

ALASKA STATE LEGISLATURE

LEGISLATIVE BUDGET AND AUDIT COMMITTEE



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November 4, 2008

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

November 4, 2008

Audit Control Number
41-20057-08

The audit was conducted as required by AS 44.66.050 and under the authority of AS 24.20.271(1). 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, 2009.

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, 2017.

The audit was conducted in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives. Fieldwork procedures utilized in the course of developing the findings and discussion presented in this report are discussed in the Objectives, Scope, and Methodology.

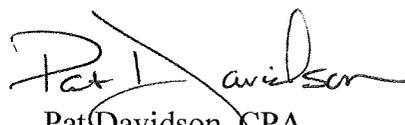

Pat Davidson, CPA
Legislative Auditor

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OBJECTIVES, SCOPE, AND METHODOLOGY

In accordance with Title 24 and Title 44 of the Alaska Statutes (sunset legislation), we have reviewed the 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, 2009. 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 four central objectives of our report. They are:

1. To determine if the termination date for the board should be extended.
2. To determine if the board is operating in the public's interest.
3. To determine if the board has exercised appropriate oversight of licensed members of the Alaska Bar Association (Bar).
4. To provide a current status on the recommendations made in the prior report.

The assessment of the operations and performance of the board was based on criteria set in AS 44.66.050(c). Criteria set out in this statute relates to the determination of a demonstrated public need for the board.

Scope and Methodology

Our review focused on the continuing legal education requirement, discipline function provided by the Bar, as well as board proceedings. Our audit reviewed board operations and activities from July 1, 2006 through June 30, 2008.

We reviewed and evaluated the following:

- Applicable statutes, Alaska Bar Rules, Alaska Rules of Professional Conduct, and Bar bylaws
- Board minutes
- Bar annual reports

- Attorney discipline files
- Audited financial statement of the board

In addition, we conducted interviews of the board president, staff, including the executive director, board counsel, director of continuing legal education, 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 (Bar) 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 (CLE) for the membership, and to increase the public service and efficiency of the 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 2008 budget of \$1,983,738. Funding is provided primarily by membership dues (\$410 per year), admission fees, lawyer referral fees, CLE 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. 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 selects hearing committee members from a group of individuals in each judicial district

Exhibit 1

The Board of Governors of the Alaska Bar Association (as of October 20, 2008)
Mitch Seaver, President <i>First Judicial District</i>
Sidney K. Billingslea, President-elect <i>Third Judicial District</i>
Don McLean, Vice-president <i>Public Member</i>
Jason A. Weiner, Treasurer <i>Second/Fourth Judicial District</i>
Christopher R. Cooke, Secretary <i>Third Judicial District</i>
Carl Ekstrom <i>Public Member</i>
William A. Granger <i>Public Member</i>
Donald W. McClintock <i>Third Judicial District</i>
Allison Mendel <i>Third Judicial District</i>
Hanna Sebold <i>First Judicial District</i>
Krista S. Stearns <i>Third Judicial District</i>
John J. Tiemessen <i>Second/Fourth Judicial District</i>

appointed by the Chief Justice of the Supreme Court. The board is also responsible for issuing reprimands when warranted, and for recommending the Supreme Court impose disbarment, suspension, probation, or public censure when appropriate.

Miscellaneous Functions The Bar also performs a wide variety of miscellaneous functions that include providing classes for and accrediting CLE providers, a lawyer referral service, client mediation, and fee arbitration with clients. In conjunction with the 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 from earnings of interest on the lawyers trust account program. These grants are used to support legal services for the economically disadvantaged and improve the administration of justice.

The Bar's office is located in Anchorage and is currently staffed by 19 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 and lawyer disciplinary sanctions involving disbarment, suspension, probation, and public censure.

REPORT CONCLUSIONS

In our opinion, the termination date of the Board of Governors of the Alaska Bar Association (board) should be extended. 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 recommend that the legislature extend the termination date of the board to June 30, 2017.

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FINDINGS AND RECOMMENDATIONS

In the prior audit, *Board of Governors of the Alaska Bar Association, Follow Up, September 15, 2006*, (Audit Control No. 41-20050-06), there were three recommendations, one of which has been fully implemented. The implemented recommendation was to adopt a due date for timely issuance of annual reports. The recommendation was resolved at the board's September 7, 2006 meeting where the board voted to amend their Standing Policies, setting April 15 as the due date for the completion of the preceding year's annual report. Review of the 2006 and 2007 annual report documentation confirmed they were completed prior to the April 15 due date.

The recommendation to adopt mandatory minimum continuing legal education (CLE) for attorneys is partially implemented and is reiterated as Recommendation No. 1

The final recommendation, which relates to the Alaska Bar Association (Bar) developing a database of disciplined lawyers, has not been addressed and is reiterated as Recommendation No. 2. In addition, review of board meeting proceedings resulted in noted deficiencies. The deficiencies are further discussed in Recommendation No. 3

Recommendation No. 1

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

Prior Finding

CLE for attorneys is voluntary rather than required. The Supreme Court adopted voluntary CLE under Bar Rule 65 in 1999. It encouraged all active members of the 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.

Forty-one legal jurisdictions in the United States have a mandatory CLE 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.

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

Overall, we believe a mandatory minimum CLE 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 CLE.

Legislative Audit's Current Position

The board voted at their September 7, 2006 meeting to send the mandatory CLE rule, as published, to the Alaska Supreme Court. Based on this rule, the Alaska Supreme Court amended Alaska Bar Rule 65 through Supreme Court Order No. 1640, to require all members to complete three credit hours of mandatory ethics continuing legal education (MECLE) per year. In addition to MECLE, all members are encouraged to complete nine credit hours of approved voluntary continuing legal education (VCLE). Members must certify with the Bar that they have completed the required MECLE and provide the number or an estimated number of completed VCLE.

