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HOUSE

JUDICIARY

Deterrent Effect

One of the traditional purposes of punishment is deterrence. Deterrence rational choice theory is at least partially based on economic perspective of criminal behavior. The would-be offender is presumed to make a calculation, which weighs the potential benefit that may be gained from the contemplated criminal act against the potential cost if the person is caught and punished. The "cost" of criminal behavior may be increased by making greater the likelihood of detection and punishment (2). The cost of criminal behavior is increased by enhancing the punishment. This punishment may include fines, incarceration, public service work, treatment requirements, license suspension, probation supervision, and other sentencing provisions, which may include the use of an ignition interlock device. This punishment goal can be directed toward the individual offender in the form of specific deterrence or to society as a whole in the form of general deterrence (17). Deterrence is limited by low rates of detection. Low detection rates regarding drunken drivers is also a serious limitation in measures of recidivism based on rearrest rates (10).

Incapacitation

The ignition interlock also uses another of the traditional purposes of punishment, incapacitation. The ultimate form of incapacitation, in non-capital punishment, is incarceration. Jail sentences are totally effective in preventing the offender from driving under the influence of alcohol while the person remains incarcerated. As mentioned above, studies have shown that incarceration has little deterrent effect on future violations. Another form of incapacitation is license suspension.

A device such as the interlock is a form of partial incapacitation. The offender is partially incapacitated in that his vehicle is rendered functionally inoperable if the offender, or any person, attempts to start the vehicle with a prohibited breath alcohol level.

Routine Activities Theory

Society's mobility subsequent to World War II is noted to be related to crime and criminal activity. Cohen and Felson's (18) "routine activities theory points to "... the convergence in space and time of the three minimal elements of direct-contact predatory violations: (1) motivated offenders, (2) suitable targets, and (3) the absence of capable guardians against a violation." (p. 89). Drunken driving is always potentially predatory, given the likelihood of injury of persons or property. It thus appears that drunken driving could be examined in the context of this theory. The offender (a person under the influence of alcohol and in control of a motor vehicle) meets in time and place with a victim (any member of society or their property in the path of the offender) in the absence of a capable guardian (anyone or anything that can stop the offender).

Routine activities theory ignores the motivation of criminal offenders. The theory assumes that certain persons are motivated to commit offenses and will do so if they meet with a target and there is no one or nothing to stop them. A person who has been convicted of DWI is such an offender. In fact, it could be said that the DWI offender is quite predisposed to commit this offense. The vehicle is not the target of the offense but, rather, is the tool for the commissions of the offense. As stated above, the victim is any member of society, or their property, who gets in the way of the impaired driver. The interlock becomes the capable guardian. The interlock is an example of "opportunity blocking." It is similar to anti-theft devices installed in vehicles (19). The major distinction between such devices and the interlock is that the crime-preventing device is installed in the vehicle of the potential offender instead of that of the potential victim.

The ignition interlock is a very capable guardian. As mentioned above, the interlock was extremely effective in preventing drivers from operating the interlocked vehicle while intoxicated. One driver of 315 (0.32%) was charged with DWI with an interlock in place. This offender had a child provide the breath sample while she drove the vehicle. This incident is the only time in over 5 years in the subject jurisdiction that an offender has been discovered driving under the influence with an

interlock device in place.

This incident underscores the fact that the interlock is effective but still imperfect. Other possible scenarios include the fact that an offender can drive a vehicle that is not equipped with an interlock. The offender is legally constrained, but not physically restrained, from driving another vehicle that is not equipped with an interlock. A household with more than one vehicle will not be required to install the interlock in all of the family vehicles. In addition, being a mechanical device, it may be possible to circumvent the system in some manner (13).

The provider of interlock devices (a private contractor) in the subject jurisdiction reviewed the data retrieved from the company's client base for the period of July 1, 1995 through June 30, 1996. The interlock devices were all set to prevent the operation of a vehicle if the driver's blood-alcohol level (BAC) exceeded 0.025%. Interlock unit reports indicate that the subjects were prevented from driving with a BAC in violation of the state's then-current illegal per se limit of 0.10% a total of 90 times. Another 33 starts at the 0.08% BAC level (the present legal limit) were also prevented.

Punishment in General

The interlock may be viewed as an additional sentencing option, which has a specifically deterrent effect on the offender. It may also be viewed as rehabilitative, or at least educational, in that it provides instant feedback to the offender whether an excessive amount of alcohol has been consumed to safely operate a motor vehicle. It is certainly a form of incapacitation, in that the offender is limited in what he or she can do with regard to operating the interlock-equipped vehicle. It also may satisfy that basic societal urge to get revenge on lawbreakers. The DWI sentences may include incarceration, public service work, treatment or counseling, probation supervision, license suspension, and alternatives such as the ignition interlock. All of these sentencing components, individually or collectively, cover each of the four basic punishment goals. The interlock may be viewed as another reasonable form of punishment, which covers each of these four traditional sentencing goals.

Other Intervening Factors

Are there other factors that may have played a part in this reduction in recidivism rates, particularly among repeat offenders? State law mandates alcohol education or counseling. As such, these services were provided to offenders in both jurisdictions. Moreover, the program was delivered by the same source, and subjects in both groups were provided the same program. A review of court sentences indicates that the court's sentences were similar in both groups. First offenders typically were sentenced to public service work in lieu of incarceration. Second offenders were usually sentenced to serve 10 days in jail. Third offenders were normally sentenced to serve a mandatory minimum of 90 days in jail. However, in Greene County, third offenders typically were sentenced to a 6-month jail sentence, twice the normal sentence used in Craighead County. It is possible that the stiffer jail sentence in Greene County could be associated with the lesser rate of recidivism found in Greene County. But it must be recognized that jail has not been found to have a significant deterrent effect. As stated above, all offenders were sentenced to some form of treatment based on recommendations of a presentence screening report. All offenders had additional jail time suspended on the condition that the other requirements of their sentence be completed.

There was also a difference in fines and court costs from the control group and the experimental group. Fines in Craighead County were normally \$500 for first offenders, \$1500 for second offenders, and \$2500 for third offenses. Court costs ranged from \$300 to \$340. In 1996, fines, in Greene County for DWI, were normally \$500 for a first offense; \$750 for a second offense; and \$1000 for a third offense. Court costs were set at \$325. Thus, Greene County used more jail time in some sentences and Craighead County used higher fines. In both courts, persons were permitted to perform public service work for credit toward fines if they were financially unable to pay fines. Both jurisdictions had the benefit of probation services to monitor offender compliance regarding the specific terms of their sentences.

Judicial Response

Members of the Arkansas District Judges Council were surveyed regarding their usage of the ignition interlock device at an annual meeting in May 1999. Thirty-seven judges participated in the survey. Thirty percent indicated that the interlock was available for them to use as a part of a DWI sentence. Sixty-eight percent of respondents stated they do not use the interlock as part of their DWI sentences. Twenty-two percent of the judges make use of the interlock as part of their sentences. Of those judges who do not use the interlock, 53% stated the primary reason was that the cost to the offender was prohibitive; 36% did not know how to arrange for the use of the device; and 12% said they believed the device was ineffective.

CONCLUSION

The breath-analyzed ignition interlock device is an example of a technological response to a technological problem. The problem is that the technology of the modern automobile in the hands of an impaired driver has created a serious danger to society. The technological response is to render the vehicle inoperable for a driver with a proscribed amount of alcohol in his or her system.

The ignition interlock device is not a perfect response, but it may be viewed as appropriate in certain cases. The sentencing judge must weigh the relevant factors. The interlock may be a burden on other family members who may have to share an interlock-equipped vehicle with an offender. It may also be a financial hardship on some offenders and their families. However, the device may also prevent numerous alcohol-related motor vehicle crashes. It provides both incapacitative and rehabilitative functions. The device is also a new approach to the concept of target hardening.

Although there is a difference in recidivism rates between the experimental and control groups, comparing these rates for all offenders, there was not a clear statistical relationship between the two. But the study demonstrates that recidivism is decreased significantly for multiple offenders who are required to drive with the interlock. Multiple offenders who are ordered to use the interlock are less than half as likely to have a subsequent conviction for drunken driving over a 3-year period. This decrease in subsequent violations has been shown by this study to continue even after the removal of the interlock device. In view of the foregoing, especially when applied to multi-offenders, the breath alcohol ignition interlock device appears to be an effective tool in the prevention of drunken driving.

Table 1. DWI arrest rates.

Year	Licensed drivers	Arrests for DWI	Rate of arrest per 100,000 drivers
1986	159,486,000	1,793,300	1,124
1987	161,816,000	1,727,200	1,067
1988	162,854,000	1,792,500	1,101
1989	165,554,000	1,736,200	1,049
1990	167,015,000	1,810,300	1,084
1991	168,995,000	1,771,400	1,048
1992	173,125,000	1,624,500	938
1993	173,149,000	1,524,800	871
1994	175,403,000	1,384,600	789
1995	176,628,000	1,436,000	813
1996	179,539,000	1,467,300	817
1997	182,709,000	1,477,300	809

Change (%) 14.6 -17.6 -28.0

Table taken from Ref. (3), citing FBI, crime in the United States (1986-1997), and Federal Highway Administration. Highway Statistics (1986-1997).

Table 2. Three-year recidivism rates by group.

	Interlock group	Comparison group
Total DWI offenders	312	315
Total offenders with DWI within 3 years (%)	55 (17.5)	79 (25.3)

Table 3. Survival rates by group.

Time (months)	Interlock (N = 315) (%)	Comparison (N = 312) (%)
6	302 (95.9)	287 (92)
12	295 (92.4)	266 (85.3)
18	(284 (88.9)	252 (80.8)
24	273 (85.4)	244 (78.2)
36	260 (81.3)	233 (74.7)

Table 4. Three-year recidivism rates by offense level.

	Interlock group	Comparison group
Total DWI first offenders	232	228
First offenders with DWI within 3 years (%)	40 (17.2)	49 (21.1)
Total DWI multioffenders	83	84
Multi offenders with DWI within 3 years (%)	15 (18.1)	31 (36.9)

Symmetric measure

Offense level	Value
First offender Phi	0.048
Multi offender Phi	0.211

Table 5. Three-year recidivism rates by offender age.

Subsequent conviction	Interlock (%)	Comparison (%)
Under age 30	12.2	23.3
Over age 30	19.8	27.1

Symmetric measures

Age	Value
Under 30 Phi	0.138
Over 30 Phi	0.086

REFERENCES

- (1.) Rogers P, Schenig S. A time series evaluation of California's 1982 driving-under-the-influence legislative reforms. *Accid Anal Prev* 1994; 26(1):63-78.
- (2.) Evans WN, Neville D, Graham JD. General deterrence of drunk driving: evaluation of recent American policies. *Risk Anal* 1991; 11 (2):279-289.
- (3.) Maruschak L. *DWI Offenders Under Correctional Supervision*. Bureau of Justice Statistics Special Report. U.S. Department of Justice, 1999.
- (4.) McCarroll J, Haddon W. A controlled study of fatal automobile accidents in New York City. *J Chronic Dis* 1962; 38:811-826.
- (5.) Borkenstein R, Crowther R, Shumate R, Zeil W, Zyhnan R. *The Role of the Drinking Driver in Traffic Accidents*. Bloomington, Indiana: Indiana University, 1964.
- (6.) Forney RB Jr. Recognizing alcohol impairment, observation and testing. Presentation, 1999 American Bar Association Traffic Court Seminar.
- (7.) Baker E, Beck K. Ignition interlocks for DWI offenders--A useful tool? *Alcohol Drugs Driving* 1990; 107-115.
- (8.) Voas RB. Cars that drunks can't drive. Paper presented at the Annual Meeting of the Human Factors Society in San Francisco, California, October 15, 1970.
- (9.) Jones B, Wood N. Traffic safety impact of the 1988 ignition interlock pilot program. Oregon Motor Vehicles Division 1989; February.
- (10.) Popkin C, Lederhaus C, Stewart J, Martell C, Birckmayer J. An evaluation of the effectiveness of the interlock in preventing recidivism in a population of multiple DWI offenders. Final Report for North Carolina Governor's Highway Safety Program, 1992.
- (11.) EMT Group, Inc. Evaluation of the California Ignition Interlock Pilot Program for DUI Offenders. Final Report. The California Department of Alcohol and Drug Programs, 1990.
- (12.) Jones B. The effectiveness of Oregon's ignition interlock program. In: Utzelmann H, Berghaus G, Kroj G, eds. *Alcohol, Drugs and Traffic Safety-T92*, 1993:1460-1465.
- (13.) Beck KH, Rauch WJ, Baker E.A. The effects of alcohol ignition interlock license restrictions on multiple alcohol offenders: a randomized trial in Maryland. Paper presented at the 14th International Conference on Alcohol, Drugs and Traffic Safety,

Annecy, France, September 1997.

- (14.) Coben JH, Larkin GL. Effectiveness of ignition interlock devices in reducing drunk driving recidivism. *Am J Prev Med* 1998; 16:81-87.
- (15.) Morse B, Elliott D. Effects of ignition interlock devices on DUI recidivism: Findings from a longitudinal study in Hamilton County, Ohio. *Crime Delinquency* 1992; 38:131-157.
- (16.) Weinrath M. The ignition interlock program for drunk drivers: a multivariate test. *Crime & Delinquency* 1997; 43:42-59.
- (17.) Ross H. *Detering the Drinking Driver*. Lexington, MA: Lexington Books, 1984.
- (18.) Cohen LE, Felson M. Social change and crime rate trends: a routine activity approach. *Am Sociol Rev* 1979; 44:588-608.
- (19.) Clarke RV. Situational crime prevention. Vol. 19. In: Tonry Michael, Farrington David P, eds. *Building a Safer Society: Strategic Approaches to Crime Prevention*. Crime and Justice. Chicago, IL: University of Chicago Press, 1995.

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The Department of Premier and Cabinet
Government of Western Australia

Office of Road Safety

Your ref:

Our ref:

Enquiries:

Representative Kevin Meyer
State Capitol
Juneau, AK 99801

Dear Mr Meyer

I was fortunate to receive a draft copy of the Alcohol Interlock legislation that is being proposed for Alaska and would like to take this opportunity to offer my support for the Bill and congratulate all those that were involved in its development.

I met Narda Butler in October last year at the International Interlock Symposium in Colorado. At the Symposium I presented on the Western Australian Interlock Scheme and spent a memorable evening with Narda discussing the work we were both doing. During that discussion we discovered that Alaska and Western Australia have much in common, especially concerning our Indigenous populations, and that we share many of the same challenges in relation to establishing an effective response for convicted drink drivers.

In my role as a consultant to the Government of Western Australia (WA), I have been working on a comprehensive strategy to reduce repeat drink driving and unlicensed driving. This includes new legislation for an alcohol interlock scheme that, like Alaska, will make provision for all convicted drink drivers to apply to our Transport Department for a special interlock licence that will allow them to drive a vehicle fitted with an interlock device for the full period of their licence revocation. The aim of our program is to reduce repeat drink driving and unlicensed driving by drink driving offenders and in doing so reduce the associated road trauma and harm to the community.

The program in WA has been developed over a number of years and I believe that the process we undertook was extremely rigorous. All the components of our program are based on the latest international research and best practice indicators, which clearly suggest that interlock schemes should be managed administratively and that, if we are really serious about reducing drink driving recidivism, drink driving offenders should be engaged in an interlock program as soon as possible after receiving a drink driving conviction and retained on that program until such time that they demonstrate a clean driving record.

It is great to see another jurisdiction base their program on the evidence that Interlocks provide the best opportunity to effectively separate drinking and driving, whilst at the same time allowing drink driving offenders to remain in employment and contributing to their families and wider community. As you will be aware, the majority of these people need to drive to remain in employment and the evidence is clear that simply revoking their driver's licence does not stop them driving, nor does it stop them drink driving. A special interlock licence that restricts these offenders to only driving a vehicle fitted with an interlock device allows them to continue to drive legally and ensures that when they do they are under the

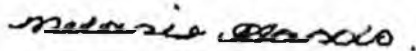
legal alcohol limit. In addition, it also reduces the incidence of unlicensed driving, which like drink driving is associated with significant road safety risks.

It is very heartening to learn that Alaska is proposing to introduce such a well considered interlock program and we should all be encouraged by the very positive results that are coming out of New Mexico, which has pioneered the approach that both Alaska and Western Australia are hoping to establish.

The Drink Driving Bill in WA is due to be considered by our Parliament in March of this year. We have done a great deal of consultation with all our legislators and politicians and all the indicators are pointing to a positive result. The community wants safer roads and everyone is keen to see legislation enacted that will reduce drink driving recidivism and the associated death and serious injury that results.

I wish you the best of luck as you progress your legislation through your political processes and will wait with interest to hear about your success.

Yours sincerely



Melanie Hands
Consultant, Office of Road Safety

17 January 2007



States turn on to idea of ignition locks

By Haya El Nasser, USA TODAY

More convicted drunken drivers may have to blow into devices that won't let them start their cars if they're intoxicated now that several states are embracing tougher penalties.



Lobbyist Richard Roth, holds up the ignition interlock device which keeps a car from starting if the driver has been drinking.

By Jeff Geissler, AP

New Mexico last Friday became the first state to require "ignition interlock" systems for first-time offenders. The devices, which act as breath-alcohol analyzers that control a car's ignition, will be on their cars for one year. Drivers with four or more DWI convictions are required to drive with the interlocks for the rest of their lives.

The devices cost the offenders about \$1,000 a year.

Until now, they were required only for repeat offenders and for a maximum of a year.

