

ALASKA LEGISLATURE COMMITTEE FILES, 1989-1990  
6369 SENATE JUDICIARY 8672

773

## ***V. Delay***

---

Sixteen agencies (46 percent of 35 agencies responding) reported that they have no deadlines for processing complaints, either formal or informal. And 12 agencies (55 percent of 22 agencies responding) reported backlogs of six to 12 months. In fact, these numbers seem generous in light of what has been documented elsewhere.

✓ In 1987, the District of Columbia reported taking as long as three to eight years to complete the disciplinary process.<sup>40</sup>

✓ The year before, Fellmeth reported some California complaints sat around in the Los Angeles "'TNT' room (getting so full it may blow up)" so long that they were not settled a decade after the events occurred.<sup>41</sup>

✓ A *Houston Post* reporter found that, despite major improvements since the 1981 ABA audit of the Texas process, "the bar still takes more than two years to investigate some complaints and then as much as five more years before getting some accused lawyers disbarred . . . or cleared. . ." <sup>42</sup>

✓ In 1985, Michigan reported a backlog increase of 66 percent since the previous year.<sup>43</sup>

✓ In 1982, an ABA team sent to evaluate the New Jersey discipline system found "two serious and related problems: delay and backlog."<sup>44</sup>

✓ The ABA team sent to New Mexico in 1981 "was impressed dramatically with the unanimity of expression by every [disciplinary staff] interviewed that the greatest and most profound fault of the system in New Mexico is delay."<sup>45</sup>

In human terms, the effect of delay is illustrated by the following case. A complaint filed in 1981 alleged that California attorney Eugene Bambric had stolen more than \$50,000 from a client. In the two years after the complaint was filed and before he was suspended, Bambric stole \$300,000 from more than a dozen other clients.<sup>46</sup>

Because processing complaints takes place in secret in most states, the effects of delay are heightened further. Combined with secrecy, delays:

- ✓ Shield attorneys who are guilty of misconduct, sometimes for years.
- ✓ Expose the public to unethical or incompetent lawyers.
- ✓ Discourage clients from pursuing their complaints.
- ✓ Encourage attorney contempt for the discipline system.

### ***Recommendations***

HALT recommends that agencies:

- ✓ Adopt and adhere to deadlines for all stages of complaint resolution.
- ✓ Institute fines to apply to lawyers who do not cooperate with investigations within designated deadlines.
- ✓ Make public monthly case management reports to show that deadlines for processing complaints are being met.

## **VI. Unfair and Unresponsive Process**

Consumers are discouraged from filing complaints against lawyers when the only agency that receives such complaints is created and controlled by lawyers.<sup>47</sup> Instead of trying to overcome such resistance, agency procedures for accepting and processing complaints seem designed to further discourage clients from reporting misconduct.

The agencies' most common way of letting clients know they have a right to file a complaint, the informational brochure, usually warns consumers that what may appear to be misconduct is often merely a misunderstanding because "few" lawyers engage in misconduct.<sup>48</sup> Most state agencies have such a brochure and they vary; but they do have a discouraging note in common. Many take care to explain that clients should not complain about disagreements, mistakes, failures of communication or "simple" neglect because these do not usually constitute unethical conduct.<sup>49</sup> Others remind consumers to take filing seriously because it could "drastically affect the lawyer's ability to earn a living as well as his personal standing in the community."<sup>50</sup>

If a consumer does file a complaint, most agencies warn that all information about the complaint must be kept confidential on threat of being found in contempt of court.<sup>51</sup> The Mississippi "gag rule" is printed directly on the complaint form:

Everything about this complaint, including the fact that a complaint has been made, is confidential. This means everything should be kept secret. A violation of that law is punishable by a fine of not more than \$500.00 or by imprisonment in the county jail for not more than thirty (30) days, or both.<sup>52</sup>

The discouraging effect of this type of warning may be compounded by the threat of a lawsuit from the accused lawyer. Fifteen agencies (45 percent of 33 agencies responding) do not provide complainants with immunity from being sued for libel or slander based on the information they provide the discipline agency.<sup>53</sup> In those states,

complainants may be intimidated into dropping their complaint or never filing it to avoid the possible cost of defending a suit brought by the lawyer.

After a complaint is filed, the agency gives the complainant little reason to pursue it vigorously. The investigative and hearing process minimizes the participation of the complainant, who is considered merely a "witness." Thus, the complainant has no right to know the lawyer's response to the complaint or to know about information uncovered during the investigation. And, if the complaint is dismissed before a hearing, (approximately 90 percent of all cases),<sup>54</sup> the complainant may never learn what evidence the agency used to justify the dismissal.

When hearings are held, complainants find their role severely limited. In fact, in most states complainants do not even have the same procedural rights given the lawyer:

- ✓ Nineteen agencies (61 percent of 31 agencies responding) report that the client has no right to hear the lawyer's testimony, yet every agency reported that the lawyer has the right to hear the complainant's testimony.

- ✓ Thirty-two agencies (94 percent of 34 agencies responding) do not allow the client to cross-examine the lawyer, but every agency grants the lawyer the right to cross-examine the client.

- ✓ Twenty-two agencies (68 percent of 32 agencies responding) do not allow the client to appeal a disciplinary decision, but 33 agencies (91 percent of 36 agencies responding) do allow the lawyer to appeal.<sup>55</sup>

The effects of such an unfair and unresponsive process include:

- ✓ Sending a message to consumers that agencies are more concerned about protecting lawyers than uncovering misconduct or helping the complainants.

- ✓ A "chilling effect" on the number of complaints filed or pursued by clients.

- ✓ Failure to uncover misconduct and therefore encouraging repeat misconduct.

## **Recommendations**

To assure that the discipline process encourages reports of misconduct and is fair, HALT recommends that:

✓ Agencies revise the content and tone of their brochures about the complaint process so clients are encouraged to report misconduct as a service to future clients and the community. The brochures should give examples of common misconduct and define what constitutes misconduct. As mentioned before, agencies should help clients frame and pursue their complaints.

✓ Rules grant clients and witnesses immunity from civil liability for any information given to the agency during a disciplinary investigation.

✓ "Gag rules" be eliminated so clients can get others to help support their complaint.

✓ The investigative and hearing process be redesigned to include the complaining clients as full participants. Clients must be allowed to review investigative files, to be present during the entire hearing, to cross-examine the lawyer and to appeal adverse decisions.



## ***VII . Lack of Public Participation***

---

Since 1970, a number of states have begun to allow nonlawyer members on disciplinary hearing panels.<sup>56</sup> Currently, 21 agencies (55 percent of 38 agencies responding) report requiring one nonlawyer among the three members on hearing panels, although another 17 agencies (45 percent of 38 agencies responding) still have no such requirement. However, this is the only attempt agencies have made to respond to the concern that the public is excluded from participating in the process and not every agency has even made this step.

Agency governing boards also are dominated by lawyers, many of whom work for or are closely affiliated with state bar associations. These boards decide whether a hearing panel's recommendation of public discipline should be forwarded to the state's high court, dismissed or reduced to a private reprimand. Recently public members have been included on these boards, but in every state lawyers still control a majority (if not all) of governing board seats.

In addition, processes by which the states adopt their code of professional responsibility has been dominated by the ABA and state bar influence. Every state has adopted some version of either the 1983 or 1969 ABA Model Codes.<sup>57</sup> Both ABA codes were developed by lawyers, mostly those active in the ABA or their state bar associations. Traditionally, almost no nonlawyers participate in the process of developing the model code or adopting the state version.

A bar counsel runs the day-to-day operations of the discipline agency. In every state's agency this position is held by a lawyer. In addition, 34 agencies, (97 percent of 35 agencies responding) reported using only lawyers to screen and investigate complaints. According to the ABA, 90 percent of all complaints are dismissed by these lawyers after screening or investigation and do not make it to the hearing stage.<sup>58</sup>

Although state high courts are charged with overseeing the attorney-discipline systems, they do little more than rubber-stamp agency recommendations for public discipline. Because agency governing boards file few such recommendations, this means little work for the court. Although the courts are also involved with rule changes, even in this they are more likely to follow the lead of their state bar association.

Few nonlawyers participate in processing client complaints, and the value of the little nonlawyer participation is minimized because few agencies permit them to participate at the stages where the bulk of complaints are dismissed. The value of public participation is further limited because nonlawyer work is always subject to review by the bar counsel (a lawyer) or a governing board that includes a majority of lawyer members.

More serious than the control individual lawyers have in the discipline process is the influence wielded by state bar associations. As the profession's trade association, state bar associations advance the profession's public relations and economic interests. These interests conflict with uncovering attorney misconduct.<sup>59</sup>

The debate over whether or not to integrate public members within the disciplinary system revolves around the issue of whether nonlawyers should be allowed to assess lawyer performance.<sup>60</sup> At the heart of this question is ultimate control over the discipline process itself: if nonlawyers are as competent or better at evaluating lawyers' conduct, then lawyers lose their justification for retaining control over policing the profession.

Bar officials argue that an understanding of "lawyers' judgment" is essential in assessing the merits of complaints.<sup>61</sup> Lawyers, they argue, are experts in law and practice and can therefore best determine whether another lawyer has made appropriate judgment calls. Nonlawyers, who lack the expertise and experience necessary to make such assessments, are not considered necessary or even desirable in processing complaints.

HALT does not find this argument persuasive, for these reasons:

✓ Most complaints do not involve sophisticated allegations or inappropriate judgments; rather, they involve allegations of theft, inordinate delay, substance abuse and the like.

✓ Juries in both civil and criminal trials include nonlawyers regardless of the complicated facts or laws they are asked to understand. Special masters and expert witnesses satisfy any need for an expert advice.

✓ Both nonlawyers and lawyers need training in disciplinary rules; no evidence suggests that lawyers are more likely than nonlawyers to grasp the information needed in judging complaints.

✓ "Lawyers' judgment" has little meaning outside of the knowledge and practice in a specific area of law. Yet, disciplinary agencies do not require that panelists be knowledgeable about the area of law each case involves. Thus, no evidence suggests that a lawyer panelist will be better able to assess a lawyer's legal judgment than a trained nonlawyer.<sup>62</sup>

HALT believes that the conflict of interest inherent in self-regulation is at the root of the other problems with attorney discipline. Because of lawyer control, discipline agencies are not accountable to the public. Such control, coupled with the total lack of public accountability, has led inexorably to a system characterized by invisibility, leniency, secrecy, delay and client intimidation.

## ***Recommendations***

The only way to assure that the public's concerns are perceived to be and actually are paramount to discipline agencies is to involve public members throughout the process and assign control of the entire system to a publicly accountable body. In particular, HALT supports measures that:

✓ Place control of discipline with an independent agency under executive or legislative oversight.

✓ Involve legislators, consumer advocates, concerned members of the public and others in rulemaking, overall governance, processing complaints and selecting agency personnel.

✓ Require nonlawyer majorities on disciplinary governing boards and rulemaking committees. Public members should draft the discipline rules, not merely comment on rules that are drafted by lawyers. Public involvement should not be limited to one or two token seats on governing boards.

✓ Require that nonlawyers control complaint processing. Qualified nonlawyers should screen complaints and hearing panels should have a majority of nonlawyers so that if a decision is split between lawyers and nonlawyers, nonlawyers will prevail.

✓ Institute immediate public audits of each state's system, including all relevant records and files of discipline agencies, disciplinary governing boards and courts. (See Appendix III for HALT's Model Discipline Monitoring Commission.)

## **Conclusion**

---

The nation's attorney-discipline agencies and procedures are in critical need of change. As Richard Abel, a University of California at Los Angeles legal scholar, has reported, the state of discipline nationally is a "travesty" in which:

Misconduct is rarely perceived. If perceived, it is not reported. If reported, it is not investigated. If investigated, violations are not found. If found, they are excused. If they are not excused, penalties are light. And if significant penalties are imposed, the lawyer soon returns to practice, in that state or another.<sup>63</sup>

HALT recommends a great variety of reforms. However, it is not enough to ask disciplinary officials that these reforms be instituted. Years of attempt by some state bar associations and disciplinary officials have failed to make significant improvement. (See Appendix IV, Chronology of California 'Reforms'.) This is because each reform attempt at best has cured symptoms of the problem, but none have addressed the fundamental conflict-of-interest inherent in self-regulation. To reform the system effectively, we must go beyond recommendations for reform of current procedures and identify what consumers need and legitimately expect and how such expectations can best be met.

Consumers must lead the effort to create new forums to ensure that they meet consumer needs. Although this report does not include a study of these needs, in HALT's experience clients expect the discipline system to:<sup>64</sup>

- ✓ Help resolve disputes.
- ✓ Get compensation for any injury.
- ✓ Punish wrongdoers.
- ✓ Deter misconduct.
- ✓ Warn consumers about potential misconduct.
- ✓ Remove serious incompetents and wrongdoers from practice.

Resistance to creating forums that meet these needs is unconscionable, but it is not inexplicable. As long as lawyers are charged with disciplining themselves, discipline agencies will not even meet their stated and limited goal of maintaining minimum licensing standards. As Stanford Law Professor Deborah Rhode testified about the failings of California's lawyer-discipline system: "No matter how well intentioned . . . no vocational group is well-situated to pass judgment on matters that directly implicate its economic interests, social status, and self-image."<sup>65</sup>

Unless and until the conflict in self-regulation is acknowledged and the entire system, from rulemaking to licensing and consumer protection, is taken out of the hands of lawyers and placed with a publicly accountable body, consumer interests will be second to the economic protectionism in the system. And as long as consumers' interests are secondary, discontent with lawyers and legal services will mount as will pressure for consumer reforms.

## Footnotes

---

- <sup>1</sup> The total complaints filed was calculated using the ABA *Survey on Lawyer Discipline* (American Bar Association Standing Committee on Professional Discipline and Center for Professional Responsibility, *1986 Survey on Lawyer Discipline Systems*, ABA, 1987, p. 7 [*1986 ABA Discipline Survey*]) and telephone inquiries to agency officials who had not submitted data to the ABA. The total is, however, an approximation as HALT had to estimate figures for four jurisdictions (Idaho, Iowa, North Carolina and Puerto Rico) based on figures for states with comparable populations.
- <sup>2</sup> Since 1970, when the ABA Clark Commission found the state of attorney discipline "scandalous" (American Bar Association Special Committee on Evaluation of Disciplinary Enforcement, *Problems and Recommendations in Disciplinary Enforcement*, ABA, 1970, p. 1. [Clark Report]), the discipline system has been the subject of several law review articles. However, writers of these articles consistently presume that what is good for the legal profession (including its "image") is good for consumers. As a result, even severe critics of the discipline system do not question the basic premise of self-regulation or the overall goals of the discipline system.
- <sup>3</sup> HALT's survey data are reported throughout this report using this convention, as the number of agencies that responded to each question varied. (See also, Appendices I and II of this report.)
- <sup>4</sup> As one legal scholar explains, "Courts serve largely as passive sounding boards and official approvers or disapprovers of initiatives that are taken by lawyers operating through bar associations." Charles Wolfram, *Modern Legal Ethics*, West Publishing Co., 1986, p. 34.
- <sup>5</sup> American Bar Association Center for Professional Responsibility, *Memorandum on Discipline Enforcement System Responsibility from Lori Schaffel to Dorl Weiner Monitz*, ABA, March 29, 1983, p. 1.
- <sup>6</sup> For further discussion of state bar influence, see Wolfram, p. 34.
- <sup>7</sup> American Bar Association Commission on Professionalism, ". . . In The Spirit of Public Service: A Blueprint for the Rekindling of Lawyer Professionalism, ABA, 1986, p. 37 [Professionalism Report], Report of Michael J. Hoover, Director of Lawyers' Professional Responsibility, Minnesota, July 1, 1985, pp. 12-13 [Hoover Report], Clark Report, p. 167.
- <sup>8</sup> *1986 ABA Discipline Survey*, p. 7.
- <sup>9</sup> Clark Report, p. 143.
- <sup>10</sup> This information was gathered in a HALT telephone survey conducted with 35 agencies between January and March, 1988. Agencies in the following jurisdictions reported they did not have a statewide toll-free number: Alaska, Arkansas, Colorado, Connecticut, District of Columbia, Florida, Hawaii, Idaho, Illinois, Kentucky, Maryland, Massachusetts, Minnesota, Mississippi, Missouri, Montana, Nevada, New Jersey, New Mexico, North Carolina, Ohio, Oregon, Pennsylvania, Rhode Island, South Carolina, Tennessee, Texas, Utah, Vermont, Virginia, Washington, Wisconsin and Wyoming.
- <sup>11</sup> Robert Fellmeth, *Initial Report to the Assembly and Senate Judiciary Committees and Chief Justice of the Supreme Court of California on the Performance of the Disciplinary System of the California State Bar*, June 1, 1987, p. 32 [Fellmeth Report].