The Supreme Court Order No. 1640 also added Alaska Bar Rule 66 for the suspension of members who have not complied with completing the required MECLE or members who failed to report the MECLE and VCLE for the year. These rules became effective January 1, 2008.

The mandatory ethics requirement does not fully achieve the goal of promoting competency and professionalism in members of the Bar. Although ethics education is part of the goal, requiring CLE, as opposed to encouraging VCLE, will strengthen the public's confidence that attorneys are professional and competent. Therefore, we reiterate our prior recommendation.

Recommendation No. 2

The board should consider developing a database of disciplined lawyers in the Bar'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 the Bar's 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 would 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 its 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 from the Bar's website.

The board stated in the prior recommendation that the new discipline module of the replacement database, including online reporting of public discipline would be operational in the summer of 2007. However, due to changing priorities, the Bar has not started implementing the discipline module, though it is tentatively scheduled for early 2009.

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 Bar's website.

Recommendation No. 3

The board should adhere to existing public notice requirements for all meetings or modify the bylaws to clearly address conference call board meeting procedures and public notice requirements.

The board, as the governing body of the Bar, is vested with the power and authority to adopt regulations and policies concerning activities, affairs, and organization of the Bar, as well as collect and disburse all monies of the organization. In order to achieve these responsibilities, the board meets at least four times during the year. In addition to the four regular meetings, the president may, or upon written request of three governors, call emergency meetings. Public notice for regular and emergency meetings must be provided at least thirty and three days prior to the meeting, respectively. The proceedings for these board meetings are outlined in the Bar bylaws under Article IV specific to the board.

Since June 30, 2006, there were eight regular and five conference call board meetings. None of the conference call meetings met the public notice requirements for board meetings. There appears to be some confusion by the board as to the public notice requirements for conference call meetings.

The bylaws do not identify conference call meetings as a unique type of board meeting with unique public notice requirements; therefore the board should adhere to the public notice requirements for regular board meetings. Adequate public notice of meetings is necessary to allow for maximum public participation in public activities.

If the board believes the conference call meetings are inherently different from regular meeting then the bylaws should be modified to clearly address conference call board meetings to ensure the appropriate procedures are followed and the public receives adequate notice for such meetings.

AUDITOR'S COMMENTS

The sunset process allows for an objective and independent 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 overall conclusions of our review are that the Board of Governors of the Alaska Bar Association (board) is operating in the public interest and that there is a continuing public need for the attorney admission and discipline functions of the Alaska Bar Association (Bar). Nevertheless, an overall evaluation of the basic approach to these functions should be undertaken from time to time. 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 intended to assist in such consideration.

Self-regulation, whether by industry 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 twelve 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 believe that the attorney discipline system in Alaska could be a government function. 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 1993,¹ 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...the disciplinary process should be directed solely by the disciplinary policy of the court and its appointees and not influenced by internal politics of the bar association... the 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 judicial branch employees.

¹ 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.

- Disciplinary function placed 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 for 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.

ANALYSIS OF PUBLIC NEED

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 to address the 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.²

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 (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

² As of June 30, 2008, the Alaska Bar Association has reciprocal agreements with 33 states.

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).

⁴ Alaska 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 fees from participating members. Members of the public can call an instate 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.
- The Bar provides grants to support legal services for the economically disadvantaged. Through the Alaska Bar Foundation, the earnings from the interest on Lawyers Trust Account are used to improve the administration of justice.
- 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 members of the Bar, their families, or business associates when it appears a Bar member has substance abuse 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 September 2005, the board adopted an amendment to Bylaw III, Section 1(a) which states that, “*the annual membership fee for an active member is the amount approved by the board.*” Thus, the board can set the dues amount in accordance with the operating expenses and number of Bar members.

The 2008 budgeted revenue is \$1,983,738. The Bar has cumulative net assets of \$3,496,544 as of the end of calendar year 2007. The net assets include approximately \$1.1 million for the Lawyers’ Fund for Client Protection. This fund is for clients who have suffered monetary losses as a result of dishonest acts by their lawyer. These funds are designed to protect the public and cannot be used for general operating expenses.

The maintenance of substantial net assets is not consistent with the other professions regulated by the State, under the jurisdiction of the Department of Commerce, Community, and Economic Development (DCCED) – 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. As the Bar is not included in DCCED's organizational structure, the ability to pool resources and meet funding shortages is not available. Although the Bar's funding needs are greater, the net assets are still substantial.

In order to address the cumulative net assets, the board voted at the end of 2007 to reduce the active members' due from \$550 to \$410, effective in the 2008 membership year. The Bar anticipates that with the reduction in membership dues net assets will be reduced by approximately \$400,000 per year.

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

Although the board has a Statutes, Bylaws, and Rules Committee, consisting of 12 members responsible for drafting proposed revisions of the statutes, bylaws, and rules which govern the activities of the Bar, the board has not recommended any statutory changes during July 1, 2006 through June 30, 2008. 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 Bar policies and procedures.

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's membership is involved in its operations. This operation may include service on one of the ten standing committees or five Alaska Bar Rules committees. It may include participation in one of 23 sections or groups 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 on the Alaska Public Online Notice system and on the Bar's website. Members of the general public are encouraged to make comments and adequate time is allotted 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, non-attorneys serve on disciplinary hearing committees and fee arbitration panels throughout the State.

