaska Women's Commission and a resolution to cease all business dealings with the Republic of South Africa and Libya in protest of current political conditions.

The lobbying issue has been debated nationally by other mandatory bar associations and has been the subject of court proceedings in other states. The Wisconsin Supreme Court has responded to the concern by permitting attorneys who object to the bar's legislative activities to reduce their membership dues by a certain percentage. The Washington State Supreme Court recently took a more direct approach by amending general Bar Rule 12 governing Washington State Bar Association general purposes to include the following.

(c) Activities Not Authorized. Among the specific actions which this rule and these Purposes do not authorize are:

(1) Taking positions on issues concerning the politics or social positions of foreign nations;

(2) Taking positions on political or social issues which do not relate to or affect the practice of law or the administration of justice;

(3) Supporting or opposing, in an election, candidates for public office.

We recommend the Board of Governors propose a similar amendment to Alaska's bar rules to clarify and limit activities of the Board to those appropriate to a mandatory bar.

Recommendation No. 3

The Board of Governors of the Alaska Bar Association should take prompt action to reduce both the number of backlogged disciplinary investigation cases and the length of time it takes to bring an investigation to a conclusion.

At the time of our last audit (October 31, 1984) the Alaska Bar Association had 41 cases pending disciplinary or other proceedings and an additional 165 cases under investigation. As of December 31, 1988, the Alaska Bar Association's discipline section had 18 cases pending disciplinary or other proceedings and an additional 160 cases under investigation. Although the actual number of open cases has decreased slightly, the average number of days open has increased.

An analysis of the status and length of time these cases have been open showed the following.

<u>Status</u>	-----1984-----		-----1988-----	
	<u>Cases</u>	<u>Avg. Days Open</u>	<u>Cases</u>	<u>Avg. Days Open</u>
<u>Pending Proceedings:</u>				
Pending Supreme Court	5	636	5	1,082
Pending Disc. Board	6	425	2	787
Pending Hearing Comm.	10	720	4	771
Pending Admonition	3	422	5	618
Pending Fee Arb.	12	291	1	985
Pending Conciliation	<u>5</u>	<u>332</u>	<u>1</u>	<u>219</u>
<u>Total</u>	<u>41</u>	<u>471</u>	<u>18</u>	<u>769</u>
<u>Under Investigation:</u>				
Investigator on Case	11	606	--	--
Special Counsel	1	1,662	1	871
Under Review (Prelim.)	113	188	25	85
Investigation (Formal)	<u>40</u>	<u>342</u>	<u>134</u>	<u>375</u>
<u>Total</u>	<u>165</u>	<u>261</u>	<u>160</u>	<u>333</u>

In addition, an analysis of cases closed during 1986, 1987, and 1988 was made. The information presented was produced by Association staff and includes grievances not accepted, closed by admonition, closed by reprimand, closed by suspension, closed by disbarment, and dismissed. The overall processing time represents the average time from the date a grievance is filed until either a determination is made to decline an investigation or the case is completed. The results follow.

Analysis of Closed Cases

<u>Year</u>	<u>Number of Cases Closed</u>	<u>Overall Processing Time (Avg. Days Open)</u>
1986	251	207
1987	277	169
1988	244	187

Significant improvement was noted in reduction of case backlog during 1985, 1986, and 1987. During 1988, however, the backlog began to return to previous levels.

We encourage the Board to take prompt action to reduce the case backlog. In addition, we recommend that during the Board's deliberations of available options, consideration should be given to the length of time taken to conclude cases. It is in the best interest of ABA, the complainant, and the attorneys against whom the grievances were filed to take timely action in closing cases. The deterioration in processing time on open cases reflects, in part, the increase in complexity of cases coming before the Bar. However, a review of discipline files did reveal significant "dead" time in several proceedings. In one proceeding the dead time caused the investigation trail to become cold and resulted in the case being dismissed.

Therefore, we recommend that the Board's actions not only address the immediate need to reduce the case backlog, but also address the long-term staffing needs of the discipline section.

Recommendation No. 4

The Alaska Bar Association should comply with the public notice requirements of AS 08.08.075.

Chapter 52, SLA 1981 amended the Alaska Integrated Bar Act (AS 08.08) to bring meetings of the Board of Governors under the public meeting statutes, AS 44.62.310 and .312. More specifically, the Bar Act was amended to require that the public shall be given 30 days notice of meetings of the Board, except for emergency meetings.

Legislative Audit's 1984 audit of the Bar found that ABA had not publicly advertised meetings of the Board. Our current review found that the Board has properly noticed all face-to-face meetings of the Board, but has not publicly advertised teleconferenced meetings. A review of the minutes of these meetings demonstrated that these meetings were for the purpose of carrying out Board business which, in some cases, included discussion and voting on resolutions before that body.

We recommend that the Alaska Bar Association publicly advertise all meetings of the Board in conformance with applicable statutes and regulations.

Recommendation No. 5

The Alaska Bar Association should elect members of the Board of Governors in conformance with statutory guidelines.

AS 08.08.040-050 requires that members elected to the Board of Governors serve three-year terms subject to a specified triennial rotation. The purpose of this requirement is to maintain a level of experience on the Board which would be lost were a majority of members to rotate on any given year.

