

ALASKA STATE LEGISLATURE

LEGISLATIVE BUDGET AND AUDIT COMMITTEE

Division of Legislative Audit



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SUMMARY OF: A Sunset Review Follow Up of the *Board of Governors of the Alaska Bar Association, November 28, 2005*, (Audit Control No. 41-20040-06), September 15, 2006.

PURPOSE OF THE REPORT

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).

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.

REPORT CONCLUSIONS

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. Nothing came to our attention during our current assessment that would give rise to a change in our conclusion or recommendation to extend the termination date until June 30, 2014.

In response to the specific objectives of this audit, 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.

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

1. The Board should recommend to the Alaska Supreme Court that mandatory minimum continuing legal education (CLE) for attorneys be adopted.

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

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

Although some steps have been taken in response to this recommendation, attorney discipline information is not yet available via link from the Alaska Bar Association website. 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.

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.

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.

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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 <i>Second/Fourth Judicial District</i>
Matthew W. Claman, President-elect <i>Third Judicial District</i>
Sidney K. Billingslea, Vice-president <i>Third Judicial District</i>
Philip M. Pallenberg , Treasurer <i>First Judicial District</i>
William A. Granger, Secretary <i>Public Member</i>
Christopher R. Cooke <i>Member At Large</i>
Mitchell A. Seaver <i>First Judicial District</i>
Joseph N. Faulhaber <i>Public Member</i>
Michael J. Hurley <i>Public Member</i>
Allison Mendel <i>Third Judicial District</i>
Krista S. Stearns <i>Third Judicial District</i>
Jason A. Weiner <i>Second/Fourth Judicial District</i>

- 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).

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 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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APPENDICE**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. Its 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
Administration	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	1,146,178	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	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 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.

APPENDIX A
(continued)

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

	2002	2003	2004	2005
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	94,637	67,635	47,224	59,994
Expenses				
Claims Awarded	5,583	800	72,328	27,257
Other	300	305	738	300
Total Expenses	5,883	1,105	73,066	27,557
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	984,299	1,073,053	1,139,583	1,113,741
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	\$ 1,073,053	\$ 1,139,583	\$ 1,113,741	\$ 1,146,178

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.

APPENDIX E
(continued)

27% of the unified bars administer both admissions and discipline.

64% of the unified bars administer discipline.

The budget of 79% of the unified bars is approved by their governing board only, with 91% of the unified bars indicating that their funds are considered to be part of the bar's budget only. 100% of the unified bars fund their functions without supplemental appropriations.

58% of the unified bars administer MCLE regulation, with 91% of the unified bars providing CLE programs.

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ALASKA COURT SYSTEM
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October 19, 2006

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

Re: Preliminary Audit Report 41-20050-06
Board of Governors of Alaska Bar Association

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 three recommendations directed at the Board of Governors of the Alaska Bar Association. We agree with the conclusion that the regulation and licensure of attorneys contributes to the protection of the public's welfare. We also concur in the recommendation to the legislature that the termination date of the Board be extended to June 30, 2014.

However, we continue to take issue with certain conclusions of the prior audit that are referenced in the Auditor's Comments beginning on page 11. That prior audit, *Board of Governors of the Alaska Bar Association, November 28, 2005* (Audit Control No. 41-20040-06), made conclusory observations about the current system of attorney discipline, and stated that such discipline could be a government function. Specifically, it 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

Considerations not addressed by the prior audit lead us to conclude that these two options are flawed.

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 objections 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 functions. 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 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 adequate justification for this consolidation of government power.

As pointed out in the Preliminary Audit Report, modification of the existing disciplinary structure would be a policy-level decision, and a wide range of structures exist on which modifications could be modeled. If it is ever determined that the current system of attorney discipline does not work adequately and needs to be changed, a better model to follow 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

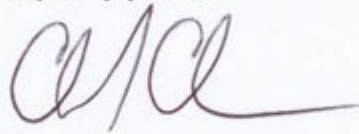
Pat Davidson
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judicial misconduct are made, and makes recommendations to the supreme court. The supreme court exercises the judicial function, serving as the ultimate arbiter of guilt or innocence.

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 dark ink, appearing to read 'CSC', 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

October 11, 2006

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

Dear Ms. Davidson:

Thank you for the thorough sunset review follow-up 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, 2014.

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 20 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 Board of Governors has forwarded an MCLE rule to the Alaska Supreme Court.

In the September 15, 2006 preliminary audit report, the legislative auditor correctly outlined the steps which the Board of Governors has taken in 2006 regarding MCLE.

At the Board of Governors meeting on September 7, 2006, the Board voted to send the MCLE rule as published to the Alaska Supreme Court. Only the Supreme Court can adopt a rule providing for MCLE.

The MCLE rule, as published by the Board, would provide that active Bar members complete 12 hours of CLE a year, including 1 hour of ethics.

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 have lawyer disciplinary 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. The Bar has managed its website without a full-time webmaster.

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 summer of 2007.

Response to Recommendation No. 3. The Standing Policies of the Board of Governors have been amended to provide for a due date for the annual report.

At the Board of Governors meeting on September 7, 2006, the Board voted to amend their Standing Policies to set April 15 as a specific due date for completion of the annual report for the preceding year.

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

Response to Preliminary Audit Report

October 11, 2006

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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.

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 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 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.

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.

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.

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 over 700 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.

Meanwhile, the Board of Governors would still need to have its own bar 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. (\$191,000/month or \$764,000.) 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 \$1,146,000 - \$1,719,000.)

Unlike state agencies, the Bar cannot request supplemental appropriations from the Legislature if an unexpected event occurs which would incur significant financial expense. Unlike private entities, the Bar cannot easily obtain business interruption insurance.

Recent experience with Gulf Coast bar associations in the wake of Hurricane Katrina indicates that a lack of preplanning for disasters will cripple a bar association at the very time it is under tremendous demand to provide emergency services to members and to assist members in aiding the public's need for legal assistance in the aftermath of a disaster. Also, the Board 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.

Every year, Bar members each pay ten dollars to the Lawyers' Fund For Client Protection. This fund 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 \$1,171,000 in it. These funds are designed to protect the public and cannot be used for general operating expenses.

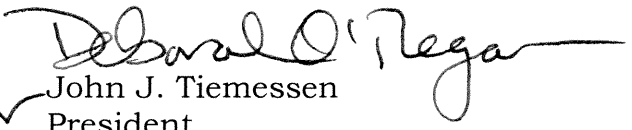
As an instrumentality that predates the ratification of the Alaska Constitution, the Alaska Bar maintains these funds under Article IX, Sec. 7 of the Alaska Constitution. It is unclear whether the Bar could continue to do so if portions of its powers were split to a state agency.

It has also been the policy of the Board to set Bar dues in an amount to accumulate a reserve, so that Bar dues do not have to be raised each year. The Board believes that the stability and predictability of Bar dues over a long period of time is desirable. In the past 22 years, Bar dues have only been raised twice: from \$310 to \$450 in 1994; and, from \$450 to \$550 in 2005.

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October 11, 2006
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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 John J. Tiemessen
President