- 12 *Ibid.*, p. 60 of exhibits.
- 13 Professionalism Report, p. 37, Hoover Report, pp. 12-13, Clark Report, p. 167.
- 14 1986 ABA Discipline Survey, p. 7.
- 15 Lawyer-discipline procedures more closely resemble a criminal trial than a regulatory hearing, except for the secrecy. Thus, responding lawyers receive the due process rights accorded a criminal defendant with the added advantage of having the proceedings in secret.
- 16 Wolfram, p. 107. See also, National Organization of Bar Counsel, *Standards for Dissemination of Disciplinary Information*, ABA, 1980, p. 8.
- 17 The concern about frivolous complaints can be accommodated to a large extent by disclosing the attorneys' response to the complaint and attempts to resolve it. In fact, the Oregon and Washington attorney-discipline agencies do just this.
- 18 American Civil Liberties Union of the National Capitol Area, *Statement on Proposed Changes in Disciplinary Rules*, March 25, 1976, p. 7.
- 19 1986 ABA Discipline Survey, p. 7.
- 20 These percentages do not include consumer complaints dismissed before labeling and reporting. For example, the Tampa office of the Florida Disciplinary Committee which serves five Florida counties, reported receiving more than 100 complaints a day (Susan Snyder, "Lawyers Increasingly on Wrong Side of Law," *Clearwater [Fla.] Sun*, September 2, 1986, p. 1a), yet statistics reported to the ABA reflect only 24 complaints a day for the entire state (1986 ABA Discipline Survey, p. 2). Also, Fellmeth found that the California Bar's count of 8,674 complaints filed in 1986 did not include those dismissed as "inquiries" or those filed with local bar associations. He estimates actual complaints for 1986 were about triple those reported. Fellmeth Report, p. 80, n. 4.
- 21 Even if this claim were true, the number of dismissals suggests two things: that many clients are unhappy with their lawyers' conduct and that the disciplinary system does nothing to solve the problem. As one member of the public remarked about the California attorney-discipline system at HALT's Oct. 26, 1987, public hearing in San Diego, "The system is just there to allow people to vent and blow off steam, they never do anything about the complaints." *Lawyer Discipline Hearing Report*, HALT, 1987, p. 4.
- 22 Data from Steele and Nimmer's research showed that agency-initiated actions, including action based on criminal convictions, accounted for only 3.4 percent of the agency's caseload but led to 40 percent of all public sanctions imposed. Eric Steele and Raymond Nimmer, "Lawyers, Clients, and Professional Regulation," *American Bar Foundation Research Journal*, vol. 1976, p. 981. In 1985, ABA data show that of 12 possible offenses, felony convictions led to the second greatest number of lawyers disbarred. American Bar Association Center for Professional Responsibility, *Statistical Report re: Factual Information on Public Discipline Imposed Against Lawyers by State Jurisdictions During 1985*, ABA, 1986, p. 6 [1985 ABA Sanctions Survey]. See also, Wolfram, p. 90.
- 23 American Bar Association Center for Professional Responsibility, *Professional Discipline for Lawyers and Judges*, ABA, 1979, p. 103 [ABA on Discipline for Lawyers and Judges].
- 24 Clark Report, p. 150.

26 For example, the "Current Reports" section of the *ABA/BNA Lawyers' Manual on Professional Conduct* described the case of a Florida lawyer who received only a reprimand for billing a client more than \$24,000 for representing her in a dispute over \$3,000. *The Florida Bar v. Mirabole*, No. 87,893; Fla. Sup. Ct., 12/11/86. Another issue of the Current Reports described a case in which a Minnesota lawyer was given a reprimand and a 6-year suspension (which was stayed) after it was found that between 1980 and 1984 the lawyer failed to hold client funds in trust, misappropriated other funds, commingled client and other funds, failed to maintain proper books and records, falsely certified that they were maintained and failed to disburse settlement proceeds promptly. *In re Isaacs*, No. C6-84-2215; Minn. Sup. Ct., 8/6/87. In yet another case, a Louisiana lawyer who refused to return an \$18,000 unearned fee was let off with a reprimand by the agency. *Louisiana State Bar Association v. Pugh*, No. 85-B-0950; La. Sup. Ct., 8/22/87.

Enforcement reports from states that publish them also reveal cases of egregious, repeated misconduct followed by minimal discipline. For example, in 1986 Michigan reported that an attorney who admitted failing to appear at a hearing, failing to notify a client that the case was dismissed due to lack of service of process, failing to notify the client of his change of address and a number of other counts of neglect was merely given a reprimand and, in another case, a lawyer was disbarred only after five clients complained about "aggravated neglect" and lying over a period of seven years. *Joint Annual Report for October, 1985 - December, 1986*, State of Michigan Discipline Board and State of Michigan Attorney Grievance Commission, undated, pp. 70, 33 [Michigan's 1985-86 Annual Report].

26 Some of the more noteworthy investigative news series include:

Arnold Grahl and Todd Sloane, "Judging Our Lawyers," *Pioneer Press Newspapers*. This three-part series appeared in Illinois papers on Jan. 15, Jan. 22, and Jan. 29, 1987.

Brad Bumsted and Jeannine Guttman, "Beyond the Law," *A Gannett News Services Special Report*. Articles from this five-part report appeared in Gannett newspapers across the country during October and November, 1986. Gannett published the complete report in December, 1986.

James Finefrock and Connie Kang, "The Brotherhood, Justice for Lawyers," *The San Francisco Examiner*. This six-part series was published daily from March 25, 1985, to March 30, 1985.

Thomas French, "Discipline of Lawyers Is Shrouded in Secrecy," *The St. Petersburg [Fla.] Times*. This three-part series was published on July 8, July 9, and July 10, 1984.

27 Steele and Nimmer, p. 997, pp. 998-999.

28 Fellmeth, p. 41.

29 *Ibid.*, p. 45.

30 *1986 ABA Discipline Survey*, p. 7.

31 For support for this position, see Steele and Nimmer, pp. 965-968.

32 American Bar Association Center for Professional Responsibility, *Standards for Imposing Lawyer Sanctions*, ABA, 1986, p. 50.

33 Agencies and courts often reduce discipline based on these factors. The following examples are but a few of numerous such instances reported recently. In 1986, the California disciplinary system gave a private reprimand to an attorney who failed for four

years to file a required probate inventory/appraisal and ignored letters from the judge; the leniency was justified by a claim that he was overwhelmed by the complexity of the case. "Discipline," *California Lawyer*, April, 1986, p. 58. The D.C. Court of Appeals ruled that an attorney's alcoholism warranted reducing his punishment from a suspension to probation although he had been found to have misappropriated client funds on three occasions. *In re Kersey*, No. 84-739; D.C. Ct. App., 1/28/87. In yet another case, the same court considered a lawyer's psychiatric condition of atypical depression sufficient to reduce his license suspension to probation although he had repeatedly "disrupted" court proceedings. *In re Crowley*, No. D-8; N.J. Sup.Ct., 1/16/87.

In a recent New Jersey case, a solo practitioner's discipline was reduced to a public reprimand despite his "gross neglect" of six cases because the court considered his inexperience, inadequate staff and high volume of litigation as mitigating factors. *In re Maurello*, 102 N.J. 622 (1986).

34 The good news for consumers is that in some states, most notably New Jersey, lawyers caught stealing are automatically disbarred. *In re Wilson*, 81 N.J. 451 (1979). New Jersey's rule has withstood attempts to erode it based on mitigating factors such as the intention to return the money, good character and fitness (*In re Noonan*, 102 N.J. 157 (1986)) poor accounting practices with prior unblemished record (*In re Fleischer*, 102 N.J. 440 (1986)) or severe financial pressures (*In re Lennan*, 102 N.J. 518 (1986)).

35 Andrew Wilson, "Lawyers in Trouble," *The Courier-Journal*, Louisville, Ky, Feb. 22, 1987, p. 1.

36 1985 ABA Sanctions Survey.

37 ABA on Discipline for Lawyers and Judges, p. 79.

38 A quick review of these alternatives shows they are not sufficient to meet consumer needs.

#### **Fee Arbitration**

Fee arbitration is not available everywhere. Six states do not offer any arbitration at all, while in 14 other states, arbitration is not available in some parts of the state. *Arbitrating Lawyer-Client Fee Disputes: A National Survey*, HALT, 1988, p. 3. Furthermore, although a client or an attorney disciplinary committee might refer a fee dispute to a fee arbitration committee, in all but six states the attorney is under no obligation to arbitrate the dispute and can simply ignore the complaint. *Ibid.*, p. 4.

Moreover, arbitration panels are limited because they are not permitted to decrease a fee because of incompetent performance or malpractice. Finally, consumers are discouraged from filing because they feel the lawyer-run programs will protect lawyers' right to charge whatever fee they desire.

#### **Client Security Funds**

Most states have special funds that reimburse clients money stolen by their attorney. These programs are also limited. State bars consider any reimbursement as awarded by the "grace of lawyers' largesse" because the programs are funded by lawyer dues. As a result, clients have no legal right or claim for reimbursement and, in every state but California, no right to challenge a denial. In addition, most programs cap the amount one can recover regardless of how much was stolen. Although many state bars proudly publicize the money reimbursed through these funds, a more accurate barometer of the programs' success would be the number of valid claims left uncompensated.

#### **Malpractice Lawsuits**

The major problem with the catch-all option, malpractice suits, is that they are often prohibitively expensive. Many clients do not even consider filing a malpractice suit because they see no point in exposing themselves to possible further loss caused by a second attorney hired to file an action against the first. As the saying goes, "Once burned, twice shy."

May clients who do decide to take this risk find themselves in the position described by the state bar counsel who reported: ". . . The bulk of the cases that come to my attention. . . involve incompetence. The answer you give to the client is that he doesn't have an ethics matter but he may have a civil action. They will tell you that they have been to 10 or 20 or 30 lawyers and they can't get one to take their case." Clark Report, p. 187.

Some attorneys won't take cases because of an unwillingness to sue a fellow lawyer or because of the difficulty in winning. Malpractice actions involve proving two cases: that the attorney was guilty of misconduct, and that the misconduct caused the loss of an award they would otherwise have won. Thus, clients must prove both the original case (that they would have received an award if the original case had been handled properly) and that there was attorney misconduct that caused them to lose.

Often lawyers also turn down malpractice cases because the amounts involved, even though thousands of dollars, will not support the fees and expenses needed to bring the suit. As a HALT member wrote in February, 1987, "[I]n the last few months I have discussed our situation with six different . . . law firms which handle malpractice. While all agree that evidence of malpractice exists, none is willing to represent us . . . . The usual reason given for turning us down is that the amount of the damage is too small."

Other times the lawyer to be sued does not have either malpractice insurance or the money to pay a successful client suit.

Finally, filing suit is never a solution when a dispute involves an ongoing relationship. For clients who are looking for a solution to a lawyer's neglect, failure to communicate or failure to follow directions, filing a malpractice suit is not only pointless, it is likely to destroy any chance of repairing the relationship.

39 For example, in 1985 the ABA testified in the reauthorization hearing for the Federal Trade Commission (FTC) that the FTC should have no authority over lawyers because "lawyers are regulated very extensively, regulated by state bars, the agents of the Supreme Court in 31 jurisdictions. This is duplicative regulation and there is no need for it. . . . States are doing an effective job." *Testimony on the Reauthorization of the Federal Trade Commission*, Hearings on S. 1078 Before the Subcommittee on Commerce, Transportation and Tourism of the Committee on Energy and Commerce, 99th Congress, 1st Session, 1985, statement of J. Chrys Dougherty, ABA.

40 Pauline Schneider, "Report on the Board of Governors," *Washington Lawyer*, March/April, 1987, p. 66.

41 Fellmeth Report, p. 67. The California State Bar has also been accused of "number massaging." Accusations were based on information from a state senator's aide who interviewed disciplinary staff and reported, "When the 1985 deadline for concluding pre-1983 cases approached and many were not yet closed, according to a [disciplinary staff] investigator, their supervisor directed them to close the remaining cases informally — and then reopen them as 1985 cases." Monica Bay, "Bar Attorneys Charge 'Number Massaging,'" *The Recorder Newspaper*, San Francisco, Calif., March 21, 1986, p. 1.

42 Ira Perry, "Disbarment Proceedings Drag On," *The Houston Post*, Jan. 26, 1987, p. 14a.

43 Michigan's 1985-86 Annual Report, p. 10.

44 American Bar Association Standing Committee on Professional Discipline, *Evaluation of the Lawyer Discipline System of New Jersey*, ABA, 1982, p. 7.

45 American Bar Association Standing Committee on Professional Discipline, *Evaluation of the Lawyer Discipline System in the State of New Mexico*, ABA, 1981, p. 8.

46 Connie Kang and James Finefrock, "Half Who Steal Return to Practice," *The San Francisco Examiner*, March 26, 1985.

- 47 As the Clark Commission explained: "The unsophisticated complainant approaches the filing of a complaint with reservations. He realizes that he is asking a group of lawyers to take action against one of their brethren. He is aware that he has slight knowledge of the standards of the profession and that the attorney's conduct he questions may not violate the Code of Professional Responsibility. He often feels he cannot state his complaint adequately because his attorney has not kept him properly informed." Clark Report, p. 72.
- 48 See, for example, the consumer brochures published by the discipline agencies for Florida, Georgia, North Carolina and Oregon.
- 49 See, for example, the consumer brochures published by the discipline agencies for New Jersey, Oregon, Tennessee and Virginia.
- 50 Disciplinary Board of the Supreme Court of Pennsylvania, "Information About Complaint Procedures and Discipline of Lawyers," undated, p. 1. Many other states use similar or identical language in their brochures.
- 51 HALT conducted a telephone survey of discipline agencies during March and April 1988. Twenty-eight agencies (82 percent of 34 contacted) have a "gag rule." They include: Alaska, California, Colorado, Connecticut, District of Columbia, Florida, Hawaii, Idaho, Illinois, Kentucky, Massachusetts, Mississippi, Missouri, Montana, Nevada, New Jersey, North Carolina, Ohio, Pennsylvania, Rhode Island, South Carolina, Tennessee, Texas, Utah, Vermont, Virginia, Wisconsin and Wyoming. States that do not have a "gag rule" include: Arkansas, Maryland, Minnesota, New Mexico, Oregon and Washington.
- 52 Mississippi State Bar Association, "Complaint," undated, p. 2.
- 53 HALT's telephone survey of discipline agencies during March and April, 1988 included a question about whether the agency gave complainants absolute immunity from civil suit based on information provided to the agency. The 15 agencies that do not provide immunity include: Alaska, Arkansas, Connecticut, Illinois, Kentucky, Missouri, Nevada, New Mexico, Ohio, Pennsylvania, Rhode Island, Vermont, Virginia, Wisconsin and Wyoming. States that reported having an immunity provision include: California, Colorado, District of Columbia, Florida, Hawaii, Idaho, Maryland, Massachusetts, Minnesota, Montana, New Jersey, North Carolina, Oregon, South Carolina, Tennessee, Texas, Utah and Washington.
- 54 *1986 ABA Discipline Survey*, p. 7.
- 55 Twenty-four agencies (71 percent of 34 agencies responding) reported that the bar counsel or disciplinary agency could appeal a decision.
- 56 The first state to provide for nonlawyer participation was Michigan. F. LaMar Forshee, "Professional Responsibility in the Twenty-First Century," *Ohio Law Review*, vol. 39, 1978, p. 694.
- 57 Twenty-six states have adopted versions of the 1983 Model Code. The remaining states still use versions of the 1969 Code. "More States Adopt Model Rules," *Bar Leader*, March/April 1988, p. 30.
- 58 *1986 ABA Discipline Survey*, p. 7. A few states do not regularly hold hearings (Wisconsin, for example). States that do hold hearings do so after a finding of probable cause. Thus, using 1986 ABA Discipline Survey data HALT has approximated the percentage of complaints which reach the hearing stage.

69 A recent example of the seriousness of bar influence was the Minnesota State Bar's successful campaign to undermine the work of Michael Hoover, then Bar Counsel and President of the National Organization of Bar Counsel.

The Minnesota State Bar Association petitioned the Minnesota Supreme Court to appoint a committee to recommend changes in the discipline system based on concerns about "an excessively adversarial posture in the Director's Office and the inappropriate treatment of the 'innocent' lawyer." Minnesota Supreme Court Advisory Committee, "Report of the Supreme Court Advisory Committee on Lawyer Discipline," April 15, 1985, p. 1. Six of the nine committee members were appointed by the Bar Association. The committee urged checks in the "excessive zeal" of the Bar Counsel. As a result of the campaign, Michael Hoover resigned his position.

60 As Wolfram points out, "[o]ne is tempted to believe that most of these reforms [incorporating public members into the process] were initiated, and are being maintained more as a public relations effort than as genuine attempts to change the rules and practice of lawyer discipline in a radical way." Charles Wolfram, "Barriers to Effective Public Participation," *Minnesota Law Review*, vol. 62 (1978), p. 694.

61 It has also been argued that the Supreme Court has and must retain oversight of discipline, precluding public control through the legislature or any public agency. Courts claim authority to regulate the legal profession based on the doctrine of *inherent judicial power*. Courts declare an "inherent" power over the practice of law, including discipline, in order to protect the dignity and effective operation of the judicial process.

HALT believes that jurisdiction over lawyer discipline is unrelated to the orderly administration of the courts. Courts can regulate lawyer conduct in court and court proceedings and even participate in decisions about who should be licensed to practice before them without having sole control of attorney discipline.

HALT's position is strengthened by an examination of the history of court intrusion in this area and by the fact that courts have done little to exercise oversight of discipline. There is considerable evidence that the real reason that lawyers and judges pushed to restrict legislative control over lawyers was to heighten lawyers' status and diminish competition from outsiders. For further discussion of this issue, see, Katherine Lee, *Challenges to the Lawyer Monopoly*, HALT, 1988, pp. 6-9, 47-55, Thomas Alpert, "The Inherent Power of the Courts to Regulate the Practice of Law: An Historical Analysis," *Buffalo Law Review*, vol. 32 (1983), pp. 525-56, Comment, "Control of the Unauthorized Practice of Law: Scope of Inherent Judicial Power," *Univ. of Chicago Law Review*, vol. 28 (1960), pp. 162-73.

