

# Report Highlights

## Why DLA Performed This Audit

This audit determines whether there is a need for the board's continued existence and whether the board's termination date should be extended. The board is set to terminate June 30, 2021, and will have one year from that date to conclude its administrative operations.

## What DLA Recommends

1. The executive director should encourage public participation at board meetings.
2. The board should improve internal controls over the Bar's online admissions system and case management database.
3. The board should recommend an increase in mandatory continuing legal education for attorneys.

# A Sunset Review of the Alaska Court System, Board of Governors of the Alaska Bar Association (Bar)

June 9, 2020

Audit Control Number 41-20119-20

## REPORT CONCLUSIONS

The audit concludes that the board served the public's interest by effectively admitting qualified members to the Bar and investigating complaints made against Bar members. The audit also found the mandatory three hours of continuing legal education required of Bar members was far below the standard of 12 hours required by 37 other states. (See Recommendation 3) Further, the audit identified the need for administrative improvements. (See Recommendations 1 and 2)

In accordance with AS 08.30.010(c)(2), the board is scheduled to terminate June 30, 2021. We recommend the legislature extend the board's termination date eight years, to June 30, 2029.

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# ALASKA STATE LEGISLATURE

## LEGISLATIVE BUDGET AND AUDIT COMMITTEE

### Division of Legislative Audit



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July 15, 2020

Members of the Legislative Budget  
and Audit Committee:

In accordance with the provisions of 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 and the attached report is submitted for your review.

ALASKA COURT SYSTEM  
BOARD OF GOVERNORS OF THE ALASKA BAR ASSOCIATION  
SUNSET REVIEW

June 9, 2020

Audit Control Number  
41-20119-20

The audit was conducted as required by AS 44.66.050(a). Per AS 08.03.010(c)(2), the board is scheduled to terminate on June 30, 2021. We recommend that the legislature extend the board's termination date to June 30, 2029.

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 recommendations presented in this report are discussed in the Objectives, Scope, and Methodology.

A handwritten signature in black ink, appearing to read "Kris Curtis".

Kris Curtis, CPA, CISA  
Legislative Auditor

## ABBREVIATIONS

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ACN	Audit Control Number
AS	Alaska Statute
Bar	Alaska Bar Association
CISA	Certified Information Systems Auditor
CLE	Continuing Legal Education
CPA	Certified Public Accountant
DLA	Division of Legislative Audit
NIST	National Institute of Standards and Technology
UBE	Uniform Bar Examination

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# ORGANIZATION AND FUNCTION

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## Board of Governors of the Alaska Bar Association

The practice of law in Alaska is regulated by the Board of Governors of the Alaska Bar Association. The board consists of 12 members, including nine attorneys elected by the Alaska Bar Association's (Bar)<sup>1</sup> active membership and three non-attorney public members who are appointed by the governor and confirmed by the legislature in joint session. Of the nine attorney members, two must be from the first judicial district, four must be from the third judicial district, two must be from the combined area of the second and fourth judicial districts, and one is an at-large member residing in the state. Board membership as of March 31, 2020, is shown in Exhibit 1.

The Alaska Supreme Court oversees the practice of law in Alaska. The Bar is responsible to the Alaska Supreme Court for the administration of the Bar admission and discipline process. The board is empowered to approve and recommend rules to the Alaska Supreme Court, as well as adopt bylaws and regulations consistent with statutes and Bar rules.

The board's purpose includes regulating the practice of law, promoting reform in the law and in judicial procedure, facilitating the administration of justice, encouraging continuing legal education (CLE) for

### Exhibit 1

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#### Alaska Bar Association Board of Governors Members as of March 31, 2020

Robert Stone, President  
*Third Judicial District*

Ben Hofmeister, President-Elect  
*First Judicial District*

Molly Brown, Vice President  
*Third Judicial District*

Cam Leonard, Secretary  
*Second/Fourth Judicial District*

William Granger, Treasurer  
*Public Member*

Jessica Graham  
*Third Judicial District*

Aimee Oravec  
*Second/Fourth Judicial District*

Susan Cox  
*First Judicial District*

Darrel Gardner  
*Third Judicial District*

Hanna Sebold  
*At-Large*

Jed Cox  
*Public Member*

Bill Gordon  
*Public Member*

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Source: Alaska Bar Association website.