"This is the first time it's been so broad," Jonathan Adkins, communications director for the Governors Highway Safety Association, says of the New Mexico law. "States realize we haven't won the drunken driving battle yet."

At the same time, the Senate version of a federal highway spending bill before Congress threatens to withhold about \$600 million in highway construction and maintenance funds if states don't subject high-risk offenders to stiffer sanctions, including ignition interlocks and license suspensions.

'Excellent tool'

Mothers Against Drunk Driving says 17,000 people are killed and a half-million injured in alcohol-related crashes every year. Only 18 states have mandatory ignition interlock laws, according to MADD President Wendy Hamilton.

"They have to play a bigger role," she says about the devices. "They're an excellent tool and should be used for higher-risk drivers."

High-risk drivers include repeat offenders and those convicted of driving with a blood-alcohol levels of 0.15% or higher. By August, when a Minnesota law goes into effect, the legal limit in every state will be 0.08%.

Forty-three states and the District of Columbia have the option to make convicted drunken drivers use interlocks, MADD says. More are making them mandatory, applying the sentence to all offenders or lengthening the penalty:

- This month, Florida Gov. Jeb Bush signed a bill that allows the state to require the device without a court order.
- Last year, Washington state began requiring interlocks for first-time offenders with a blood-alcohol level of 0.15% or higher.
- New York Assemblyman Felix Ortiz, who spearheaded legislation that bans hands-on use of cell phones while driving in his state, introduced a bill that would require interlocks on all new cars. A similar measure failed in New Mexico last year, but others are being proposed in New Jersey, Connecticut and Washington state.

Growing business

About 80,000 interlocks are used in the USA, according to Lamar Ball, chief executive of Smart Start Inc., a manufacturer in Irving, Texas.

"I would expect that to more than double in the next five years," he says. His business is growing 30% a year.

Interlocks also can be installed voluntarily by parents who worry about their teenage children's driving habits. The system keeps a log of failed attempts to turn on the ignition.

Some drivers have tried to bypass the system by starting the car when sober and drinking while the engine is running. Others have used air compressor hoses. The devices now require random breath samples while the person is driving. They have only a few minutes to comply.

Amy Berning, research psychologist at the National Highway Transportation Safety Administration, says interlocks are "extremely effective" when they're on a car. "The concern is when the devices come off the vehicle, the recidivism starts to go back up."

Tackling the problem

New Mexico, which ranks sixth in the nation in the rate of alcohol-related car fatalities, is becoming one of the toughest enforcers. There are 3,000 interlocks on cars in the state, the highest per capita of any state.

In 2003, 198 of New Mexico's 439 traffic fatalities were alcohol-related, according to the most recent government data. It was the first time since 1998 that the state's alcohol-related fatalities fell below 200.

Fighting drunken driving is one of Gov. Bill Richardson's signature issues. He has appointed DWI Czar Rachel O'Connor and several task forces to tackle the problem of repeat offenders and set up drunken-driving checkpoints statewide.

"An interlock device is like a mechanical probation officer on duty and monitoring DWI offenders 24 hours per day and seven days per week," Richardson says. "It's a wonderful device. It's going to dramatically curb DWI in New Mexico."

• REPRINTS & PERMISSIONS

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**Report of Tests on
Breath Alcohol Ignition Interlock Device (BAIID)
per Federal Register/Vol. 57, No. 67**

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The test results contained in this report pertain only to the samples submitted for testing and not necessarily to all similar products.

JOB NUMBER: 30160 03-51983
STORK - TWIN CITY TESTING CORPORATION

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BAIID TESTING

INTRODUCTION:

This report presents the results of tests performed on two BAIIDS per the Federal Register (Vol. 57, No. 67/Tuesday, April 7, 1992/Notices). The scope of our work was limited to specific test requirements 1.1.T through 2.5.T. The test units were submitted to our laboratory on May 2, 2002 by Mr. Jim Ballard of Smart Start, Inc. The testing and data analysis was completed on July 8, 2003.

SUMMARY OF RESULTS:

Both test units were found to be in full compliance with the National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT) Specifications [Docket No. 91-07. Notice 2].

SPECIMEN IDENTIFICATION:

Two units were submitted for testing, each was identified as a model SSI-1000 and were labeled with the following serial numbers: Unit A - Logger #51133L, Head #52624; Unit B - Logger #L81159, Head #H71362. Both Units share the same basic dimensions:

Loggers are 4.1875" long, 3.25" wide, 1.5" tall.
Head units are 5.25" long, 2" wide, ~ 1.5" tall.



Unit A



Unit B

The normal Calibration Period was identified by the manufacturer as being 60 days.

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TEST METHODS:

Test methods were as outlined in the National Highway Traffic Safety Administration [Docket No. 91-07, Notice 2] 1.1.T through 2.5.T.

- 1.1.1.T UnStressed Accuracy/Precision Testing. Units were tested under controlled Lab conditions. A sample solution of 0.01% w/v above the set point (0.03%) was introduced to the BAID 20 times. This corresponds to an overall testing BrAC of 0.04% w/v for this test.
Criteria: The BAID must successfully lock out 90% of the time, or 18 of the 20 times.
- 1.1.2.T Stressed Accuracy/Precision Tests. Units were subject to stress tests from sections, 1.3, 1.4 - 1.6.4, 1.7 (i.e., Vibration, temperature, etc.). The devices were then exposed to a solution of 0.02% w/v above the set-point (0.03%), 20 times. This corresponds to an overall testing BrAC of 0.05% w/v for this test.
Criteria: The BAID must successfully lock out 90% of the time, or 18 of the 20 times.
- 1.2.T Breath Sampling Requirement Test. Units were tested for how much air passed through before a sample was taken.
Criteria: 1.5 liters of air pass through the system before the unit samples the air.
- 1.3.T Calibration Stability Test. The units were calibrated and remained in the laboratory, untouched for 7-days plus the specified calibration period. The calibration test was conducted using Alcohol Samples and Non-Alcohol samples. Nine of the ten days the units were tested with 10 cycles per day with the Non-Alcohol sample. On the tenth day the units were tested with the Alcohol sample. The units were tested to section 1.3.1.T. The units were tested to 1.1.2.T.
Criteria: Units must function normally throughout the entire calibration period.
- 1.3.1.T Evaluation of Lockout for Expiration of Service Interval. The devices were evaluated for warning signals/alerts after the specified service duration.
Criteria: The units shall prevent ignition after the service duration.
- 1.4.T Power Tests. Units were attached to a variable DC Power Supply and voltage set to 11 and 16 volts. Then subject to section 1.1.2.T
Criteria: Units must function normally at each voltage extreme.
- 1.5.1.1.T-1.5.1.4.T Temperature Tests. Logger portion of Units was placed in an environmental chamber and stabilized at the following conditions: -40°C, -20°C, +70°C, +85°C for a duration of 1 hour and then tested according to 1.1.2.T
Criteria: Units must function normally at each temperature.

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TEST METHODS: Continued

- 1.6.1.T - 1.6.4.T Vibration Stability Tests. Units were subject to Simple Harmonic motion having amplitude of:
- Unit A: *0.76 mm, with an initial frequency of 10 Hz, then increased to 30Hz in 2.5min, then decreased to 10 Hz in 2.5 min.
- Unit B: *0.38 mm, with an initial frequency of 30 Hz, then increased to 60Hz in 2.5min, then decreased to 30 Hz in 2.5 min.
- Each device was tested to the above conditions in three directions. The devices were subjected to testing according to 1.1.2.T.
- Criteria: Units must function normally after vibration testing.
- 1.6.5.T Post Vibration Examination. Units were inspected for damage after vibration testing
- Criteria: Units must show no damage after vibration.
- 1.7.T Radio Frequency Interference. Units were subject to a cellular phone and radio interference by placing the unit 5cm from the interference source in three orthogonal orientations. The units were tested in accordance with 1.1.2.T while cellular phone, radio being used.
- Criteria: Units must not allow the engine to start (i.e. Sample/Pass) as a result of the RFI.
- 1.8.1.1.T Tampering and Circumvention Tests /Power Loss Tests. Units were disconnected from the power source. Time and date were recorded, and when data was downloaded from unit, it was inspected to see that it showed this power loss. This was done at random 20 times during testing.
- Criteria: Units must Log power loss.
- 1.8.1.2.T Tampering and Circumvention Tests/Circuit Tampering. Each device was operated at varying voltage levels during the course of testing. Logs were then checked to see that corresponding data was present.
- Criteria: Units must Log power changes.
- 1.8.2.1.T Circumvention/Non-Human Sample. Each device was tested using three non-human compressed air sources with no alcohol present. These included a Mylar balloon, a rubber balloon, and canned air.
- Criteria: The device shall detect or fail 80% of non-human breath samples.
- 1.8.2.2.T Circumvention/Filtered Sample. Each device was tested according to 1.1.2.T using two different filters; a standard toilet paper tube filled with cat litter, and a wet filter constructed from a capped styrofoam coffee cup filled with hot water. Both filters had tubing input/outputs.
- Criteria: The device shall detect or fail 80% of filtered samples.
- 1.8.2.3.T Circumvention/Rolling retest to thwart curbside assistance. Each unit was tested as to whether it would require a re-test after a passing test.
- Criteria: Units must require a re-test within a 5-30 minute period after a passing test, and must give a three minute period in which to take the re-test.

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TEST METHODS: Continued

- 1.9.T Sample Free Restart Test. (in the event of a stall) Each device shall permit a free restart for 2 ± 0.25 min. Each was tested three times with alcohol-free sample at 1.5-min and 2.5 min. **Criteria:** The devices shall allow a start the first three tests and fail to start the last three tests.
- 1.10.T Data Recording Test. Testing consisted of recording time, date and introduced sample concentration. These results were then compared to the data recorded by the unit **Criteria:** Data logged must be accurate.
- 2.1.1.T Utility Accuracy Testing Of Unstressed BAID. Each device was tested with a solution that is 0.01% w/v below the alcohol setpoint (0.03% BrAC). This corresponds to an overall testing BrAC of 0.02% w/v for this test. The tests were repeated 20 times on each device. **Criteria:** Units must meet 90% accuracy.
- 2.2.T Clearance Rate Test. Each device was tested with BrAC = 0.05%w/v. A timer was activated upon receipt of the result. The timer was paused upon receiving a "ready" condition from the device. **Criteria:** The device shall reset within 3 min.
- 2.3.T Warm Up Test. Each device was conditioned at -20°C for four hours. A timer was started concurrently with the activation of the BAID. The time required for the device to register "ready" was recorded. **Criteria:** The device shall not require more than 5-min. to register "ready".
- 2.4.1.T User Display/Operational Modes. Each device was evaluated for visible or clearly audible indicators. **Criteria:** Units must indicate ON, Unit is Ready to Test, Unit has Received Acceptable Sample.
- 2.4.2.T User Display/Outcome. Each device was evaluated for visible indication of the results. **Criteria:** Units must display Pass or Fail.
- 2.4.3.T User Display/Warnings. Each device was evaluated for displayed warnings. **Criteria:** Unit must indicate that it needs to be Serviced or Calibrated Soon.
- 2.6 T Altitude Test. Each device was tested per Section 1.1.2 Stress Accuracy at a simulated altitude of 2.5km. **Criteria:** Units must hold or exceed 90% accuracy when tested at .02% above setpoint.

JOB NUMBER: 30160 03-51983
STORK - TWIN CITY TESTING CORPORATION

PAGE: 6 of 56
DATE: July 15, 2003

TEST RESULTS:

SECTION	TEST DESCRIPTION	BAIID	COMMENT/PURPOSE	PASS/FAIL
1.1.1.T	Accuracy Tests for Safety Specifications-Unstressed	A,B	UnStressed Criterion is 90% accuracy at .01% w/v above setpoint; 20 tests, 18 or more must lock	PASS
1.1.2.T	Accuracy Tests for Safety Specifications-Stressed	A,B	Stressed Criterion is 90% accuracy at .02% w/v above setpoint; 20 tests, 18 or more must lock	PASS
1.2.T	Breath Sampling	A,B	Min. sample of 1.5L	PASS
1.3.T	Calibration Stability	A,B	Test according to 1.1.2.T at end, then recalibrate and test with 1.1.1.T	PASS (60 DAYS)
1.3.1.T	Lockout Evaluation	A,B	Lockout after 7 days beyond service interval	PASS
1.4.T	Power	A,B	11 and 16 VDC, Test according to 1.1.2.T	PASS
1.5.1.T	Temperature Ranges	A,B	Test according to 1.1.2.T at -40°C, -20°C, +70°C, +85°C	PASS
1.6.1.T	Vibration 1	A	10 to 30 to 10 Hz, 5 min. .76mm disp.	PASS
1.6.2.T	Vibration 2	B	30 to 60 to 30 Hz, 5 min. .38mm disp.	PASS
1.6.3.T	Vibration 3	A,B	As above 3 directions	PASS
1.6.4.T	Vibration 4	A,B	Test by 1.1.2.T	PASS
1.6.5.T	Post Inspection Shake	A,B	Inspect for damage	PASS
1.7.T	RFI/EMI	A,B	5 cm from in vehicle appliance	PASS
1.8.1.1.T	Tampering/Power Loss	A,B	Test for Interrupt detection	PASS
1.8.2.1.T	Circumvention/ Non-Human Sample	A,B	80% correct	PASS
1.8.2.2.T	Circumvention/Filtered Samples	A,B	80% correct	PASS
1.8.2.3.T	Circumvention/Rolling Retest	A or B	Test retest conditions	PASS
1.9.T	Sample Free Restart	A,B	Test Timer	PASS
1.10.T	Data Recorder	A,B	Observe	PASS
2.1.1.T	Accuracy/Precision for Utility Specification-Unstressed	A,B	90% correct	PASS
2.1.2.T	Stressed Utility Test	N/A	N/A	N/A
2.2.T	Clearance Rate Test	A,B	Reset Time	PASS
2.3.T	Warm Up Test	A,B	Time to ready	PASS

JOB NUMBER: 30160 03-51983
STORK - TWIN CITY TESTING CORPORATION

PAGE: 7 of 56
DATE: July 15, 2003

RESULTS: Continued

SECTION	TEST DESCRIPTION	BAIID	COMMENT/PURPOSE	PASS/FAIL
2.4.1.T	Display Readability	A,B	Observe	PASS
2.4.2.T	Display User Feedback	A,B	Observe	PASS
2.4.3.T	Display Warnings	A,B	Observe	PASS
2.5.T	Low Temperature Provisions	N/A	N/A	N/A
2.6T	Altitude- 2.5 km	A,B	90 % correct	PASS

TEST EQUIPMENT:

RepCo 3402C Simulator (Supplied by Smart Start Inc.)

Nextel Motorola i30sx Cell Phone S/N 021TCJ6S61

Hans Rudolph model 5570 three liter calibrated syringe
S/N 557-7678

Thermotron Temperature/Altitude Chamber MM 190-018
-90°F-300°F/ 1000-70,000 Feet

Tektronix PS281 Variable DC Power Supply MI-160-128

Fluke 8050a DMM MM180-005

Ling Dynamic Systems V 810 Vibration Table
Dactron Controller MM 460-026

HB

22



HOUSE JUDICIARY COMMITTEE

STATE CAPITOL, ROOM 120
(907) 465-4990

COMMITTEE MEMBERS

Rep. Jay Ramras
Chairman
Room, 118
(907) 465-3004

Rep. Nancy Dahlstrom
Vice-Chairman
Room 409
(907) 465-3783

Rep. John Coghill
Room 214
(907) 465-3719

Rep. Bob Lynn
Room 104
(907) 465-4931

Rep. Ralph Samuels
Room 204
(907) 465-2095

Rep. Max Gruenberg
Room 110
(907) 465-4940

Rep. Lindsey Holmes
Room 405
(907) 465-4919

MEMORANDUM

Date: April 27, 2007

To: Representative Kevin Meyer
Co-Chair House Finance Committee

From: Representative Jay Ramras
Chair House Judiciary Committee

Re: House Judiciary Referral File for HB22

Attached please find the following documents, which comprise the House Judiciary Committee referral file for HB22:

- Sponsor Statement
- HB22 (25-LS0138\)
- Fiscal Notes
Commerce – 0
Governor – 0
- HJUD Committee Report
- Alaska Bar Association – 2006 Annual Report
- Board of Governors of the Alaska Bar Association, Sunset Review Follow-up, dated September 15, 2006
- Alaska Division of Legislative Audit, Audit Digest #41-20040-06
- Board of Governors of the Alaska Bar Association Sunset Review, dated November 28, 2005

ALASKA STATE LEGISLATURE

Vice Chair:
House Finance Committee

Chair:
House Finance Subcommittees for,
Department of Public Safety
Department of Law



Session:
Alaska State Capitol
Juneau, AK 99801-1182
Phone: (907) 465-4958
Fax: (907) 465-4928

Interim:
PO Box 464
Chugiak, AK 99567

BILL STOLTZE STATE REPRESENTATIVE

Representative_Bill_Stoltze@legis.state.ak.us

House Bill 22

Extend the Termination Date for the Board of Governors ABA

"An act extending the termination date for the Board of Governors of the Alaska Bar Association; and providing for an effective date."

House Bill 22 extends the sunset date of the Board of Governors of the Alaska Bar Association until June 30, 2010.

The Board of Governors for the Alaska Bar Association is comprised of 12 members. Nine members are elected by active members of the Alaska Bar Association: two from the 1st judicial district, four from the 3rd judicial district, two from the 2nd/4th judicial districts, and one at-large member. There are also three non-attorney members appointed by the Governor and confirmed by the Legislature. The Board governs the Bar Association, administers exams, approves, recommends rules concerning practice of law to the State Supreme Court and provides continuing legal education and member services.