62 Based loosely on a list developed by Wolfram, in his article, "Barriers to Effective Public Participation," p. 629.

63 Brad Bumsted and Jeannine Guttman, "Beyond the Law," *A Gannett News Services Special Report*, December, 1986, p. 3.

64 HALT bases this claim on expectations consistently voiced in letters from consumers.

65 *Testimony of Professor Deborah Rhode, Stanford Law School, Hearings Before the Assembly Judiciary Committee and the Senate Judiciary Committee, 1985-86 Regular Session of the California Legislature*, vol. 86, p. 38.



## **Appendix I**

### **State-By-State Survey Questionnaire**

---

HALT staff designed the lawyer-discipline survey questionnaire using existing studies and the wealth of questions asked by consumers over the years. The questionnaire used a "multiple choice" format wherever practical. The questions were reviewed by several authorities including three bar counsels.

As usual with surveys, after the data was collected, a number of additional questions were identified. Some were pursued in follow-up telephoning. Others not asked include:

- ✓ What standard of proof must be met to find a disciplinary violation (i.e., "beyond a reasonable doubt," "clear and convincing" or "preponderance of the evidence")?
- ✓ How many nonlawyers are currently serving on your disciplinary board?
- ✓ How many lawyers and nonlawyers are currently in your pool of hearing panelists? How often do your hearing panels include one nonlawyer? Two? Three?
- ✓ What mitigating factors can the agency take into consideration when determining the appropriate level of discipline?

# ATTORNEY GRIEVANCE PROCEDURE QUESTIONNAIRE

State \_\_\_\_\_

## 1 Authority Over Disciplinary System

a. What body or bodies have the authority to make the rules for your state's attorney disciplinary system?

- high court
- state bar
- legislature
- other (explain)

b. What is the source of that authority?

- state statutes, cite:
- constitution, cite:
- court rules, cite:
- other (describe)

c. Is the state bar association a legal extension of the state supreme court, or an "integrated" bar? Yes | | No | |

d. What is the source of your agency's budget?

- appropriation from bar association dues
- appropriation from attorney licensing fees (if separate from bar dues)
- fee paid by licensed attorneys directly to agency
- appropriation from legislature
- other (describe)

e. What is your agency's budget for 1985? (Feel free to enclose a financial statement if you have one prepared for the public.) \$ \_\_\_\_\_

f. Is the budget and staffing adequate for the agency's caseload? Yes | | No | |  
If no, how much more (money and staff) is needed for timely action on the caseload?

## 2 Filing Complaints

a. What person (title) or body are complaints filed with?

- bar counsel
- disciplinary committee
- state/county/regional bar association
- other (name)

b. Must complaints be filed on a specific form? Yes | | No | |

Are there any requirements about their form? Yes | | No | |

If so, must they be:

- written
- verified
- other (describe)

c. What is the title and training of the person(s) who initially screens complaints?

d. What types of complaints does your office have authority over?

- failure to represent client zealously (within bounds of law)
- failure to protect client confidences
- improper use of client funds
- neglect of client's case
- charging excessive fee to client
- criminal act outside attorney/client relationship
- in-person solicitation of clients
- misrepresentation of facts to client, court or third party
- lying on bar application
- improper advertising
- conflict-of-interest
- failure to pay bar dues
- others (list)

e. Are fee disputes handled separately from other disputes? Yes | | No | |

Yes | | No | |

If yes, explain the system for handling fee disputes.

f. What is the statute of limitations for filing complaints?

| | None | | Years

g. Is the system publicized? Yes | | No | |

Yes | | No | |

If yes, how?

- brochure available to public
- advertisement in yellow pages
- publication of filing of disciplinary charges or imposition of public discipline
- other (describe)

## 3 Processing Complaints

a. What criteria are used to decide which complaints are docketed for investigation?

- within jurisdiction
- verifiable
- other (list)

What are the most common reasons for dismissing a case before docketing?

b. What is the title and training of the person(s) who perform the preliminary investigation and the person(s) who oversee their work?

c. How many people are assigned to perform this function?

Do investigators perform other functions? Yes | | No | |  
If, so what are they?

d. Do you have a statutory or informal deadline on processing complaints? Yes | | No | |

If yes, which: Statutory | | Informal | |

What is the length of that period?

How often is it met?

e. What are the most common reasons for dismissing a docketed case?

- not verifiable
- alleged conduct does not constitute misconduct
- evidence not sufficient to meet required standard
- other (describe)

f. Is there provision for interim suspension of an attorney? Yes | | No | |

Yes | | No | |

If so, when?

- after probable cause has been determined
- when attorney has been convicted of a felony or "serious crime"
- when attorney is deemed to present imminent threat to clients or the public
- other (describe)

#### 4 Hearing Process

Do you hold a hearing following determination of probable cause and/or petitioning of the matter? Yes  No

If not, on a separate sheet, describe as fully as possible the system that your state uses at this point in the process and omit the remaining questions under this section

a. How are hearing panel/committee members recruited?  
— members volunteer  
— disciplinary committee solicits members  
— disciplinary committee members serve  
— place advertisements in newspaper  
— other (describe)

b. Who chooses the hearing panel/committee?  
— disciplinary agency  
— disciplinary counsel  
— other (describe)

c. What qualifications are required for lawyer members of the hearing panel/committee?  
— member of bar  
— practice related to type of case in question  
— specified number of years' experience  
— other (describe)

d. How many members do panels/committees have?

e. How many non-lawyers are required to be on each panel?  
— none  
— (give number)

g. What qualifications are required for non-lawyer members?  
— membership on bar board  
— membership on disciplinary committee  
— recommendation by bar members  
— other (describe)

h. Can both attorney and client appear at the hearing?  
Yes  No   
Can attorney bring witnesses? Yes  No   
Can client? Yes  No   
Does the prosecutor call experts? Yes  No   
Does the prosecutor call its own witnesses? Yes  No

i. Who is required to appear at the hearing?  
Both attorney and client? Yes  No   
Attorney only? Yes  No   
Client only? Yes  No   
Other (describe)

j. Can prior discipline of the attorney be considered as evidence in the hearing? Yes  No

If so, under what circumstances?  
— if prior discipline was public (not private reprimand)  
— if prior discipline was "serious" (suspension or disbarment)  
— when guilt has been determined and discipline is being decided  
— if evidence of prior discipline is needed to prove present charges (such as continuing to practice after suspension)  
— other (describe)

k. Can client be present during attorney testimony?  
Yes  No

Can client cross-examine the attorney? Yes  No

l. Can attorney be present during client testimony?  
Yes  No

Can attorney cross-examine the client? Yes  No

m. Is the prosecutor responsible for building the record?  
Yes  No

Is client responsible for building the record? Yes  No

n. Can witnesses or documents be subpoenaed? Yes  No

o. Do the rules of evidence apply in disciplinary hearings?  
Yes  No

p. Are hearings recorded? Yes  No

q. Is a written report of the hearing required? Yes  No

r. If so, is there a deadline by which the report must be produced? Yes  No

If yes, what is it?

#### 5 Powers of Hearing Committee/Panel

Does the hearing committee:  
— issue informal admonition/private reprimand  
— impose discipline  
— recommend discipline  
— forward its report to the Bar Board or the Court for a determination on disciplinary action  
— other (describe)

#### 6 Disciplinary Action

a. What body actually metes out discipline for attorneys?  
— hearing panel or committee  
— disciplinary commission  
— high court  
— other (describe)

b. What are the possible types of discipline handed out?  
— informal admonition/private reprimand  
— public reprimand  
— probation  
— censure  
— suspension  
— disbarment  
— permanent disbarment  
— other (list)

c. Does discipline for certain offenses require a showing of fitness before readmission to practice? Yes  No   
If yes, describe types of offenses or under what circumstances.

d. Do the rules provide for a disability suspension?  
Yes  No   
If so, what are the standards?

e. Can financial restitution to clients be required?  
Yes  No

Under what circumstances?  
— if attorney misused client funds  
— if attorney overcharged client  
— if disciplinary body recommends restitution  
— other (describe)

Are there any limitations? Yes  No

If yes, what are they?  
— limit on amount  
— other (list)

f. Are attorneys given the right to appeal decisions of the disciplinary body? Yes  No

Is disciplinary counsel given the right to appeal decisions of the disciplinary body? Yes  No

Are clients given the right to appeal decisions of the disciplinary body? Yes  No

If so, do appeals take place  
— within the state bar system  
— outside the bar system  
— both

g. Does the disciplinary agency have a system to monitor whether disbarred attorneys are practicing? Yes [ ] No [ ]  
If so, describe.

h. Are full records maintained on all cases? Yes [ ] No [ ]  
For how long? \_\_\_\_\_ months  
On dismissed cases? Yes [ ] No [ ]  
For how long? \_\_\_\_\_ months

If records of dismissed cases are expunged, does the skeletal record (name, date, type of case) remain? Yes [ ] No [ ]

### 7 Publicity

a. Are disciplinary cases made public:  
\_\_\_ when the complaint is filed  
\_\_\_ when probable cause is found or case is docketed for investigation  
\_\_\_ when discipline is recommended  
\_\_\_ when discipline is imposed  
\_\_\_ when disciplinary action is something other than private reprimand  
\_\_\_ when discipline is "serious" (suspension or disbarment)

b. If made public prior to discipline, how are cases made public?

\_\_\_ record of complaint open to public  
\_\_\_ file opened to public  
\_\_\_ hearing record or report open to public  
\_\_\_ notice printed in bar publication  
\_\_\_ other (describe)

c. How is the public informed about attorneys who have been disciplined?

\_\_\_ notice printed in bar publication  
\_\_\_ notice published in area newspapers  
\_\_\_ notice sent to area newspapers  
\_\_\_ other (describe)

d. Does public notification apply only to public discipline?  
Yes [ ] No [ ]

### 8 Distinguishing Characteristics

Are you aware of any components of your system that make it significantly different from those in other places? (Such as a system that is not statewide but regional or local, provisions for automatic disbarment, jury trials, etc. You may wish to use the ABA Model Rules as a standard of comparison.)

### 9 Enforcement

(If your agency compiles a year-end report which contains the information requested in the following questions, please feel free to enclose a copy of the report, in lieu of answering the following.)

Do you keep records on the enforcement of your disciplinary rules? Yes [ ] No [ ]

a. How many complaints did you receive in 1983? \_\_\_\_\_  
In 1984? \_\_\_\_\_

b. How many complaints did you investigate in 1983? \_\_\_\_\_  
In 1984? \_\_\_\_\_

c. Do you have a backlog? Yes [ ] No [ ]  
How long is it?

d. What is the average amount of time it takes to complete work on a complaint, from its receipt to final disposition?

e. How many cases does your agency now have on its docket that are more than:

\_\_\_ 90 days old \_\_\_\_\_ 120 days old  
\_\_\_ 180 days old \_\_\_\_\_ 360 days old

f. Of the complaints you received in 1984, how many resulted in disciplinary action? \_\_\_\_\_  
In 1983? \_\_\_\_\_

g. Of the lawyers investigated in 1984, how many resigned before disciplinary action was taken? \_\_\_\_\_  
In 1983? \_\_\_\_\_

h. How many lawyers were disciplined for:  
Note type of discipline and approximate no. of each type

\_\_\_ failure to represent client zealously (within bounds of law)

\_\_\_ failure to protect client confidences

\_\_\_ improper use of client funds

\_\_\_ neglect of client's case

\_\_\_ charging excessive fee to client

\_\_\_ criminal act outside attorney-client relationship

\_\_\_ in-person solicitation of clients

\_\_\_ misrepresentation of facts to client, court or third-party

\_\_\_ lying on bar application

\_\_\_ failure to pay bar dues

\_\_\_ improper advertising

\_\_\_ conflict-of-interest

\_\_\_ felony conviction

\_\_\_ others (list)

### 10 Suggestions/Plans for change

What problems do you see in your state's system? What ideas do you have for improving it? (Ways to reduce backlog, ways to simplify process, etc.)

Are there any plans or proposals currently being considered for changes in the system? What are they?

Do you wish to receive a copy of our study results?  
Yes [ ] No [ ]

Name of person(s) completing questionnaire

Address \_\_\_\_\_

Phone \_\_\_\_\_

Please return to  
Karen Lechinam  
HALT  
1319 F St., N.W., Suite 300  
Washington, D.C. 20004



## ***Appendix II***

### ***State-By-State Survey Results***

---

Agencies returned their answers to HALT's questionnaire between April 1985 and January 1986. For those agencies that did not respond, in some instances HALT staff was able to get answers to the questions over the telephone. In other cases, unreturned or uncompleted questionnaires were completed by staff using previously published materials, such as brochures, complaint forms and procedural rules.

Each state has one disciplinary agency, except New York which has eight independently operated agencies. HALT sent questionnaires to all 68 agencies, of which 34 responded (including two New York agencies).

In February and March of 1988, HALT telephoned each agency again to update the survey information about the stage at which they make case information public (under the heading "cases made public").



# STATES

	RULEMAKING AUTHORITY				SOURCE OF AUTHORITY				INTEGRATED BAR		FINANCING					ADEQUATE BUDGET		COMPLAINTS FILED WITH				COMPLAINT FORM		
	HIGH COURT	STATE BAR	LEGISLATURE	OTHER	STATUTES	CONSTITUTION	COURT RULES	OTHER	YES	NO	BAR DUES	LICENCES	ATTORNEY FEES	LEGISLATURE	OTHER	YES	NO	BAR COUNSEL	BAR COMMITTEE	BAR ASSOC.	OTHER	YES	NO	
ALABAMA																X								
ALASKA	X				X			X		X								X						X
ARIZONA	X	X				X		X		X						X			X					X
ARKANSAS	X				X				X		X					X			X				X	
CALIFORNIA																								
COLORADO	X				X	X			X				X			X			X					X
CONNECTICUT	X				X				X					X		X					X		X	
DELAWARE																								
DISTRICT OF COLUMBIA	X	X						X		X						X		X					X	
FLORIDA	X				X			X		X						X		X						X
GEORGIA		X				X												X						
HAWAII	X	X			X	X	X		X			X				X		X						X
IDAHO	X				X			X		X								X					X	
ILLINOIS	X				X	X			X			X				X			X					X
INDIANA																								
IOWA	X					X		X		X										X			X	
KANSAS	X					X			X		X					X			X					X
KENTUCKY	X				X	X	X	X		X						X								X
LOUISIANA																								
MAINE																								
MARYLAND	X					X			X			X						X						X
MASSACHUSETTS	X				X				X			X						X	X					X
MICHIGAN	X					X				X									X					X
MINNESOTA	X							X		X						X		X						X
MISSISSIPPI	X				X	X	X	X		X						X				X				X
MISSOURI	X					X			X		X					X			X					X
MONTANA	X							X					X			X		X						X

# STATES

	RULEMAKING AUTHORITY				SOURCE OF AUTHORITY				INTEGRATED BAR		FINANCING					ADEQUATE BUDGET		COMPLAINTS FILED WITH				COMPLAINT FORM	
	HIGH COURT	STATE BAR	LEGISLATURE	OTHER	STATUTES	CONSTITUTION	COURT RULES	OTHER	YES	NO	BAR DUES	LICENCES	ATTORNEY FEES	LEGISLATURE	OTHER	YES	NO	BAR COUNSEL	BAR COMMITTEE	BAR ASSOC.	OTHER	YES	NO
NEBRASKA	X						X	X		X					X		X						X
NEVADA	X				X	X	X	X		X						X		X					X
NEW HAMPSHIRE																							
NEW JERSEY	X					X			X		X					X			X			X	
NEW MEXICO	X						X	X		X		X			X								X
NEW YORK (1ST)		X	X	X	X				X				X		X				X				X
NEW YORK (2ND)	X								X					X		X	X		X				X
NEW YORK (3RD)																							
NEW YORK (4TH)																							
NORTH CAROLINA		X			X			X				X			X						X		X
NORTH DAKOTA																							
OHIO	X					X			X			X			X		X		X				X
OKLAHOMA																							
OREGON	X				X			X		X					X		X						X
PENNSYLVANIA	X					X			X			X				X	X						X
RHODE ISLAND	X						X				X					X	X						X
SOUTH CAROLINA	X							X					X		X			X				X	
SOUTH DAKOTA																							
TENNESSEE	X						X		X		X				X					X			
TEXAS																							
UTAH	X						X			X							X	X					
VERMONT																							
VIRGINIA	X	X			X			X				X			X		X					X	
WASHINGTON	X				X	X	X	X		X					X		X						X
WEST VIRGINIA	X				X	X		X		X					X		X						
WISCONSIN																							
WYOMING	X						X	X		X					X			X					X
<b>TOTALS</b>	36	5	2	1	11	16	19	3	21	15	15	6	11	5	0	25	7	21	14	5	2	8	27

# STATES

	MUST COMPLAINTS BE:			WHO SCREENS COMPLAINTS			FEE DISPUTES INCLUDED?		STATUTE OF LIMITATIONS		CRITERIA FOR INVESTIGATING			MOST COMMON REASON FOR NOT INVESTIGATING		
	WRITTEN	VERIFIED	OTHER	LAWYER	NONLAWYER	OTHER	YES	NO	YEARS (X)	NONE	WITHIN JURISDICTION	VERIFIABLE	OTHER	INSUFFICIENT EVIDENCE	NO JURISDICTION	OTHER
ALABAMA																
ALASKA	X				X			X	5		X					
ARIZONA	X			X						X	X				X	
ARKANSAS	X	X		X			X			X	X				X	
CALIFORNIA																
COLORADO	X			X				X		X	X	X			X	
CONNECTICUT	X	X		X			X			X	X					
DELAWARE																
DISTRICT OF COLUMBIA	X			X				X		X	X			X	X	
FLORIDA	X			X				X		X	X					
GEORGIA	X	X		X				X		X	X	X		X		
HAWAII	X			X				X		X	X				X	
IDAHO	X			X				X		X	X	X			X	
ILLINOIS				X				X		X	X					
INDIANA																
IOWA	X	X												X		
KANSAS	X			X			X			X		X		X		
KENTUCKY	X	X		X				X		X		X		X		
LOUISIANA																
MAINE																
MARYLAND				X				X		X	X				X	
MASSACHUSETTS	X			X				X		X	X				X	
MICHIGAN	X			X			X					X		X		
MINNESOTA	X			X				X		X	X				X	
MISSISSIPPI	X			X				X		X			(1)			X
MISSOURI	X			X				X		X					X	
MONTANA				X				X		X		X				