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<sup>1</sup> Alaska Statute 08.08, Alaska Integrated Bar Act, created the Bar and requires every person licensed to practice law in the state become a Bar member. As of December 31, 2019, the Bar had over 4,000 members.

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membership, and increasing the public service and efficiency of the Bar.

To accomplish its functions, the board may hire Bar employees; establish, collect, deposit, invest, and disburse member admission fees, penalties, and other funds; sue in the name of the Bar; and provide for all other matters affecting the Bar's organization and function.

The board employs an executive director to assist in carrying out its functions. The executive director serves at the board's pleasure and is the Bar's staff director. The board employs and supervises the Bar counsel, which is responsible for investigating complaints against attorneys. As of December 31, 2019, the Bar employed 17 staff, including the executive director and Bar counsel. Bar operational costs are entirely covered by membership dues, admission fees, CLE charges, lawyer referral fees, convention fees, and interest income. Audited financial statements for the calendar year ended December 31, 2019, are included as Appendix A.

The board's two primary functions are:

- Bar member admission: the board screens applicants for admission to the Bar and certifies to the Alaska Supreme Court that applicants are fit to practice law.
- Bar member discipline: the board is responsible for investigating grievances against all Bar members. The board appoints the Bar counsel responsible for oversight of all disciplinary actions taken against the Bar's members. The board selects hearing committee members from a group of individuals in each judicial district appointed by the chief justice of the Alaska Supreme Court. The board is also responsible for issuing reprimands when warranted and recommending the Alaska Supreme Court impose disbarment, suspension, probation, or public censure when appropriate.

Board decisions involving admissions and discipline may be appealed to the Alaska Supreme Court. The Alaska Supreme Court

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issues admission orders to the Bar, as well as lawyer disciplinary sanctions involving disbarment, suspension, probation, and public censure.

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# REPORT

## CONCLUSIONS

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In developing our conclusions regarding whether the board's termination date should be extended, its operations were evaluated using the 11 factors set out in AS 44.66.050(c), included as Appendix B. Under the State's "sunset" law, these factors are to be considered in assessing whether an entity has demonstrated a public policy need for continued operations.

The audit concludes that the board served the public's interest by effectively admitting qualified members to the Alaska Bar Association (Bar) and investigating complaints made against Bar members. The audit also found the mandatory three hours of continuing legal education (CLE) required by Bar members was far below the standard of 12 hours required by 37 other states. (See Recommendation 3) Further, the audit identified a need for administrative improvements. (See Recommendations 1 and 2)

In accordance with AS 08.03.010(c)(2), the board is scheduled to terminate June 30, 2021. We recommend the legislature extend the board's termination date eight years, to June 30, 2029.

Detailed report conclusions are as follows.

### **The board generally operated in the public interest and efficiently addressed complaints.**

The board met at least four times per year as required by board bylaws. During calendar years 2017, 2018, and 2019, the board met 18 times. Auditors reviewed nine of the meetings and found seven of the nine were not noticed on the State's Online Public Notice System. The audit also found that six of nine meeting agendas did not designate time for public comment. (See Recommendation 1)

Between January 1, 2017, and December 31, 2019, 689 complaints were filed with the Bar and processed as shown in Exhibit 2. Five hundred sixty-six of the 689 complaints (82 percent) were not accepted for further investigation by Bar counsel because the complaints were incomplete, did not identify ethical misconduct,

or were not within the Bar’s jurisdiction. Twenty-nine of the complaints filed (4 percent) were investigated and no basis for further investigation or disciplinary action was found, or the complaints were withdrawn. Five complaints resulted in discipline (less than 1 percent) and 89 complaints were open at the time of the audit (initial review or active investigation). Auditors reviewed 30 of the 689 complaints and found no unjustified periods of inactivity.