As mentioned above, the Bar publicly advertises meetings of the board. Time is allotted at all board meetings for public comments. However, some board meetings did not have adequate public notice. Further discussion on public notice of the conference call board meetings is in Recommendation No. 3.

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. Two complaints specifically involving the actions and activities of the board were filed with and investigated by the Office of the Ombudsman during July 1, 2006 through June 30, 2008. The investigations were closed due to the Ombudsman not having jurisdiction over the activities of the Bar.

There were no complaints filed with the Office of Victim's Rights against the board from July 1, 2006 through June 30, 2008.

The board has a lawyer discipline process for investigation of grievances alleging attorney misconduct. If a grievance does not result in an investigation being opened by the bar counsel, the complainant may ask for that decision to be reviewed by the board discipline liaison. Additionally the Supreme Court may review decisions made by the bar counsel or the liaison, though this is done rarely.

Sanctions are imposed on those found in violation of the Rules of Professional Conduct. The Supreme Court reviews only the most serious disciplinary actions, such as public censure, disbarment, suspension, or probation. Other disciplinary cases are not subject to Supreme Court review. These sanctions would include written private admonition and board reprimand. This process for professional discipline 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.

The Bar receives an average of 228 complaints annually. Analyses of the complaints filed during July 1, 2006 through June 30, 2008 shows that all were reviewed, but relatively few were pursued beyond the initial investigation. Approximately 80% of the grievances received were not accepted for investigation due to lack of merit. The Bar estimates that 10 to 15 appeals are reviewed annually by the board discipline liaison, and 1 or 2 reviews by the Supreme Court.

Over 650 grievances were filed during 2006, 2007, and 2008,⁵ resulting in 143 cases being opened and the remaining grievances were not accepted. The investigations resulted in thirty-two cases⁶ with sanctions against a total of twenty-one attorneys. Four attorneys were disbarred, seventeen were suspended, three were publicly and two were privately reprimanded, five received private admonition, and one was publicly censured. Discipline statistics are shown in Appendix B. Closure of grievance cases with sanctions such as disbarment, suspension, public censure, public reprimand, and admonition appear reasonable.

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.

⁵ Complaints received for 2008 include January 1 through June 30.

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

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

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 the 33 states with which Alaska has a reciprocal agreement.

Examination and admission statistics are shown in Appendix C.

Per Bar Rule 65, in order to promote competence and professionalism, the Alaska Supreme Court and the Bar encourage all members to engage in continuing legal education (CLE).

Supreme Court issued Order No. 1640, which amended Bar Rule 65, to require all active Bar members to complete three credit hours per calendar year of approved mandatory ethics continuing legal education (MECLE). In addition, all active Bar members are encouraged to engage in nine hours per calendar year of approved voluntary continuing legal education (VCLE). This order became effective January 1, 2008.

The Supreme Court Order No. 1640 also added Alaska Bar Rule 66 for the suspension of members who have not complied with completing the required MECLE or members who failed to report the MECLE and VCLE for the year.

The Bar offers CLE for its membership and maintains an educational library. The majority of live CLE programs are presented and video taped in Anchorage. For lawyers located outside of Anchorage, the Bar has regularly scheduled video replays in Juneau, Fairbanks, and Kenai. Also available are DVDs and CLE materials for purchase through the Bar's online CLE library catalog.

In 2006, the Bar partnered with the online CLE provider LegalSpan to develop online CLE seminars and live webcasting of selected programs. The Bar presented 10 live webcasts in 2007. All of the video taped live seminars are also available as online CLE through LegalSpan.

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 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 Auditor's Comments sections of this report.

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 Bar bylaws sets out the purposes of the Bar which are:

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 and 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 Anchorage, Fairbanks, Juneau, Kenai, Matanuska-Susitna, 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 (Council). The Council recommends candidates for judicial office and conducts studies for the improvement of the administration of justice in Alaska. Council members 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 CLE committee, consisting of 15 members, assists the CLE 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 68 live, 2 satellite, 15 webcasts, and 36 conventions for CLE presentations for 3,926, 4,820, and 1,976 attorney participants from calendar year 2006 through 2008,⁸ respectively.

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

⁸ Data is presented as of June 30, 2008.

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.

APPENDICES

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 non-insured losses of money or property as a result of dishonest conduct by attorneys. Related trustee counsel compensation may be paid from this fund under 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. The purpose of the fund 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.

The financial information of Bar funds is from the Bar's audited financial statements for 2007.

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Appendix A

Alaska Bar Association Statement of Financial Position Calendar Year 2007

Assets	General Fund	Lawyers' Fund for Client Protection	Court System Library Fund	Total All Funds
Current Assets				
Cash	\$ 534,056	\$ 137,534	\$ 23,472	\$ 695,062
Investments	2,133,208	907,611	-	3,040,819
Accounts receivable	1,016,821	-	-	1,016,821
Accrued interest receivable	27,514	8,158	-	35,672
Due from general fund	-	58,287	-	58,287
Prepaid Expenses	92,744	-	-	92,744
Total Current Assets	3,804,343	1,111,590	23,472	4,939,405
Property and Equipment, at cost				
Office furniture and equipment	452,421	-	-	452,421
Leasehold improvements	94,898	-	-	94,898
Video tape library and equipment	7,587	-	-	7,587
Historical artifacts	3,750	-	-	3,750
Subtotal Property and Equipment	558,656	-	-	\$ 558,656
Less accumulated depreciation	(486,130)	-	-	(486,130)
Total Property and Equipment	72,526	-	-	72,526
Total Assets	\$ 3,876,869	\$ 1,111,590	\$ 23,472	\$ 5,011,931
Liabilities and Net Assets				
Current Liabilities				
Deferred dues and fees	1,281,715	29,260	-	1,310,975
Accounts payable and accrued expenses	126,423	-	-	126,423
Due to other funds	72,965	-	-	72,965
Due to Bar Foundation	1,274	-	-	1,274
Total Current Liabilities	2,112,876	29,260	-	1,511,637
Net Assets				
Unrestricted (designated by the Board of Governors)				
Designated for Working Capital	800,000	-	-	800,000
Designated for Asset Acquisition	124,874	-	-	124,874
Undesignated	1,465,868	1,082,330	23,472	2,571,670
Permanently restricted	3,750	-	-	3,750
Total Net Assets	2,394,492	1,082,330	23,472	3,500,294
Total Liabilities and Net Assets	\$ 3,876,869	\$ 1,111,590	\$ 23,472	\$ 5,011,931