In recent years the Board of Governors has had several mid-term resignations. Statute allows the Board to appoint a replacement until the next annual election. The current rotation problem has arisen by election of a new Board member for a full three-year term rather than for the balance of the existing term.

We recommend that at the next annual meeting of the Alaska Bar Association those terms currently out of rotation be adjusted and, in the future, members elected to replace a resigning member be elected for the balance of the existing term.

ANALYSIS OF PUBLIC NEED

Limited Analysis

The following analyses indicate both positive and negative factors as they relate to the public need as defined in the "sunset" law. These analyses are not intended to be comprehensive, but to address those areas we were able to cover during our examination.

I. The extent to which the board, commission, or program has operated in the public interest.

- A. ABA admits applicants to practice law through a sophisticated examination process which was designed under consultation with a national expert. The exam has withstood a court challenge as to its adequacy as a test of competence. Admission is also contingent on the passage of the Multi-state Professional Responsibility Examination and a character investigation to determine if the applicant is of good moral character.

The Alaska Bar Association has recently developed proposed changes to the Alaska Bar Rules which will facilitate the determination of "good moral character." At this time those rules changes have not been adopted by the Supreme Court of the State of Alaska.

- B. Effective January 1, 1985 the Alaska Bar began admitting members under motion for reciprocity. That option is limited to attorneys in the active practice of law for five years in states with which Alaska has a reciprocal agreement.
- C. ABA has a lawyer discipline process for the investigation of complaints of ethical misconduct. Sanctions are imposed on those found to be in violation of the rules of conduct. This process was developed through a cooperative effort of the Supreme Court, the Board of Governors, the ABA staff, and a review team from the American Bar Association's Standing Committee on Professional Discipline.

In response to the American Bar Association's recommendation, and to alleviate public concern that attorney discipline is not taken seriously by ABA, discipline rules provide that once a petition for formal hearing is filed, the disciplinary proceedings become open to the public.

- D. ABA provides public notice of any attorney who has been disbarred or suspended.
- E. In addition to the three public members who serve on the Board of Governors, the Board has also appointed a total of 34 non-attorney individuals to serve on disciplinary hearing committees and fee arbitration panels throughout the State.
- F. If a complaint received by ABA does not constitute misconduct on the part of an attorney, but rather is primarily concerned with a fee dispute, ABA offers a fee arbitration process. This process provides for the dispute to be arbitrated by a third-party panel consisting of two attorneys and one public member.

Similarly, ABA offers a conciliation process to attempt to resolve disputes between attorneys and clients where the dispute is neither fee- nor misconduct-related. Failure by an attorney to participate in good faith in the conciliation process may be grounds for disciplinary action.

- G. ABA operates an attorney referral service, funded by subscribing attorneys, whereby anyone from around the State or from outside the State can call a toll-free number and receive the names of three attorneys who practice law in certain disciplines. Subscribing attorneys agree to provide referred clients the first half hour of consultation at a reduced rate of \$35. (See Appendix D for the number of referral calls received by discipline.)
 - H. ABA maintains a Client Security Fund for the purpose of making reimbursement to clients of attorneys who have suffered non-insured losses of money, property, or other things of value as a result of a dishonest act by an attorney. A portion (\$10) of each ABA member's annual dues is deposited in the Fund.
 - I. ABA jointly sponsors with the Alaska Legal Services Corporation the Alaska Pro Bono Program which involves attorneys in the delivery of free legal services to low-income Alaskans.
- II. The extent to which the operation of the board, commission, or agency program has been impeded or enhanced by existing statutes, procedures, and practices which it has adopted, and any other matter, including budgetary, resource, and personnel matters.

- A. ABA has been impeded by the absence of Bar Rules governing the degree to which the Board of Governors may be involved in lobbying and other political activities (see Recommendation No. 2). They have also been impeded by the absence of guidelines as to "good moral character" which, as noted in I.A. above, proposed changes to the Bar Rules have been drafted, but have not yet been adopted.
- B. The operations of the Board are enhanced by a substantial budget funded virtually entirely by the ABA membership through dues, admission fees, continuing legal education, lawyer referral fees, conventions, and interest income. The 1989 budget totals \$1,277,501. (See Appendix A for a schedule of ABA revenues and expenditures.)

III. The extent to which the board, commission, or agency has recommended statutory changes which are generally of benefit to the public interest.

- A. The Board has not recommended any statutory changes during our three-year audit test period. However, the Board's involvement in the process of evaluating and revising the Alaska Bar Rules governing Bar Association policies and procedures has been a dynamic one.

IV. The extent to which the board, commission, or agency has encouraged interested persons to report to it concerning the effect of its regulations and decisions on the effectiveness of service, economy of service, and availability of service which it has provided.

- A. ABA is enhanced by an unprecedented involvement of the membership (in excess of one half) in its operations. That involvement may take the form of service on one of the eight standing committees or four bar rules committees. It may also take the form of participation in a section (group of members with similar specialization (i.e., bankruptcy law, criminal defense, etc)). Each section is responsible for monitoring the law, suggesting revisions, and reporting annually to the membership. It may also take the form of participation in adjunct organizations (such as the Alaska Pro Bono Program) or special projects (such as the Statewide Lawyer Referral Service).
- B. ABA publishes all proposed changes to the Alaska Bar Rules in its quarterly publication The Alaska Bar Rag which is distributed to all members of the Association. Members are asked to submit any and all comments on those proposed rule changes for review by the Board.