It is the opinion of the Legislative Budget and Audit Committee that the Board of Governors of the Alaska Bar Association should be extended. I ask for your support in extending its sunset date to June 30, 2010.

DISTRICT 16

BIRCHWOOD • BUTTE • CHUGIAK • EKLUTNA • FAIRVIEW LOOP
KNIK RIVER ROAD • LAZY MOUNTAIN • PALMER • PETERS CREEK

FISCAL NOTE

STATE OF ALASKA
2007 LEGISLATIVE SESSION

Fiscal Note Number: HB022-COM-OL-04-20-07
 Bill Version: HB 22
 () Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: Commerce
 Title Extend Board of Governors ABA RDU Corp, Bus & Prof Licensing (i17)
 Component Corp, Bus & Prof Licensing
 Sponsor Stoltze, Ramras, Gruenberg
 Requester House Judiciary Component No. 2360

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
-----------------------------	--	--	--	--	--	--

CHANGE IN REVENUES ()						
-------------------------------	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2007) cost: 0.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2008 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This legislation would extend the Board of Governors of the Alaska Bar Association to 2010. This board is governed by the Board of Governors of the Alaska Bar, not this division. Accordingly, this legislation would not have a fiscal impact on the operations of the division.

Prepared by: Chris Wyatt, Administrative Manager Phone (907) 465-2572
 Division Corporations, Business, and Professional Licensing Date/Time 4/20/07 5:41 PM
 Approved by: Emil Notti, Commissioner Date 4/20/2007
 Agency Commerce, Community, and Economic Development

FISCAL NOTE

STATE OF ALASKA
2007 LEGISLATIVE SESSION

Fiscal Note Number: HB022-OOG-EO-4-20-07
 Bill Version: HB 22
 () Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: OOG
 Title: "An Act extending the termination date for the Board of Governors of the Alaska Bar Assoc..." RDU: Executive Operations
 Component: Executive Office
 Sponsor: Representatives Stoltze, Ramras, Gruenberg
 Requester: House Judiciary Committee Component No. 6

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
-----------------------------	--	--	--	--	--	--

CHANGE IN REVENUES ()						
-------------------------------	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2007) cost: 0.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2008 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

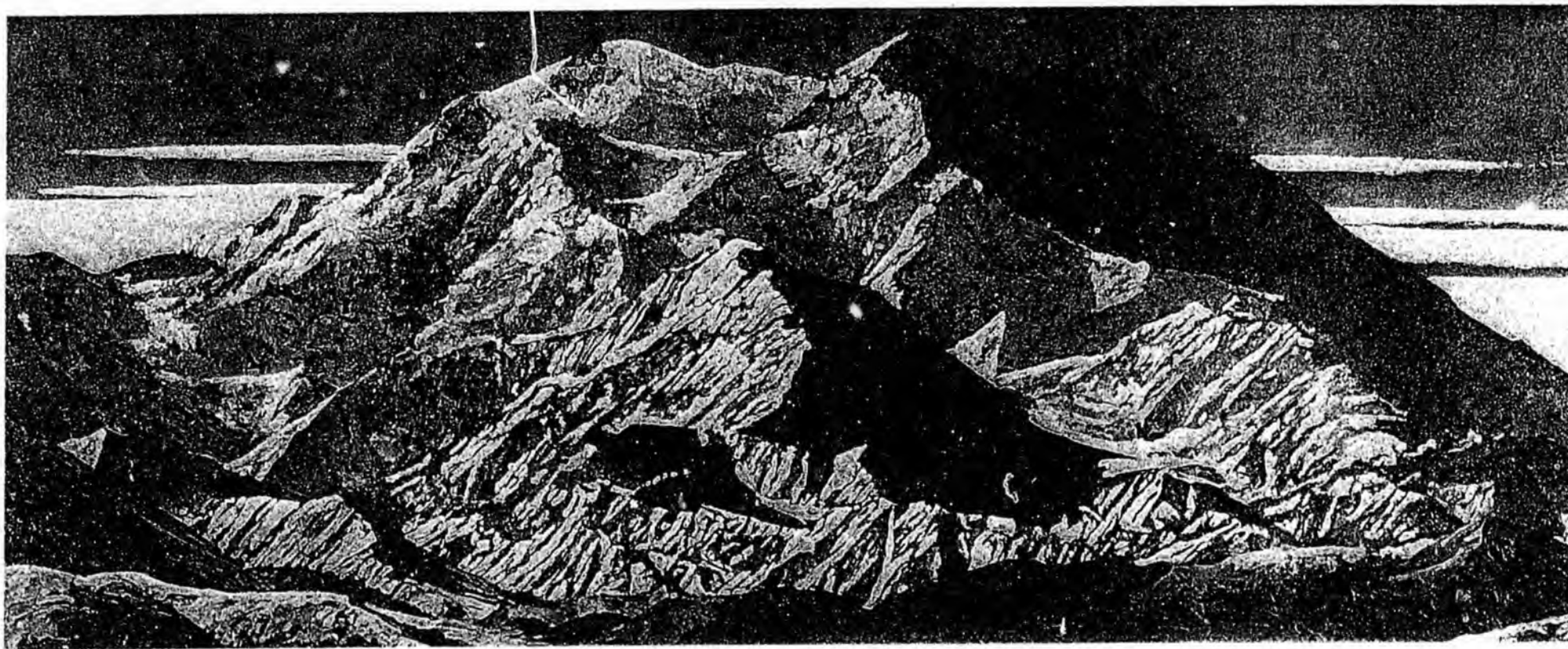
ANALYSIS: (Attach a separate page if necessary)

This proposed legislation will have no fiscal impact on the Office of the Governor.

Prepared by: Gail Fenumiai, Asst. Admin. Director Phone 465-3885
 Division: Division of Administrative Services Date/Time 4/20/2007, 9:21am
 Approved by: Linda J. Perez, Administrative Director Date 4/20/2007
 Agency: Office of the Governor, Division of Administrative Services

ALASKA BAR ASSOCIATION

2006 Annual Report





Board of Governors and Bar staff representatives visit the Valdez Bar Association for pro bono outreach.

THE ALASKA BAR ASSOCIATION

2006 Board of Governors

John Tiemessen, President
Matthew Claman, President-Elect
Sidney Billingslea, Vice President
William Granger, Secretary
Philip Pallenberg, Treasurer
Chris Cooke
Joe Faulhaber
Michael Hurley
Allison Mendel
Mitchell Seaver
Krista Stearns
Jason Weiner
Maude Blair (New Lawyer Liaison)

Staff

Deborah O'Regan, Executive Director
Barbara Armstrong, Assistant Director & CLE Director
Krista Scully, Pro Bono Director
Kristi Powell, Executive Assistant
Karen A. Schmidkofer, Controller
Candice Goard Bryant, Accounting Assistant
Kara Bridge, CLE Coordinator
Devon Richardson, Admissions Assistant/Receptionist
Charissa Feltman, Lawyer Referral Assistant

Stephen J. Van Goor, Bar Counsel
Mark Woelber, Assistant Bar Counsel
Louise R. Driscoll, Assistant Bar Counsel
Deborah C. Ricker, Discipline Investigator/Paralegal
JoAnne Baker, Section Coordinator & Arbitration/Discipline/CLE Library
Ingrid Varenbrink, Arbitration/Discipline/CLE Library
Gail Welt, Executive Assistant
Annette Ravithis, Discipline Secretary
Jonathan Minton, CLE Assistant

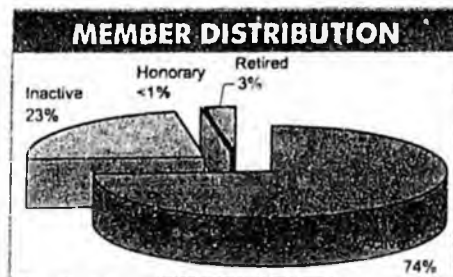
Introduction & Overview

In 2006, the Alaska Bar Association had 3,819 members in the following categories: 2,858 Active (2,367 In-state and 491 Outside), 859 Inactive, 101 Retired, and 1 Honorary. Its affairs are governed by a 12-member Board of nine attorneys and three non-attorney citizens. A (non-voting) New Lawyer Liaison also advises the Board.

Written guidelines for governance are contained in the Integrated Bar Act, the Alaska Bar Rules (promulgated by the Supreme Court of Alaska), the Alaska Rules of Professional Conduct, the Association's Bylaws and Regulations, the Board of Governors' Policy Manual, and a Personnel Manual.

The two most important functions of the Bar are the admission and discipline of its members, both of which are carried out under the supervision of the Supreme Court of Alaska.

There are presently 9 standing committees, 22 sections, 5 bar rule committees, and special committees as appointed by the Board. In addition, the Bar Association participates in a number of adjunct organizations and administers special projects, such as the Statewide Lawyer Referral Service. More than half of the membership participates, voluntarily and without remuneration, in the affairs of the Association. The staff of the Alaska Bar has grown from a part-time, volunteer executive secretary when it was founded in 1968, to 18 employees.



The Association is primarily funded by its membership's annual dues, continuing legal education program registration fees, admissions, the annual convention, the Lawyer Referral Service, and interest income. The Association received no public monies in the 2006 fiscal year.

Principal Activities

• Bar Examination

The Alaska Bar Examination is conducted twice annually in Anchorage, Fairbanks, Juneau, and Ketchikan and in such other locations as the Board directed. Starting in 2007, the Bar exam will be offered only in Anchorage, Juneau and Fairbanks. It consists of: 1) one day of essay questions

2002 - 2006 Bar Exam Results

Date	Applicants	Passed	Pass Rate
July 2006	82	52	63%
	64 1st timers	46	72%
Feb. 2006	66	40	61%
	46 1st timers	36	78%
July 2005	70	39	56%
	49 1st timers	35	71%
Feb. 2005	62	44	71%
	50 1st timers	39	78%
July 2004	61	43	70%
	52 1st timers	40	77%
Feb. 2004	56	37	66%
	31 1st timers	27	87%
July 2003	86	51	59%
	63 1st timers	44	70%
Feb. 2003	53	27	51%
	31 1st timers	25	81%
July 2002	60	31	52%
	42 1st timers	23	55%
Feb. 2002	35	20	57%
	23 1st timers	14	61%

“ The two most important functions of the Bar are the admission and discipline of its members, both of which are carried out under the supervision of the Supreme Court of Alaska. ”

Admissions

All applicants are required to attend a course on ethics as prescribed by the Board prior to admission.

All applicants must also submit an affidavit that they have read and are familiar with the Alaska Rules of Professional Conduct. (Bar Rule 64)

on Alaska law prepared by a permanent committee of the Association known as the Alaska Law Examiners; 2) two half-days of objective, multiple choice questions (the Multistate Bar Examination or "MBE"), prepared by the National Conference of Bar Examiners (NCBE) and administered simultaneously in more than 40 states; and 3) a half day of the performance test (the Multistate Performance Test of "MPT") prepared by NCBE.

In addition, a Multistate Professional Responsibility Exam (MPRE) is given separately three times a year (March, August, and November).

In 2006, 148 individuals took the Bar Exam and 92 passed the exam.

ADMISSION WITHOUT EXAMINATION

Bar Rule 2, Section 2 provides an admission without examination rule, with reciprocity provisions. An applicant who has taken a written bar exam in a reciprocal jurisdiction and has engaged in the active practice of law for five of the previous seven years may be eligible for reciprocal admission.

In 2006, 30 applicants were approved for admission without examination.

• Discipline of Members

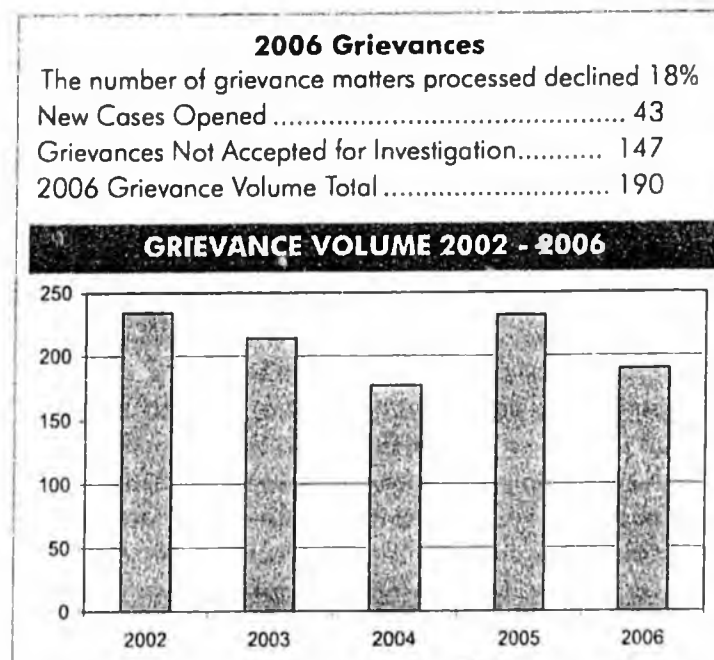
The Alaska Supreme Court has held that an attorney's license to practice law is "a continuing proclamation by the Court that the holder is fit to be entrusted with professional and judicial matters...as an officer of the courts." Investigation and recommendations for professional

conduct matters have been delegated by the Court to the Bar Association.

Expenditures for the Discipline Section totaled \$646,385 during 2006, a substantial allocation of Bar Association resources for the protection of clients, the public, and the legal system in Alaska.

2006 GRIEVANCES

The Discipline Section processed 190 grievances in 2006 compared with 232 in 2005, representing an 18% decline. Summary statistical data related to discipline status are contained in the charts.



Discipline Case Statistics¹

2002-2006

	'02	'03	'04	'05	'06
Open cases pending as of Jan. 1.....	88	106	83	63	61
New cases opened in 2006(+)	42	25	31	36	43
TOTAL open and new cases	130	131	114	99	104

Cases closed in 2002-2006

Closed after disbarment by Supreme Court.....	5	17	0	3	0
Closed after suspension by Supreme Court.....	6	1	10	3	7
Closed after probation ended.....	0	0	0	0	0
Closed after public censure by Supreme Court.....	0	1	1	4	0
Closed after reprimand publicly imposed by Disciplinary Board.....	0	2	0	1	2
Closed after reprimand privately imposed by Disciplinary Board.....	0	0	1	0	2
Closed after written private admonition by Bar Counsel.....	0	0	2	3	4
Dismissed by Bar Counsel.....	13	26	36	24	31
Closed after mediation.....	0	1	1	0	0
TOTAL closed cases (-)	24	48	51	38	46
Open cases pending as of Dec. 31	106	83	63	61	58

¹ All numbers reflect individual grievances filed and not the number of attorneys involved.

Status of Open Cases as of December 31, 2002 - 2006

	'02	'03	'04	'05	'06
Pending First Response from Respondent Attorney	6	3	7	7	3
Pending Complainant's Reply	4	3	1	2	1
Pending Second Response from Respondent Attorney	1	0	7	0	0
Pending Bar Counsel Investigation/Decision	67	62	32	25	23
Absence Pending Outcome of Related Court Case	2	2	2	9	9
Pending Mediation	1	1	0	0	0
Absence Pending Outcome of Fee Arbitration	0	0	0	0	0
Pending Approval to Issue Written Private Admonition	0	0	0	1	0
Pending Acceptance of Written Private Admonition by Respondent Attorney	0	0	1	0	0
Pending Approval to File Petition for Formal Hearing	0	0	5	8	10
Pending Stipulation for Discipline between Bar Counsel and Respondent Attorney	0	2	0	0	0
Pending Stipulation Consideration by Disciplinary Board	0	0	0	6	0
Pending Stipulation Consideration by Supreme Court	0	0	0	0	0
Pending before Area Hearing Committee	7	1	0	0	5
Pending before Disciplinary Board	17	2	2	0	5
Pending before Supreme Court	0	6	5	2	1
Respondent Attorney on Probation	1	1	1	1	1
TOTAL open cases	106	83	63	61	58

SUMMARY OF PUBLIC DISCIPLINE ACTIONS IN 2006

The Alaska Supreme Court suspended William T. Ford for 90 days effective February 27, 2006. Mr. Ford was subsequently reinstated effective June 2, 2006. The Court publicly censured and suspended Eugene B. Cyrus for 6 months effective May 3, 2006. The Court suspended Michael A. Stepovich for three years with one year stayed effective October 15, 2006.

The Disciplinary Board publicly reprimanded Mikel R. Miller effective April 25, 2006 based on a public reprimand imposed by the Supreme Court of the State of Oregon, and publicly reprimanded Calvin P. Vance effective September 8, 2006 based on a public reprimand imposed by the

“The Bar Association, under the Alaska Bar Rules, maintains an Attorney Fee Dispute Review Committee to hear fee disputes between attorneys and clients.”

Disciplinary Board of the Supreme Court of the State of Oregon.

SUMMARY OF REINSTATEMENT ACTIONS, 2006

A suspended or disbarred attorney may be reinstated by the Alaska Supreme Court, but only after the appropriate review procedures are followed.

As reported above, William T. Ford was reinstated on June 2, 2006.

SUMMARY OF DISABILITY ACTIONS IN 2006

The Rules of Disciplinary Enforcement also anticipate circumstances where the need for protection of the public arises from mental or physical infirmity, illness, or addiction to controlled substances.

Robert C. Nauheim was transferred to disability inactive status due to a physical disability effective December 11, 2006.