Appendix A

Alaska Bar Association Revenues Compared with Expenses Calendar Year 2007

	General Fund	Lawyers' Fund for Client Protection	Court System Library Fund	Total All Funds
Revenues				
Dues	\$ 1,686,571	\$ 29,043	\$ -	\$ 1,715,614
Admission Fees	150,850	-	-	150,850
Continuing Legal Education	136,404	-	-	136,404
Lawyer Referral Fees	41,593	-	-	41,593
Annual Meeting	134,557	-	-	134,557
Earnings on Investments	126,973	43,425	205	170,603
Other	<u>235,298</u>	<u>14,727</u>	<u>2,140</u>	<u>252,165</u>
Total Revenues	<u>2,512,246</u>	<u>87,195</u>	<u>2,345</u>	<u>2,601,786</u>
	-	-	-	-
Expenses				
Admissions	182,457	-	-	182,457
Board of Governors	47,822	-	-	47,822
Discipline	664,488	-	-	664,488
Fee Arbitration	66,780	-	-	66,780
Lawyer Referral	52,504	-	-	52,504
Continuing Legal Education	327,828	-	-	327,828
Administration	492,382	-	-	492,382
Annual Meeting	112,091	-	-	112,091
Other	<u>288,028</u>	<u>157,902</u>	<u>12</u>	<u>445,942</u>
Total Expenses	<u>2,234,380</u>	<u>157,902</u>	<u>12</u>	<u>2,392,294</u>
	-	-	-	-
Increase (decrease) in net unrestricted assets	277,866	(70,707)	2,333	209,492
	-	-	-	-
Unrestricted Net assets at beginning of year:				
Designated for Working Capital	775,000	-	-	775,000
Designated for Asset Acquisition	130,239	-	-	130,239
Undesignated	<u>1,207,637</u>	<u>1,153,037</u>	<u>21,139</u>	<u>2,381,813</u>
Total at Beginning of Year	<u>2,112,876</u>	<u>1,153,037</u>	<u>21,139</u>	<u>3,287,052</u>
	-	-	-	-
Unrestricted Net assets at end of year:				
Designated for Working Capital	800,000	-	-	800,000
Designated for Asset Acquisition	124,874	-	-	124,874
Undesignated	<u>1,465,868</u>	<u>1,082,330</u>	<u>23,472</u>	<u>2,571,670</u>
Total at End of Year	<u>\$ 2,390,742</u>	<u>\$ 1,082,330</u>	<u>\$ 23,472</u>	<u>\$ 3,496,544</u>

Appendix A

Alaska Bar Association General Fund Revenues Compared with Expenses Calendar Years 2006 through 2007

	2006	2007
Revenues		
Dues	\$ 1,702,211	\$ 1,686,571
Admission Fees	174,750	150,850
Continuing Legal Education	131,979	136,404
Lawyer Referral Fees	42,242	41,593
Annual Meeting	123,905	134,557
Earnings on Investments	105,092	126,973
Other	<u>148,861</u>	<u>235,298</u>
Total Revenues	<u>2,429,040</u>	<u>2,512,246</u>
Expenses		
Admissions	175,898	182,457
Board of Governors	42,364	47,822
Discipline	646,385	664,488
Fee Arbitration	63,311	66,780
Lawyer Referral	50,785	52,504
Continuing Legal Education	360,525	327,828
Administration	460,255	492,382
Annual Meeting	122,746	112,091
Other	<u>226,520</u>	<u>288,028</u>
Total Expenses	<u>2,148,789</u>	<u>2,234,380</u>
Increase (decrease) in net unrestricted assets	280,251	277,866
Unrestricted Net assets at beginning of year:		
Designated for Working Capital	700,000	775,000
Designated for Asset Acquisition	129,375	130,239
Undesignated	<u>1,003,250</u>	<u>1,207,637</u>
Total at Beginning of Year	1,832,625	2,112,876
Unrestricted Net assets at end of year:		
Designated for Working Capital	775,000	800,000
Designated for Asset Acquisition	130,239	124,874
Undesignated	<u>1,207,637</u>	<u>1,465,868</u>
Total at End of Year	<u>\$ 2,112,876</u>	<u>\$ 2,390,742</u>

Appendix A

Alaska Bar Association Lawyers' Fund for Client Protection Revenues Compared with Expenses Calendar Years 2006 through 2007