- V. The extent to which the board, commission, or agency has encouraged public participation in the making of its regulations and decisions.
- A. As previously noted, in addition to the three public members who serve on the Board of Governors, the Board has also appointed a total of 42 non-attorney individuals to serve on disciplinary hearing committees and fee arbitration panels throughout the State.
 - B. ABA has publicly advertised face-to-face meetings of the Board of Governors in major newspapers and the Alaska Bar Rag. They have not advertised teleconferenced meetings at Association business has been conducted (see Recommendation No. 4).
- VI. The efficiency with which public inquiries or complaints regarding the activities of the board, commission, or agency filed with it, with the department to which a board or commission is administratively assigned, or with the Office of the Ombudsman have been processed and resolved.
- A. ABA is an instrumentality of the State and not administratively assigned to any department. Five complaints have been filed against it with the Office of the Ombudsman during the last three years. Investigation into complaints filed with the Ombudsman have been somewhat stymied by a disagreement with ABA as to whether they have jurisdiction over it.
 - B. ABA has adopted rules governing appeal procedures for both the disciplinary and examination/admission processes. As noted in Recommendation No. 3, resolution of disciplinary proceedings in 1988 averaged a processing time of 187 days. ABA received two appeals of the July 1988 bar exam results which were released in November of that year. Both appeals were heard at the January 1989 meeting of the Board of Governors.
- VII. The extent to which a board or commission which regulated entry into an occupation or profession has presented qualified applicants to serve the public.
- A. We found no instances where the Board had licensed unqualified applicants.

- B. Although many complaints are filed against attorneys, approximately fifteen percent result in sanctions against those attorneys. This represents sanctions against approximately one percent of the active membership of the Alaska Bar Association annually.
- C. The Alaska Bar Association offers a continuing legal education program to its membership and also maintains an education library.
- D. ABA sponsors and promotes the LEXIS program, a computer-assisted legal research service.

VIII. The extent to which state personnel practices, including affirmative action requirements, have been complied with by the board, commission, or agency to its own activities and the area of activity of interest.

- A. Nothing came to our attention that showed the Board was in violation of any affirmative action or hiring requirements.
- B. The Board has on several occasions voiced concern over the low minority pass rate of the Alaska Bar Exam. A national consultant on bar examinations was asked to review the exam in 1986 and found it not to be unusually biased. He recommended the problem be corrected through tutoring and remedial programs. At their June 1988 meeting the Board of Governors resolved to ask the Alaska Bar Foundation to develop a scholarship program for minorities; and to resurrect the Continuing Legal Education Opportunities Committee to tutor minority applicants.

IX. The extent to which statutory, regulatory, budgeting, or other changes are necessary to enable the agency, board, or commission to better serve the interests of the public and to comply with the factors enumerated in this subsection.

Please refer to the previous section, Findings and Recommendations.

APPENDIXES

APPENDIX A

BOARD OF GOVERNORS
ALASKA BAR ASSOCIATION
REVENUES COMPARED WITH EXPENSES
For the Calendar Years 1986, 1987, and 1988
(Note 1)

	<u>1986</u>	<u>1987</u>	<u>1988</u>
<u>Revenues</u>			
Membership Dues	\$ 677,753	\$ 705,347	\$ 697,310
Admission Fees	148,575	105,675	94,875
Cont. Legal Ed.	122,549	112,596	140,318
Lawyer Refer. Fees	53,361	51,836	55,883
Annual Meeting	33,635	31,633	73,415
Interest on Invest.	82,399	75,687	59,772
Lexis Service	-0-	46,072	15,637
Other	<u>100,332</u>	<u>65,606</u>	<u>92,653</u>
<u>Total Revenues</u>	<u>1,218,604</u>	<u>1,194,452</u>	<u>1,229,863</u>
<u>Expenses</u>			
Admissions	150,832	151,686	136,905
Board of Governors	43,766	34,382	25,923
Discipline	286,714	281,488	294,600
Administration	251,004	253,791	255,241
Lawyer Referral Svc.	31,715	31,740	33,993
Cont. Legal Ed.	144,126	168,345	171,077
Annual Meeting	34,750	38,045	58,875
Fee Arbitration	30,888	41,002	38,896
The Bar Rag	36,468	39,688	35,335
Alaska Law Review	22,000	25,000	26,500
Lexis Service	-0-	58,074	19,488
Other	<u>76,002</u>	<u>29,274</u>	<u>28,780</u>
<u>Total Expenses</u>	<u>1,108,265</u>	<u>1,152,515</u>	<u>1,125,563</u>
<u>Other Financing Sources (Uses):</u>			
Loss on Sale of Investments		<u>(47,553)</u>	
<u>Excess (deficit) of Revenues over Expenses and Other Financing Uses</u>			
	<u>\$ 110,339</u>	<u>\$ (5,616)</u>	<u>\$ 104,300</u>

Note 1: The 1986 and 1987 revenue and expense information was taken from audited financial statements of ABA. The 1988 information was obtained from the accounting records of ABA and has not been audited.