• Attorney Fee Dispute Review Committee

The Bar Association, under the Alaska Bar Rules, maintains an Attorney Fee Dispute Review Committee to hear fee disputes between attorneys and clients where such disputes have not been determined by statute, court rule, or decision. Five subcommittees residing in Ketchikan, Juneau, Anchorage, Kenai and Fairbanks comprise the Committee. Each subcommittee consists of a “pool” of attorney and non-attorney members who serve for three years on a volunteer basis. From these subcommittees, a panel of two attorneys and one non-attorney is convened to hear a fee dispute. If the amount in dispute is \$5,000 or less, a single panel member hears the matter.

2002 - 2006 Fee Arbitration Statistics

	'02	'03	'04	'05	'06
Arbitrations pending January 1	32	37	33	21	27
Arbitrations opened during year (+)	55	58	39	60	53
Arbitrations closed during year (-)	50	62	51	54	54
Arbitrations pending Dec. 31 year-end	37	33	21	27	26

• Lawyers' Fund for Client Protection Committee (LFPC)

The Bar Association maintains a fund for the purpose of reimbursing attorneys' clients who have suffered non-insured losses of money, property, or other things of value, as a result of dishonest conduct by attorneys. Dishonest conduct is defined as acts of embezzlement, wrongful taking, or conversion of money, property, or other things of value. The monies of the Fund come from yearly assessments of active members, paid concurrently with membership dues, as well as interest earned on the Fund balance.

2006 LFPC Actions

Case Number	Reimbursement(s)* Paid by Board	Reimbursement(s) Rejected by Board	Reimbursement(s) Rejected by LFPC Committee
2005L001	\$22,000		
2006L001	\$2,600		
2006L003		\$3,500	
2006L007	\$3,000		
2006L010		\$3,500	
2006L015		\$7,500	
2006L016		\$6,500	
2006L017		\$850,000	
2006L018		\$2,500	
2006L020	\$3,000		
2006L021	\$1,372.11		
Totals	\$31,972.11	\$892,500.00	

*Figures reflect reimbursements from the Fund which may be less than the amount requested by the claimant.

At the close of 2006, fourteen (14) claims were pending before the LFCP Committee. The Committee and the Board of Governors took action on eleven (11) claims during the year.

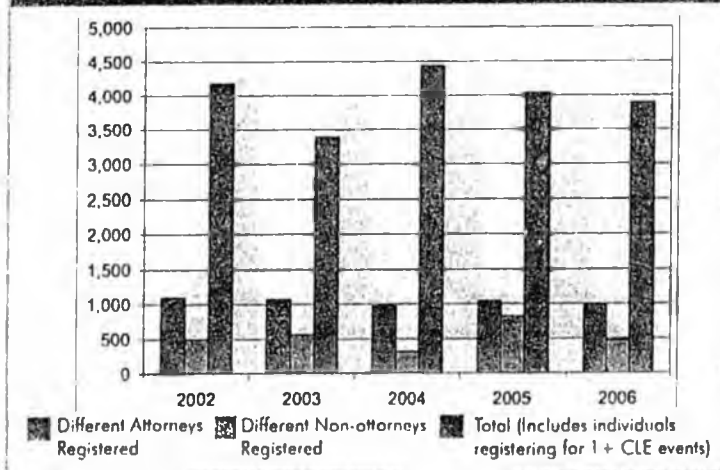
• Continuing Legal Education (CLE)

The Continuing Legal Education Committee and the Association's Director of Continuing Legal Education are responsible for presenting and administering all CLE programs and activities, including the CLE Library.

The substantive law sections of the Bar Association are responsible for sponsoring a minimum of one CLE seminar every two years. In 2006 there were 22 active substantive law sections, with a total membership of 1,425.

The majority of live CLE programs are presented in Anchorage, which has the largest concentration of lawyers in the state.

**CLE ATTENDANCE — 2002 - 2006
LIVE PROGRAMS, REPLAYS, CONVENTION**

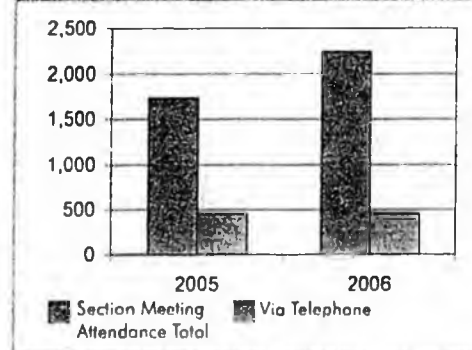


To provide CLE opportunities for attorneys practicing outside of Anchorage, law firms in Juneau, Fairbanks, and Kenai host regularly scheduled group video replays of CLE seminars. These locations receive full video presentations and course materials. Other communities in Alaska may also request a group video replay. The Bar also provides online CLE programs.

The Alaska Bar CLE program continues to work with Seattle University School of Law CLE and Summer Law School Programs. Faculty of the Seattle University Law Program at UAA meet with the Bar's substantive law sections, and section members make presentations to the law students enrolled in the program.

Since 2003 the Bar has partnered with the American Law Institute-American Bar Association (ALI-ABA) to offer their live satellite-delivered CLEs at KAKM's studios in Anchorage. Beginning this year, ALI-ABA webcasting is an additional option for Alaska Bar members. In 2006, the Bar partnered with LegalSpan, an online educational delivery company, to provide more extensive online CLE options and to explore webcasting of Alaska Bar live programs. The Bar's inaugural webcast in October 2006, "A Trust Accounts

**SECTION MEETING ATTENDANCE
2005 - 2006**



Ethics Refresher," was very successful with 90 registrants online and 21 registrants at the live broadcast site.

Alaska Bar CLE Attendance

In 2006, attendance at CLE programs totaled 3,888, including 111 speakers.

In addition, 1,783 attorneys attended in person and 456 participated by telephone in the Bar's substantive law sections' monthly meetings.

VCLE Compliance

For the reporting year of Jan. 1 - Dec. 31, 2006, 1,101 attorneys voluntarily complied with the VCLE Rule.

“ In addition to services associated with CLE, the Bar Association provides other programs to assist members of the Bar in their practices. ”

• Voluntary Continuing Legal Education (VCLE)

The Voluntary CLE Rule, originally a 3-year pilot project, became effective on September 2, 1999 and recommended a minimum of 12 hours of approved CLE credit (including one in Ethics) each calendar year.

This incentive-based VCLE rule was adopted by the Alaska Supreme Court in response to the rule proposed by the Alaska Bar. Those members complying with the VCLE rule:

- receive a discount on Bar dues,
- may participate in the Lawyer Referral Service, and
- have their names published in an annual list of those who have met the Supreme Court's recommended guidelines.

The compliance or non-compliance with the VCLE Rule may also be taken into account in a disciplinary matter related to the competency of an attorney.

Bar members report annually. The Board of Governors voted in 2003 to revise the VCLE reporting procedure. Bar

members now certify on their annual Bar dues statement whether or not they have completed the recommended minimum CLE hours and are in compliance with the VCLE Rule.

In May 2005, the Board of Governors appointed a Mandatory CLE Task Force, comprised of representatives of the Board, the Alaska Court System, and the Alaska Judicial Council, to study the issue of whether MCLE should be adopted in Alaska. The Task Force subcommittee reports were submitted to the Board of Governors in January 2006.

In September 2006, the Board of Governors voted to amend the Bar Rules to establish an MCLE program in Alaska, and to forward the proposed amendments to the Alaska Supreme Court for approval.

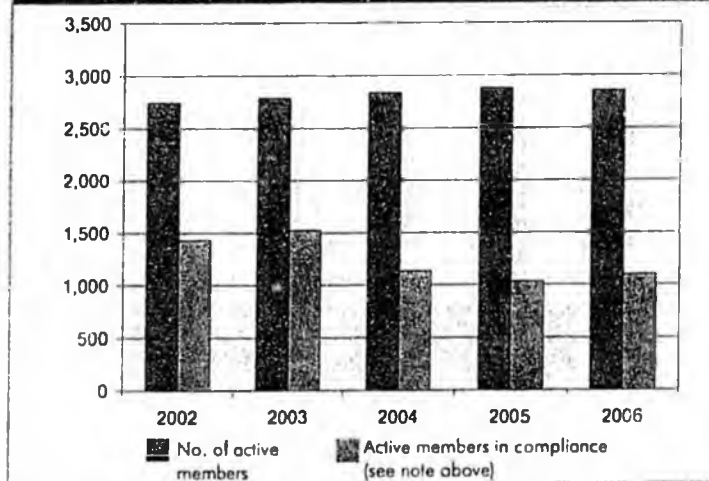
Note: These compliance numbers include members who did not turn in a form, but were nonetheless in compliance because they had adequate credits carried forward from the prior reporting year.

2002 - 2006 CLE PROGRAMS SUMMARY

	'02	'03	'04	'05	'06
Topics	24	23	18	29	26
Live Bar Programs	33	25	20	36	27
Mandatory Ethics*	2	2	4	5	5
Convention CLE Programs	16	10	13	9	14
Video Replays	59	62	36	42	40
Satellite Seminars	0	1	3	4	2

*Mandatory Ethics: A Short Course on Discipline and Fee Arbitration Procedures in Alaska, a one-hour videotape, is required viewing for admission to the Alaska Bar. Group video sessions are presented in the spring and in the fall. The format was changed to a one-hour video in the fall of 2004.

VCLE REPORTING STATISTICS — 2002-2006



Total Lawyer Referrals 2002 - 2006

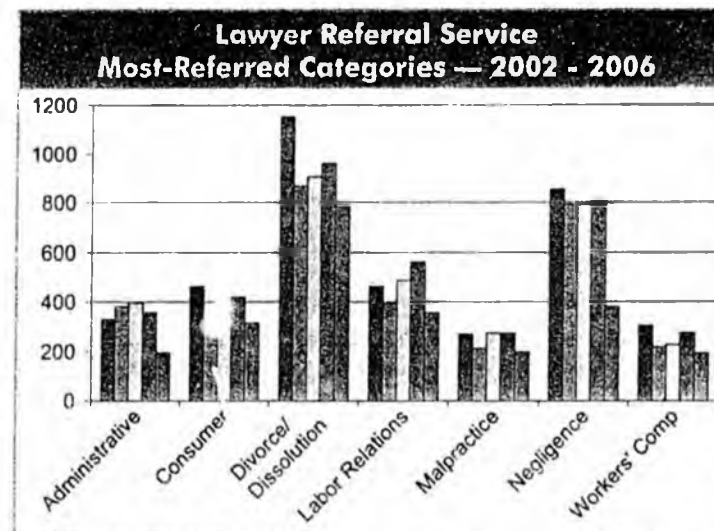
	'02	'03	'04	'05	'06
Administrative	331	382	396	357	194
Admiralty	16	19	17	17	18
Adoption	27	34	34	37	16
Alaska Native Law	11	—	—	2	—
Arts	9	—	—	—	2
Bankruptcy	122	108	110	142	52
Commercial	185	148	123	212	112
Construction	36	14	37	40	29
Consumer	464	326	356	419	315
Criminal: Felony	144	130	127	228	92
Criminal: Misdemeanor	260	162	143	175	114
Discrimination	56	66	13	—	—
Divorce/Dissolution/Custody	1153	869	907	962	784
Eminent Domain	2	—	—	5	4
Environmental	2	—	—	6	6
Foreign Language	3	—	2	—	—
Guardian/Conservator	29	—	33	52	64
Immigration	41	25	70	—	28
Insurance	89	87	88	89	51
Labor Relations	464	395	488	563	355
Landlord/Tenant	215	161	182	250	63
Malpractice	271	212	276	275	197
Military	0	—	—	—	—
Mining	—	—	—	—	—
Negligence	856	791	794	812	380
Patent/Copyright	—	—	—	—	5
Public Interest	5	8	4	3	3
Real Estate	230	206	281	290	175
SSI Cases	18	28	82	51	22
Tax	34	8	—	—	—
Traffic	24	8	4	21	49
Trusts/Wills/Estates	171	167	187	227	144
Workers' Compensation	305	217	228	276	107
Total	5,573	4,585	4,982	5,511	3,468
Change from previous year	-8%	-8%	+9%	+11%	-37%

• Lawyer Referral Service

The Bar Association operates a statewide Lawyer Referral Service for the purpose of providing the general public with names of enrolled active members of the Alaska Bar Association who are in good standing and are willing and able to accept referral clients at a reasonable fee.

Each caller requesting services is given the names of three lawyers in his/her geographic area who are listed in the category requested. Each lawyer pays a \$4 surcharge to the Bar Association on each referral made, regardless of whether the caller actually contacts the lawyer as a result of the referral. The first half-hour conference may be charged at a maximum of \$50. Thereafter the fee is agreed upon by the attorney and the client.

At the end of 2006, 79 attorneys were enrolled in 33 practice categories in the Lawyer Referral Service, with total referrals of 3,468 — a 37% decline from the 5,511 referrals in 2005.



“At the end of 2006, 79 attorneys were enrolled in 33 practice categories in the Lawyer Referral Service with total referrals of 3,468 — a 37% decline from 2005.”

“ In 2006, the Board of Governors allocated \$10,000 for grants to organizations delivering Law Related Education programs and materials. These annual grants will be targeted to programs that offer practical or direct LRE programs in urban and Bush areas.”

• Pro Bono

The Alaska Bar Association's Pro Bono Director works in partnership with Alaska's legal service providers, the legal community, Pro Bono Services Committee of the Bar Association, and other organizations in Alaska to promote, educate, recognize and recruit attorneys and other professional services to assist low-income citizens. The program serves as an information clearinghouse for the membership regarding volunteer opportunities, resources, training, and other volunteer support services, as well as a contact for legal services providers.

In 2006, the Pro Bono Director, accompanied by the Bar President or a member of the Board of Governors traveled to eight communities as an outreach function and to increase volunteerism in smaller communities. The Director made presentations to 15 of the 22 substantive law sections, eight community groups, assisted in the establishment of a legal hotline for Spanish speaking citizens, spearheaded two community service projects in the areas of Tax and Elder Law, and presented at two swearing-in ceremonies of new attorneys to further establish the need for civil justice representation to Alaska's nearly 80,000 low-income citizens

• Committees of the Alaska Bar

Substantial work is accomplished through the extensive committee structure of the Alaska Bar Association.

Governance is structured around the Board of Governors and its three major committees, with administrative and day-to-day activity as the responsibility of the Executive Director and staff.

Committees of the Bar include:

- The Bar Rules Committees, which include the Committee of Law Examiners, Area Disciplinary Hearing Committees, the Mediation Panel, the Attorney Fee Dispute Review Committees, the Lawyers' Fund for Client Protection Committee, and Admission Waiver Programs.
- The Standing Committees, including Bar Polls and Elections, Continuing Legal Education, Ethics, Bar Historians, Law Related Education, Pro Bono Services, Lawyers' Assistance, Judicial Independence and Alaska Rules of Professional Conduct.
- The Substantive Law Sections, comprised of 22 peer groups practicing in specific areas of the law.

Members and chairs of these committees and sections are found in the appendices.

Membership Services

In addition to services associated with CLE and other activity areas, the Bar Association provides programs that assist members of the Bar in their practices. Complete information about these as well as other Bar programs and services can be found on the Bar's website at www.alaskabar.org.

Programs include:

- **ALPS (Attorney Liability Protection Society).** The Alaska Bar Association is a member of a multi-state, lawyer-owned insurance company. Membership in ALPS increases the availability of coverage to Alaska lawyers at rates that are predictable and which avoid dramatic fluctuations caused by policies and practices over which the lawyers have no control.

- **Computerized Legal Research.** The Bar Association sponsors a group program to provide members with access to LEXIS, a computer-assisted legal research service. Participating firms pay a \$25 monthly subscription fee. Additionally, all members' use of LEXIS aggregates to take advantage of volume discounts.
- **Loislaw.** Loislaw launched a subscription service for searchable, linked Alaska Bar CLE materials on the Loislaw website. These enhanced CLE materials are available from Loislaw for a fee of \$120 per year (\$10 per month) for Bar members.
- **Free Downloading of Alaska Bar CLE Materials.** All Alaska Bar CLE materials 1 calendar year old or older are available on the Bar website for free downloading. These materials are not searchable or linked.
- **Group Insurance.** The Bar Association sponsors a life insurance program for Bar members with States West Life Insurance Company. All members of the Association and employees of their firms are eligible. The Bar Association also sponsors a group medical program. Medical, dental, vision, life and disability coverage are available to firms ranging in size from sole practitioners to those with more than 100 employees. The plan is underwritten by Blue Cross of Washington and Alaska. The Bar Association also sponsors a disability insurance program offered by Unimerica Insurance Co.
- **The Alaska Bar Rag.** The official publication of the Bar Association is the *Alaska Bar Rag*, which is published quarterly. The editor is Thomas V. Van Flein.
- **E-News.** This weekly e-mail newsletter is sent to all members for whom the Bar has e-mail addresses. It contains announcements about Bar Association activities, court news, upcoming CLE programs, and other timely items of interest.
- **Unreported Court Opinions Database.** The Bar maintains a searchable database of unreported court opinions on the Bar website.
- **Section News.** This newsletter, containing notices of section meetings, CLE seminars, and information on new case law, is e-mailed monthly to 85% of substantive law section members. Members without e-mail are mailed a hard copy. Section meeting dates are noted on the website calendar, and the full newsletter is posted on the Bar website at www.alaskabar.org.
- **Ethics Opinions.** All Alaska Bar Ethics Opinions are published in the *Alaska Bar Rag* and online at the Bar's website www.alaskabar.org.
- **Public Copying Machines.** The Alaska Bar Association and the Alaska Court System are continuing a cooperative agreement to provide copying services in the Anchorage Law Library. The Alaska Bar Association has a service agreement with the Anchorage Bar Association for the purpose of providing copiers in the Anchorage Law Library for the use of all library patrons. The revenue is divided as follows: Alaska Court System 40%; Anchorage Bar Association 50%; Alaska Bar Association 10%.