	<u>2006</u>	<u>2007</u>
Revenues		
Dues	\$ 28,623	\$ 29,043
Earnings on Investments	44,047	43,425
Unrealized (Loss) Gain on Investments	5,413	11,547
Other	<u>2,368</u>	<u>3,180</u>
Total Revenues	<u>80,451</u>	<u>87,195</u>
Expenses		
Claims Awarded	71,672	127,235
Other	<u>1,920</u>	<u>30,667</u>
Total Expenses	<u>73,592</u>	<u>157,902</u>
 Increase (decrease) in net unrestricted assets	 6,859	 (70,707)
 Unrestricted Net assets at beginning of year:		
Undesignated	<u>1,146,178</u>	<u>1,153,037</u>
Total at Beginning of Year	<u>1,146,178</u>	<u>1,153,037</u>
 Unrestricted Net assets at end of year		
Undesignated	<u>1,153,037</u>	<u>1,082,330</u>
Total at End of Year	<u>\$ 1,153,037</u>	<u>\$ 1,082,330</u>

Appendix A

Alaska Bar Association Court System Library Fund Revenues Compared with Expenses Calendar Years 2006 through 2007

	<u>2006</u>	<u>2007</u>
Revenues		
Earnings on Investments	\$ 190	\$ 205
Share from Copiers	<u>1,856</u>	<u>2,140</u>
Total Revenues	<u>2,046</u>	<u>2,345</u>
 Expenses		
Other	<u>12</u>	<u>12</u>
Total Expenses	<u>12</u>	<u>12</u>
 Increase (decrease) in net unrestricted assets		
	2,034	2,333
 Unrestricted Net assets at beginning of year:		
Undesignated	<u>19,105</u>	<u>21,139</u>
Total at Beginning of Year	<u>19,105</u>	<u>21,139</u>
 Unrestricted Net assets at end of year		
Undesignated	<u>21,139</u>	<u>23,472</u>
Total at End of Year	<u><u>\$ 21,139</u></u>	<u><u>\$ 23,472</u></u>

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Appendix B

Board of Governors of the Alaska Bar Association Discipline Statistics Calendar Years 2006 through 2008⁹

<u>Disposition of Closed Disciplinary Cases</u>	<u>2006</u>	<u>2007</u>	<u>2008</u>
Disbarment by Supreme Court	-	2	2
Suspension by Supreme Court	7	5	5
Public Censure by Supreme Court	-	1	-
Public Reprimand by Disciplinary Board	2	1	1
Private Reprimand by Disciplinary Board	2	-	1
Private Admonition by Discipline Counsel	4	1	2
Dismissed	31	21	5
Closed After Mediation	<u>-</u>	<u>-</u>	<u>-</u>
Total Closed Cases	<u>46</u>	<u>31</u>	<u>12</u>
<u>Status of Open Cases at Year End</u>			
Attorney on Probation	1	1	1
Pending Supreme Court	1	3	7
Pending Disciplinary Board	5	8	-
Pending Hearing Committee	5	-	12
Pending Stipulation	-	3	8
Pending Approval to File Formal Hearing	10	11	7
Pending Written Private Admonition	-	-	-
Abeyance due to Court Case	9	9	9
Pending Bar Counsel Investigation/Decision	23	33	40
Pending Complainant Reply	1	1	10
Pending Respondent Response	3	17	21
Pending Mediation	<u>-</u>	<u>-</u>	<u>-</u>
Total Open Cases	<u>58</u>	<u>86</u>	<u>115</u>

Source: Data for 2006-2007 was obtained from annual reports of the Alaska Bar Association. The 2008 data is from Alaska Bar Association's quarterly Discipline Reports to the Alaska Supreme Court for January 1, 2008 through June 30, 2008.

⁹ The amounts reported for 2008 includes activity from January 1 through June 30, 2008.

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Appendix C

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

Examination Statistics

Examination Dates	Number Taking <u>Exam</u>	Number Passing <u>Exam</u>	Percent Passing <u>Exam</u>
July 2006	82	52	63%
February 2007	54	26	48%
July 2007	75	52	69%
February 2008	<u>37</u>	<u>27</u>	<u>73%</u>
Total	248	157	63%

Admission Statistics

Calendar Year	Admission By <u>Examination</u>	Admission By <u>Reciprocity</u>	Total <u>Admissions</u>
2006	85	30	115
2007	70	43	113
2008 ¹⁰	<u>40</u>	<u>14</u>	<u>54</u>
Total	195	87	282

Source: Alaska Bar Association's 2006-2007 Annual Reports and 2008 information provided by the Alaska Bar Association's executive director.

¹⁰ Admissions through June 30, 2008.

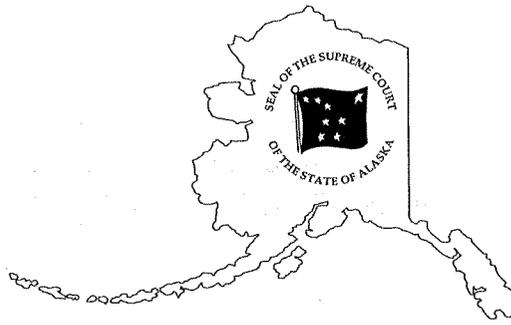
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Board of Governors of the Alaska Bar Association
Attorney Referrals
January 1, 2006 through June 30, 2008
(Unaudited)

<u>Practice Categories</u>	<u>2006</u>	<u>2007</u>	<u>2008</u>
Administrative	194	219	128
Admiralty	18	12	7
Adoption	16	35	15
Arts	2	3	4
Bankruptcy	52	79	63
Commercial	112	149	76
Construction	29	63	15
Consumer	315	275	152
Criminal: Felony	92	166	55
Criminal: Misdemeanor	114	170	75
Divorce/Dissolution/Custody	784	809	402
Eminent Domain	4	-	4
Environmental	6	-	-
Foreign Language	-	2	3
Guardian/Conservator	64	11	18
Immigration	28	52	18
Insurance	51	61	23
Labor Relations	355	392	194
Landlord/Tenant	63	30	49
Malpractice	197	244	96
Negligence	380	556	211
Patent/Copyright	5	41	8
Public Interest	3	1	1
Real Estate	175	257	112
Social Security Insurance Cases	22	48	2
Traffic	49	8	3
Trusts/Wills/Estates	144	222	107
Workers' Compensation	<u>192</u>	<u>229</u>	<u>110</u>
Total	<u>3,468</u>	<u>4,134</u>	<u>1,951</u>

Source: Data for 2006-2007 was obtained from Annual Reports of the Alaska Bar Association. The 2008 data provided by the Alaska Bar Association's executive director is for 6 months of attorney referrals.