APPENDIX B

BOARD OF GOVERNORS
ALASKA BAR ASSOCIATION
DISCIPLINE STATISTICS
(Note 1)

Disposition of Cases Closed
During 1986, 1987, and 1988

<u>Disposition</u>	<u>1986</u>	<u>1987</u>	<u>1988</u>
Disbarment by Supreme Court	2	1	0
Suspension by Supreme Court	2	0	2
Public Censure by Supreme Court	0	0	0
Public Reprimand by Disciplinary Board	-	-	1
Private Reprimand by Disciplinary Board	9	0	2
Private Admonition by Discipline Counsel	17	9	23
Dismissed	<u>109</u>	<u>111</u>	<u>74</u>
<u>Total Closed Cases</u>	<u>139</u>	<u>121</u>	<u>102</u>

Status of Cases Open
as of December 31, 1988

<u>Status</u>	<u>Cases</u>
Attorney on Probation	8
Short Term Suspension	0
Pending Supreme Court	5
Pending Disciplinary Board	2
Pending Hearing Committee	4
Pending Admonition	5
Pending Fee Arbitration	1
Pending Conciliation	1
Held in Abeyance	4
Special Counsel Investigation	1
Filed/Under Review	25
Under Investigation	<u>134</u>
<u>Total Open Cases</u>	<u>190</u>

Note 1: The information in this Appendix was obtained from statistical summaries prepared by ABA's discipline section.

Note 2: All numbers reflect individual complaints filed and not the number of attorneys under investigation.

APPENDIX C

BOARD OF GOVERNORS
ALASKA BAR ASSOCIATION
BAR EXAMINATION AND ADMISSION STATISTICS
For Calendar Years 1986, 1987, and 1988
(Note 1)

Bar Examination

	<u>Number Taking Exam</u>	<u>Number Passing Exam</u>	<u>Percent Passing Exam</u>
February 1986 Exam	102	70	68%
July 1986 Exam	106	66	62%
February 1987 Exam	78	58	74%
July 1987 Exam	76	48	63%
February 1988 Exam	58	42	72%
July 1988 Exam	84	52	61%

Admission Under Motion for Reciprocity

<u>Year</u>	<u>Number Admitted</u>
1986	16
1987	8
1988	10

Note 1: The information in this Appendix was obtained from statistical summaries prepared by the Alaska Bar Association.

APPENDIX D

BOARD OF GOVERNORS
ALASKA BAR ASSOCIATION
ATTORNEY REFERRAL CALLS RECEIVED
For Calendar Years 1986, 1987, and 1988
(Note 1)

<u>Area of Discipline</u>	<u>1986</u>	<u>1987</u>	<u>1988</u>
Administrative	214	235	274
Admiralty	33	32	31
Arts	1	0	7
Bankruptcy	505	429	373
Commercial	505	345	292
Construction	29	19	14
Consumer	383	559	632
Discrimination	100	94	60
Eminent Domain	9	10	12
Environmental	6	3	2
Family	2,213	2,619	2,705
Felony/Misdemeanor	808	702	692
Foreign Language	1	2	10
Immigration	70	82	20
Insurance	122	92	89
Labor Relations	461	464	562
Landlord/Tenant	286	322	334
Malpractice	155	158	202
Mining	6	9	14
Negligence	732	729	873
Patent/Copyright	128	162	157
Public Interest	1	4	-
Real Estate	504	718	706
SSI Cases	2	40	22
Tax	89	102	103
Traffic	289	183	117
Trust/Wills/Estates	230	247	285
Workers' Compensation	189	216	273
<u>Total</u>	<u>8,071</u>	<u>8,577</u>	<u>8,855</u>

Note 1: The information in this Appendix was obtained from statistical summaries prepared by ABA.

APPENDIX E

BOARD OF GOVERNORS
ALASKA BAR ASSOCIATION
MEMBERSHIP ON ABA COMMITTEES
February 3, 1989

<u>Committee</u>	<u>Attorney Members</u>	<u>Public Members</u>	<u>Total Members</u>
<u>Board of Governors</u>	<u>9</u>	<u>3</u>	<u>12</u>
<u>Standing Committees</u>			
Bar Polls and Elections	8	-	8
Continuing Legal Education	12	-	12
Ethics	12	-	12
Historians	10	-	10
Law Related Education	17	4	21
Statutes, Bylaws & Rules	12	-	12
<u>Total Standing Committees</u>	<u>71</u>	<u>4</u>	<u>75</u>
<u>Bar Rule Committees</u>			
Law Examiners	29	-	29
Disciplinary Hearing:			
First District	10	2	12
Second & Fourth Districts	8	3	11
Third District	25	8	33
Conciliation Panels:			
First District	4	-	4
Second & Fourth Districts	4	-	4
Third District	8	-	8
Attorney Fee Review:			
First District	15	6	21
Second & Fourth District	10	2	12
Third District	36	13	49
Client Security Fund	6	-	6
<u>Total Bar Rule Committees</u>	<u>155</u>	<u>34</u>	<u>189</u>
<u>Other Adjunct Involvement</u>			
American Bar Assoc. Delegate	1	-	1
AK Assoc. of Legal Assistance	1	-	1
AK Bar Foundation	5	-	5
AK Code Revision Commission	1	-	1
AK Comm. on Jud. Conduct	3	-	3
AK Judicial Council	3	-	3
AK Law Review	3	-	3
AK Legal Service Corp.	17	-	17
Ninth Circuit Judicial Conf.	5	-	5
Rocky Mountain Mineral Law Foundation	1	-	1
Bar Rag	16	-	16
Tutors	11	-	11
<u>Total Other Involvement</u>	<u>67</u>	<u>-</u>	<u>67</u>
<u>Total Committee Membership</u>	<u>302</u>	<u>41</u>	<u>343</u>