ADJUNCT INVOLVEMENT

The Alaska Bar Association cooperates, partners and supports with its membership a number of programs related to the Alaska legal and justice system:

- **The Alaska Bar Foundation** was established in 1972 for the purpose of fostering and maintaining the honor and integrity of the profession, improving and facilitating the administration of justice, promoting the study of law and continuing legal education,

“The Alaska Bar Association cooperates, partners, and supports with its membership a number of programs related to the Alaska legal and justice systems.”

“ The 2006 financial reports reflect total revenue of \$2,429,040 with total expenses of \$2,148,789. The net gain of \$280,251 showed improvement from the 2005 gain of \$235,673. ”

administering loans and scholarships, and maintaining a law library and research center.

- **Alaska Law Review**, edited by law students at Duke University School of Law in Durham, NC, includes articles by practicing attorneys, law professors, and notes and comments by Duke law students. The Bar publishes the Review semi-annually for the education of the legal community. Bar members receive the publication as part of their Bar dues benefits.
- **Alaska Legal Services Corporation** provides legal assistance to persons lacking the financial resources to obtain private counsel.
- **Alaska Code Revision Commission**, established in 1976, reviews and recommends revisions to the laws of Alaska.
- **Alaska Commission on Judicial Conduct** includes three attorney members who have practiced law in Alaska for at least 10 years. They are appointed to the Commission by the Governor from recommendations submitted by the Board of Governors.
- **IOLTA** is an opt-out Interest on Lawyers Trust Accounts program for the placement of client trust money into interest-bearing accounts. The interest earned on each account is paid periodically to the Alaska Bar Foundation for its charitable and public service work.

In 2006, the IOLTA program earned \$146,822 from interest, and awarded grants totaling \$104,000.

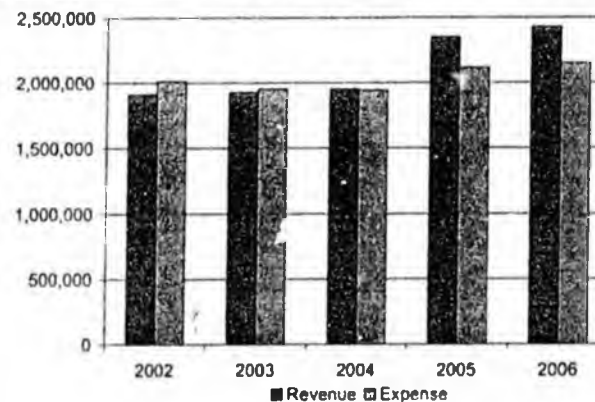
Foundation grants included: \$27,000 to the Alaska Pro Bono Program, \$4,000 to United Youth Courts of Alaska, \$55,000 to Alaska Legal Services Corp, and \$18,000 to the Alaska Immigration Justice Project.

- **Alaska Judicial Council** includes three attorneys who serve staggered, six-year terms. The Council's purpose is to recommend candidates who are seeking judicial office and to conduct studies for the improvement of the administration of justice in Alaska.
- **Other Relationships.** The Bar Association maintains relationships with other, non-Alaskan organizations, usually with representation by a member of the Board of Governors or Bar executive staff. These include the American Bar Association, National Conference of Bar Presidents, Ninth Circuit Judicial Conference, National Association of Bar Executives, Association for Continuing Legal Education (ACLEA), ORACLE (MCLE Regulators), National Organization of Bar Counsel, and Western States Bar Conference.

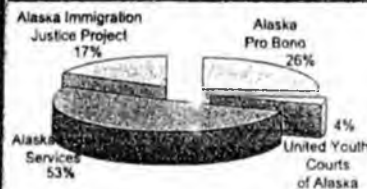
Financial Statements & Budget

The 2006 financial reports reflect total revenue of \$2,429,040 with total expenses of \$2,148,789. The net gain of \$280,251 showed improvement from the 2005 gain of \$235,673.

GENERAL FUND REVENUE & EXPENSES 2002-2006



IOLTA GRANTS 2006





Daniel, Hewko
& Tharp

Certified Public Accountants - A Professional Corporation

INDEPENDENT AUDITORS' REPORT

Board of Governors
Alaska Bar Association

We have audited the accompanying statements of financial position of the General Fund, the Lawyers' Fund for Client Protection and the Court System Library Fund of the Alaska Bar Association as of December 31, 2006, and the related statements of activities, functional expenses, and cash flows for the year then ended. These financial statements are the responsibility of the Association's management. Our responsibility is to express an opinion on these financial statements based on our audit.

We conducted our audit in accordance with auditing standards generally accepted in the United States of America. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe our audit provides a reasonable basis for our opinion.

In our opinion, the financial statements referred to above present fairly, in all material respects, the financial position of the General Fund, the Lawyers' Fund for Client Protection and the Court System Library Fund of the Alaska Bar Association as of December 31, 2006, and the changes in net assets and cash flows for the year then ended in conformity with accounting principles generally accepted in the United States of America.

Daniel, Hewko & Tharp

Anchorage, Alaska
February 23, 2007

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ALASKA BAR ASSOCIATION
STATEMENT OF ACTIVITIES
For the Year Ended December 31, 2006

UNRESTRICTED NET ASSETS	General Fund			Total All Funds
	General Fund	Lawyers' Fund for Client Protection	Court System Library Fund	
Revenue and Other Income				
Dues				
Admission fees	\$ 1,702,211	\$ 28,623	\$ -	\$ 1,730,834
Continuing legal education	174,750	-	-	174,750
Lawyer referral fees	131,979	-	-	131,979
Annual meeting	42,242	-	-	42,242
Share from copiers	123,905	-	-	123,905
Rule 81	-	-	-	-
Other	-	-	-	-
Earnings on investments	116,590	2,210	1,856	118,800
Unrealized loss on investments	38,909	158	-	39,067
	105,092	44,047	-	149,329
	(6,638)	5,413	190	(1,225)
Total unrestricted revenue	2,429,040	80,451	2,046	2,511,537
Expenses				
Admissions	175,898	-	-	175,898
Board of Governors	42,364	-	-	42,364
Discipline	646,385	-	-	646,385
Fee arbitration	63,311	-	-	63,311
Lawyer referral	50,785	-	-	50,785
Continuing legal education	339,255	-	-	339,255
Administration	460,255	-	-	460,255
Pro Bono	79,737	-	-	79,737
Voluntary CLE	20,800	-	-	20,800
Annual meeting	122,746	-	-	122,746
Claims awarded	-	31,972	-	31,972
Rule 31.7 Fee Counsel	-	39,700	-	39,700
Other	-	1,920	-	1,920
Total expenses	146,783	73,592	12	222,393
Increase in unrestricted net assets	2,148,789	6,859	2,034	2,157,682
Net assets, beginning of year	280,251	-	-	280,251
Net assets, end of year	\$ 2,112,876	\$ 1,153,037	\$ 21,139	\$ 3,287,052

The full Independent Auditor's Report and accompanying financial statements and notes are available for inspection at the Bar Association office.

APPENDIX A

Bar Bylaws and Rules Proposed, Added, Modified, or Repealed in 2006

Article IV, Section 8

September 2006: The Board amended Bylaws, Article IV, Section 8 to provide for electronic notice of Board meetings.

Article VIII, Section 3

October 2006: The Board amended Bylaws, Article VIII, Section 3 to change its parliamentary rules from "Robert's Rules of Order, Revised" to "Robert's Rules of Order, Newly Revised."

Bar Rules Proposed to the Supreme Court in 2006

Alaska Rules of Professional Conduct

September 2006: The Board proposed comprehensive amendments to the Alaska Rules of Professional Conduct based on the American Bar Association's Ethics 2000 amendments to the Model Rules of Professional Conduct.

Alaska Bar Rules

September 2006: The Board proposed an amendment to Bar Rule 61(d) correcting the name of the Child Support Enforcement Division to the Child Support Services Division.

September 2006: The Board proposed an amendment to Bar Rule 5, Section 1(b) adding the filing of the Bar Rule 64 affidavit to the requirement to file membership acceptance forms within 60 days of completion of certain admissions requirements.

September 2006: The Board proposed a new Bar Rule 43.2 permitting practice by a retired or inactive "Emeritus Attorney" for qualified legal services organizations.

September 2006: The Board proposed an amendment to Bar Rule 22(a) and an addition to Bar Rule 61(e) providing for administrative suspension of an attorney for failure to respond to an attorney grievance.

October 2006, filed January 2007: The Board proposed an amendment to Bar Rules 65 and 61 and a new Bar Rule 66 to provide for a program of mandatory continuing legal education and providing for administrative suspension for failure to comply with requirements.

October 2006, filed January 2007: The Board proposed a housekeeping amendment to Bar Rule 39(a) correcting the address of the Alaska Bar Association.

October 2006, filed January 2007: The Board proposed an amendment to Bar Rule 40(u) regarding citations to the Uniform Arbitration Act.

October 2006, filed January 2007: The Board proposed an amendment to Bar Rule 3, Section 6 changing the reapplication deadline for the July bar examination to June 15.

Bar Rules Adopted by the Supreme Court in 2006

Alaska Bar Rules

Effective October 15, 2006: The Supreme Court amended Bar Rule 43 to permit lawyers working exclusively for Alaska Legal Services Corporation on a part-time basis to practice law without admission to the Alaska Bar Association.

APPENDIX B

Bar Sections & Committees

Substantive Sections and Chairs, 2006

At the end of 2006 there were 22 active sections.

The Sections, Chairs, and Co-Chairs at the end of 2006 follow:

Administrative Law

Kathy Atkinson

Admiralty Law

Steve Shamburek & Mark Manning

Alaska Native Law

Natalie Landreth

Alternate Dispute Resolution

Glenn Cravez

Bankruptcy Law

Michelle Boutin & Gary Spraker

Business Law

Leonard Anderson & Colleen Libbey

Corporate Counsel

Marcia Davis & Carol Johnson

Elder Law

Kenneth Kirk & Una Gandbhir

Employment Law

Tom Daniel, Will Schendel & Rob Schmidt

Environmental/Natural Resources Law

Larry Albert, Larry Hartig & Russ Winner

Estate Planning/Probate Law

Susan B. Foley & Bill Pearson

Family Law

Lori Ann Colbert & SJ Lee

Health Law

Joan Wilson

Immigration Law

Kathy Atkinson

Intellectual Property Law

Jon Dawson

International Law

Andy Haas

Law & Community Health Forum

Sara Acharya & Stephanie Pawlowski

Municipal Law

John Harile & Rhonda Fehlen-Westover

Real Estate Law

Joan Travostino

Tax Law

Charles Schuetze

Torts/Personal Injury Law

Jim Leik

Workers' Comp

Joe Kalamarides

CLE Committee Members

June 30, 2005 - June 30, 2006

Fairbanks

James DeWitt, Chair 6/2008

Gail Ballou 6/2008

Aimee Anderson Oravec 6/2007

Anchorage

Peter Ashman 6/2008

Nora Barlow 6/2006

Jason Bergevin 6/2007

David Carter 6/2007

Lea Filippi 6/2006

Bonnie Harris 6/2006

Barbara Jones 6/2008

Christine Thoreson 6/2008

Juneau

Justice Walter Carpeneti, 6/2006

Judicial Representative

Stanley Fields, 6/2007

Young Lawyer Rep

David Ingram 6/2006

Girdwood

Hollis Handler, 6/2006

Young Lawyer Rep

Bar Committees and Chairs

Alaska Bar Rag

Tom Van Flein

Alaska Rules of Professional Conduct

Jerome Juday

Bar Polls & Elections

Tim Middleton

Continuing Legal Education

James DeWitt

Ethics

Bob Mahoney

Historians

Leroy Barker

Judicial Independence

Susie Dosik

Law Examiners

Mary Gilson

Law Related Education

Barbara Jones

Lawyers Assistance

Vanessa White

Lawyers Fund for Client Protection

Paul Nangle

Pro Bono Service

Robert Stewart

ALASKA STATE LEGISLATURE

LEGISLATIVE BUDGET AND AUDIT COMMITTEE

Division of Legislative Audit



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Juneau, AK 9811-3300
(907) 465-3830
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legaudit@legis.state.ak.us

September 15, 2006

Members of the Legislative Budget
and Audit Committee:

In accordance with the provisions of Title 24 of the Alaska Statutes, the attached report is submitted for your review.

BOARD OF GOVERNORS OF THE
ALASKA BAR ASSOCIATION
SUNSET REVIEW FOLLOW-UP
September 15, 2006

Audit Control Number
41-20050-06

This follow-up audit was conducted as required by AS 44.66.050 and under the authority of AS 24.20.271(1) and a special request by the Legislative Budget and Audit Committee. Alaska Statute 44.66.050(c) lists criteria to be used to assess the demonstrated public need for a given board, commission, agency, or program subject to the sunset review process. Currently, under AS 08.03.010(c)(2), the Board of Governors of the Alaska Bar Association is scheduled to terminate on June 30, 2007.

In our opinion, the termination date for this Board should be extended. The regulation and licensure of attorneys contributes to the protection of the public's welfare. We recommend the legislature extend the termination date to June 30, 2014.

The audit was conducted in accordance with generally accepted government auditing standards. Fieldwork procedures utilized in the course of developing the findings and discussion presented in this report are discussed in the Objectives, Scope, and Methodology section.

Pat Davidson, CPA
Legislative Auditor

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OBJECTIVES, SCOPE, AND METHODOLOGY

In accordance with the intent of Title 24 and Title 44 of the Alaska Statutes (sunset legislation), and a special request from the Legislative Budget and Audit Committee, we have performed a follow-up of our prior audit, *Board of Governors of the Alaska Bar Association, November 28, 2005*, (Audit Control No. 41-20040-06). Our audit included review of certain activities of the Board of Governors of the Alaska Bar Association (Board). Under AS 44.66.050(a), the legislative committee of reference is to consider this report during the legislative oversight process to determine whether the Board's termination date should be extended. Currently, AS 08.03.010(c)(2) requires the Board to terminate on June 30, 2007. If the legislature takes no action to extend the termination date, the Board will have one year from that date to conclude its operations

Objectives

There are three specific objectives of our report. They are:

1. To provide a current status on the recommendations made in the prior report.
2. To provide updated financial and occupational statistics information.
3. To provide information on organizational, budgeting/appropriation, and disciplinary structure alternatives existing in other states.

In addition, we will report anything that comes to our attention during this review that would change our prior report conclusions and analysis of public need.

Scope and Methodology

The focus of our review was identifying the current status of issues addressed in our prior audit report and gathering information related to organizational, budgeting/appropriation, and disciplinary structures existing in other states. Our audit was a follow-up to the report of November 28, 2005 that reviewed Board operations and activities of the Bar from January 2002 through June 30, 2005.

We reviewed and evaluated the following:

- Applicable statutes, Alaska Bar Rules, Alaska Rules of Professional Conduct, and bar association bylaws
- American Bar Association (ABA) Model Rules
- Board minutes
- Alaska Bar Association annual reports

- Attorney discipline reports
- Audited financial statements of the Board
- Attorney examination and admission results
- Lawyer referral service reports
- Websites of National Conference of Bar Examiners (NCBE), American Bar Association (ABA), and other states' bars
- Various reports and publication of the ABA and the NCBE

In addition, we conducted interviews of the Board staff, including the Executive Director, Board Counsel, and Comptroller.

ORGANIZATION AND FUNCTION

The practice of law in the State of Alaska is regulated by the Board of Governors of the Alaska Bar Association (Board). The Board consists of 12 members including nine attorneys elected by the active membership of the Alaska Bar Association and three non-attorney public members that are appointed by the governor and confirmed by the legislature in joint session.

The powers and duties of the Board are conferred by the Alaska Integrated Bar Act (AS 08.08), the Alaska Bar Rules, and the Rules of Professional Conduct which are promulgated by the Alaska Supreme Court. The purpose of the Board includes the following: to cultivate and advance the science of jurisprudence, to promote reform in the law and in judicial procedure, to facilitate the administration of justice, to encourage continuing legal education for the membership, and to increase the public service and efficiency of the Alaska Bar Association (Bar).

The two primary functions of the Bar are the admission and discipline of its members. To accomplish these and other functions, the Bar operated with a 2006 budget of \$2,385,811. Funding is provided primarily by membership dues (\$550 per year), admission fees, lawyer referral fees, continuing legal education charges, administrative discipline fees, and interest income.

- **Admission Function** The Board is responsible for screening applicants for admission to the Bar. The Board certifies to the Supreme Court that all successful applicants are fit to practice law. The Board appoints an executive director who is responsible for directing all staff functions, including the oversight of the admissions function.
- **Discipline Function** The Board is responsible for investigating grievances against all members of the Bar Association. The Board appoints the discipline counsel. This counsel is responsible for oversight of all disciplinary actions taken against the Bar's membership and provides an ethics course that is required for all applicants. The Board appoints hearing committees from each judicial district. The Board is also responsible for issuing reprimands when warranted, and for recommending that the Supreme Court impose disbarment, suspension, probation, or public censure when appropriate.