# STATES

	MUST COMPLAINTS BE:			WHO SCREENS COMPLAINTS			FEE DISPUTES INCLUDED?		STATUTE OF LIMITATIONS		CRITERIA FOR INVESTIGATING			MOST COMMON REASON FOR NOT INVESTIGATING		
	WRITTEN	VERIFIED	OTHER	LAWYER	NON-LAWYER	OTHER	YES	NO	YEARS (X)	NONE	WITHIN JURISDICTION	VERIFIABLE	OTHER	INSUFFICIENT EVIDENCE	NO JURISDICTION	OTHER
NEBRASKA				X			X			X						
NEVADA	X			X				X			X			X	X	
NEW HAMPSHIRE																
NEW JERSEY				X				X		X					X	
NEW MEXICO	X			X				X	3	X	X			X		
NEW YORK (1ST)	X			X				X		X	X					
NEW YORK (2ND)	X			X				X		X		X				
NEW YORK (3RD)																
NEW YORK (4TH)																
NORTH CAROLINA				X			X			X	X					
NORTH DAKOTA																
OHIO				X	X			X		X	X					
OKLAHOMA																
OREGON	X			X				X		X	X	X				
PENNSYLVANIA	X			X				X	6	X						
RHODE ISLAND	X							X		X	X				X	
SOUTH CAROLINA	X							X		X				X		
SOUTH DAKOTA																
TENNESSEE				X				X		X	X			X	X	
TEXAS																
UTAH				X			X		3	X						X
VERMONT																
VIRGINIA	X			X				X		X	X	X				
WASHINGTON				X				X		X	X	X			X	
WEST VIRGINIA				X			X			X	X	X			X	
WISCONSIN																
WYOMING								X		X						
<b>TOTALS</b>	27	5	0	34	1	0	8	29	4	31	27	13	1	11	16	2

# STATES

	WHO DOES PRELIMINARY INVESTIGATION			DEADLINE FOR COMPLAINT PROCESSING			HOW LONG	HOW OFTEN MET				MOST COMMON REASON FOR DISMISSING INVESTIGATED CASE				INTERIM SUSPENSION?				
	LAWYER	NONLAWYER	OTHER	STATUTORY	INFORMAL	NONE	DAYS	ALWAYS	OFTEN	OCCASIONALLY	RARELY	NOT VERIFIABLE	NOT MISCONDUCT	INSUFFICIENT EVIDENCE	OTHER	YES/NO	AFTER PROBABLE CAUSE	CONVICTED FOR SERIOUS CRIME	ATTY. POSES IMMINENT THREAT	OTHER
ALABAMA					X								X	X		Y		X	X	
ALASKA	X				X		180						X	X		Y		X	X	
ARIZONA	X						120		X							Y			X	
ARKANSAS	X					X										N				
CALIFORNIA																				
COLORADO	X				X		2		X			X	X	X		Y		X	X	X
CONNECTICUT	X			X												Y		X	X	
DELAWARE																				
DISTRICT OF COLUMBIA	X				X		90		X				X	X		Y		X	X	X
FLORIDA	X	X			X		180		X				X	X		Y		X	X	X
GEORGIA																Y			X	
HAWAII	X					X							X	X		Y		X	X	
IDAHO	X	X				X										Y		X	X	
ILLINOIS	X				X											Y		X	X	
INDIANA																				
IOWA																				
KANSAS	X					X						X	X	X		N				
KENTUCKY	X					X							X			Y		X	X	
LOUISIANA																				
MAINE																				
MARYLAND	X				X		30		X					X		Y		X	X	
MASSACHUSETTS	X	X				X						X	X			Y		X	X	
MICHIGAN	X																			
MINNESOTA	X	X		X			45		X							Y			X	
MISSISSIPPI	X					X										N		(2)		
MISSOURI	X					X						X	X	X		Y		X		
MONTANA	X																			

# STATES

	WHO DOES PRELIMINARY INVESTIGATION			DEADLINE FOR COMPLAINT PROCESSING			HOW LONG	HOW OFTEN MET				MOST COMMON REASON FOR DISMISSING INVESTIGATED CASE				INTERIM SUSPENSION?				
	LAWYER	NONLAWYER	OTHER	STATUTORY	INFORMAL	NONE		DAYS	ALWAYS	OFTEN	OCCASIONALLY	RARELY	NOT VERIFIABLE	NOT MISCONDUCT	INSUFFICIENT EVIDENCE	OTHER	YES/NO	AFTER PROBABLE CAUSE	CONVICTED FOR SERIOUS CRIME	ATTY. POSES IMMINENT THREAT
NEBRASKA	X				X							X	X	X		Y		X	X	X
NEVADA	X						45									Y			X	
NEW HAMPSHIRE																				
NEW JERSEY	X				X		60						X	X		Y		X	X	(3)
NEW MEXICO	X			X			90						X	X		Y	X	X	X	X
NEW YORK (1ST)	X	X			X		180		X				X	X		Y				
NEW YORK (2ND)	X				X		90		X				X			N		X	X	(4)
NEW YORK (3RD)																				
NEW YORK (4TH)																				
NORTH CAROLINA	X	X				X							X			Y		X	X	
NORTH DAKOTA																				
OHIO	X				X		90		X				X	X		Y		X		
OKLAHOMA																				
OREGON	X			X									X			Y			X	X
PENNSYLVANIA	X	X				X						X	X	X		Y		X	X	
RHODE ISLAND	X				X								X	X		Y		X	X	
SOUTH CAROLINA	X				X		60		X							Y	X	X	X	(5)
SOUTH DAKOTA																				
TENNESSEE	X					X						X	X	X		Y		X	X	
TEXAS																				
UTAH	X				X		90		X							Y			X	
VERMONT																				
VIRGINIA	X					X							X					X	X	
WASHINGTON	X	X				X										Y		X	X	
WEST VIRGINIA	X					X						X	X	X		N		(6)		
WISCONSIN																				
WYOMING						X							X			N				
<b>TOTALS</b>	36	8	0	4	13	16		0	11	0	0	8	23	17	0	Y-29 N-6	2	26	28	9



# STATES

	HEARING PANEL RECRUITMENT				WHO CHOOSES PANEL			LAWYER QUALIFICATIONS			No. OF COMMITTEE MEMBERS	No. OF NONLAWYERS REQUIRED	NONLAWYER QUALIFICATIONS			ATTY. & CLIENT CAN APPEAR		
	VOLUNTEERS	SOLICITATION COMMITTEE MEMBERS SERVE	ADVERTISEMENTS	AGENCY	BAR COUNSEL	BAR BOARD/ COMMITTEE	HIGH COURT	BAR MEMBER	PRACTICE IN RELEVANT FIELD	SPECIFIED EXPERTISE	NUMBER	NUMBER	APPOINTMENT BY AGENCY	APPOINTMENT BY COURT	NONE	OTHER	YES	NO
ALABAMA																		
ALASKA	X							X		9	3					X	X	
ARIZONA	X			X				X		3	0						X	
ARKANSAS							X			7	2						X	
CALIFORNIA																		
COLORADO		X	X	X				X		3	1				X		X	
CONNECTICUT								X		3	1				X			
DELAWARE																		
DISTRICT OF COLUMBIA	X					X		X		3	1						X	
FLORIDA	X	X				X		X		5-15	1-5				X		X	
GEORGIA							X	X	X	1	0							
HAWAII						X	X	X		3	1			X				X
IDAHO	X	X		X						3	1			X			X	
ILLINOIS						X		X	X	3	0						X	
INDIANA													X					
IOWA			X				X	X									X	
KANSAS							X	X	X	3	0						X	
KENTUCKY											0							
LOUISIANA																		
MAINE																		
MARYLAND	X			X		X		X		3	1				X		X	
MASSACHUSETTS		X		X				X		3	0						X	
MICHIGAN						X				3	0						X	
MINNESOTA			X		X			X		3	1	X					X	
MISSISSIPPI	X					X		X		3	0		X				X	
MISSOURI						X		X		4-5	1						X	
MONTANA						X		X		11	3						X	

# STATES

	HEARING PANEL RECRUITMENT				WHO CHOOSES PANEL				LAWYER QUALIFICATIONS			No. OF COMMITTEE MEMBERS	No. OF NONLAWYERS REQUIRED	NONLAWYER QUALIFICATIONS			ATTY. & CLIENT CAN APPEAR		
	VOLUNTEERS	SOLICITATION COMMITTEE MEMBERS SERVE	ADVERTISEMENTS	AGENCY	BAR COUNSEL	BAR BOARD COMMITTEE	HIGH COURT	BAR MEMBER	PRACTICE IN RELEVANT FIELD	SPECIFIED EXPERTISE	NUMBER	NUMBER	APPOINTMENT BY AGENCY	APPOINTMENT BY COURT	NONE	OTHER	YES	NO	
NEBRASKA							X	X			7	0	X				X		
NEVADA			X			X					5	1					X		
NEW HAMPSHIRE																			
NEW JERSEY	X						X	X	X		3	1			X		X		
NEW MEXICO	X	X		X				X			3	0					X		
NEW YORK (1ST)			X				X				7	2	X				X		
NEW YORK (2ND)								X	X		16	4					X		
NEW YORK (3RD)								X											
NEW YORK (4TH)																			
NORTH CAROLINA	X				X			X			3	1			X		X		
NORTH DAKOTA																			
OHIO						X		X			3	0					X		
OKLAHOMA											3	1							
OREGON																			
PENNSYLVANIA	X	X		X				X			3	0						X	
RHODE ISLAND			X	X				X			3	0						X	
SOUTH CAROLINA			X	X				X			3	0					X		
SOUTH DAKOTA																			
TENNESSEE				X							3	0					X		
TEXAS																			
UTAH						X		X			3	1	X				X		
VERMONT																			
VIRGINIA						X			X		9	2		X			X		
WASHINGTON						X		X			1	0					X		
WEST VIRGINIA			X			X		X			3	1			X		X		
WISCONSIN																			
WYOMING			X			X		X			5	0					X		
<b>TOTALS</b>	11	6	8	2	9	2	13	9	31	2	5			1	6	3	8	32	3

# STATES

	ATTY. BRINGS WITNESSES		CLIENT BRINGS WITNESSES		PROSECUTOR CALLS EXPERTS		PROSECUTOR CALLS WITNESSES		ATTY. & CLIENT MUST APPEAR		CLIENT MUST APPEAR		ATTY ONLY MUST APPEAR		PRIOR DISCIPLINE CONSIDERED			
	YES	NO	YES	NO	YES	NO	YES	NO	YES	NO	YES	NO	YES	NO	Y/N	IF PUBLIC	IF "SERIOUS" AFTER GUILTY DETERMINED	IF NEEDED TO PROVE CHARGES
ALABAMA																		
ALASKA	X			X	X		X								X			
ARIZONA	X		X		X		X		X		X	X			Y		X	X
ARKANSAS	X		X		X		X		X						Y	X		
CALIFORNIA																		
COLORADO	X		X		X		X								Y		X	
CONNECTICUT																		
DELAWARE																		
DISTRICT OF COLUMBIA	X		X		X		X		X		X	X		Y	X	X	X	X
FLORIDA	X		X		X		X		X		X	X		Y		X	X	
GEORGIA																		
HAWAII	X			X	X		X							Y			X	
IDAHO	X		X			X	X		X		X	X		Y		X		
ILLINOIS	X		X		X		X		X		X	X		Y				
INDIANA																		
IOWA	X		X				X		X		X			Y				
KANSAS	X		X		X		X		X		X	X		Y		X		
KENTUCKY																		
LOUISIANA																		
MAINE																		
MARYLAND	X		X		X		X		X		X	X		Y	X	X		
MASSACHUSETTS	X		X		X		X		X		X	X		Y				X
MICHIGAN							X		X		X	X		Y		X		
MINNESOTA	X			X		X	X		X		X	X		Y				
MISSISSIPPI	X		X		X		X		X		X	X		Y	X	X		
MISSOURI	X				X		X							Y				X
MONTANA	X		X			X	X		X					Y	X	X	X	X

# STATES

	ATTY. BRINGS WITNESSES		CLIENT BRINGS WITNESSES		PROSECUTOR CALLS EXPERTS		PROSECUTOR CALLS WITNESSES		ATTY. & CLIENT MUST APPEAR		CLIENT MUST APPEAR		ATTY ONLY MUST APPEAR		PRIOR DISCIPLINE CONSIDERED				
	YES	NO	YES	NO	YES	NO	YES	NO	YES	NO	YES	NO	YES	NO	Y/N	IF PUBLIC	F "SERIOUS" AFTER GUILTY DETERMINED	F NEEDED TO PROVE CHARGES	
NEBRASKA	X		X		X		X		X						Y	X	X	X	X
NEVADA	X			X											Y				
NEW HAMPSHIRE																			
NEW JERSEY	X		X		X		X			X		X		X	Y	X			
NEW MEXICO	X			X	X		X						X		Y			X	
NEW YORK (1ST)	X		X		X			X		X		X	X		Y	X		X	X
NEW YORK (2ND)	X			X	X		X		X						Y			X	
NEW YORK (3RD)																			
NEW YORK (4TH)																			
NORTH CAROLINA	X		X		X		X			X			X		Y			X	
NORTH DAKOTA																			
OHIO	X		X			X	X			X			X		N				
OKLAHOMA																			
OREGON	X			X			X								Y			X	X
PENNSYLVANIA	X			X	X		X		X		X			X	Y			X	
RHODE ISLAND	X			X	X		X			X		X	X		N				
SOUTH CAROLINA	X				X		X		X						Y		X		X
SOUTH DAKOTA																			
TENNESSEE	X		X		X		X			X		X	X		Y				X
TEXAS																			
UTAH	X		X		X		X								Y	X			
VERMONT																			
VIRGINIA	X		X		X		X			X		X		X	Y			X	
WASHINGTON	X			X	X		X								Y				
WEST VIRGINIA	X		X		X		X								Y			X	
WISCONSIN																			
WYOMING	X			X			X						X		N				
<b>TOTALS</b>	35	0	22	11	27	4	34	1	8	17	1	17	12	9	Y-32 N-4	9	5	19	11

# STATES

	CLIENT HEARS ATTORNEY TESTIMONY		CLIENT CROSS-EXAMINES ATTORNEY		ATTORNEY HEARS CLIENT TESTIMONY		ATTORNEY CROSS-EXAMINES CLIENT		SUBPOENA POWER		RULES OF EVIDENCE APPLIED			HEARINGS RECORDED		WRITTEN REPORT REQUIRED		REPORT DEADLINE	
	YES	NO	YES	NO	YES	NO	YES	NO	YES	NO	YES	YES BUT RELAXED	NO	YES	NO	YES	NO	YES/NO	DAYS
ALABAMA																			
ALASKA	X			X	X		X		X		X			X		X		Y	30
ARIZONA				X	X		X		X		X			X		X		Y	60
ARKANSAS	X		X		X		X		X				X	X			X		
CALIFORNIA																			
COLORADO	X			X	X		X		X		X			X		X		N	
CONNECTICUT																			
DELAWARE																			
DISTRICT OF COLUMBIA		X		X	X		X				X			X		X		Y	60
FLORIDA	X			X	X		X		X		X			X		X		N	
GEORGIA				X	X		X		X		X			X		X		Y	60
HAWAII		X		X	X		X		X			X		X		X		Y	60
IDAHO	X			X	X		X		X		X			X			X		
ILLINOIS		X		X	X		X		X		X			X		X		Y	60
INDIANA																			
IOWA																			
KANSAS	X			X	X		X		X		X			X		X		N	
KENTUCKY	X			X	X		X		X		X			X		X		Y	30
LOUISIANA																			
MAINE																			
MARYLAND	X			X					X		X			X		X		Y	15
MASSACHUSETTS	X			X	X		X		X		X			X		X		N	
MICHIGAN				X					X		X			X		X		Y	30
MINNESOTA									X		X			X			X		
MISSISSIPPI					X		X		X		X			X		X		N	
MISSOURI		X		X	X		X		X		X			X		X		N	
MONTANA	X		X		X		X				X			X		X		N	