APPENDIX F

BOARD OF GOVERNORS
ALASKA BAR ASSOCIATION
GRIEVANCES FILED BY CATEGORY
For Calendar Years 1986, 1987, and 1988

<u>Grievance Category</u>	<u>1986</u>	<u>1987</u>	<u>1988</u>
Trust violations (embezzlement, conversion, withholding client's property)	6	11	9
Conflict of Interest	13	15	9
Neglect (failure to perform, delay)	39	44	35
Relationship with client (disclosing confidential information, improper withdrawal, abandonment, failure to protect interest of client).	24	23	7
Misrepresentation/Fraud	10	13	11
Excessive Fees	1	1	3
Interference with justice	32	35	34
Improper advertising and solicitation	6	2	0
Criminal conviction	0	0	1
Personal behavior	1	0	2
Willful failure to cooperate with discipline authorities	0	0	0
Medical incapacity	0	0	0
Incompetence	0	0	0
Other	<u>1</u>	<u>0</u>	<u>1</u>
<u>Total Grievances by Category</u>	<u>133</u>	<u>144</u>	<u>112</u>

ALASKA BAR
ASSOCIATION

RECEIVED
March 9, 1989

MAR 13 1989

LEGISLATIVE
AUDIT

Randy S. Welker
Legislative Auditor
Division of Legislative Audit
Pouch W
Juneau, AK 99811

Dear Mr. Welker:

This letter is written to respond to the recommendations contained in the Division of Legislative Audit's preliminary performance report on the Board of Governors of the Alaska Bar Association. It is my understanding that the Division's recommendations and this response will be contained in your final report to the Alaska Legislature's Budget and Audit Committee.

Let me say that I appreciate the positive comments about the Bar's lawyer referral, pro bono and CLE programs. We have worked hard to have increased member participation and public access and it is gratifying to have you acknowledge those improved aspects. We understand that it is your function to point out ways that we can improve and accept your report in that spirit. In response to your specific recommendations:

Recommendation No. 1: The Legislative Auditor has questioned the Board of Governor's action in a disciplinary matter in which the Board imposed a private reprimand following a public hearing. The Board subsequently recommended to the Alaska Supreme Court proposed changes to Alaska Bar Rules 10(c) and 16(a) which would allow a private reprimand to be imposed by the Board. The court referred the matter back to the Board for reconsideration before they discussed the proposal.

Currently the Bar Rules provide that the Board can issue a private reprimand only if discipline counsel and the attorney stipulate to that discipline and that once imposed, this information is not released to the public. In their decision to issue a private reprimand in the referenced matter, the Board recognized the incongruity of allowing a private reprimand following a public hearing. However, their desire was to make a distinction in the severity of discipline imposed. The Board's position was that the public would have access to the outcome of this discipline matter, but the Board would not publish a notice regarding the imposition of discipline.

Randy S. Welker
March 9, 1989
Page 2

At the January 19-21, 1989 Board of Governors meeting, the Board discussed the proposed rule changes and is attempting to work out a tenable solution. The Board directed discipline counsel to review the Discipline Rules and submit proposed rule changes which would delete the terms "public" and "private" wherever the rules refer to reprimands. The result of this proposal would give the Board the authority to impose a reprimand either after hearing or by stipulation of discipline counsel and the attorney. This would give the Board the flexibility when they issue a reprimand to determine the level of severity of the discipline imposed. After a public hearing the Board could impose a reprimand that would be public, without requiring publishing a notice in the Bar Rag.

The Board does recognize that this is an area which needs to be worked out and they will most likely be recommending proposed changes to the Bar Rules following the March Board meeting.

Recommendation No. 2: The Board has recognized for several years the problems associated with a mandatory bar association taking a formal position on political issues, with which members of the Association may disagree. In 1986, this matter arose with the issue of tort reform. The Board of Governors decided that it was not appropriate for them as a Board to take a position on tort reform. Instead, the Board sponsored a public hearing and invited speakers from various sides of the issue to make presentations.

The Association has, in the past couple of years, occasionally taken positions on political issues. In 1988 the Board voted to support the continuation of the Alaska Women's Commission, and the membership voted at the annual business meeting in 1986 to cease doing business with South Africa and Libya. While the South Africa/Libya resolution was done somewhat tongue-in-cheek, the resolution supporting the Women's Commission was serious and adopted after some discussion of the appropriateness of the action.

The court cases around the country which have considered the question of lobbying by mandatory bar associations have generally stated that bars may lobby or take positions on political issues, provided they make some provisions for not spending or refunding that portion of the dues of a member who may disagree with the bar's position. Several bar associations will refund, upon request and on a pro rata basis, that portion of bar dues spent by the bar on lobbying.