The Board of Governors of the Alaska Bar Association (as of June 1, 2006)

John J. Tiemessen , President
Second/Fourth Judicial District

Matthew W. Claman, President-elect
Third Judicial District

Sidney K. Billingslea, Vice-president
Third Judicial District

Philip M. Pallenberg , Treasurer
First Judicial District

William A. Granger, Secretary
Public Member

Christopher R. Cooke
Member At Large

Mitchell A. Seaver
First Judicial District

Joseph N. Faulhaber
Public Member

Michael J. Hurley
Public Member

Allison Mendel
Third Judicial District

Krista S. Stearns
Third Judicial District

Jason A. Weiner
Second/Fourth Judicial District

- Miscellaneous Functions The Bar also performs a wide variety of miscellaneous functions that include providing classes for and accrediting providers of continuing legal education, a lawyer referral service, client mediation, and fee arbitration with clients. In conjunction with Alaska Legal Services Corporation, the Bar sponsors the Alaska Pro Bono Program. The Bar provides a number of other member services including attorney liability protection, group insurance, the *Alaska Bar Rag*, ethics opinions, and alcohol and drug counseling. In addition the association provides grants through the Alaska Bar Foundation (ABF) from earnings of interest on lawyers trust account (IOLTA) program. IOLTA grants are used to support legal services for the economically disadvantaged and improve the administration of justice.

The Alaska Bar Association's office is located in Anchorage and is currently staffed by 18 full-time and job-share employees.

The Board's decision involving examination and discipline may be appealed to the Alaska Supreme Court. The Alaska Supreme Court issues the order of admission to the bar association and lawyer disciplinary sanctions involving disbarment, suspension, probation, and public censure.

REPORT CONCLUSIONS

Prior Audit Conclusion

The objective of our prior audit, *Board of Governors of the Alaska Bar Association, November 28, 2005*, (Audit Control No. 41-20040-06) was to determine if the Board of Governors of the Alaska Bar Association (Board) should continue to exist, primarily based on the results discussed in the Analysis of Public Need section of the report.

The conclusion of the prior report was that the termination date of the Board of Governors of the Alaska Bar Association should be extended. Since the first three attorneys were admitted to the practice of law in Alaska in 1884, membership has grown to its current level of 2,839 active members practicing in the State. The regulation and licensing of qualified attorneys contributes to the protection of the public's welfare.

The Board, through the Alaska Supreme Court, protects the public by ensuring that persons licensed to practice law are qualified. It also provides for the investigation of complaints and has established a disciplinary process designed to promote licensed individuals to act in a competent and professional manner. Chapter 58, SLA 2005 amended AS 08.03.020(c) to increase, from four to eight years, the period for which a board scheduled for termination may be continued or reestablished by the legislature. As such, we recommended that the legislature extend the termination date of the Board to June 30, 2014.

Nothing came to our attention during our current assessment that would give rise to a change in our conclusion or recommendation regarding extension of the termination date.

Current Audit Results

The objective of this audit is to provide a current status on the recommendations made in the prior report, provide updated financial and occupational statistics information, and provide information on organizational, budgeting/appropriations, and disciplinary structure alternatives existing on other states.

We have reiterated and provided a current status of the three recommendations made in our prior audit, *Board of Governors of the Alaska Bar Association, November 28, 2005*, (Audit Control No. 41-20040-06). These recommendations, if implemented, will improve the effectiveness of the Board's goals and operations. See the Findings and Recommendations section of this report.

We have also incorporated the financial information and occupational statistics, from Appendices A, B, C, and D in our prior audit, with updates for more current periods and more recent activities. See Appendices A, B, C, and D of this report.

And finally we have included, for discussion, information on possible organizational alternatives from a limited review of other states in the Additional Auditor Comments section of this report.

FINDINGS AND RECOMMENDATIONS

In the prior audit, *Board of Governors of the Alaska Bar Association, November 28, 2005*, (Audit Control No. 41-20040-06) there were three recommendations, two of which have been fully implemented. They are reiterated below, with a current status, as Recommendations No. 1 through 3.

Recommendation No. 1

The Board should recommend to the Alaska Supreme Court that mandatory minimum CLE for attorneys be adopted.

Prior Finding

Continuing legal education for attorneys is only voluntary rather than required. The Supreme Court adopted a voluntary CLE under Bar Rule 65 in 1999. It encouraged all active members of the Alaska Bar Association (Bar) to complete at least 12 credit hours of approved CLE, including one credit hour of ethics. Incentives, such as reduction of bar dues and eligibility to participate in the Lawyer Referral Service are authorized to those who comply with the bar rule.

The Board implemented a three-year voluntary CLE pilot project effective September 2, 1999 which ended in December 2002. Each member of the Bar was required to report at the end of each year the CLE hours earned during the preceding year on the prescribed CLE reporting form. The average participation rate during the pilot program years was 46%. The Board eliminated the voluntary CLE reporting requirement at the end of the pilot program. However to encourage completion and reporting of approved CLE, the Bar continued its reduced annual dues to those attorneys who certify completion of CLE on their annual dues statement. The reported average participation rate for CLE has dropped from 46% to 38% for the two years after the end of the pilot program.

Forty-one legal jurisdictions in the United States have a mandatory CLE education requirement for attorneys desiring to practice law in their jurisdiction. Mandatory CLE requirements range from 8 to 27 credit hours per year with the majority of the jurisdictions requiring between 12 and 15 hours. Specific course requirements vary.

Many professions require continuing education to maintain licensure in Alaska. For example, Alaska-licensed dentists, doctors, pharmacists, and psychologists are all required to meet minimum continuing education standards.

The Board's major concern regarding mandatory CLE is an appearance of a conflict of interest. Currently, the Bar both accredits CLE providers and provides CLE. The American Law Institute-American Bar Association study released in 1998 recommended creating a

distinct and separate department or organization, with separate staff, to regulate and sponsor CLE so as to avoid the appearance of conflict of interest.

The Board has recently established a joint task force on mandatory continuing legal education. The memberships include three members of the Board and a representative each from the Alaska Supreme Court and the Judicial Council.

Overall, we believe a mandatory minimum continuing legal education requirement will enhance the membership's continued professional competence and raise the public's confidence in attorneys. The Board should encourage the Supreme Court to adopt an Alaska Bar Rule requiring mandatory minimum continuing legal education.

Legislative Audit's Current Position

In their response to the prior recommendation, the Board noted there was sentiment on the Board in favor of mandatory continuing legal education. They stated that despite several potential obstacles it was probable that they would approve a mandatory CLE rule and recommend its adoption to the Alaska Supreme Court.

At their January 2006 board meeting, the Board heard reports from the aforementioned joint task force on mandatory CLE. They then voted to table related discussions until their April 2006 meeting and to set up an informal meeting with the Supreme Court to discuss mandatory CLE.

A luncheon meeting with the five members of the Supreme Court was held in conjunction with the April 2006 board meeting. Mandatory CLE was one of the topics discussed. The Bar was told to make a recommendation to the court and submit a request to take action if they wanted the court to review the issue.

The Board subsequently voted at their April 2006 meeting to publish a proposed amendment to the Bar Rules providing for a mandatory CLE program. The publishing of the proposed change is the next required step in the court established process governing the adoption of new or modified Bar Rules.

The proposed rule change was published, as required, in April 2006. Solicited comments from members of the Bar were accepted through August 15, 2006. The issue of mandatory CLE was on the agenda for the Board of Governors' September 2006 meeting.

Most recently, the Board voted at their September 7, 2006 meeting to send the mandatory CLE rule, as published, to the Alaska Supreme Court. In effect, they have now implemented our prior recommendation.

Recommendation No. 2

The Board should consider developing a database of disciplined lawyers in the association's website.

Prior Finding

While current procedures are adequate, the Board could increase efficient and effective communication of lawyer discipline to the public by publishing their discipline list on their website.

Board procedures provide for public notice of all attorneys who have been disbarred, suspended, put on probation, publicly censured, or reprimanded. Currently, the Board publishes the names of these attorneys in four major newspapers throughout the State, the local newspaper where the attorney practiced, the *Alaska Bar Rag*, and in the Board's annual report. Notice of all disciplines imposed by the court, all orders granting reinstatements, and all public reprimands are also transmitted to the American Bar Association National Lawyer Regulatory Data Bank. These are long-standing means of providing public notice; however, 15 states currently also publish their lawyers discipline list on their websites.

The Board should consider developing a database for the Bar's website of the disciplines imposed against lawyers. It would be an effective medium in addition to the others used to inform the public of lawyers who have been disciplined. It will enhance public notification and client protection through increased accessibility of discipline information.

Legislative Audit's Current Position

In their response to the prior recommendation, the Board agreed that having public discipline information available on their website was a desirable goal and that they would work to that end. Although some steps have been taken towards the possible implementation of our recommendation, attorney discipline information is not yet available via link from the Alaska Bar Association web-site.

The Alaska Bar Association has joined a consortium of other state and local Bars and through this group entered into a long-term contract aimed at replacing their legacy database with a new member management system. A module created specifically to accommodate lawyer discipline data is planned for the new system. By design, this module is expected to provide a technologically viable means to publish lawyer disciplinary information on the Alaska Bar Association web-site. The Board anticipates that the new discipline module of the replacement database, including online reporting of public discipline, will be operational in the summer of 2007.

Legislative audit's position remains unchanged. We continue to believe the Board should develop a database of disciplined lawyers to which access is provided the public via the association's website. We encourage continued efforts in this area. Client protection will undoubtedly be improved with increased accessibility to discipline information.

Recommendation No. 3

The Board should adopt a due date for the annual report to ensure it is made available to the Supreme Court, the legislature and the public on a timely basis.

Prior Finding

The Board's annual reports for the three years 2002 through 2004 were not prepared timely.¹ In fact, the 2004 report is still in draft format. AS 08.08.085 requires the Board to prepare an annual report and notify the legislature when it is available; however, it does not specify a due date. The annual report is normally made available to the legislature in the spring of the subsequent year. For the past three years, the executive director has placed a low priority on the preparation of the annual reports.

The Board's annual report contains information on matters relating to admission, discipline of members, modification or repeals of bylaws, and bar rules proposed to or adopted by the Supreme Court. The annual report may also be used to recommend changes to the Alaska Bar statutes. Information provided in the report will be more useful and relevant to public officials and the public when provided in a timely manner.

The adoption of a specific due date by the Board in its bylaws or standing policies should ensure the timely preparation of the Board's annual report.

Legislative Audit's Current Position

In their response to the prior recommendation, the Board stated they would take steps to amend their Standing Policies to set a deadline for submission of the Annual Report. They noted that the required amendment would be proposed at the January 2006 Board of Governors meeting. This did not occur. An amendment was also not proposed at the April 2006 Board of Governors meeting.

Although the 2005 Annual Report was completed timely, until recently no action was taken to implement our recommendation. The issue of formally adopting an annual report due date was on the agenda for the Board of Governors' September 2006 meeting.

Most recently, the Board voted at their September 7, 2006 meeting to amend their Standing Policies to set April 15 as the due date for the completion of the preceding year's annual report. In effect, they have now implemented our prior recommendation.

AUDITOR'S COMMENTS

¹ We considered completion of the annual report to be untimely if it was not completed within four months after the end of the calendar year.

Prior Auditor Comments

As delineated in our prior audit, *Board of Governors of the Alaska Bar Association, November 28, 2005*, (Audit Control No. 41-20040-06) the sunset process allows for an objective review of various boards and commissions to determine if the public need for protection continues to exist and if the entity is satisfying that need. The independent conclusions of a review agency, such as this Division, provide certain assurances that entities such as the Board of Governors of the Alaska Bar Association (Board) are operating in the public interest. Our overall conclusion at that time was that Board was operating in the public interest and that there was a continuing public need for the attorney admission and discipline functions of the Alaska Bar Association (Bar). Nothing came to our attention during our current assessment that would give rise to a change in our position or conclusions.

Whether the discipline function is to be controlled by government or by attorneys is a policy-level determination that should be carefully considered by the Supreme Court, the Board, and the legislature. The following comments are again intended to assist in such consideration.

Self-regulation, whether by industries or profession, has always been viewed skeptically by the citizenry. There is often a perception of conflict of interest in whether actions are for the benefit of the organization's membership or for the citizens' benefit. The attorney discipline system of the Bar is a self-regulatory function that may suffer from this public perception.

The Board is comprised of 12 members, of which nine are attorney members elected by the Bar's membership and three public members appointed by the governor. As the majority is elected by the membership, the Bar's discipline activities will likely be perceived as self-regulation.

We continue to believe that the attorney discipline system in Alaska could be a government function. In at least 22 states, discipline is carried out by a state government agency. In 2000, Nebraska's Supreme Court moved the disciplinary function out from their bar association to the Supreme Court Counsel for Discipline.

The American Bar Association concurs and, in fact has recommended that the disciplinary function of state bars be under the direct control of the Supreme Court. The American Bar Association's *Model Rules for Lawyer Disciplinary Enforcement*, August 1993,² recommended the following:

The disciplinary system should be controlled and managed exclusively by the state's highest court and not the state or local bar association [T]he disciplinary process should be directed solely by the disciplinary policy of the court and its appointees and not

² The *Model Rules for Lawyer Disciplinary Enforcement*, August 1993 was amended on August 5, 1996, on February 8, 1999 and on August 12, 2002. The 1993 recommendation is in the commentary under Rule 2.

influenced by internal politics of the bar association ... [T]he disciplinary system should be free from even the appearance of conflicts of interest or impropriety.

The following options should be considered in a move away from attorney self-regulation:

- Disciplinary investigations performed by Alaska Court System employees
- Place disciplinary function under the Supreme Court with a Disciplinary Board appointed by the court

There should be no general fund net cost to either of these options. They would be paid by attorney licensing fees, the same as they currently are and as they are for other occupations. Fees are established such that full costs are recouped.

From a citizen's perspective, there are no advantages to allowing the legal profession to self-regulate. However, there will always be the disadvantage of at least the perception of inadequate discipline. In a move away from self-regulation, the legal profession and the State's citizens would likely benefit.

Additional Auditor Comments

One of the objectives of the current audit is to provide information on organizational, budgeting/appropriations, and disciplinary structure alternatives existing on other states. The following comments address these issues. Our supporting analyses were not intended to be comprehensive, but address those areas we were able to cover within the scope of the current review.

The manner in which lawyer admission and disciplinary functions are organized varies widely from state to state. In some jurisdictions both functions are handled by the same entity, similar to the manner in which these functions are addressed in Alaska. In other instances, this is not the case. It is more likely that state government agencies operating under that state's Supreme Court will perform these functions in states where there is a voluntary Bar. In states with mandatory, or unified, Bars it is more common for the state Bar Association to be involved with these functions at least to some degree.

During our current audit we determined that the annual Bar Association budget in at least two other states, both of which have mandatory state Bars, is subject to legislative appropriation. This is not the case in Alaska or the majority of states with unified Bars. In one of those states (Alabama) all practicing attorneys pay an annual license fee, which goes into a special trust fund. From this fund, the legislature makes an appropriation for the use of the Alabama State Bar. Virginia operates in a somewhat similar manner.

In direct response to the Legislative Budget and Audit Committee's request for information regarding organizational, budgeting/appropriations, and disciplinary structures used in other states, the Alaska Bar Association's executive director conducted an email/phone survey of

the Bar Associations in states with unified Bars. Eight specific questions were posed and a 100% response rate was attained. The questions posed were as follows:

1. Are you a state agency, state instrumentality, public corporation, or other (please specify)?
2. Is your budget approved by Board of Governors (governing board), Supreme Court, legislature, or other (please specify)?
3. Are your funds considered to be part of the budget of Bar Association, Supreme Court, legislature or other state agency, or other (please specify)?
4. Are you receiving appropriations (funds) from the legislature?
5. Do you administer admissions?
6. Do you administer discipline?
7. Do you administer mandatory CLE?
8. Do you provide CLE programs?

We have included the executive director's survey summary as Appendix E to this report for information purposes only. Although we did not audit the survey results, we did find the summary substantially supported by the survey responses provided to the auditors.

Based on our limited research, it appears that a wide range of structures exist on which modifications to Alaska's system could be modeled in the event a policy-level decision is made to revamp our current system. A more extensive, detailed research project could be undertaken at that time by legislative legal and research services, the Board, and the Court System when working on proposed changes.

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ANALYSIS OF PUBLIC NEED

Nothing came to our attention during our current assessment that would give rise to a change in our position or the conclusions drawn in our prior audit, *Board of Governors of the Alaska Bar Association, November 28, 2005*, (Audit Control No. 41-20040-06). Included here is a reiteration of the analyses presented in our prior report.

The following analyses of the Board of Governors of the Alaska Bar Association (Board) activities relate to the public-need factors defined in AS 44.66.050(c). These analyses are not intended to be comprehensive, but address those areas we were able to cover within the scope of our review.

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

The Board admits applicants to practice law through an examination process that was designed in consultation with a national expert. The Board also admits members by motion for reciprocity. This option is limited to attorneys in the active practice of law for five of the last seven years in states with which Alaska has a reciprocal agreement.

Additionally, the Alaska Bar Association (Bar) also provides services that are more typically provided by professional associations rather than regulatory agencies. These include:

- The Bar has a committee to administer the *Lawyers' Fund for Client Protection*. This fund receives \$10 from each active member's annual dues. The fund is used to reimburse clients for losses³ caused by dishonest conduct⁴ of a lawyer which is not covered by insurance or fidelity bond, whether of the lawyer or the client. The maximum amount payable to any individual is the lesser of \$50,000 or 10% of the fund amount at the time of the award. The aggregate maximum amount that may be paid to all claimants under a fee arbitration case arising from the dishonest conduct of a particular lawyer is \$200,000.
- Since 1976, the Bar has maintained a *Fee Arbitration* process allowing a client to resolve attorney fee disputes that have not been determined by statute or court rule or decision. For fee disputes of \$5,000 or less, the process provides for a single arbitrator. Disputes over \$5,000 are heard by a three-member panel that consists of two attorneys and one

³ Reimbursable losses are losses of money, property, or other things of value caused by the lawyer when: (1) acting in a fiduciary capacity customary to the practice of law, such as a administrator, executor, trustee, guardian or conservator; (2) acting as an escrow holder; or (3) filed within three years after the claimant knew or should have known of the dishonest conduct of the lawyer (Alaska Bar Rule 45).