# STATES

	CLIENT HEARS ATTORNEY TESTIMONY		CLIENT CROSS-EXAMINES ATTORNEY		ATTORNEY HEARS CLIENT TESTIMONY		ATTORNEY CROSS-EXAMINES CLIENT		SUBPOENA POWER		RULES OF EVIDENCE APPLIED			HEARINGS RECORDED		WRITTEN REPORT REQUIRED		REPORT DEADLINE	
	YES	NO	YES	NO	YES	NO	YES	NO	YES	NO	YES	YES, BUT RELAXED	NO	YES	NO	YES	NO	YES/NO	DAYS
NEBRASKA	X			X	X		X		X		X			X					
NEVADA	X			X	X		X		X			X		X		X		Y	60
NEW HAMPSHIRE																			
NEW JERSEY												X		X		X		Y	30
NEW MEXICO	X			X	X		X		X			X		X		X		Y	10
NEW YORK (1ST)		X		X	X		X		X		X			X			X	N	
NEW YORK (2ND)	X			X	X		X		X		X			X		X		N	
NEW YORK (3RD)																			
NEW YORK (4TH)																			
NORTH CAROLIN..	X			X	X		X		X		X			X			X		
NORTH DAKOTA																			
OHIO		X		X	X		X		X		X			X		X		N	
OKLAHOMA																			
OREGON		X		X			X		X							X		Y	21
PENNSYLVANIA		X		X	X		X		X		X			X		X		Y	60
RHODE ISLAND		X		X	X		X		X		X			X		X		Y	60
SOUTH CAROLINA		X		X	X		X		X		X			X		X		Y	60
SOUTH DAKOTA																			
TENNESSEE	X			X	X			X	X		X			X		X		Y	60
TEXAS																			
UTAH	X			X	X		X		X		X			X			X		
VERMONT																			
VIRGINIA	X			X	X		X		X			X		X			X	N	
WASHINGTON		X		X	X		X		X			X		X			X	N	
WEST VIRGINIA	X			X	X		X		X		X			X		X		N	
WISCONSIN																			
WYOMING		X		X	X		X		X		X			X			X		
<b>TOTALS</b>	19	12	2	32	32	0	32	1	33	1	25	7	4	35	1	27	9	Y-17 N-13	

# STATES

	HEARING COMMITTEE CAN					WHAT BODY GIVES FINAL DISCIPLINE			TYPES OF DISCIPLINE							STANDARDS FOR READMISSION		DISABILITY SUSPENSION		FINANCIAL RESTITUTION POSSIBLE							
	ISSUE PRIVATE DISCIPLINE	IMPOSE DISCIPLINE	RECOMMEND DISCIPLINE	FORWARD REPORT	OTHER	HEARING PANEL	DISCIPLINE COMMISSION	HIGH COURT	OTHER	PRIVATE REPRIMAND	PUBLIC REPRIMAND	PROBATION	CENSURE	SUSPENSION	DISBARMENT	PERMANENT DISBARMENT	OTHER	YES	NO	YES	NO	YES/NO	IF ATTY MISUSED FUNDS	IF ATTY OVERCHARGED	IF DISC BODY RECOMMENDS	OTHER	
ALABAMA																											
ALASKA			X	X			X	X	X	X	X	X	X	X				X		X		Y				X	(9)
ARIZONA			X	X			X			X		X	X	X					X		X		Y	X	X	X	
ARKANSAS	X	X				X		(6)		X	X		X									N					
CALIFORNIA																											
COLORADO			X	X		X		X	X	X	X	X	X	X		(7)		X		X		Y	X	X	X		
CONNECTICUT	X			X		X		X	X				X	X						X		N					
DELAWARE																											
DISTRICT OF COLUMBIA			X	X			X	X	X	X	X	X	X	X		X		X				Y	X	X	X		
FLORIDA	X			X		X		X	X	X	X	X	X	X				X		X		Y	X	X	X	(9)	
GEORGIA			X	X		X		X	X			X	X					X		X		N					
HAWAII			X			X			X	X		X	X	X					X		X	Y	X	X	X		
IDAHO			X	X			X	X	X	X	X	X	X	X				X				Y			X		
ILLINOIS	X		X	X			X		X		X	X	X	X				X		X		Y	X				
INDIANA																											
IOWA	X		X			X	X		X	X			X	X				X		X							
KANSAS	X		X	X			X		X				X	X				X		X		N					
KENTUCKY	X			X		X		X	X				X	X				X		X		Y	X		X		
LOUISIANA																											
MAINE																											
MARYLAND	X		X	X			X		X	X	X			X					X		X	Y					
MASSACHUSETTS			X	X		X	X		X		X	X	X	X				X		X		Y	X			(9)	
MICHIGAN		X				X			X	X	X		X	X				X		X							
MINNESOTA				X			X	X	X	X	X	X	X	X				X		X		Y				(9)	
MISSISSIPPI	X	X				X		X	X	X	X	X	X	X				X		X		Y	X		X		
MISSOURI	X	X	X				X		X	X		X	X	X				X		X		N				(10)	
MONTANA	X		X				X					X	X	X					X		X	Y	X		X		

# STATES

	HEARING COMMITTEE CAN					WHAT BODY GIVES FINAL DISCIPLINE			TYPES OF DISCIPLINE							STANDARDS FOR READMISSION		DISABILITY SUSPENSION		FINANCIAL RESTITUTION POSSIBLE						
	ISSUE PRIVATE DISCIPLINE	IMPOSE DISCIPLINE	RECOMMEND DISCIPLINE	FORWARD REPORT	OTHER	HEARING PANEL	DISCIPLINE COMMISSION	HIGH COURT	OTHER	PRIVATE REPRIMAND	PUBLIC REPRIMAND	PROBATION	CELSURE	SUSPENSION	DISBARMENT	PERMANENT DISBARMENT	OTHER	YES	NO	YES	NO	YES/NO	F FATTY MISUSED FUNDS	F FATTY OVERCHARGED	F DISC BODY RECOMMENDS	OTHER
NEBRASKA	X			X		X	X		X	X	X	X	X	X						X		N				
NEVADA			X				X		X	X			X	X	X			X				N				
NEW HAMPSHIRE																										
NEW JERSEY			X	X		X	X		X	X			X		X	(8)		X				N				
NEW MEXICO			X	X		X	X		X	X	X	X	X	X		(8)		X	X	X		Y	X	X	X	(10)
NEW YORK (1ST)	X		X	X			X					X	X	X						X		Y	X	X	X	
NEW YORK (2ND)						X	X		X			X	X	X						X		N				
NEW YORK (3RD)																										
NEW YORK (4TH)																										
NORTH CAROLINA		X						X	X			X	X	X			X		X	X		Y			X	
NORTH DAKOTA																										
OHIO			X	X			X		X			X	X	X			X		X	X		N				
OKLAHOMA																										
OREGON	X	X		X		X	X	X	X	X		X	X	X			X			X		N				
PENNSYLVANIA			X			X	X		X	X		X	X	X			X		X	X		Y	X			
RHODE ISLAND			X	X			X		X	X		X	X	X			X		X	X		N				
SOUTH CAROLINA			X	X			X		X	X		X		X			X		X	X		Y	X	X	X	(9)
SOUTH DAKOTA																										
TENNESSEE			X	X			X		X	X		X	X	X			X		X	X		Y			X	
TEXAS																										
UTAH		X					X		X	X		X	X	X			X		X	X		Y				
VERMONT																										
VIRGINIA	X					X	X		X	X		X	X	X			X		X	X		N				
WASHINGTON		X	X			X	X	X	X	X	X	X	X	X	X	(7)		X		X	X		Y			X
WEST VIRGINIA			X	X			X		X	X		X	X	X		(7)	X		X	X		N				
WISCONSIN																										
WYOMING	X	X	X	X		X	X		X	X		X	X	X				X	X	X		Y			X	
<b>TOTALS</b>	16	8	25	26	0	13	13	33	5	32	31	21	19	38	36	5	5	28	6	33	0	Y-23 N-14	14	8	17	7

# STATES

	LIMITS ON RESTITUTION			ATTYS. CAN APPEAL		BAR COUNSEL CAN APPEAL		CLIENTS CAN APPEAL		APPEALS TO			MONITOR DISBARRED ATTORNEYS		RECORDS MAINTAINED			DISMISSED CASE RECORDS MAINTAINED						
	YES	NO	AMOUNT	OTHER	YES	NO	YES	NO	YES	NO	STATE BAR SYSTEM	OUTSIDE BAR	BOTH	YES	NO	YES	NO	INDEFINITELY	NO. YEARS	YES	NO	PERMANENTLY	OTHER	
ALABAMA																								
ALASKA	N				X		X			X					X		Y	X		Y		5		
ARIZONA					X		X			X			X		X					N				
ARKANSAS					X			X		X					X		Y			Y				
CALIFORNIA																								
COLORADO	N				X		X			X			X		X		Y	X		Y		3		
CONNECTICUT					X		X			X			X		X		Y	X		Y			X	
DELAWARE																								
DISTRICT OF COLUMBIA	N				X		X			X					X		Y	X		Y		5		
FLORIDA	N				X		X			X			X				Y	X		N				
GEORGIA					X					X					X		Y	X		Y		4		
HAWAII	N				X			X		X					X		Y	X		Y			X	
IDAHO	N				X		X			X					X		Y			Y				
ILLINOIS					X		X			X			X		X		Y			Y				
INDIANA																								
IOWA					X												Y							
KANSAS					X		X			X			X		X		Y	X						
KENTUCKY	N				X		X							X		Y	X		Y		1			
LOUISIANA																								
MAINE																								
MARYLAND	N				X		X			X					X		Y	X		Y		5-12		
MASSACHUSETTS	N				X					X					X		Y	X		Y		6		
MICHIGAN					X		X			X			X											
MINNESOTA	N					X		X		X					X		Y	X		Y		5		
MISSISSIPPI	N				X		X			X			X		X		Y	X		Y			X	
MISSOURI					X			X		X					X		Y		5	N				
MONTANA	N				X		X			X			X		X		Y	X		Y			X	

# STATES

	LIMITS ON RESTITUTION			ATTYS. CAN APPEAL		BAR COUNSEL CAN APPEAL		CLIENTS CAN APPEAL		APPEALS TO			MONITOR DISBARRED ATTORNEYS		RECORDS MAINTAINED			DISMISSED CASE RECORDS MAINTAINED			
	Y/N	AMOUNT	OTHER	YES	NO	YES	NO	YES	NO	STATE BAR SYSTEM	OUTSIDE BAR	BOTH	YES	NO	YES/NO	INDEFINITELY	NO YEARS	YES/NO	YEARS	PERMANENTLY	OTHER
NEBRASKA				X		X			X	X				X	Y	X		Y	3		
NEVADA						X								X	Y	X		Y		X	
NEW HAMPSHIRE																					
NEW JERSEY								X				X		X	Y	X		Y	5		
NEW MEXICO	N			X			X	X		X				X	Y	X		Y	3		
NEW YORK (1ST)	N			X			X	X		X				X	Y			Y	7		
NEW YORK (2ND)				X		X			X	X				X	Y						
NEW YORK (3RD)																					
NEW YORK (4TH)																					
NORTH CAROLINA	N			X		X			X		X			X	Y	X		Y	1		
NORTH DAKOTA																					
OHIO	Y	X		X		X			X		X			X	Y	X		Y	3		
OKLAHOMA																					
OREGON				X		X		X		X					Y	X		Y		X	
PENNSYLVANIA	Y	X		X		X			X			X		X	Y	X		Y	6		
RHODE ISLAND					X		X		X					X	Y	X		Y			
SOUTH CAROLINA	N													X	Y	X		Y	3		
SOUTH DAKOTA																					
TENNESSEE	N			X		X			X		X		X		Y	X		Y		X	
TEXAS																					
UTAH				X		X		X				X			Y			Y		X	
VERMONT																					
VIRGINIA				X			X		X			X		X	Y		5	Y	5		
WASHINGTON	N			X		X			X			X		X	Y		5	Y	5		
WEST VIRGINIA				X		X				X				X	Y	X		Y			
WISCONSIN																					
WYOMING	N				X			X		X				X	Y	X	(*)	N			
<b>TOTALS</b>	N-19 Y-2	2	0	33	3	24	10	11	22	11	8	9	6	29	Y-37	27		Y-31 N-4		8	0

# STATES

	SKELETAL RECORD MAINTAINED		DISCIPLINE NOTICE:			CASES BECOME PUBLIC WHEN:				SYSTEM PUBLICIZED					
	YES	NO	SENT TO NEWSPAPER	PRINTED IN NEWSPAPER	PRINTED IN BAR PUBLICATION	COMPLAINT FILED	PROBABLE CAUSE/ AGENCY HEARING	COURT ACTION RECOMMENDED	PUBLIC DISCIPLINE IMPOSED	YES/NO	BROCHURE	YELLOW PAGES	DISCIPLINE PUBLISHED	PUBLIC SPEAKING	OTHER
ALABAMA							X								
ALASKA	X			X	X		X			Y	X		X		
ARIZONA			X		X				X	Y	X		X		
ARKANSAS				X	X				X	Y			X		
CALIFORNIA							X			Y	X		X		
COLORADO		X		X	X				X	Y	X		X	X	
CONNECTICUT							X			Y	X				
DELAWARE								X							
DISTRICT OF COLUMBIA	X		X	X	X			X		Y	X		X		
FLORIDA	X		X		X			X		Y	X	X	X	X	
GEORGIA										Y	X		X		
HAWAII								X		Y			X	X	
IDAHO	X			X	X				X	Y	X		X	X	
ILLINOIS			X		X			X		Y	X		X		
INDIANA								X							
IOWA									X	Y	X				
KANSAS				X			X			Y	X		X		
KENTUCKY				X	X				X	Y	X		X		
LOUISIANA								X							
MAINE								X							
MARYLAND	X		X		X			X		Y	X		X		
MASSACHUSETTS		X	X					X		Y	X		X		
MICHIGAN							X								
MINNESOTA	X		X		X			X		Y			X		
MISSISSIPPI	X		X	X	X				X	Y	X		X		
MISSOURI	X				X			X		Y	X		X	X	
MONTANA				X	X			X		Y				X	

# STATES

	SKELETAL RECORD MAINTAINED		DISCIPLINE NOTICE:			CASES BECOME PUBLIC WHEN:				SYSTEM PUBLICIZED					
	YES	NO	SENT TO NEWSPAPER	PRINTED IN NEWSPAPER	PRINTED IN BAR PUBLICATION	COMPLAINT FILED	PROBABLE CAUSE/ AGENCY HEARING	COURT ACTION RECOMMENDED	PUBLIC DISCIPLINE IMPOSED	YES/NO	BROCHURE	YELLOW PAGES	DISCIPLINE PUBLISHED	PUBLIC SPEAKING	OTHER
NEBRASKA	X			X	X			X		Y			X		
NEVADA	X		X		X			X		Y			X		
NEW HAMPSHIRE								X							
NEW JERSEY			X		X			X		Y	X	X			
NEW MEXICO	X		X		X				X	Y			X		
NEW YORK (1ST)	X				X				X	Y			X	X	
NEW YORK (2ND)	X									N					
NEW YORK (3RD)															
NEW YORK (4TH)															
NORTH CAROLINA	X		X		X		X			Y	X		X		
NORTH DAKOTA															
OHIO	X				X			X		Y			X		
OKLAHOMA								X							
OREGON					X	X				Y	X		X		
PENNSYLVANIA	X				X			X		Y	X		X		
RHODE ISLAND				X	X				X	Y			X		
SOUTH CAROLINA	X			X	X				X	Y	X		X		
SOUTH DAKOTA									X						
TENNESSEE	X		X						X	Y	X				
TEXAS															
UTAH	X				X		X			Y			X		
VERMONT								X							
VIRGINIA	X		X		X				X	Y	X		X		
WASHINGTON		X		X	X	X				Y	X		X	X	
WEST VIRGINIA	X			X	X			X		Y	X		X	X	
WISCONSIN								X							
WYOMING		X		X	X				X	Y			X	X	
<b>TOTALS</b>	<b>21</b>	<b>4</b>	<b>14</b>	<b>15</b>	<b>30</b>	<b>2</b>	<b>7</b>	<b>24</b>	<b>17</b>	<b>Y-38 N-1</b>	<b>25</b>	<b>2</b>	<b>31</b>	<b>10</b>	<b>0</b>

# STATES

	HOW MADE PUBLIC					PUBLIC NOTICE ONLY FOR PUBLIC DISCIPLINE		BACKLOG		LENGTH
	COMPLAINT RECORD OPEN	COMPLAINT FILE OPEN	HEARING RECEIVED OPEN	NOTICE IN BAR PUBLICATION	OTHER	YES	NO	YES	NO	CASES (XXX)
ALABAMA										
ALASKA		X	X			X				
ARIZONA						X			X	
ARKANSAS						X			X	
CALIFORNIA										
COLORADO						X		X		
CONNECTICUT						X			X	
DELAWARE										
DISTRICT OF COLUMBIA				X		X				
FLORIDA	X		X			X				
GEORGIA						X				
HAWAII						X		X		170
IDAHO						X		X		
ILLINOIS						X				
INDIANA										
IOWA						X				
KANSAS	X	X				X			X	
KENTUCKY						X		X		
LOUISIANA										
MAINE										
MARYLAND						X		X		
MASSACHUSETTS						X		X		365
MICHIGAN						X		X		
MINNESOTA						X		X		
MISSISSIPPI						X				
MISSOURI		X				X				
MONTANA		X						X		

# STATES

	HOW MADE PUBLIC					PUBLIC NOTICE ONLY FOR PUBLIC DISCIPLINE		BACKLOG		LENGTH
	COMPLAINT RECORD OPEN	COMPLAINT FILE OPEN	HEARING RECORD OPEN	NOTICE IN BAR PUBLICATION	OTHER	YES	NO	YES	NO	NO. CASES
NEBRASKA	X	X	X	X					X	
NEVADA				X					X	
NEW HAMPSHIRE										
NEW JERSEY						X				
NEW MEXICO						X			X	
NEW YORK (1ST)						X				
NEW YORK (2ND)										
NEW YORK (3RD)										
NEW YORK (4TH)										
NORTH CAROLINA	X		X			X		X		
NORTH DAKOTA										
OHIO						X			X	
OKLAHOMA										
OREGON	X	X	X	X						
PENNSYLVANIA			X	X		X			X	
RHODE ISLAND						X		X		
SOUTH CAROLINA						X		X		
SOUTH DAKOTA										
TENNESSEE						X				
TEXAS										
UTAH	X	X	X	X		X				
VERMONT										
VIRGINIA										
WASHINGTON	X	X	X			X				
WEST VIRGINIA			X	X		X			X	
WISCONSIN										
WYOMING						X				
<b>TOTALS</b>	7	8	9	7	0	33	0	12	10	

## ***Appendix III***

### ***Model Discipline Monitoring Commission***

---

HALT drafted this model legislation with explanatory notes to support our recommendation that every state should empower a commission to provide the public with objective, detailed information, by an independent source, about the performance of a state's attorney discipline system. Only by having accurate, objective information can the public make an intelligent evaluation of how the system could be improved. HALT intends to use this model to urge states to create such independent commissions.