Randy S. Welker
March 9, 1989
Page 3

The Alaska Bar Board of Governors has not gone beyond passing a resolution on political issues and has no plans to actively lobby on such issues. The Bar is aware that the Washington State Bar Association has a provision which lists appropriate lobbying areas for them (Washington is also a mandatory bar association.) The Board agrees that it is a good idea to focus on this question and determine appropriate areas on which the Board could take positions. The Board of Governors will be reviewing the provisions listed by Washington and may recommend changes to the bylaws which would cover the question of lobbying and taking positions on political issues.

Recommendation No. 3: The Board of Governors has regularly focused its attention on the discipline process and taken steps to reduce the number of backlogged discipline cases and the amount of time it takes to bring cases to a conclusion.

In the winter of 1985, the Board of Governors directed discipline counsel to review their caseload and determine the status of and probable disposition of each case and report to the Board at the mid-March meeting. The staff was specifically instructed to concentrate on those cases, especially the older cases, and resolve those cases which could be resolved. By the end of the first quarter of 1986, the discipline caseload was at its lowest point of 125 open cases.

By the end of the second quarter of 1987, the discipline caseload had edged up to 156. The Board analyzed the caseload to determine why the caseload was gradually increasing and to look for possible solutions. In August of that year, the Board contracted with a former discipline counsel to handle some of the more routine discipline cases on a part-time basis. With the assistance of the contract discipline counsel, the caseload level through the first half of 1988 remained about the same, even though the total number of new cases initiated and total grievances went up.

In October 1988, the Board of Governors hired an additional half time assistant discipline counsel. The hiring of this staff person is an indication of the Board's commitment of the Bar's resources to reduce the caseload and processing time.

In 1988, in addition to its regular monitoring of the discipline process, the Board requested an analysis of the discipline caseload which reflected the average processing time for cases closed, cases dismissed, and cases not accepted for investigation after screening for the years 1986 and 1987. This analysis, which is reported on page 10 of the preliminary

Randy S. Welker
March 9, 1989
Page 4

report, reflected an average time (date filed to disposition) of 207 days for 1986 and 169 days for 1987. The analysis for 1988 shows an average of 187 days.

In reviewing the processing time, discipline counsel believes that the Bar is dealing with a greater number of more complex and more serious cases than several years ago. There have been an increased number of hearings over the past four years. The formal hearing process requires a considerable investment of time by discipline counsel and staff in preparing for hearing, conducting the hearing itself, and then preparing the necessary record and briefing for the Board and the Supreme Court. Thus, the average time to process a case is significantly increased with more cases going to hearing and on to the Board and to the Court.

Another factor which increases the processing time is the failure of attorneys to respond to grievances opened by discipline counsel for investigation. An attorney's non-response is itself a grievable offense, which must be dealt with either before or with the underlying grievance itself. There seem to be more of these non-responses as economic times get hard. Finally, once the case is filed with the Court, the case comes within exclusive control and processing guidelines of the Court.

The Board of Governors recognizes that the discipline caseload is an ongoing priority, as demonstrated by the Board's efforts over the years to take action to manage the caseload. We believe the recent hirings to be a positive step to meet this continuing problem.

Recommendation No. 4: The Board of Governors has conscientiously complied with the statutory requirement to give 30 days public notice of its regularly scheduled meetings. The Board has generally found it necessary to call one or two unscheduled conference call meetings a year. Conference call meetings are usually called to deal with matters which cannot wait until the next regularly scheduled Board meeting. For example, in 1988 the Board called conference call meetings to arrange hearings in two admission appeals and to decide on the purchase of a new computer system before the manufacturer's deadline.

The statute does grant exemptions to the notice requirement in the case of emergency meetings. In the case of the admissions appeals, the applicants were operating under tight time constraints and since the matters were confidential, the Board met in executive session.

Randy S. Welker
March 9, 1989
Page 5

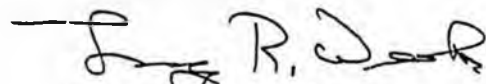
The Board will make every effort to publish notice of conference call meetings. The Board's schedule of meetings is currently published in the Bar Rag, as well as the notice being published in the State's major newspapers.

Recommendation No. 5: The Board of Governors is now aware that several of the Board seats are "out of sync" due to the mid-term resignation of several Board members. The Board has, as required by statute, appointed attorney members to the vacant seats until the next general election. Rather than having a election for a three year term, the Board will treat these as elections for the remainder of the terms of that Board seat.

A notice recently went out to the active members of the association soliciting nominations for the vacant seats on the Board. This gave notice that one of the seats was for a two year term and one of the seats was for a one year term. With the election to these seats, the Board seats will be back in sync according to the rotation set out in the statute.

In closing, let me take this opportunity to express my appreciation for the manner in which your Division conducted the performance audit. I hope your Division found the Bar's staff cooperative. If you have any questions concerning this response, please contact me or the Bar Association staff directly.

Sincerely,



Larry R. Weeks
President

cc: Deborah Ricker
Division of Legislative Audit
Deborah O'Regan
Executive Director

exdir127

S B

252

Original sponsor(s): Judiciary Committee

1 IN THE SENATE

BY THE JUDICIARY COMMITTEE

2 CS FOR SENATE BILL NO. 252 (Judiciary)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to retirement system exemptions from
7 execution."