⁴Alaska Bar Rule 45 defines "dishonest conduct" as wrongful acts committed by a lawyer in the manner of defalcation or embezzlement of money, or the wrongful taking or conversion of money, property or other things of value.

public member. Failure by an attorney to participate in this process may be grounds for disciplinary action.

- The Bar also offers a mediation process that attempts to resolve the differences between attorneys and their clients. This process is not used when the issues are of a very serious nature such as allegations of intentional dishonesty, material misrepresentation, or the alleged conduct could lead to suspension or disbarment. Mediation requires the approval of both parties and the Bar counsel. The agreement is considered a contract and is legally enforceable in court.
- The Bar operates a *Lawyer Referral Service* funded by enrollment fee from participating members. Members of the public can call an in-state toll free number and obtain the names of three attorneys who have listed themselves as practicing law in a certain field. Lawyer Referral Service statistics are shown in Appendix D (**NOTE**: *Appendix D included in this report has been updated with additional information obtained during the current audit*).
- The Bar provides grants to support legal services for the economically disadvantaged and improve the administration of justice through the Alaska Bar Foundation from earnings of the Interest on Lawyers Trust Account.
- The Bar jointly sponsors the Alaska Pro Bono Program with the Alaska Legal Services Corporation in which attorneys provide free legal advice to low-income Alaskans.
- The Bar also has a *Lawyer Assistance Committee* that provides assistance and counseling to bar applicants and lawyers with drug and alcohol problems.

Determine the extent to which the operation of the board, commission, or agency program has been impeded or enhanced by existing statutes, procedures, and practices that it has adopted, and any other matter, including budgetary, resource, and personnel matters.

The operations of the Board are funded entirely by the membership through dues, admission fees, continuing legal education charges, lawyer referral fees, convention fees, and interest income. In 2004, the Board amended Article VII Section 1(a) of the bylaws to increase fees for additional substantive law section membership and associate⁵ members. The Board also amended Article III Section 1(a) of the bylaws to increase active members' dues to \$550, effective in the 2005 membership year.

The 2005 budgeted revenue is \$2,195,584. The Bar has a cumulative revenue surplus of \$2,722,989 as of the end of calendar year 2004. (See Appendix A - **NOTE**: *Appendix A included in this report has been updated with additional information obtained during the current audit*). The maintenance of a substantial revenue surplus is not consistent with the

⁵ A member of the public may join the Bar's section membership as an associate member. Associate members are nonvoting members and may not serve on the section's executive committee.

other professions regulated by the State, under the jurisdiction of the Department of Commerce, Community, and Economic Development – Division of Corporations, Business, and Professional Licensing. Those professional fees are required by statute to be set so the total fee collections approximately equal the actual regulatory cost of the occupation.

In August 2004, the Board formed the Bar Services and Funding Committee “to study and propose new ways to utilize bar dues and a portion of the unappropriated capital to advance the profession of law in Alaska and to benefit the members of the Bar and the practice of law in general.”

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

The Board has not recommended any statutory changes during this audit period. However, the Board has been active in the process of evaluating and revising the Alaska Bar Rules, Bylaws, and Rules of Professional Conduct that govern the Bar policies and procedures. The Board also had addressed the two recommendations presented in their prior sunset review. See Findings and Recommendations section.

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

The Bar membership is involved in its operations. This operation may include service on one of the eight standing committees or five Alaska Bar Rules committees. It may include participation in one of the 24 sections or group of members with similar specialization (bankruptcy, criminal law, etc).

In addition to the above committees, members of the Bar may be appointed to serve in an adjunct organization, such as the Alaska Legal Services Corporation. Also, special committees are established from time to time by the President with the advice and consent of the Board.

The Bar publishes all proposed changes to the Alaska Bar Rules in its quarterly publication, the *Alaska Bar Rag*, which is distributed to all members of the Bar and to interested members of the public. Members are asked to submit any and all comments on proposed rule changes for review by the Board.

The Board advertises board meetings in four Alaska newspapers, the *Alaska Bar Rag*, and the Alaska Public Online Notice System. Adequate time is allotted, and members of the general public are encouraged to make comments at all meetings.

Determine the extent to which the board, commission, or agency has encouraged public participation in the making of its regulations and decisions.

In addition to the three public members who serve on the Board, nonattorneys serve on disciplinary hearing committees and fee arbitration panels throughout the State. The membership of the Joint Task Force on Mandatory Continuing Legal Education established in May 2005 includes a public member of the Board.

As mentioned above, the Bar publicly advertises meetings of the Board. Time is allotted at all board meetings for public comments.

Determine the efficiency with which public inquiries or complaints regarding the activities of the board, commission, or agency filed with it, with the department to which a board or commission is administratively assigned, or with the office of victims' rights or the office of the ombudsman have been processed and resolved.

The Bar is an instrumentality of the State but is not administratively assigned to any department. However, the Alaska Supreme Court exercises a great degree of oversight. No complaints or investigations specifically involving the actions and activities of the Board were filed with the Office of the Ombudsman during our audit period.

The Board has a lawyer discipline process for investigation of complaints alleging attorney misconduct. Sanctions are imposed on those found in violation of the Rules of Professional Conduct. All public disciplinary action is subject to Supreme Court review. This process was developed through a cooperative effort of the Alaska Supreme Court, the Board, Bar staff, and a review team from the American Bar Association's Standing Committee on Professional Discipline.

An average of 215 complaints is received annually. Analyses of the complaints filed during the audit period shows that all grievances were reviewed, but relatively few were pursued beyond the initial investigation. Over 80 percent of the grievances received were not accepted for investigation due to lack of merit. Closure of grievances cases with sanctions such as disbarment, suspension, public censure, public reprimand, and admonition appear reasonable.

Over 600 complaints were filed during 2002, 2003, and 2004; these resulted in 135 cases being opened and the remaining complaints were not accepted. The investigations resulted in 50 cases⁶ with sanctions against a total of 16 attorneys. Six attorneys were disbarred, six were suspended, two were publicly reprimanded, and two were publicly censured. Discipline statistics are shown in Appendix B (***NOTE: Appendix B included in this report has been updated with additional information obtained during the current audit.***)

⁶ A single attorney may have multiple cases filed against them.

Board procedures provide for public notice of all attorneys who have been disbarred, suspended, put on probation, publicly censured, or reprimanded. The names of these attorneys are published in four major newspapers throughout the State, the local newspaper where the attorney practiced, the *Alaska Bar Rag*, and in the Board's annual report. Notice of all disciplines imposed by the court, all orders granting reinstatements, and all public reprimands are transmitted to the American Bar Association's National Lawyer Regulatory Data Bank. However, as discussed in Recommendation No. 2, the Board does not publish the names of lawyers who were suspended, disbarred, publicly reprimanded or censured on their website.

Determine the extent to which a board or commission that regulates entry into an occupation or profession has presented qualified applicants to serve the public.

The Board admits applicants to practice law through an examination process that was designed in consultation with a national expert. Admission is contingent on the following:

- Passing the Alaska Bar Examination
- Passing the Multi-state Professional Responsibility Examination
- Passing character investigation to determine if the applicant is of good moral character
- Attendance⁷ of a mandatory three hour ethics presentation by the Board.

The Board also admits members by motion for reciprocity. This option is limited to attorneys in the active practice of law for five of the last seven years in states with which Alaska has a reciprocal agreement.

Examination and admission statistics are shown in Appendix C (***NOTE: Appendix C included in this report has been updated with additional information obtained during the current audit.***)

The Bar offers continuing legal education for its membership and maintains an educational library. The Board established a three-year voluntary continuing legal education (CLE) project which required completion of a minimum of twelve hours of CLE, including one hour in ethics each calendar year. The Board compiled statistics of member participation and reported the information to the Supreme Court each year. The project expired in 2002 and the Board continued the voluntary CLE program. However, as discussed in Recommendation No. 1, the voluntary CLE average participation of 46 percent during the pilot period (September 19, 1999 – December 31, 2002) has declined during the subsequent two years

⁷ This requirement may be fulfilled by watching the ethics videotape and signing an affidavit.

(2003 through 2004) to 38 percent. Forty-one states, excluding Alaska currently have mandatory CLE requirements which range from eight to twenty-seven credit hours per year.

As of 2004, lawyers located outside of Anchorage may participate in CLE through audio-video presentations available in three Alaska communities – Fairbanks, Juneau, and Kenai. Other communities may request a group video replay.

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

Please refer to the Findings and Recommendations and the Auditor Comments sections of this report.

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

The Board allows special accommodations for applicants who have been determined to have disabilities.

We did not find any evidence that the Board was not complying with state personnel laws, including affirmative action in qualifying applicants for licensure. In no instance did the Board deny an applicant a license based on personal attributes.

Determine the extent to which the board, commission, or agency has effectively attained its objectives and purposes and the efficiency with which the board, commission, or agency has operated.

Article I Section 3 of the association bylaws sets out the purposes of the Bar which include:

1. To cultivate and advance the science of jurisprudence
2. To promote reform in the law and in judicial procedure
3. To facilitate the administration of justice
4. To encourage legal education for the membership
5. To increase the public service and efficiency of the bar

To achieve these purposes the Bar has established and maintains various committees as well as performs certain functions. For example, the Bar maintains a Law Related Education Committee to present programs to the community and school system to aid in the understanding of the law and legal system. The committee is divided into subcommittees in

the communities of Anchorage, Fairbanks, Juneau, Kenai, Mat-Su, and other communities where the Board president sees the need to appoint a subcommittee.

The Board appoints three attorneys to serve staggered six-year terms on the Alaska Judicial Council. The Council recommends candidates for judicial office and conducts studies for the improvement of the administration of justice in Alaska. As council members, they survey, investigate, and evaluate incumbent justices and judges standing for retention. The evaluation is published in the Lieutenant Governor's Official Elections Pamphlet. They are also involved in screening of applicants for the state public defenders office.

The Bar's continuing legal education committee consisting of 15 members assists the continuing legal education director in overseeing the presentation of substantive legal education programs to educate Alaskan lawyers, about developments in the field of law, and emphasize their ethical responsibilities. The Bar has conducted 100 live, 6 satellite, 49 conventions, and 2 video conference CLE presentations for 1,096, 1,066, and 973 attorney participants from calendar year 2002 through 2004, respectively.

Determine the extent to which the board, commission, or agency duplicates the activities of another governmental agency or the private sector.

The Board does not duplicate the activities of another governmental agency. However, many of its activities are those typically performed by a professional association. As discussed earlier, some of these more typical private sector activities include such things as fee arbitration, referral services, and sponsorship of a pro bono program.

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APPENDICES**S**

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APPENDIX A

Alaska Bar Association Funds

The Alaska Bar Association (Bar) maintains three separate funds for accounting and reporting purposes. These include a General Fund, the Lawyers' Fund for Client Protection, and the Court System Library Fund. The following describes these funds and their purpose.

- General Fund – This fund is the Bar's operating fund. It accounts for the financial resources and transactions not accounted for in other funds.
- Lawyers' Fund for Client Protection – In accordance with Alaska Bar Rules promulgated by the court system, this fund is maintained solely for the purpose of making reimbursements to clients who have incurred noninsured losses of money or property as a result of dishonest conduct by attorneys. Related trustee counsel compensation may be paid from this fund in certain circumstances.
- Court System Library Fund – This fund is maintained by the Bar, pursuant to a cooperative agreement with the Alaska Court System and the Anchorage Bar Association. It's purpose is to account for the portion of receipts generated from copying services provided in the Anchorage Law Library that are to be used for purchasing legal research resources for the Alaska Court Libraries as designated by the State Law Librarian.

APPENDIX A
(continued)

Alaska Bar Association
Revenues Compared with Expenses
Calendar Year 2005

	General Fund	Lawyers' Fund for Client Protection	Court System Library Fund	Total All Funds
Revenues				
Dues	\$1,674,351	\$ 28,296		\$ 1,702,647
Admission Fees	161,875			161,875
Continuing Legal Education	153,271			153,271
Lawyer Referral Fees	54,461			54,461
Annual Meeting	122,414			122,414
Earnings on Investments	82,552	45,574	\$ 91	128,217
Unrealized Loss on Investments	(49,268)	(27,902)		(77,170)
Other	152,113	14,026	6,730	172,869
Total Revenues	2,351,769	59,994	6,821	2,418,584
Expenses				
Admissions	176,178			176,178
Board of Governors	42,959			42,959
Discipline	623,605			623,605
Fee Arbitration	59,326			59,326
Lawyer Referral	47,641			47,641
Continuing Legal Education	356,375			356,375
Administrative	448,167			448,167
Annual Meeting	122,145			122,145
Other	239,700	27,557	12	267,269
Total Expenses	2,116,096	27,557	12	2,143,665
Increase (decrease) in net unrestricted assets	235,673	32,437	6,809	274,919
Unrestricted Net assets at beginning of year:				
Designated for Working Capital	675,000	0	0	675,000
Designated for Asset Acquisition	120,665	0	0	120,665
Undesignated	801,287	1,113,741	12,296	1,927,324
Total at Beginning of Year	1,596,952	1,113,741	12,296	2,722,989
Unrestricted Net assets at end of year:				
Designated for Working Capital	700,000	0	0	700,000
Designated for Asset Acquisition	129,375	0	0	129,375
Undesignated	1,003,250	1,116,178	19,105	2,168,533
Total at End of Year	\$ 1,832,625	\$ 1,146,178	\$ 19,105	\$ 2,997,908

Source: Alaska Bar Association's Audited Financial Statements for 2004 and 2005.

APPENDIX A
(continued)

Alaska Bar Association
General Fund Revenues Compared with Expenses
Calendar Years 2002 through 2005

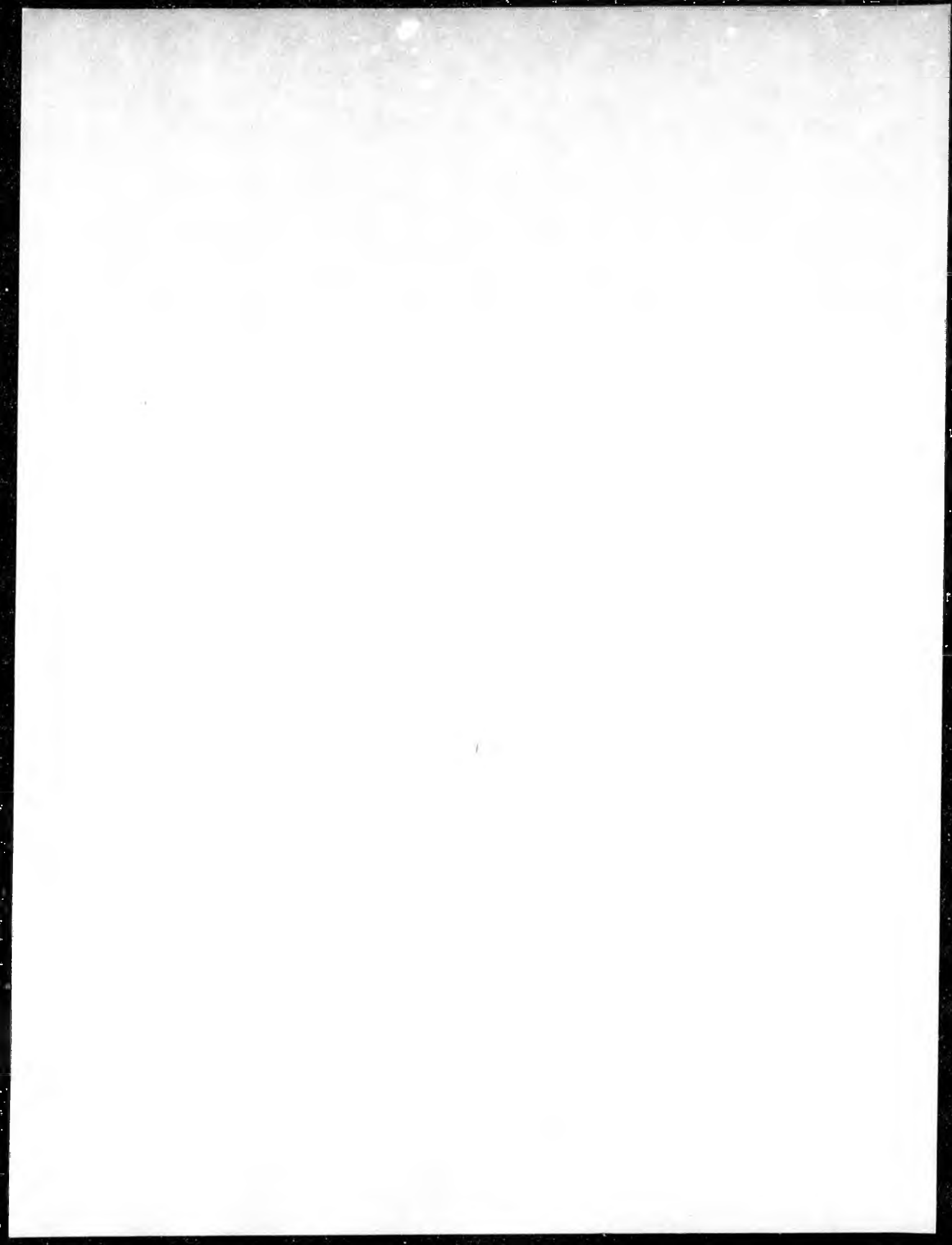
	2002	2003	2004	2005
Revenues				
Dues	\$ 1,332,811	\$ 1,346,808	\$ 1,361,672	\$ 1,674,351
Admission Fees	156,055	186,905	146,175	161,875
Continuing Legal Education	111,740	132,830	102,121	153,271
Lawyer Referral Fees	59,462	46,520	51,816	54,461
Annual Meeting	97,071	94,042	117,189	122,414
Earnings on Investments	100,098	76,593	61,403	82,552
Unrealized Loss on Investments	(357)	(3,041)	(29,993)	(49,268)
Other	49,596	42,416	142,845	152,113
Total Revenues	1,906,476	1,923,073	1,953,228	2,351,769
Expenses				
Admissions	163,646	171,525	170,888	176,178
Board of Governors	37,540	40,728	33,637	42,959
Discipline	637,541	576,469	603,493	623,605
Fee Arbitration	53,548	54,614	57,685	59,326
Lawyer Referral	45,682	44,878	47,995	47,641
Continuing Legal Education	420,517	421,767	312,481	356,375
Administration	378,678	392,549	422,902	448,167
Annual Meeting	105,371	99,018	105,871	122,145
Other	172,512	151,708	187,090	239,700
Total Expenses	2,015,035	1,953,256	1,942,042	2,116,096
Increase (decrease) in net unrestricted assets	(108,559)	(30,183)	11,186	235,673
Unrestricted Net assets at beginning of year:				
Designated for Working Capital	200,000	200,000	675,000	675,000
Designated for Asset Acquisition	118,871	117,928	107,990	120,665
Undesignated	1,405,637	1,298,021	802,776	801,287
Total at Beginning of Year	1,724,508	1,615,949	1,585,766	1,596,952
Unrestricted Net assets at end of year:				
Designated for Working Capital	200,000	675,000	675,000	,00,000
Designated for Asset Acquisition	117,928	107,990	120,665	129,375
Undesignated	1,298,021	802,776	801,287	1,003,250
Total at End of Year	\$ 1,615,949	\$ 1,585,766	\$ 1,596,952	\$ 1,832,625

Source: Alaska Bar Association's Audited Financial Statements for 2001 through 2005.