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ALASKA COURT SYSTEM
State of Alaska
Office of the Administrative Director

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November 20, 2008

Pat Davidson
Legislative Auditor
Division of Legislative Audit
P.O. Box 113300
Juneau, Alaska 99811-3300

RECEIVED
NOV 25 2008
LEGISLATIVE AUDIT

Re: Preliminary Audit Report
Board of Governors of Alaska Bar Association
Sunset Review, November 8, 2008

Dear Ms. Davidson:

Thank you for the opportunity to offer a written response to the findings and recommendations contained in the above-referenced preliminary audit report. This response represents the views of the Administrative Office of the Alaska Court System (AOC).

The AOC takes no position on the findings and recommendations directed at the Board of Governors of the Alaska Bar Association. We agree with the conclusion that the Board protects the public by ensuring that persons licensed to practice law are qualified. We also concur in the recommendation to the legislature that the termination date of the Board be extended to June 30, 2017.

However, we take issue with the auditor's comments beginning on page 11. Those comments go beyond the scope of the audit by making conclusory observations about the merits of self-regulation by the Bar, and suggesting that attorney discipline in Alaska could be a government function. Specifically, it is suggested that the following options be considered:

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

The historical record shows that attorney discipline has always been a matter of importance to the supreme court. In fact, when the supreme court first asserted control of the Bar over the Bar's strenuous objection in 1964, it did so by promulgating rules governing the discipline of attorneys, among other things. See *In the Matter of an Application for an Order Vacating ALASKA SUPREME COURT ORDERS NO. 64, 68, 69, 70 and 71, and Other Relief*, 395 P.2d 853 (Alaska 1964). Public confidence in the process of attorney discipline is essential.

Equally important, however, is the need to keep separate the prosecutorial and adjudicative functions inherent in attorney discipline. Under our system of government, it is imperative that those who have the duty of charging transgressors and proving their guilt do not have the final say in determining that guilt. As currently designed, the system of attorney discipline keeps a wall between those two roles. It is the Bar which has the duty to investigate and prosecute allegations of attorney misconduct, to make preliminary findings, and to recommend punishment. It is the supreme court which makes the final determination of guilt or innocence, and which makes the final determination regarding appropriate punishment.

The fundamental problem with placing the attorney discipline function within the court system is that the entity responsible for investigating and prosecuting attorney misconduct would also be the entity responsible for making the ultimate determination of guilt or innocence. As the final adjudicative body for cases decided under the Alaska Constitution, it is inappropriate for the supreme court to exercise both executive and judicial powers in disciplinary matters.

There may be other states in which the supreme court exercises both prosecutorial and adjudicative authority. However, that does not mean that it is good public policy to do so, or that doing so is consistent with the fundamental principles under which our system was intended to operate. Administrative convenience is not an adequate justification for this consolidation of government power.

If it is ever determined that the current system of attorney discipline does not work adequately and needs to be changed, a better model would be the one utilized by the Judicial Conduct Commission. This commission is part of the judicial branch of government, not the court system, and as such it is independent of the supreme court. The commission engages in investigatory and prosecutorial tasks when allegations of judicial misconduct are made, and makes recommendations to the supreme court. The supreme court exercises the judicial function, serving as the final arbiter of guilt or innocence.

Pat Davidson
November 20, 2008
Page 3

It is true that a separate disciplinary entity such as this could be paid for by Bar dues and have no cost to the general fund at this time. However, the persons staffing said agency would be new state employees. The legislature has demonstrated an intent in recent years to limit the addition of permanent, full-time state employees, and absent concrete evidence that the current system does not adequately serve the public interest, it may be disinclined to create a new state bureaucracy.

Thank you for providing the opportunity to comment on this audit. Please feel free to contact me if you have any questions.

Very truly yours,

A handwritten signature in black ink, appearing to read 'C. S. Christensen III', with a long horizontal flourish extending to the right.

C. S. Christensen III
Deputy Administrative Director

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ALASKA BAR

A S S O C I A T I O N

December 2, 2008

RECEIVED
DEC 02 2008
LEGISLATIVE AUDIT

Pat Davidson
Legislative Auditor
c/o Division of Legislative Audit
4341 B Street, Ste. 400
Anchorage, AK 99503

Dear Ms. Davidson:

Thank you for the thorough sunset review of the Alaska Bar Association and the opportunity to respond to your preliminary audit report.

Sunset and Fiscal Note

The Board concurs with extending the sunset date of the Alaska Bar Association Board of Governors until June 30, 2017.

There will be no fiscal note attached to any bill filed with the legislature to extend the sunset date of the Board of Governors, as the Bar Association will not be seeking any state funding for its operational costs. The Bar Association has obtained state funding only during the limited time frame between 1981 and 1986, and only for the per diem and travel expenses of the three public members who sat on the Board. For the past 22 years, the Bar Association has paid those expenses without state funding.