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

9 * Section 1. AS 09.38.015(b) is amended to read:

10 (b) The right to benefits held by the state on behalf of an
11 individual that [WHICH] may become payable by reason of disability,
12 unemployment or illness, amounts held in the teachers', judicial, or
13 public employees' retirement system, or in the elected public offi-
14 cers' retirement system under former AS 39.37, and child support
15 collections made by the child support enforcement agency are exempt.

16 * Sec. 2. AS 09.38.017(c) is amended to read:

17 (c) The exemptions provided by (a) of this section do not pre-
18 vent the payment of benefits under a retirement plan to an alternate
19 payee under a qualified domestic relations order. In this subsection,
20 "qualified domestic relations order" has the meaning given in 26
21 U.S.C. 414(p), except as applied to "governmental plans" as defined
22 under 29 U.S.C. 1002 in which case "qualified domestic relations
23 order" has the meaning given by the plan or by the law governing the
24 plan.

FISCAL NOTE

REQUEST:

Revision Date: _____ Agency Affected: Department of Administration
 Title: An Act exempting amounts held in BRU: Retirement and Benefits
the Judicial Retirement System.
 Sponsor: Judiciary Committee Components: Retirement and Benefits
 Requestor: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL	0	0	0	0	0	0
REVENUE	0	0	0	0	0	0

FUNDING: (Thousands of Dollars)

GENERAL FUND	0	0	0	0	0	0
FEDERAL FUNDS	0	0	0	0	0	0
OTHER 1034	0	0	0	0	0	0
TOTAL	0	0	0	0	0	0

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

ANALYSIS: (Attach a separate page if necessary)

Please refer to page 2 for discussion of financial implications..

Prepared By: Sally Smith, Director *Sally Smith* Phone: 465-4470
 Division: Retirement and Benefits *C 120* Date: April 17, 1989
 Approved by Commissioner: John M. Andrews *for* Date: 4/18/89
 Agency: Department of Administration

Distribution (by preparer):
 Legislative Finance
 Legislative Sponsor
 Requestor
 Office of Management and Budget
 Impacted Agency(ies)

*Changes in the State Affairs CS
 have no fiscal effect. This
 fiscal note is appropriate.*
Schubert Page 1 of 2
4-19-89 8/6K2/041410-9/2

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

June 6, 1938

STEVE COWPER, GOVERNOR

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Honorable Steve Cowper
Governor
State of Alaska
P.O. Box A
Juneau, AK 99811

Re: CSSB 508(Fin) -- property ex-
emptions for homesteads, re-
tirement plan interests, etc.
Our file: 883-88-0108

Dear Governor Cowper:

At Judy Fleming's request on your behalf, we have reviewed CSSB 508(Fin), relating to property exemptions for homesteads, retirement plan interests and payments, and other property. The bill raises policy and legal questions, and you might want to consider vetoing it. There are two basic categories of concern: (1) the retirement provisions, and (2) the increases in the exemption values.

This bill was introduced by the Senate Judiciary Committee on April 14, 1988. The Senate Finance Committee Substitute was offered May 3, 1988 and passed by the Senate on May 5, 1988, and the House passed it on May 9, 1988.

We are concerned that the retirement plan provisions in sec. 3 of the bill could be interpreted as requiring the federal definition of "qualified domestic relations order" (QDRO) to apply to the public employees' (PERS) and teachers' (TRS) retirement systems. The statutes for both of those systems include a definition of "QDRO" that differs from the federal definition. The bill also would allow bankruptcy creditors to reach TRS and PERS contributions made by a member within 120 days before the member files for bankruptcy. These are serious and, we believe, unintended effects of the bill.

The Senate Finance Committee's substitute bill (offered six days before the end of the session) doubles the dollar amount of exemptions from claims of creditors. That raises important policy questions. We are concerned about the full effects of that doubling, including the effect on the state's own collection efforts and on the state's private lending institutions. In light of its importance, we believe that the subject merits more

extended consideration than was possible during the extremely brief period that the committee substitute was pending at the hectic end of the legislative session.

As originally introduced, SB 508 related only to exemptions for certain retirement plan interests and payments (i.e., secs. 3, 8, 10, and part of 5 of this final version). The purpose of this part of the bill is not at all clear from the language of the bill itself. However, we have ascertained from documents provided by the Legislative Affairs Agency that, although the only reference to bankruptcy in the proposed AS 09.38.017 is in its subsec. (b), and the basic subsec. (a) is worded in general terms, the purpose is to exclude or exempt from the property of a bankruptcy debtor's estate that is subject to the reach of the debtor's creditors ^{1/} the bankruptcy debtor's interest in or payments to be received from a pension plan. An understanding of this purpose and the manner in which it is accomplished requires analysis of provisions of federal law, including the U.S. Bankruptcy Code, the Internal Revenue Code, and the Employee Retirement Income Security Act of 1974 (ERISA), as well as the relationship between federal bankruptcy law and state exemption statutes.