Alaska Bar Association
General Fund Revenues Compared with Expenses
Calendar Years 2003 through 2006

	2003	2004	2005	2006
Revenues				
Dues	\$ 1,346,808	\$ 1,361,672	\$ 1,674,351	\$ 1,702,211
Admission Fees	186,905	146,175	161,875	174,750
Continuing Legal Education	132,830	102,121	153,271	131,979
Lawyer Referral Fees	46,520	51,816	54,461	42,242
Annual Meeting	94,042	117,189	122,414	123,905
Earnings on Investments	76,593	61,403	82,552	105,092
Unrealized Loss on Investments	(3,041)	(29,993)	(49,268)	(6,638)
Other	42,416	142,845	152,113	155,499
Total Revenues	1,923,073	1,953,228	2,351,769	2,429,040
Expenses				
Admissions	171,525	170,888	176,178	175,898
Board of Governors	40,728	33,637	42,959	42,364
Discipline	576,469	603,493	623,605	646,385
Fee Arbitration	54,614	57,685	59,326	63,311
Lawyer Referral	44,878	47,995	47,641	50,785
Continuing Legal Education	421,767	312,481	356,375	339,725
Administration	392,549	422,902	448,167	460,255
Annual Meeting	99,018	105,871	122,145	122,746
Other	151,708	187,090	239,700	247,320
Total Expenses	1,953,256	1,942,042	2,116,096	2,148,789
Increase (decrease) in net unrestricted assets	(30,183)	11,186	235,673	280,251
Unrestricted Net assets at beginning of year:				
Designated for Working Capital	200,000	675,000	675,000	700,000
Designated for Asset Acquisition	117,928	107,990	120,665	129,375
Undesignated	1,298,021	802,776	801,287	1,003,250
Total at Beginning of Year	1,615,949	1,585,766	1,596,952	1,832,625
Unrestricted Net assets at end of year:				
Designated for Working Capital	675,000	675,000	700,000	700,000
Designated for Asset Acquisition	107,990	120,665	129,375	129,375
Undesignated	802,776	801,287	1,003,250	1,283,501
Total at End of Year	\$ 1,585,766	\$ 1,596,952	\$ 1,832,625	\$ 2,112,876

Source: Alaska Bar Association's Audited Financial Statements for 2002 through 2006



FISCAL NOTE

STATE OF ALASKA
2006 LEGISLATIVE SESSION

Fiscal Note Number: 1
 Bill Version: CSHB 316(JUD)
 (H) Publish Date: 5/6/06

Revision Date/Time (Note if correction): _____ Dept. Affected: _____
 Title "An Act extending the termination date for the RDU _____
Board of Governors of the Alaska Bar..." Component _____
 Sponsor Stoltze _____
 Requester House Judiciary Committee Component No. _____

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2006) cost: 0.0
 Check this box (X) if funding for this bill is included in the Governor's FY 2007 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

The Board of Governors of the Alaska Bar Association is not allocated to a Department and considers itself exempt from the appropriation powers of the Legislature.

Prepared by: Kevin Jardell, Legislative Director Phone 455-4021
 Division Governor's Legislative Office Date/Time 4/26/06 7:00 AM
 Approved by: Kevin Jardell, Legislative Director Date 4/26/2006
 Agency Governor's Legislative Office

APPENDIX A
(continued)

Alaska Bar Association
Lawyers' Fund for Client Protection Revenues Compared with Expenses
Calendar Years 2002 through 2005

	<u>2002</u>	<u>2003</u>	<u>2004</u>	<u>2005</u>
Revenues				
Dues	\$ 29,362	\$ 27,728	\$ 28,032	\$ 28,296
Earnings on Investments	47,876	43,024	39,529	45,574
Unrealized (Loss) Gain on Investments	17,399	(5,037)	(22,447)	(27,902)
Other	0	1,920	2,110	14,026
Total Revenues	<u>94,637</u>	<u>67,635</u>	<u>47,224</u>	<u>59,994</u>
Expenses				
Claims Awarded	5,583	800	72,328	27,257
Other	300	305	738	300
Total Expenses	<u>5,883</u>	<u>1,105</u>	<u>73,066</u>	<u>27,557</u>
Increase (decrease) in net unrestricted assets	88,754	66,530	(25,842)	32,437
Unrestricted Net assets at beginning of year:				
Undesignated	984,299	1,073,053	1,139,583	1,113,741
Total at Beginning of Year	<u>984,299</u>	<u>1,073,053</u>	<u>1,139,583</u>	<u>1,113,741</u>
Unrestricted Net assets at end of year				
Undesignated	1,073,053	1,139,583	1,113,741	1,146,178
Total at End of Year	<u>\$ 1,073,053</u>	<u>\$ 1,139,583</u>	<u>\$ 1,113,741</u>	<u>\$ 1,146,178</u>

Source: Alaska Bar Association's Audited Financial Statements for 2001 through 2005.

APPENDIX A
(continued)

Alaska Bar Association
Court System Library Fund Revenues Compared with Expenses
Calendar Years 2002 through 2005

	2002	2003	2004	2005
Revenues				
Earnings on Investments	\$ 139	\$ 44	\$ 30	\$ 91
Share from Copiers	0	8,090	5,719	6,730
Total Revenues	139	8,134	5,749	6,821
Expenses				
Research Resources	11,904	8,091	7,140	0
Other	12	12	12	12
Total Expenses	11,916	8,103	7,152	12
Increase (decrease) in net unrestricted assets	(11,777)	31	(1,403)	6,809
Unrestricted Net assets at beginning of year:				
Undesignated	25,445	13,668	13,699	12,296
Total at Beginning of Year	25,445	13,668	13,699	12,296
Unrestricted Net assets at end of year				
Undesignated	13,668	13,699	12,296	19,105
Total at End of Year	\$ 13,668	\$ 13,699	\$ 12,296	\$ 19,105

Source: Alaska Bar Association's Audited Financial Statements for 2001 through 2005.

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APPENDIX B

Board of Governors of the Alaska Bar Association Discipline Statistics Calendar Years 2002 through 2006⁸

<u>Disposition of Closed Disciplinary Cases</u>	<u>2002</u>	<u>2003</u>	<u>2004</u>	<u>2005</u>	<u>2006</u>
Disbarment by Supreme Court	5	17	0	3	0
Suspension by Supreme Court	6	1	10	3	6
Public Censure by Supreme Court	0	1	1	4	0
Public Reprimand by Disciplinary Board	0	2	0	1	1
Private Reprimand by Disciplinary Board	0	0	1	0	1
Private Admonition by Discipline Counsel	0	0	2	3	2
Dismissed	13	26	36	24	23
Closed After Mediation	<u>0</u>	<u>1</u>	<u>1</u>	<u>0</u>	<u>0</u>
Total Closed Cases	<u>24</u>	<u>48</u>	<u>51</u>	<u>38</u>	<u>33</u>
<u>Status of Open Cases at Year End</u>					
Attorney on Probation	1	1	1	1	1
Pending Supreme Court	0	6	5	2	2
Pending Disciplinary Board	17	2	2	0	1
Pending Hearing Committee	7	1	0	0	5
Pending Stipulation	0	2	0	6	1
Pending Approval to File Formal Hearing	0	0	5	8	1
Pending Written Private Admonition	0	0	1	1	1
Abeyance due to Court Case	2	2	2	9	9
Pending Bar Counsel Investigation/Decision	67	62	32	25	26
Pending Complainant Reply	4	3	1	2	1
Pending Respondent Response	7	3	14	7	11
Pending Mediation	<u>1</u>	<u>1</u>	<u>0</u>	<u>0</u>	<u>0</u>
Total Open Cases	<u>106</u>	<u>83</u>	<u>63</u>	<u>61</u>	<u>59</u>

Source: Data for 2002-2005 was obtained from annual reports of the Alaska Bar Association. The 2006 data is from Alaska Bar Association's quarterly Discipline Reports to the Alaska Supreme Court

Note: These numbers reflect individual complaints filed and not the number of attorneys under investigation. An individual attorney may have more than one case established against them.

⁸ The amounts reported for 2006 includes activity from January 1 through June 30, 2006.

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APPENDIX C

Board of Governors of the Alaska Bar Association Bar Examination and Admission Statistics

Examination Statistics

Examination Dates	<u>Number Taking Exam</u>	<u>Number Passing Exam</u>	<u>Percent Passing Exam</u>
February 2002	35	20	57%
July 2002	60	31	52%
February 2003	53	27	51%
July 2003	86	51	59%
February 2004	56	37	66%
July 2004	61	43	70%
February 2005	62	44	71%
July 2005	70	39	56%
February 2006	<u>66</u>	<u>40</u>	<u>61%</u>
Total	<u>549</u>	<u>332</u>	<u>60%</u>

Admission Statistics

Calendar Year	<u>Admission By Examination</u>	<u>Admission By Reciprocity</u>	<u>Total Admissions</u>
2002	51	24	75
2003	78	18	96
2004	80	30	110
2005	83	39	122
2006 ⁹	<u>40</u>	<u>17</u>	<u>57</u>
Total	<u>332</u>	<u>128</u>	<u>460</u>

Source: Alaska Bar Association's 2002-2005 Annual Reports and updated information provided by the Alaska Bar Association's executive director.

⁹ Admissions through June 30, 2006.

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APPENDIX D

Board of Governors of the Alaska Bar Association

Attorney Referrals

January 1, 2002 through June 30, 2006

(unaudited)

<u>Practice Categories</u>	<u>2002</u>	<u>2003</u>	<u>2004</u>	<u>2005</u>	<u>2006</u>
Administrative	331	382	396	357	125
Admiralty	16	19	17	17	17
Adoption	27	34	34	37	14
Alaska Native Law	11	0	0	2	0
Arts	9	0	0	0	4
Bankruptcy	122	108	110	142	34
Commercial	185	148	123	212	69
Construction	36	14	37	40	23
Consumer	464	326	356	419	171
Criminal: Felony	144	130	127	228	66
Criminal: Misdemeanor	260	162	143	175	76
Discrimination	56	66	13	0	0
Divorce/Dissolution/Custody	1,153	869	907	962	404
Eminent Domain	2	0	0	5	4
Environmental	2	0	0	6	0
Foreign Language	3	0	2	0	6
Guardian/Conservator	29	14	33	52	33
Immigration	41	25	70	0	8
Insurance	89	87	88	89	46
Labor Relations	464	395	488	563	245
Landlord/Tenant	215	161	182	250	55
Malpractice	271	212	276	275	152
Negligence	856	791	794	812	312
Public Interest	5	8	4	3	4
Real Estate	230	206	281	290	105
Social Security Insurance Cases	18	28	82	51	11
Tax	34	8	0	0	0
Traffic	24	8	4	21	36
Trusts/Wills/Estates	171	167	187	227	92
Workers' Compensation	<u>305</u>	<u>217</u>	<u>228</u>	<u>276</u>	<u>113</u>
Total	<u>5,573</u>	<u>4,585</u>	<u>4,982</u>	<u>5,511</u>	<u>2,225</u>

Source: Data for 2002-2005 was obtained from Annual Reports of the Alaska Bar Association. The 2006 data was provided by the Alaska Bar Association's executive director.

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APPENDIX E

The following information was provided by the Alaska Bar Association's executive director.

Unified State Bar Survey Executive Summary

The Legislative Budget & Audit Committee asked the Legislative Auditor to identify the organizational, budgeting/appropriations, and disciplinary structures used in other states.

33 state bar associations, including Alaska, are "unified" or "mandatory" state bars. This means that all lawyers practicing law in that state must be a member of and pay dues to that state bar association. Most of these unified bars have regulatory functions such as discipline, admissions, mandatory CLE, fee arbitration, etc., which are delegated to them by the state supreme court. They usually have other member services as well.

The other state bar associations are "voluntary" bar associations. Lawyers may, but are not required to join those voluntary bars. In those states, lawyers pay their dues directly to the state supreme court. These voluntary bars often have programs such continuing legal education seminars, law related education or other membership services, but do not perform any regulatory functions.

In July 2006, I contacted the 32 other unified state bar associations through the National Association of Bar Associations (NABE) Chief Staff Executives listserv. I asked them eight questions about their structure and functions. (Appendix A.) Through mostly e-mail responses, and several phone calls, I received 100% response.

A. Organizational Structure of the Unified State Bars

Of the 33 unified state bars, 21 bars are state instrumentalities, public corporations, or professional associations. 12 are considered to be either a state agency or "quasi" state agency. Some of those who identified

themselves as a state agency described themselves as a "self-governing" agency, an agency "for tax purposes," "a public corporation" as well as an agency, or a "state agency for certain purposes."

B. Budgeting/Appropriations

The 33 unified state bars were asked which entity approved their budget: their governing board, their supreme court, their legislature, or another body. 26 state bars had their budget approved by their governing board. 4 had their budget reviewed or approved by their governing board and their supreme court. One state indicated that its budget was approved by their supreme court, and two states either file a budget with the state budget office or have their money appropriated by their legislature from the state bar account.

APPENDIX E

(continued)

The bars were asked if their funds were considered to be the bar association's funds, the Supreme Court's funds, the legislature's funds or some other body's funds. 30 bars indicated that the funds were considered to be the bar association's funds. One bar indicated that though bar dues are paid to the bar, license fees are paid to their supreme court, which forwards a percentage of this to the bar. One bar said that special membership dues are considered associational and under control of the bar. Occupational license fees are paid to the state treasury to the credit of the state bar. One bar stated that their funds are kept segregated in the treasury.

None of the state bars receive appropriations, independent of bar funds, from the state treasury. One bar indicated that they are self-funded with all funds turned over to the state treasury but appropriated back to the bar. Another bar stated that the bar application fees are paid to their supreme court, of which 94% is passed back to the bar.

C. Functions of the Unified State Bars: Admissions and Discipline

11 of the unified state bars administer admissions (e.g., the bar exam). Anecdotally, in the other states, admissions is done by a separate agency under their supreme courts.

Of these 11 states, only two do not also administer discipline. The other 9 states administer both admissions and discipline.

21 of the unified state bars administer discipline. The Montana Bar's employees do discipline, but are funded from a separate attorney assessment.

In November and December, 2005, bar counsel of the Alaska Bar Association conducted an e-mail and phone survey of the members of the National Organization of Bar Counsel whose members staff disciplinary jurisdictions nationwide. Of the 48 states the Alaska Bar was able to contact, 13, in addition to Alaska, indicated that they were not state government agencies under their supreme courts; 13 generally indicated that they were considered creations of their supreme courts, but either not considered state government agencies or state employees; and, 22 indicated that they were state government agencies under their supreme courts.

D. Mandatory Continuing Legal Education (MCLE) and CLE programs

The last two questions asked whether the unified state bars regulated of Mandatory Continuing Legal Education and provided CLE programs. 19 of the 33 bars indicated that they regulate MCLE. Only three of the state bars said they do not provide CLE programs at all. Anecdotally, in almost all states, if the state bar does both MCLE and CLE programs, this function is performed by a separate person or department.

Conclusion

65% of the state bar associations are unified or mandatory state bars.

64% of the unified state bars are state instrumentalities, public corporations or professional associations. 21% of the unified bars are state instrumentalities.