As noted in the audit, the operations of the Bar Association are funded entirely by Bar members through bar dues, admission fees, Continuing Legal Education seminar fees, Lawyer Referral Service charges, convention fees, and interest income. Ironically, a decision to sunset the Bar would have a multi-million dollar fiscal impact to the state.

Response to Recommendation No. 1: The Supreme Court has adopted an MCLE rule and will review the program in three years.

The Alaska Supreme Court adopted an MCLE rule in December 2007, effective January 1, 2008. Bar Association members will be required to report for the first time by February 1, 2009.

The MCLE rule requires that all active Bar members complete at least three hours of ethics CLE per year and report that they have done so. Members must also report whether they have completed nine hours of general CLE, and if they have not done so, they must report the estimated hours of general CLE that they did complete.

In their commentary to the rule, the Supreme Court stated that “To protect the public, ensure that lawyers remain mindful of their obligations to their clients, and to address the area about which the Association receives the majority of questions from and complaints about lawyers, the Supreme Court is imposing a mandatory requirement for ethics CLE on all active Bar members.”

The Court also stated that “At the end of three years, the Supreme Court will again assess the project’s results, including recommendations and statistics provided by the Association, and will determine whether an expanded mandatory CLE program is necessary.”

At the end of the three year period, the Association will have the benefit of its experience in administering the mandatory ethics and reporting program. It will be able to determine what issues and problems have arisen and will also allow the Association time to educate Bar members about complying with the educational and reporting requirements.

The Association has hired a part-time MCLE Administrator to administer the program. In addition, the Association is offering a free ethics CLE program on November 5, 2008, in accordance with the Supreme Court’s wish that the Association provide at least three hours a year of ethics CLE at no cost to members. This program will be available in a variety of formats: live, via webcast or on DVD.

Response to Recommendation No. 2. We agree that Lawyer Public Discipline History should be available on the Alaska Bar Association website.

The legislative auditor notes that the Alaska Bar Association has joined a consortium of other state and local bars aimed at replacing our database with a new member management system. This will include a module specifically for lawyer discipline data. This system will provide a means to post public discipline information on the Bar’s website.

It has been the Bar's goal since the website was first launched in 1998 to post public discipline information.

Like many computer programming projects, the implementation of the new database is taking longer than originally anticipated. Issues include the need to modify and test programs that are unique to Alaska. The new MCLE requirement also took priority over the implementation of other program modules, such as discipline.

In addition, the fact that only a minority of states publish their lawyers discipline list on their websites indicates the difficulty many states have in automating this information. Timeliness and accuracy are essential to this process.

The Board agrees that having public discipline information available on our website is a desirable goal and we will continue to work to that end. We anticipate that the new discipline module, including online reporting of public discipline, will be operational in the coming 12 - 18 months.

Response to Recommendation No. 3. We agree that the Bylaws of the Alaska Bar Association should be modified to specifically include conference call meetings of the Board and to provide for reasonable public notice of those meetings.

From time to time the Board of Governors finds it necessary to call meetings between regularly scheduled Board meetings to take up specific items which should not be delayed until the next Board meeting. The Board limits its action to those items listed in the call of the meeting.

Bar staff recognizes that the conference call meetings since June 30, 2006 did not meet the 30 day public notice requirement for Board meetings. However, the need for a conference call meeting of the Board is often realized only a week or two in advance, and therefore, it could not meet the 30 day notice requirement.

The staff will draft a proposed amendment to the Bylaws, to be taken up by the Board of Governors, to provide that the President may call a conference call meeting of the Board as appropriate to conduct business as necessary between regularly scheduled Board meetings. This will recognize conference calls as a unique type of Board meeting, and, in

accordance with AS 44.62.310(e), the proposed Bylaw will state that "reasonable public notice" will be given.

The Bylaws will also be amended to clarify that Board of Governors meetings, as well as Association meetings, are governed according to Roberts Rules of Order, Newly Revised. The Board has operated under these rules, but this will be clearly stated in the Bylaws.

Matters "not accepted" for investigation.

Page 17 states that 80% of the grievances received were not accepted for investigation due to lack of merit. While formal investigations were not conducted, these matters were thoroughly reviewed by discipline section staff counsel with expertise in attorney grievance matters and both complainants and respondent attorneys were informed in writing of the reasons that the matters were not accepted for investigation.

Concluding Comments: Lawyer self-regulation has been effective and efficient in Alaska.

The overall conclusion of the audit is that the Board effectively serves the public interest through its lawyer admission and discipline process. We also believe that lawyer self-regulation is working very effectively and efficiently in Alaska. To its credit, the Alaska Bar Association has one of the most aggressive and effective discipline systems in the country.

In 2006, the 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 Bar was able to contact, 26 indicated that they were not state government agencies.

As reported in our December 16, 2005 response, 13¹ jurisdictions, in addition to Alaska, indicated that they were not state government agencies under their supreme courts; 13² generally indicated that they were considered creations of their supreme courts, but either not

¹ Alabama, Arizona, Hawaii, Idaho, Kentucky, Montana, Nevada, North Carolina, Oregon, South Dakota, Utah, Washington, and Wyoming.

² Arkansas, Florida, Idaho, Iowa, Kansas, Maine, Maryland, Massachusetts, Michigan, Mississippi, Missouri, North Dakota, Pennsylvania, and West Virginia.

considered state government agencies or state employees; and, 22³ indicated that they were state government agencies under their supreme courts.