This analysis is fairly succinctly provided by the case of Goff v. Taylor, 706 F.2d 574 (5th Cir. 1983). That case explains that, upon filing of bankruptcy, an estate is created that includes all property in which the bankruptcy debtor has a legal or equitable interest. 11 U.S.C. 541(a)(1). An exception for this is that a debtor's interest in a trust that is subject to a restriction under an "applicable nonbankruptcy law" is excluded from the bankruptcy estate. 11 U.S.C. 541(c)(2). The interest in the trust never enters the estate.

After a bankruptcy estate is created, certain property is then exempted from the estate. 11 U.S.C. 522. (Exclusions are different from exemptions.) A bankruptcy debtor may choose whether to take exemptions provided by the Bankruptcy Code (listed at 11 U.S.C. 522(d)) or to take exemptions provided by state law. State law exemptions may be more favorable than the

^{1/} Notwithstanding that apparently intended purpose, this section also has the effect of providing an exemption in situations other than bankruptcy, for interests in certain governmental pension plans that are not currently protected under the Alaska Exemptions Act or any federal law.

law. State law exemptions may be more favorable than the Bankruptcy Code exemptions, or vice versa, depending on the type of property the bankruptcy debtor owns and depending on the specific provisions of state exemption statutes. In Goff, the bankruptcy debtors had chosen state law exemptions which, unlike the Bankruptcy Code, did not provide a limited exemption for Keogh plans. Nevertheless, the debtors argued that ERISA was an "applicable nonbankruptcy law," and that restrictions on assignment and alienation of interests in the Keogh plan under ERISA prevented their interest in the plan from entering the estate.

The court rejected this argument. It found that Congress did not intend to include ERISA plan restrictions in the reference to "applicable nonbankruptcy law." Rather, it found that Congress only intended "spendthrift trusts" to be excluded from the property of the estate. The Keogh plan was found not to be a spendthrift trust, because of the availability of the assets of the plan to the debtors, with only a 10 percent penalty, at any time before reaching retirement age. Under Goff, if a plan is not a spendthrift trust that is afforded protection under state nonbankruptcy law, a debtor's interest in the plan is not excluded from the bankruptcy estate. If the bankruptcy debtor chooses state law exemptions that do not include an exemption for the debtor's interest in a pension plan, the interest is not exempted from the estate. The result is that bankruptcy debtors may be forced to forego favorable exemptions under state law (such as the Texas homestead exemption discussed later in this bill-review letter) in order to gain at least partial protection of their pension plan interests provided by the federal bankruptcy exemptions.

Current provisions of the Alaska Exemptions Act (AS 09.38) do not provide an exemption for interests in retirement plans which is applicable in bankruptcy proceedings. See existing AS 09.38.055. Both the original and final versions of this bill add a new section, AS 09.38.017 (in sec. 3 of the CS), to the Alaska Exemptions Act, which provides an exemption for interests in certain "retirement plans." That exemption will be applicable in bankruptcy proceedings by virtue of the amendment of AS 09.38.055 in sec. 10 of the CS. By the definition of "retirement plan" in the bill, the new exemption is for interests in qualified plans under 26 U.S.C. 401(a), individual employee annuity plans under 26 U.S.C. 403(a), tax sheltered annuity plans under 26 U.S.C. 403(b), individual retirement accounts and annuities and simplified employee pension plans under 26 U.S.C. 408,

and employee stock ownership plans under 26 U.S.C. 409. 2/ No exemption is provided for interests in pension plans that do not qualify for favorable tax treatment under the specified provisions of the Internal Revenue Code.

The definition of "retirement plan" in the bill includes PERS and TRS, since those plans are qualified plans under 26 U.S.C. 401(a). Two problems arise from application of this bill to PERS and TRS. First, the bill provides that the exemptions do not apply to contributions "made by an individual under a retirement plan within 120 days before the individual files for bankruptcy." We believe that the purpose of this provision is to prevent individuals from increasing their contributions to retirement plans shortly before filing bankruptcy in order to shelter additional assets from creditors. However, PERS and TRS member contributions are statutorily fixed and involuntary, thus preventing the kind of abuse addressed by this provision. 3/ Administration of this provision would require changes in the PERS and TRS statutes, since there is currently no way for the systems to make available to creditors an employee's contributions that are made within 120 days before filing bankruptcy. There are no provisions in either PERS or TRS allowing a partial refund of a member's contribution account to pay creditors (either while the member is still employed or after termination of employment), allowing an adjustment of service credit to reflect a reduction in the contribution account, or allowing a member to repay contributions that have been paid to creditors.

Second, the bill provides that the exemptions do not prevent payment of retirement plan benefits to an alternate payee under a qualified domestic relations order (QDRO) as defined by 26 U.S.C. 414(p). Proposed AS 09.38.017(c). The potential problem with this is that the statutes providing for both PERS and TRS include a definition of "QDRO" that is different in a significant respect from the definition of "QDRO" in 26 U.S.C. 414(p). Existing AS 14.25.220(31) and AS 39.35.680(34). Under the federal definition, a QDRO can order payment of a benefit to an

2/ The federal Bankruptcy Code exemptions provide an exemption for payments under these plans only "to the extent reasonably necessary for the support of the debtor and any dependant of the debtor." 11 U.S.C. 522(d)(10)(E).

3/ This might also be true of some private pension plans that will be affected by this bill.