**MODEL LEGISLATION  
TO CREATE A MONITORING COMMISSION  
ON ATTORNEY DISCIPLINE**

Drafted by HALT — An Organization of Americans for Legal Reform

**Section 1. Creation; Composition; Purpose**

a) There is created an Attorney Discipline Monitoring Commission. The Commission appointments specified in Section 3 shall be made by no later than [two months after the legislation's effective date].

b) The Commission shall consist of five Commissioners, at least three of whom must be individuals who have never been members of the State Bar or admitted to practice law before any court. The Commissioners shall serve without compensation, but shall be reimbursed for per diem and travel expenses while engaged in Commission duties. To assist it in fulfilling its duties, the Commission shall hire a staff, as specified in Section 3.

c) The Commission shall investigate, monitor, evaluate, and make reports and recommendations regarding all programs and processes for handling complaints about attorney unresponsiveness, incompetence, fee disputes, and unethical conduct, including, but not limited to:

1) efforts to educate the public and make consumers aware that the discipline system exists and how they can use it;

2) the kinds of complaints registered with the State Bar, the implementation of rules, standards and guidelines, and the extent to which complaints may be and are acted upon;

3) the speed with which complaints are handled and decisions rendered;

4) the efficiency of the system;

5) the courtesy shown to complainants throughout the process, and the level of complainant satisfaction with the discipline process;

6) the openness of the system and the extent of public access to records and proceedings;

7) matters of procedural fairness to all parties involved;

8) the adequacy of program staffing and funding, and the disciplinary staff's evaluation of the system's performance;

9) consistency and appropriateness in applying sanctions, discipline, remedies, and referrals to programs or agencies outside the discipline system; and

10) the State Bar's cooperation with and the extent of regulatory activity by other governmental entities charged with enforcing related laws and regulations that affect members of the State Bar.

d) All records and meetings of the Commission shall be open to the public. The Commission shall take reasonable steps to encourage public attendance at its meetings and provide opportunities for public input.

## **Section 2. Duties of Commission and Its Staff; Duties of State Bar**

a) At its first meeting, the Commissioners shall elect one of its nonattorney members as its Chairperson. The Chairperson shall assure that the Commission meets to consider and act upon the proposed findings and recommendations of its staff at least once every six months.

b) Reports and recommendations of the Commission must be approved by a majority of Commissioners. Individual Commissioners may issue separate or dissenting statements at their discretion.

c) The Commission shall issue its first written report of preliminary findings, conclusions, and recommendations to the Legislature by no later than [twelve months after the legislation's effective date], and make further such reports to the Legislature once every six months thereafter during its period of operation.

d) The Commission and its staff shall be available for oral reports and provide copies of all written reports to the State Bar, the State Supreme Court, and the Chairpersons of interested committees of the Legislature, and assure that sufficient copies of its reports are reproduced to be available to the public and the media.

e) The State Bar shall cooperate with the Commission and its staff, but neither the Commission nor its staff shall exercise any decision-making authority over the State Bar's operations or staff.

f) The State Bar shall provide to the Commission and its staff:

1) access to Grievance Committee hearings, and all case data, information, and files, in unsanitized form; and

2) advance notice of and access to all meetings of the State Bar or its subsidiary bodies relating to any topics which the Commission is charged with monitoring, including closed meetings and executive sessions.

g) The Commission and its staff shall comply with the State Bar's policy of keeping the names of complainants and respondents confidential.

## **Section 3. Appointment and Qualifications of Commissioners; Hiring of Staff**

a) The three nonattorney members of the Commission shall be appointed as follows:

1) The Attorney General shall appoint one Commissioner who represents and has demonstrated experience working on behalf of consumers of legal services on discipline-related concerns;

2) The Chairperson of the Senate [Committee with jurisdiction over consumer affairs] shall appoint one Commissioner who represents and has demonstrated experience advocating on behalf of consumer concerns in general;

3) The Chairperson of the House [Committee with jurisdiction over consumer affairs] shall appoint one Commissioner who has demonstrated experience advocating the public interest in the field of occupational regulation.

b) The other members of the Commission shall be appointed as follows:

1) The Chief Justice of the Supreme Court shall appoint one Commissioner who has demonstrated experience in the actual operation of lawyer discipline procedures and the application of the ethical rules that apply to the legal profession;

2) The Governor shall appoint one Commissioner who has demonstrated knowledge and scholarship in the field of lawyer discipline, ethics, and competence.

c) In the event that a Commissioner is unable to serve for her or his entire term, the official who appointed that Commissioner shall appoint a replacement to fill the vacancy for the unexpired portion of the term.

d) The Commission shall hire for reasonable compensation an Executive Director. The Commission shall advertise the availability of the Executive Director position, interviews the applicants, and hire the successful applicant by no later than [four months after the legislation's effective date]. The successful applicant shall have investigative experience, be familiar with State laws and procedures, and be familiar with the rules and procedures of agencies that regulate matters bearing on consumer protection. The Commission shall supervise the Executive Director and has the authority to dismiss and replace her or him upon a majority vote of the Commissioners.

e) The Executive Director shall hire for reasonable compensation two Investigative Assistants and one Administrative Assistant. The Executive Director shall advertise the availability of these positions, interview the applicants, and hire the successful applicants by no later than [six months after the legislation's effective date]. The Executive Director shall supervise these employees, and has the authority to dismiss and replace them at her or his discretion.

#### **Section 4. Effective Date; Period of Operation; Sunset**

a) This Act shall take effect [at the next usual effective date for legislation enacted in the most recent legislative session].

b) The Commission shall monitor and issue reports on a continuing basis [for a period of three years from the date of the Commission's first report].

c) This statute shall remain in effect only until [the date specified in Section 4(b)], and on that date is repealed, unless a later enacted statute, which is enacted before [the date specified in Section 4(b)], extends that date.

#### **Section 5. Funding of Commission Activities**

a) On or before [the legislation's effective date], and annually on that date through [the Act's two year anniversary], the Board of Governors of the State Bar shall transmit the sum of one hundred thousand dollars (~~\$100,000~~) to the State Comptroller, who shall transfer that sum to the state treasury to carry out the purposes of this Act.

b) There is hereby appropriated annually through [the Act's two year anniversary] an additional two hundred thousand dollars (\$200,000) from the state treasury to carry out the the purposes of this Act.

EDR

**EXPLANATORY NOTES**  
**TO HALT'S MODEL LEGISLATION**  
**TO CREATE A MONITORING COMMISSION ON ATTORNEY DISCIPLINE**

**Legislative Intent**

In most (33) states, the only agency with the authority to regulate lawyers and handle client complaints is the state bar association, which is accountable only to the state's highest court. In the other states, the state supreme court appoints the governing board officials who oversee the agency. Although this set-up is technically independent of the state bar, the bar exerts considerable influence over who sits on the disciplinary governing board, who runs the system, and how complaints are processed. Whether bar control is de jure or de facto, in both cases the state bar exercises control over attorney discipline.

Typically, these agencies have dismal consumer protection records — they dismiss the overwhelming majority of complaints, take forever to act on complaints, and in the end rarely impose serious sanctions. Nationally, roughly 98% of all complaints are dismissed with no public discipline imposed. Yet, because they operate in almost total secrecy, the public they are supposed to be protecting has no way to know for sure whether these agencies are in fact dismissing valid complaints. The few independent investigations that have been done, however, have revealed substantial problems.

Public outcry has often forced state bars to set up their own study commissions and even to make some reforms. These efforts, however, have rarely had credibility with the public or made any real difference in responding to consumers' concerns, primarily because the study commissions themselves are dominated by lawyers with token, if any, public participation (again, often operating in secret). And if any reforms are proposed, they tend to be only cosmetic.

Bar-controlled disciplinary agencies routinely claim that they are doing a good job, whereas consumers and groups like HALT claim that these agencies are serving consumers poorly.

The intent of this model legislation is to provide the public with objective, detailed information, gathered over a three-year period by an independent source, about the performance of a state's attorney discipline system. Only by having accurate, objective information can the public make an intelligent evaluation of whether that system adequately serves consumers' needs and debate whether and how the system could be improved.

**Section-by-Section Explanation**

**Section 1. Creation; Composition; Purpose**

This legislation is modeled after Chapter 1114 (SB 1643), CAL. BUS. & PROF. CODE § 6086.9 (Deering 1986), enacted by the California Legislature in 1986. A key difference, however, exists between that legislation and HALT's model. California's legislation provided for the appointment of one individual to serve as "Bar Monitor," whereas this legislation calls for the creation of a five-member Commission.

Despite certain logistical advantages of appointing a single individual, HALT opted to create a Commission for two main reasons. First, the appointment of several individuals instead of just one increases the expertise and resources of the "Monitor." Five individuals can bring varied backgrounds and viewpoints to the task, a variety unlikely to be found in one individual.

More important, although the particular individual selected by the California Attorney General was viewed by consumers as an excellent choice, consumers cannot rely on such excellent appointments in every state. If an individual who is passive or even hostile to consumer interests is selected, the legislation is unlikely to produce a useful investigation in which the public can have confidence. HALT thought that the Commission structure better ensured that the public interest would be served by the legislation.

The Act mandates that the majority of Commissioners be nonlawyers. Because the purpose of the Act is to conduct an *independent* examination of the bar's consumer protection activities, it is vital that those being regulated and those doing the regulating — lawyers — not be able to control investigatory decisions or Commission recommendations. Therefore, at least three Commissioners must be nonlawyers, although there is no requirement that the remaining vacancies be filled by members of the bar.

The Commission's first purpose is to make a detailed investigation and report of at least ten facets of all the bar's programs and operations for dealing with consumer complaints about lawyers. Based on these findings, the Commission is expected to evaluate the agency's performance and make recommendations for improvement. Assuming that reforms are adopted, the Commission must then monitor and evaluate the impact of reforms, and make further recommendations, as appropriate.

The Commission is a public entity convened to conduct a public inquiry into the system. Therefore, all meetings and records of the Commission are open to the public. Further, the Commission is required not only to permit public participation, but to take reasonable steps to encourage public attendance at its meetings and public input into its decisions.

Reasonable steps to encourage public attendance might include holding meetings on weekends, sending advance notices of meetings to public interest organizations, posting notices in selected public places and places where clients of lawyers would likely be found, and placing ads or free announcements in newspapers. Reasonable steps to permit public input might include the holding of public hearings on proposed recommendations, publishing proposals in the state's register and seeking written comments from the public, or permitting the public to speak directly to the Commission at its meetings.

## **Section 2. Duties of Commission and Its Staff; Duties of State Bar**

At a minimum, the Chairperson of the Commission is responsible for assuring that the Commission meets at least once every six months to consider and act upon the staff's proposed findings and recommendations. Nothing in the Act prevents the Commission from delegating other duties to the Chair or to the staff.

The Act spells out the process for making decisions and issuing reports. In keeping with the spirit of encouraging public participation, the Commission and its staff should attempt to inform the public, as well as the specified officials, about its findings and recommendations. For this reason, written reports should be made freely available to the public and the media.

A full and open investigation of the complaints process will require full cooperation from the Bar and its staff. The Act thus requires the Bar to cooperate, and to grant the Commission and its staff free access to relevant documents and proceedings. As part of this investigation, the Commission staff may wish to interview the Bar's staff about their views. But, access to Bar staff, documents, and meetings

does not give the the Commission staff any decision-making authority over the Bar's staff and operations.

HALT strongly objects to the policy of most agencies to keep the identities of the complaining clients and the respondent attorneys confidential. But, as long as this is the policy, the Commission and its staff are required to abide by it in the course of performing their duties.

### **Section 3. Appointment and Qualifications of Commissioners; Hiring of Staff**

The appointments process is designed to increase the likelihood of a truly independent investigation that addresses consumers' concerns. First, as to *who makes the appointments*, the power is decentralized so as to assure that no one person's views dominate the Commission. All three branches of government participate in making the appointments. Second, to increase the Commission's accountability to the public, at least four of the five Commissioners are to be appointed by publicly-elected officials.

Third, the specific officials identified in the Act to make appointments were selected because of their likely familiarity with people who have the requisite qualifications. For example, because they are lobbied by consumer advocates, the Chairs of the legislative committees with jurisdiction over consumer matters are likely to be familiar with consumer advocates. In any given state, however, because of politics or the particular individuals involved, it may make sense to alter the appointers.

The same concern for an independent, effective investigation motivated HALT's choice of *who should be appointed*. Even when agencies have included public members on their committees, too often these members have had no experience dealing with consumer concerns. As a result, they have been ill-equipped to represent consumers' viewpoint and thus largely ineffective. In contrast, this legislation requires the three nonattorney members to have a firm grounding in three areas of consumer protection: attorney discipline, occupational regulation, and consumer concerns in general. The qualifications of the other two Commissioners are designed to bring to the Commission knowledge and expertise in lawyer ethics and attorney discipline.

Because the Commissioners are likely to be busy with their other jobs and are uncompensated, it is vital that the Commission have a staff to conduct the actual investigation and to prepare the reports. The Executive Director may but need not be a lawyer, and must have the relevant experience enumerated in the Act. To facilitate the Director's work and enable the Commission to "be" many places at once, the Act provides for the hiring of additional staff supervised by the Executive Director.

### **Section 4. Effective Date; Period of Operation; Sunset**

The period of operation contemplated by Act is three and one half years, with the first six months allocated for start-up tasks, thereby permitting the Commission to have three full years for investigation and reporting. After this time, the Commission will sunset out of existence. Using the Act's effective date as the base from which the other deadlines are calculated, the timeline is as follows:

**Start-up:** Two months after effective date, named officials appoint Commissioners; the Commission then has two months to hire an Executive Director; and the Executive Director then has two months to hire the rest of the staff.

**First Report:** From the time the staff is hired, it has six months before the first report is due. Within this time, the staff must begin its investigation and propose preliminary findings; the Commission must meet to consider and vote on the staff's proposals; and the staff must be given time to produce a report of the Commission's findings. Thus,

there is no expectation that the first report be at all conclusive, either as to examination of system operations or recommendations for reform.

**Successive Reports:** Successive reports are due every six months thereafter, with the final report due three years after the deadline for the Commission's first report. It is expected that the Commission itself will meet at least every six months and in advance of report deadlines so that the staff has enough time to prepare reports on the Commission's decisions.

Obviously, all of these deadlines can and should be adjusted to mesh with the state's legislative schedule. It would be desirable, for example, to time the reports for when the legislature is in session or to permit legislative action on the Commission's recommendations, if appropriate. The deadline explanations within brackets can be replaced by particular dates.

### **Section 5. Funding of Commission Activities**

HALT determined that the minimum annual budget needed to implement the legislation was around \$300,000. It is contemplated that roughly half of this amount will be needed for staff salaries and benefits, and the other half is for travel, printing, and overhead costs of the staff and the Commission. Obviously, the budget can be adjusted based on available resources and other variables.

The Commission's funding comes from two sources: one third from the state bar association and two thirds from the state treasury. This financing arrangement is most appropriate for states in which bar membership is required and where the disciplinary agency is directly operated by the bar. Because, in these states, the lawyer-funded bar claims to be a public agency serving a public function, it makes sense for it to help finance the Commission's work.

In states with different set-ups, however, these provisions would probably need to be modified to comport with state traditions and circumstances. In states where the disciplinary agency is theoretically independent of the bar, the judicial branch's appropriation is another potential source of funds.



## **Appendix IV**

### ***Chronology of California 'Reforms'***

---

The following chronology was prepared to accompany HALT — San Diego testimony, *Consumer Perspective on Reform of California's Attorney Discipline System*, presented on October 26, 1987, at a HALT sponsored public hearing on California's attorney-discipline system. It was also presented at a California State Bar hearing on attorney discipline held October 29, 1987, in Los Angeles.

The chronology demonstrates that the public has relied repeatedly on the California State Bar's promises to institute reforms that would resolve problems that have plagued the system for many years, yet the problems continue to persist and, in some instances, to become worse, largely because the "reforms" failed to address the fatal flaw — conflict-of-interest inherent in self-regulation.