Based on this survey, Alaska is not unique in its approach to attorney discipline. Indeed, because the Bar Association performs these vital functions under the supervision of the Alaska Supreme Court, its system is similar to those in place in a significant number of other state jurisdictions.

We believe that there would be significant additional costs to both the court and the Bar Association if the attorney discipline system in Alaska was carried out by a government agency. Currently, the Bar Association has one bar counsel, two assistant bar counsel, one paralegal, two legal secretaries, and two other employees of the Bar who provide support to the discipline system in addition to their other Bar duties.

Currently these employees have the benefit of shared costs of office space, conference room, computer system, telephone system, copy machines, etc. with the rest of the Bar staff. In addition, the Bar's system administrator provides computer support to all Bar employees. If the discipline employees were split off from the Bar Association, they would lose the benefit of this shared functionality and they would have to purchase and maintain separate space and equipment.

Currently discipline hearings are heard by a members of a volunteer committee made up of attorneys and public members. If discipline were split off from the Bar Association, the state would need to staff this function with state hearing officers.

Currently bar counsel supervises the assistant bar counsel and discipline staff, as well as handling such other discipline matters as reinstatement, etc. He also handles approximately 800 calls a year giving informal ethics advice to members of the Bar. If a new state agency had less than three lawyers on staff, this valuable service would not be feasible and the current caseload would likely see a dramatic increase in processing time. The discipline section would also lose the assistance of the two staff persons who provide other support to the discipline section.

³ California, Colorado, Connecticut, Delaware, Georgia, Illinois, Indiana, Louisiana, Minnesota, Nebraska, New Hampshire, New Jersey, New Mexico, New York, Ohio, Rhode Island, South Carolina, Tennessee, Texas, Vermont, Virginia, and Wisconsin.

Meanwhile, the Board of Governors would still need to have its own staff counsel, so the Bar Association would still have the expense of a lawyer and legal secretary on its staff.

There would also be additional expense if there was a Disciplinary Board separate from the Board of Governors. Currently, the Board of Governors acts as the Disciplinary Board at its regularly scheduled board meetings. The budget for the Board travel is included in the Board of Governors budget, and is not included as part of the discipline budget, so Discipline Board meetings would be a new expense.

The cost to Bar members to support additional staff, separate offices and equipment and separate Boards would mean a significant increase in bar dues, the addition of a separate disciplinary assessment, or that these expenses come out of the state general fund.

We believe that the subjective benefit of splitting out the discipline function from the Bar is outweighed by the practical and economic realities.

It is also our belief that the present management system of the Bar provides a blend of private and governmental functions, insuring both accountability and good management. For example, the Bar is an instrumentality of the state and subject to legislative audits. Its meetings are open to the public. Members of the public sit on discipline hearings and fee arbitration panels as well as on the Board of Governors. Its rule making and discipline functions are overseen by the Supreme Court, which assures a sound investigative and judicial process of discipline. Finally, the statewide lawyer membership on the Board also ensures that the Bar Association is both responsive to the needs of its members, and qualified to address such issues as admission standards and peer review.

Reserves of the Alaska Bar

The Board has a policy to hold a working capital reserve in an amount equal to four month's expenses (\$212,500/month or \$850,000.) However it is not unusual for a non-profit association to hold a reserve in an amount equal to six to nine months of expenses. (Ranging from \$1,275,000 - \$1,912,000.)

Unlike state agencies, the Bar cannot request supplemental appropriations from the Legislature or pool resources if an unexpected event occurs which would incur significant financial expense. The Board also needs to be able to "save" for the financial viability of planned projects or events. For example, the Bar is in the process of replacing its entire database, a multi-year project that will cost nearly \$200,000.

Between 1981 and 2005, Bar dues had only been raised twice: from \$310 to \$450 in 1994; and, from \$450 to \$550 in 2005.

At the October 2007 meeting, the Board of Governors approved the first bar dues reduction in the history of the Alaska Bar Association. To make the reduction, the Board voted to change a twenty-five year old budget policy that increased the unappropriated capital to offset future year deficits, deferring an increase in bar dues. Now the Board will budget on a "pay as you go" basis. This resulted in an approved draw down of the then \$1.2 million unappropriated capital by approximately \$400,000 for 2008. Active members of the bar saw their 2008 dues decrease to \$410. 2008 inactive member dues were \$135.

The Board reviewed the 2009 budget at the October 2008 meeting and voted to set 2009 active member bar dues at \$450 (plus \$10 for the Lawyers' Fund for Client Protection) and inactive dues at \$150. This will result in an estimated loss in 2009 of \$340,697, leaving a projected estimate of unappropriated capital of \$670,536 at the end of 2009.

Lawyers' Fund for Client Protection

Every year, Bar members each pays ten dollars to the Lawyers' Fund for Client Protection. This is a trust fund which serves as a safety net primarily for clients who have suffered monetary losses as a result of dishonest acts by their lawyers. This Fund currently has \$1,122,144. These funds are designed to protect the public and cannot be used for general operating expenses.

To date in 2008, \$28,100 in claims was awarded to clients of attorneys who were found to be dishonest in their dealings with the clients. \$127,235 was awarded in 2007 and \$31,972 was awarded in 2006.

As an instrumentality that predates the ratification of the Alaska Constitution, the Alaska Bar maintains these funds under Article IX, Sec.

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7 of the Alaska Constitution. It is unclear whether the Bar could continue to do so if portions of its powers were split to a state agency.

Again, thank you for the opportunity to comment on the audit report. We trust that our response has been helpful, and that it demonstrates the Board's continuing commitment to improving the legal profession and service to the public.

Sincerely,
Alaska Bar Association



for Mitchell Seaver
President

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