## CHRONOLOGY: Seventeen Years of Attorney Discipline "Reform" in California

- 1970** American Bar Association's blue-ribbon Commission, chaired by former Supreme Court Justice Tom Clark, issues report calling U.S. attorney discipline systems "scandalous."
- 1976** Legislation introduced to require California Bar Board of Governors to include six nonlawyer members. The bar, attempting to head off legislation, opens Board meetings to the public for the first time. Despite bar lobbying, legislature passes bill requiring nonlawyer members.
- 1977** Nonlawyer members of Bar Board push for consumer protections, including requiring written fee agreements between lawyers and clients. One Board member angrily responds, "The State Bar is not a consumer protection agency!"
- 1983**  
Summer Huge backlog of disciplinary cases "discovered" by disciplinary agency, some as much as 10 years old.
- November Bar appoints Subcommittee on Expediting the Disciplinary Process (a.k.a., the Coyle Commission) to recommend ways to reduce the backlog.
- 1984**  
March Coyle Report documents backlog of 2,306 cases awaiting investigation; recommends, among other things, adding staff and funds to the Office of Trial Counsel and creating a Master Calendaring System.
- September Bar puts Coyle Commission recommendations into effect.
- 1985**  
March *San Francisco Examiner* publishes HALT-award winning investigative series — "The Brotherhood" — on California attorney discipline system; indicts system as "slow, lenient and secretive."
- September Independent report by Los Angeles police commander Mark Kroeker recommends creating an Office of Investigation headed by a nonlawyer as a means of solving backlog problem. Bar endorses Kroeker recommendations.
- September Legislature, dissatisfied with bar efforts to reduce backlog, refuses to pass bill authorizing Bar to collect dues from lawyers.
- Fall "We will tolerate nothing but success in dealing with this [disciplinary] problem." — *Joe Gray, Chair, Bar Committee on Admissions & Discipline.*
- Oct./Nov. Bar seeks special legislative session for passage of bar dues bill: denied. Seeks intervention by Supreme Court: denied.
- November Bar enacts more reforms, including guidelines for penalties.

- December Backlog of 6-month-old discipline cases reaches 2,345. Bar announces it will start reducing backlog by dismissing more cases without investigation.
- 1986**
- January Sen. Robert Presley (D-Riverside) introduces bill to remove the discipline system from control of Bar. Bar judges bill passes.
- May Backlog of 6-month-old discipline complaints climbs to 2,810—"the highest in memory," says Coyle Commission.
- June "These new rules are working . . . . [T]ransferring discipline to some 'independent state agency' is, at the least, premature." — *Bar President David Heilbron writing in California Lawyer.*
- June Under heavy lobbying from the Bar, Presley bill is amended to let the bar keep the discipline system but create oversight position, "Bar Monitor," in Attorney General's office. Amended bill is enacted over heavy Bar opposition.
- September Sen. Presley holds press conference to hail signing of Bar Monitor bill. HALT, other consumer groups promise not to end vigilance.
- 1987**
- January Robert Fellmeth of University of San Diego's Center for Public Interest Law appointed Bar Monitor.
- June Bar Monitor publishes first report, documents widespread and serious problems with how the system works.
- September Attorney General John Van de Kamp delivers address to Bar's annual meeting, advocates use of administrative law judges in discipline system.
- October "It's time for our critics to step back and let the system we are designing and improving to take hold. The job is getting done, just give us a reasonable amount of time to do it." — *New Bar President Terry Anderlini, addressing Bar's annual meeting.*

© HALT, 1987  
 1319 F St. NW, Suite 300  
 Washington, DC 20004  
 (202) 347-9600

## ***About HALT***

---

**HALT — An Organization of Americans for Legal Reform** is a national nonpartisan public interest group of more than 150,000 members. It is dedicated to enabling all people to dispose of their legal affairs simply, affordably and equitably. Through education and advocacy, HALT pursues an ambitious program to improve the quality, reduce the cost and increase the accessibility of the civil justice system.

Many members join HALT because of their concern about lawyer regulation. In 1987 alone, HALT received approximately 900 letters from consumers seeking help with a problem with a lawyer or complaining that their state's attorney-discipline system failed to take adequate action on their complaint.

HALT pursues advocacy at the state and federal levels. In addition to reform of attorney discipline, HALT supports:

- ✓ Developing standard do-it-yourself forms and simplified procedures for routine legal matters such as wills, uncontested divorces and simple bankruptcies.
- ✓ Creating pro-consumer alternatives to the tort system, such as alternative compensation systems that guarantee swift and fair compensation for those injured.
- ✓ Reforming "unauthorized practice of law" (UPL) rules which forbid nonlawyers from handling even routine, uncontested matters and which limit consumers' options and make legal services unaffordable to many.

To achieve its education goals, HALT publishes *Citizens Legal Manuals* and an *Everyday Law Series* of brief legal guides to increase consumers' ability to handle their own legal affairs and become informed users of legal services. Written in easy-to-understand language, these materials explain basic legal principles and procedures, including step-by-step "how to" instructions and lists of other resources.

HALT's quarterly magazine, *The Legal Reformer*, is the only national periodical of legal reform news. It informs readers about major legal reform developments and what

they can do to help. For members active in HALT's growing network of community-based chapters, news of local activities is covered in a monthly newsletter, *Frontlines*.

HALT's activities are funded by member contributions.

**H B**

**130**



STATE OF ALASKA  
OFFICE OF THE GOVERNOR  
JUNEAU

13130

January 30, 1989

The Honorable Sam Cotten  
Speaker of the House  
Alaska State Legislature  
P.O. Box V  
Juneau, AK 99811

Dear Mr. Speaker:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill regarding penalties for repeat theft offenses.

This bill corrects a number of inequities in the law governing repeat theft offenses, which passed the legislature last year as CSHB 461(Jud) and was signed into law as ch. 133, SLA 1988. For example, under that current law, a person previously convicted twice of misdemeanor concealment of merchandise, who is again charged with concealment of merchandise, is treated much more harshly than if the person had previously been convicted twice of felony theft. Similarly, a person convicted twice of misdemeanor theft, who is again charged with theft, is treated much more harshly than if the person had previously been convicted twice of felony concealment of merchandise.

In order to justify the increased penalties provided by ch. 133, SLA 1988, the law must be fairly and equitably structured. The attached bill provides that structure.

I urge your favorable action on this bill.

Sincerely,

Steve Cowper  
Governor

# STATE OF ALASKA

## DEPARTMENT OF LAW

### CRIMINAL DIVISION

STEVE COWPER, GOVERNOR

REPLY TO:

CRIMINAL DIVISION CENTRAL OFFICE  
P.O. BOX KC  
JUNEAU, ALASKA 99811-0310  
PHONE: (907) 465-3428

OFFICE OF SPECIAL PROSECUTIONS  
AND APPEALS  
1031 WEST 4TH AVENUE, SUITE 318  
ANCHORAGE, ALASKA 99501-5993  
PHONE: (907) 279-7424

April 29, 1989

The Honorable Jan Faiks  
Alaska State Senator  
P.O. Box V  
Juneau, Alaska 99811

Dear Senator Faiks:


On Monday, May 1, 1989, the House will consider CSHB 130(Jud), a bill that makes technical amendments to the theft statutes. The amendments are necessary to correct constitutional problems in existing law created as a result of legislation that passed both houses unanimously last year. Because the Department of Law has serious concerns about the constitutionality of our existing theft statutes, we are hoping that CSHB 130 (Jud) will pass this year.

Any assistance you can provide in scheduling a Judiciary Committee hearing on this legislation at the earliest possible opportunity would be very much appreciated. Our concern about adoption of CSHB 130(Jud) is shared by representatives of the Anchorage Police Department who have been in frequent contact with me about the pressing need for this legislation.

For your information, I have provided you with copies of back up material prepared during the House hearings on CSHB 130 (Jud). Please let me know if you have any additional questions.

Very truly yours,

DOUGLAS B. BAILY  
ATTORNEY GENERAL

By:   
Laurie H. Otto  
Assistant Attorney General

**ENHANCED CLASSIFICATION OF REPEAT THEFT OFFENSES**  
**Comparison of Existing Law and CSHB 130 (Jud)**

**EXISTING STATUTE**

**CSHB 130**

*AS 11.46.220 - Concealment of Merchandise (A misdemeanor)*  
*Enhance Charge from B misdemeanor to A misdemeanor*

*IF*

*this offense is concealment of merchandise (B misdemeanor)*

*AND*

*the defendant has 2 prior convictions for:*

No	Theft 1st (B felony)	Yes
No	Theft 2d (C felony)	Yes
No	Theft 3d (A misd.)	Yes
No	Theft 4th (B misd.)	Yes
Yes	Con. mer. (C felony)	Yes
Yes	Con. mer. (A misd.)	Yes
Yes	Con. mer. (B misd.)	Yes

*AS 11.46.220 - Concealment of Merchandise (C felony)*  
*Enhance Charge from A misdemeanor to C felony*

*IF*

*this offense is concealment of merchandise (A misdemeanor)*

*AND*

*the defendant has 2 prior convictions for:*

No	Theft 1st (B felony)	Yes
No	Theft 2d (C felony)	Yes
	Theft 3d (A misd.)	
No	- >\$50/<\$500	Yes
No	- credit card	Yes
No	- 3 B misd. theft	No
Yes	Con. mer. (C felony) Con.	Yes
	mer. (A misd.)	
Yes	- >50/\$500	Yes
Yes	- 3 B misd. theft	No

*AS 11.46.140 - Theft 3d (A misdemeanor)*  
*Enhance Charge from B misdemeanor to A misdemeanor*  
*IF*  
*this offense is theft 4th (B misdemeanor)*  
*AND*  
*the defendant has 2 prior convictions for:*

Yes	Theft 1st (B felony)	Yes
Yes	Theft 2d (C felony)	Yes
Yes	Theft 3d (A misd.)	Yes
Yes	Theft 4th (B misd.)	Yes
No	Con. mer. (C felony)	Yes
No	Con. mer. (A misd.)	Yes
No	Con. mer. (B misd.)	Yes

*AS 11.46.130 - Theft 2d (C felony)*  
*Enhance Charge from A misdemeanor to C felony*  
*IF*  
*this offense is theft 3d (A misdemeanor)*  
*AND*  
*the defendant has 2 prior convictions for:*

No	Theft 1st (B felony)	Yes
Yes	Theft 2d (C felony)	Yes
	Theft 3d (A misd.)	
Yes	- >\$50/<\$500	Yes
Yes	- credit card	Yes
No	- 3 B misd. theft	No
No	Con. mer. (C felony)	Yes
	Con. mer. (A misd.)	
No	- >\$50/<\$500	Yes
No	- 3 B misd. theft	No

*AS 11.46.120 - Theft 1st (B felony)  
Enhance Charge from C felony to B felony  
IF  
this offense is theft 2d (C felony)  
AND  
the defendant has 2 prior convictions for:*

Yes	Theft 1st (B felony)	No
Yes	Theft 2d (C felony)	No
No	Con. mer. (C felony)	No

# STATE OF ALASKA

## DEPARTMENT OF LAW

### CRIMINAL DIVISION

STEVE COWPER, GOVERNOR

REPLY TO:

CRIMINAL DIVISION CENTRAL OFFICE  
P.O. BOX KC  
JUNEAU, ALASKA 99817-0310  
PHONE: (907) 465-3428

OFFICE OF SPECIAL PROSECUTIONS  
AND APPEALS  
1031 WEST 4TH AVENUE, SUITE 318  
ANCHORAGE, ALASKA 99501-5993  
PHONE: (907) 279-7424

April 25, 1989

The Honorable Max Gruenberg  
Alaska State Representative  
P.O. Box V  
Juneau, Alaska 99811

Dear Representative Gruenberg:

The Judiciary Committee substitute for HB 130 corrects problems in the theft statutes that were unintentionally created last year by passage of CSHB461(Jud), yet retains and strengthens the enhanced penalty structure that was created last year. Although the attached chart sets out the effect of the changes, it may be useful to provide you with the background of this measure.

Last session, members of the Anchorage Police Department expressed their frustration with the low penalties imposed on defendants convicted of misdemeanor thefts, even where a defendant had a significant record of theft convictions. Testimony was given in support of the bill by an Anchorage police officer who stated that he had been investigating misdemeanor thefts for over a year, and had discovered that the same people were being repeatedly arrested for theft offenses. The officer felt this was because the penalties provided for theft were inadequate and suggested that enhancing the classification for repeat theft offenses would work to deter thefts.

The legislature responded to the concerns raised by the Anchorage police and unanimously passed CSHB461(Jud). Unfortunately, the statute contained a number of internal contradictions that were not discovered during the committee hearings. After passage, the Department of Law carefully examined the statute and discovered that a person with a more serious criminal history of theft may be charged and sentenced more leniently than someone who had committed less serious thefts.

For instance, under AS 11.46.130(a)(4), a person can be convicted of second degree theft (C felony), if the person commits third degree theft and has two prior convictions for third degree theft (A misdemeanor). But, an offender who commits the exact same A misdemeanor theft offense and has two prior convictions for first degree theft (B felony) may not be convicted of second degree

theft. This disparate treatment of offenders who commit the same crime raises serious equal protection concerns.

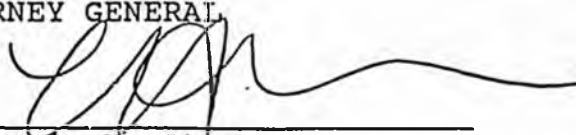
The aggravated concealment of merchandise provisions are also problematic. The statute aggravates a third misdemeanor concealment of merchandise to a felony. However, a person with a worse history of theft who then commits the exact same concealment offense is guilty only of a misdemeanor. For example, a person previously convicted of a felony theft of jewelry (that is, someone who completes the theft offenses) can only be charged with a misdemeanor for a subsequent misdemeanor concealment charge. However, a more inept thief who is repeatedly caught before getting the property out of the store is liable for felony penalties. This scheme may very well be unconstitutional as a violation of equal protection (treating similarly situated persons differently) or due process (being somewhat irrational).

The final problem relates to the effect of the legislation on offenses that are subject to presumptive sentencing. Under existing law, certain felony theft offenses are enhanced from a C felony to a B felony. However, since "all felonies are subject to presumptive sentencing, the enhanced classification for selected felonies has an effect that was unintended by the sponsors of last year's legislation. For example, under current law, a third conviction for a C felony theft offense would be enhanced to a B felony and the presumptive sentence would be six years. However, an offender with two prior convictions for first degree robbery (an A felony) or two prior convictions for first degree burglary (a B felony), who was convicted of C felony theft would not be subject to the enhanced classification law, and would receive a presumptive three year sentence.

All of the problems noted above have been corrected in CSHB 130(Jud). These changes are supported by the Anchorage Police Department, and have been reviewed and approved by Speaker Cotten. Thank you for the opportunity to explain this piece of corrective legislation.

Very truly yours,

DOUGLAS B. BAILY  
ATTORNEY GENERAL

By:   
Laurie H. Otto  
Assistant Attorney General

## FISCAL NOTE

**REQUEST:**

Revision Date: _____	Agency Affected: <u>Department of Law</u>
Title: <u>"An Act relating to penalties for repeat theft offenders."</u>	BRU: <u>Prosecution</u>
Sponsor: <u>Rules Committee</u>	Components: <u>All</u>
Requestor: <u>Governor</u>	

**EXPENDITURES/REVENUES:** (Thousands of Dollars)

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	-0-	-0-	-0-	-0-	-0-	-0-

CAPITAL						
---------	--	--	--	--	--	--

REVENUE						
---------	--	--	--	--	--	--

**FUNDING:** (Thousands of Dollars)

GENERAL FUND	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER						
<b>TOTAL</b>						

**POSITIONS:**

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

**ANALYSIS :** (Attach a separate page if necessary)

This bill makes needed correction to the increased penalty provisions for repeat theft offenders, which passed the legislature last year as CSHB 461 (Jud). Because the changes proposed in the bill are remedial in nature, the bill will not have a fiscal impact on the Department of Law.

Prepared by: Richard L. Pegues, Director Phone: 465-3672  
 Division: Administrative Services Date: November 16, 1988  
 Approved by Commissioner: Grace Berg Squaible, Atty. General Date: November 16, 1988  
 Agency: Department of Law

Distribution (by preparer): • 5/4/89 talked to D. Pegues - Jud CS makes no change in fiscal impact.  
 Legislative Finance  
 Legislative Sponsor  
 Requestor  
 Office of Management and Budget  
 Impacted Agency(ies)

CFrasca

# FISCAL NOTE

## REQUEST:

Revision Date: \_\_\_\_\_  
 Title: "An Act relating to penalties for repeat theft offenses."  
 Sponsor: Rules Committee  
 Requestor: Governor

Agency Affected: Dept. of Administration  
 BRU: Public Defender Agency  
 Components: \_\_\_\_\_

## EXPENDITURES/REVENUES: (Thousands of Dollars)

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

CAPITAL						
---------	--	--	--	--	--	--

REVENUE						
---------	--	--	--	--	--	--

## FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

## POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

## ANALYSIS : (Attach a separate page if necessary)

~~See attachment on page 9.~~

Prepared by: John Salenti, Act. Public Defender  
 Division: Public Defender Agency

Phone: 279-7541  
 Date: Dec. 19, 1988

Approved by Commissioner: John M. Andrews  
 Agency: Administration

Date: 12/22/88

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

BILL VERSION: HB 130  
PUBLISH DATE: HOUSE 1/30/89

# FISCAL NOTE

REQUEST:

Revision Date: \_\_\_\_\_  
Title: "An Act relating to penalties for repeat theft offenses."  
Sponsor: Rules Committee  
Requestor: Governor

Agency Affected: Administration  
BRU: Office of Public Advocacy  
Components: \_\_\_\_\_

## 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						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0

CAPITAL						
---------	--	--	--	--	--	--

REVENUE						
---------	--	--	--	--	--	--

## FUNDING: (Thousands of Dollars)

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

## POSITIONS:

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

ANALYSIS : (Attach a separate page if necessary)

Prepared by: Brant McGee, Public Advocate  
Division: Office of Public Advocacy

Phone: 274-1684  
Date: Dec. 22, 1988

Approved by Commissioner: John Andrews  
Agency: Department of Administration

Date: 12/23/88

Distribution (by preparer):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

**HB**

**148**

FISCAL NOTE

REQUEST:

Revision Date: \_\_\_\_\_  
Title: An Act making corrective amend-  
ments to the Alaska Statutes as recommended...  
Sponsor: House Judiciary  
Requestor: House Judiciary

Affect Agency Legislative Affairs Agency  
BRU: Legislative Council  
Components Legal Services

EXPENDITURES/REVENUES: (THOUSANDS OF DOLLARS)

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants, Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	0	0	0	0	0	0
<b>CAPITAL</b>	0	0	0	0	0	0
<b>REVENUE</b>	0	0	0	0	0	0

FUNDING: (THOUSANDS OF DOLLARS)

General Fund						
Federal Fund						
Other						
<b>TOTAL</b>	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)

NO FISCAL IMPACT

Prepared By: Pamela Stoops, Director  
Division: Administrative Services

*Pamela Stoops*

Phone: 465-3850  
Date: 3/6/89

Approved By: Warren Endicott, Executive Director  
Agency: Legislative Affairs Agency

*Warren Endicott*

Date: 3/6/89

DISTRIBUTION (BY PREPARER)  
LEGISLATIVE FINANCE  
LEGISLATIVE SPONSOR

REQUESTOR  
OFFICE OF MANAGEMENT & BUDGET  
AGENCY (IES)

STATE OF ALASKA  
THE LEGISLATURE

POUCH Y STATE CAPITOL  
JUNEAU, ALASKA 99811  
907 465 3800

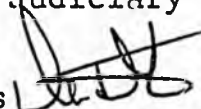
LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

April 25, 1989

SUBJECT: Sectional Analysis of Draft  
SCS CSHB 148(Jud)(Revisor's Bill)

TO: Senator Mike Szymanski  
Vice Chair, Senate Judiciary Committee

FROM: David R. Dierdorff  
Revisor of Statutes 

This memorandum discusses SCS CSHB 148 (Judiciary), the 1989 revisor's bill, as adopted by the Senate Judiciary Subcommittee.

The bill was prepared under AS 01.05.036, which provides, in part, that the revisor of statutes shall

. . . prepare for submission to the legislature legislation for the correction or removal of . . . deficiencies, conflicts, or obsolete provisions, or to otherwise improve the form or substance of . . . the statute law of this state.

The changes made in CSHB 148(Judiciary) by your subcommittee were:

The addition of bill secs. 4 - 6, relating to the Board of Pharmacy.

The addition of bill sec. 32, which had been sec. 15 in HB 148 as introduced, relating to physical examinations of students.

The deletion of the repeal of AS 09.10.055 and the corresponding deletion of what had been bill sec. 5 in CSHB 148(Judiciary).

A change in the effective date of those bill sections relating to the new corporations code, to make the

amendatory sections effective when the new corporations code goes into effect.

#### SUMMARY OF EFFECT

To assist in understanding the draft, I have summarized the contents by grouping sections that have similar effects.

Sections that delete or repeal obsolete provisions: Sections 7, 8, 12 - 26, 35, 47 - 49, 55, and 61 delete or repeal provisions that have become obsolete either through the passage of time or other legislative action.

Sections that update obsolete or archaic provisions, or improve the style of the statutes: Sections 3 - 6, 8, 28, 31, 34, 36 - 39, 42, 43, 46, 50, 52 - 54, 59, and 60 substitute new provisions for provisions that are obsolete, archaic, or otherwise outdated, including improvements in the style of language for purposes of clarity.

Sections that eliminate conflicts with other laws: Sections 2, 27, 30, 32, 33, 40, 44, 45, 51, and 57 resolve conflicts between laws or otherwise harmonize laws dealing with the same subjects.

Sections that correct errors or oversights: Sections 1, 10, 11, 29, 41, 56, and 58 correct errors or oversights in drafting.

#### SECTIONAL ANALYSIS

Section 1. The addition of "or delivery" to AS 04.16.-051(b)(1) by the amendment proposed in sec. 1 conforms the language of the paragraph to the introductory language of the subsection as amended by sec. 8, ch. 156, SLA 1988. The need for this change was noted by the Department of Law when the 1988 Act was reviewed for the governor.

Sec. 2. The amendment to AS 05.05.030(c) proposed in this section would remove a conflict with the provisions of AS 05.10.110. Existing AS 05.05.030(c) requires that a member of the athletic commission attend every boxing and wrestling event. However, AS 05.10.110 provides for the appointment of official inspectors to attend in the absence of a member of the commission. The amendment would simply recognize that commissioners need not attend if official inspectors have been provided for the event. The amendment

also substitutes "member of the commission" for "commissioner" to be consistent with other usage in AS 05.05 and to eliminate confusion between the duties of the members of the commission and the duties of the athletic commissioner.

Sec. 3. The amendment substitutes "A member" for "The commissioners" to clarify that the provision is dealing with members of the commission and not the athletic commissioner, and conform the usage to that found elsewhere in AS 05.05.

Secs. 4 - 6. The amendments to AS 08.80.110(3), 08.80.-116(b), and 08.80.480(13) reflect the fact that the National Association of Boards of Pharmacy does not recognize colleges; however, the American Association of Colleges of Pharmacy does. The amendments were requested by the division of occupational licensing on behalf of the Board of Pharmacy.

Sec. 7. The proposed amendment to AS 08.84.030(a) deletes a reference to the Professional Examination Service Association because, effective August, 1988, the association is no longer administering the exam for physical therapists. The amendment was requested by the division of occupational licensing.

Sec. 8. This section proposes the substitution of a reference to specific, relevant provisions of AS 09.20 for an archaic reference to "the following provisions."

Sec. 9. Since the 1972 enactment of AS 09.30.100 - 09.30.-180 (Uniform Foreign Money-Judgments Recognition Act), the United States' relationship with former trust territories has substantially changed. For example, the Ryukyu Islands (Okinawa and its neighbors) are now governed by Japan rather than by an American military government. Rather than name specific jurisdictions in this definitional provision, it appears to be wiser to rely on a generic listing of jurisdictions that would logically be considered "domestic" rather than "foreign."

Sec. 10. This section corrects a drafting error in the new corporations code (AS 10.06) enacted last session. This section and secs. 11 and 12 are given a special effective date by sec. 62 of the draft to correspond with the effective date of ch. 166, SLA 1988.

Sec. 11. As enacted, AS 10.06.833 provided for the filing of a certificate of withdrawal by certain foreign corporations. However, the corporation would not have a certificate of withdrawal to file; the corporation files an application for a certificate and the Department of Commerce and Economic Development issues a certificate to the corporation. The amendment corrects this error. It was requested by the corporations supervisor in the department.

Sec. 12. Last year, by Executive Order and a companion bill, the responsibility for administering business licenses was transferred from the Department of Revenue to the Department of Commerce and Economic Development. The proposed amendment to AS 10.06.870 reflects that transfer.

Secs. 13, 14, and 16 - 26. AS 10.05.773 is repealed by ch. 166, SLA 1988. These sections delete references to the repealed provision. The sections are given a special effective date by sec. 62 of the draft to correspond with the effective date of ch. 166, SLA 1988.

Sec. 15. This section proposes amendments to AS 10.15.325 to delete material that has become obsolete through the passage of time and to rewrite the last sentence for clarity.

Sec. 27. AS 11.41.432, enacted last session, partially repeals AS 11.41.443 by implication. This section of the draft enacts the substance of AS 11.41.443 as a new subsection (b) of AS 11.41.432, with additional language to clarify the interaction of the two provisions. In sec. 60, AS 11.41.443 is proposed for repeal.

Sec. 28. This section proposes an amendment to the definition of "mentally incapable" (enacted by sec. 5, ch. 96, SLA 1988) for grammatical consistency.

Sec. 29. Last session, the legislature enacted AS 12.36.-050, relating to the remission of a forfeited weapon. At one time, the bill that enacted the provision had provided for a court order compensating a claimant for the monetary value of the claimant's interest in the weapon, or an order returning the weapon to a claimant. That provision (in AS 12.36.050(b)) was amended in committee to delete the authority to order compensation. The amendment to subsection (a) proposed by this section of the draft should have been made at that time, but it was overlooked until after the bill passed both houses and was being enrolled.

Sec. 30. The amendment proposed by this section harmonizes a provision enacted by ch. 63, SLA 1988, with related provisions enacted by ch. 64, SLA 1988.

Sec. 31. The amendment to the definition of "member contribution account" for the Teachers' Retirement System law is proposed to conform the language to actual practice. Members do not make "contributions" toward their indebtedness, they make "payments." The amendment was requested by the Department of Law. The internal reference to AS 14.25.170 is changed to a reference to AS 14.25.173 to correct what appears to be an error.

Sec. 32. Chapter 60, SLA 1988 amended AS 14.30.070(a) to allow chiropractors to conduct certain required school examinations and AS 14.30.120 to allow chiropractors to conduct physicals and to sign the certificates of physical examinations that are sent to the student's parent or guardian. However, AS 14.30.070(c) was not amended, and without the amendment proposed by this section, conflicts with both AS 14.30.070(a) and 14.30.120. The amendment was suggested by the Department of Law.

Sec. 33. This section proposes an amendment to AS 15.13.040(d) to conform the dollar amount to other law and actual practice. In 1975, AS 15.13.080, which requires the filing with APOC of statements of contributions by persons and groups other than political action committees, was amended to require the statements when more than \$250 (rather than \$100) had been contributed. Even though AS 15.13.040(d)(1) was not amended at that time, such an amendment would have been consistent with the intent of the 1975 change. Therefore, since 1975 APOC has requested the filing of statements under AS 15.13.040(d)(1) only at the point when more than \$250 has been given in a year to a candidate or political group. The amendment proposed by this section was requested by APOC.

Sec. 34. This amendment is proposed to conform the language to the style of the statutes.

Sec. 35. The amendment proposed by this section deletes a reference to a subsection that was repealed in 1984.

Sec. 36. The purpose of this amendment is to replace a reference to a repealed provision with an appropriate reference

to current law. In addition, the introductory language of the section is cleaned up to conform to current style.

Secs. 37 and 38. These amendments are proposed to substitute alternate language for gender-indicating personal pronouns.

Sec. 39. This section proposes amendments to AS 24.08.-330(a), relating to the distribution of the Alaska Statutes, to reflect actual practice.

Sec. 40. Under AS 25.23.125(a), enacted in 1986, the court is required to consider the desires of a person under the age of 10 who is adopted (if the person is "of sufficient age and intelligence to state desires"). Under AS 25.23.040(a), enacted in 1974, a minor over the age of 10 must consent to an adoption, unless the court determines that it would be in the best interest of the minor to dispense with that requirement. The upshot of this is that a minor who is exactly 10 is not required to consent, nor is the court required to consider the minor's desires. The amendment proposed by this section amends AS 25.23.040(a) to require consent from a minor 10 years or older, using the age cutoff most recently enacted by the legislature.

Sec. 41. The suggested amendment to AS 33.32.015(b)(5), relating to the powers of the commissioner of corrections with respect to the correctional industries program, substitutes a reference to the new state procurement code for a reference to AS 37.05 (the Fiscal Procedures Act). This should have been done in 1986 in connection with the enactment of the procurement code.

Sec. 42. This amendment substitutes relevant current references for references rendered obsolete by the 1988 repeal of AS 39.35.110. The amendment was requested by the commissioner of revenue.

Sec. 43. This amendment rewrites AS 37.15.300, relating to borrowing by the state bond committee in anticipation of the sale of bonds, to update the style and clarify the language. There are no substantive changes.

Sec. 44. Section 2, ch. 123, SLA 1988 added a definition of "long-term lease" to AS 38.04. Unfortunately, the definition overlapped the existing definition of "short-term lease" (found in AS 38.04.910(8)), in that both definitions

included a 10 year lease. The amendment to AS 38.04.910(4) proposed by this section would resolve this overlap by defining long-term leases as leases for more than 10 years, which is consistent with other relevant provisions of the public land laws. See, for example, AS 38.05.070(b).

Sec. 45. This section proposes an amendment to harmonize the definitions of "submerged land" and "tideland" for AS 38.05. Because the two types of land share a common boundary, the language used to define each should be the same.

Sec. 46. This amendment substitutes a reference to the only relevant statute for a spanned reference to clarify the law establishing a criminal provision in the tax laws. The amendment was suggested by the Department of Law.

Sec. 47. The amendment made by this section deletes a reference to a provision that was repealed in 1981.

Secs. 48 and 49. The amendments proposed in these sections are proposed to conform to the 1977 repeal of the gross production tax. The current tax is simply the "production tax."

Sec. 50. This section rewrites, for clarity, the law describing the membership of the science and engineering advisory commission.

Sec. 51. The amendment proposed by this section is intended to resolve a conflict between AS 44.21.240(2), enacted by sec. 3, ch. 108, SLA 1988, and AS 44.21.230(c). The latter provision (enacted in 1981) prohibits the Older Alaskans Commission from investigating, reviewing, or undertaking any responsibility for the Alaska Pioneers' Home. The 1988 legislation established the long term care ombudsman program within the commission, and defined "long term care facility" in such a way that it includes the Alaska Pioneers' Home (the pioneers' home is included within the definition of "nursing home" in AS 08.70.180). The amendment resolves the conflict by excluding activities of the long term care ombudsman from the prohibition contained in AS 44.21.230(c). The problem was brought to our attention by the Department of Law when the 1988 Act was reviewed for the governor.

Secs. 52 - 54. The amendments proposed by these sections reflect a change in the name of the National Bureau of

Standards (by last year's Omnibus Trade and Competitiveness Act). Also, in sec. 53, an obsolete provision is proposed for deletion.

Sec. 55. This amendment deletes obsolete time-dated material.

Sec. 56. The amendment proposed by this section conforms the provisions of AS 47.10.090(a), as amended by sec. 4, ch. 130, SLA 1988, to the other substantive provisions of ch. 130, SLA 1988. As enacted, AS 28.15.185 did not include any references to traffic offenses, although earlier versions of the bill did encompass certain traffic offenses. When the references to traffic offenses were removed from AS 28.15.185, the reference within AS 47.10.090(a) should also have been changed. This amendment was suggested by the Department of Law in connection with its review of the 1988 Act for the governor.

Sec. 57. Last year the legislature enacted ch. 148, SLA 1988, relating to the liability of corporate directors. In that Act, two provisions in AS 10.05 were amended. AS 10.05 is repealed by ch. 166, SLA 1988, enacting the new corporations code. To give effect to legislative intent in enacting ch. 148, the provisions of sec. 1 of that Act were editorially incorporated into AS 10.06.210(1)(N). The provisions of sec. 2 of that Act were not editorially incorporated, because the revisor mistakenly believed that they were no longer needed because of other changes made in the new code as it relates to ANSCA corporations. The revisor had overlooked sec. 10 of ch. 166, which grandfathers the two-thirds voting requirements of AS 10.05.276 for corporations incorporated under AS 10.05 before July 1, 1989. Because sec. 2 of ch. 148, SLA 1988 enacted an exception to the two-thirds requirement for ANSCA corporations that desired to amend their articles to eliminate or limit director liability as allowed under ch. 148, that exception needs to be continued in connection with the grandfather clause.

This could probably be accomplished editorially, but that change would not be disseminated to the public until the 1989 statutory materials are distributed this fall. Further, while it is easy to communicate editorial changes in the codified Alaska Statutes, there is no equivalent way to communicate editorial changes made in Temporary Law provisions if those changes are made after publication of the

session laws. (It has been done, on rare occasion, by including a letter from the revisor in the Journals of the next legislative session.) Section 57 amends sec. 10, SLA 1988 to continue the exception that had been enacted as AS 10.05.276(b). The problem was called to the revisor's attention by an attorney for a Native Corporation.

Sec. 58. This amendment corrects a drafting error in one of the transitional provisions of ch. 166, SLA 1988, enacting the new corporations code. This section and sec. 57 are given a special effective date by sec. 62 of this draft to correspond with the effective date of ch. 166. The error was brought to our attention by the Hon. Ralph Stemp.

Secs. 59 and 60. These sections propose that the revisor substitute "police officer" and "fire fighter" for "policeman" and "fireman," respectively, in those provisions in which the latter terms still appear.

Sec. 61. This section proposes the repeal of several obsolete provisions.

AS 10.40.130(c) was a 1977 deadline for compliance with a provision in AS 10.40.

AS 11.41.443 would be obsolete if sec. 27 of this draft is enacted; the need for repeal of the provision is discussed in connection with sec. 27 of this draft.

AS 14.07.030(9) was rendered obsolete by 1975 legislation and should have been repealed then.

AS 16.05.632(d) should have been repealed when the provisions relating to shellfish pot licenses were repealed in 1977.

AS 19.45.001(7) defines a term that is not used in AS 19 except in a section catchline, which is not law (see AS 01.05.006).

AS 38.05.184(c) - (g) were all related to the procedures to be followed to implement the ban on further oil and gas leasing in Katchemak Bay (contained in AS 38.05.184(b)). The Department of Natural Resources advises that all of the provisions have been fully executed and are now obsolete.

Senator Mike Szymanski  
Page 10  
April 25, 1989

AS 44.47.560(1) and (2) contain definitions that are redundant to those found in AS 44.47.998(1) and (3).

AS 44.83.425(1) and (4) define terms that were deleted from AS 44.83 in 1984, making the definitions obsolete.

AS 45.03.299(e) relates to a duty that was imposed only from July 1, 1986 through June 30, 1987.

Sec. 62. Gives a special effective date to those sections relating to the new corporations code, making them effective on the effective date of that code.

Sec. 63. Gives an immediate effective date to the remainder of this draft.

DRD:mi:lmb  
wkk4/047

Enclosure

cc: Art Peterson, Department of Law