**Exhibit 2**

**Board of Governors of the Alaska Bar Association Disciplinary Statistics  
Calendar Years 2017 through 2019**

<b>Disposition of Disciplinary Cases</b>	<b>2017</b>	<b>2018</b>	<b>2019</b>	<b>Total</b>
<b>Closed Cases:</b>				
Not Accepted	203	201	162	566
Administrative Closure or Dismissed	13	11	5	29
Private or Public Reprimand by Disciplinary Board	0	3	0	3
Suspension by Supreme Court	2	0	0	2
<b>Total Closed Cases</b>	<b>218</b>	<b>215</b>	<b>167</b>	<b>600</b>
<b>Open Cases:</b>				
Initial Intake Stage	1	5	31	37
Pending Bar Counsel Investigation/Decision	3	12	8	23
Petition for Formal Hearing Approved	2	8	0	10
Pending Supreme Court Decision or Formal Proceedings	6	1	0	7
Awaiting Decision from Discipline Liaison	0	0	4	4
Pending Respondent Attorney and Bar Counsel Negotiation	0	3	0	3
Abeyance Due to Court Case or Disability	0	2	0	2
Awaiting Compliance Confirmation	0	0	2	2
Pending Respondent Reply	0	0	1	1
<b>Total Open Cases</b>	<b>12</b>	<b>31</b>	<b>46</b>	<b>89</b>
<b>Total Closed and Open Cases</b>	<b>230</b>	<b>246</b>	<b>213</b>	<b>689</b>

Source: Bar staff.

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Auditors identified deficiencies in the Bar’s online admissions system and case management database. (See Recommendation 2)

The audit also determined that the board does not duplicate the efforts of any other government or private entity.

**The board actively recommended Bar rule changes to the Alaska Supreme Court.**

The board worked to improve the practice of law in Alaska by recommending amendments to Bar rules. As an organization, Bar members vote on recommending Bar rule changes at an annual convention. Recommended changes are forwarded to the Alaska Supreme Court for consideration. During calendar years 2017, 2018, and 2019, the board recommended changes to nine Bar rules. Significant changes included:

- requiring the Bar be notified when attorneys are convicted of a crime;
- allowing disciplinary fees to be assessed to Bar members; and
- permitting eligible military spouses to practice law in Alaska.

**The board admitted qualified applicants into the Bar.**

Between January 1, 2017, and December 31, 2019, the board admitted a total of 362 new members into the Bar. New members were admitted through an examination process or by motion of reciprocity. The board administers the uniform bar examination (UBE) in February and July each year. The board also accepts UBE score transfers from other jurisdictions if certain criteria are met. Exhibit 3 displays the method by which new members were admitted, as well as Alaska UBE exam statistics for the same period. The audit reviewed a random sample of 15 new member application files and found all 15 members had complete applications and met admittance requirements.

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### Exhibit 3

## Board of Governors of the Alaska Bar Association Admission and Exam Statistics Calendar Years 2017 through 2019

#### Bar Admission:

<u>Member Approved for Admission by:</u>	<u>2017</u>	<u>2018</u>	<u>2019</u>	<u>Total</u>
Exam Administered in Alaska	53	48	44	145
Exam Score Transferred	21	48	34	103
Reciprocity	26	45	43	114
Total	100	141	121	362

#### Statistics - UBE Administered in Alaska:

<u>Description:</u>	<u>2017</u>	<u>2018</u>	<u>2019</u>	<u>Total</u>
Number Passing Exam	53	48	44	145
Number Taking Exam	100	82	89	271
Percent Passing Exam	53%	59%	49%	54%

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Source: Board of Governors of the Alaska Bar Association annual reports.

To promote competency and professionalism, active Bar members are required to obtain three CLE credits per year and encouraged to voluntarily obtain nine additional credits. Only 55 percent of attorneys completed the voluntary credits during 2019.

The number of mandatory CLE requirements for practicing attorneys is significantly below the number required by other states. As of March 2020, 37 states require 12 or more CLE hours per

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year. (See Recommendation 3) The low number of mandatory CLE hours was identified as a finding in the three prior board sunset audits<sup>2</sup> and the legislative auditor recommended increasing the CLE requirements. CLE benefits the public and the profession by ensuring attorneys remain competent.

In 2011, the board formed a committee to review the mandatory CLE program. The review included electronically surveying Bar members. Ninety-one percent of over 900 Bar member respondents did not favor increasing the number of mandatory CLE credits. The committee recommended that mandatory CLE remain at three credit hours.

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<sup>2</sup> ACN 41-20040-06, ACN 41-20057-08, and ACN 41-20075-12.

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# FINDINGS AND RECOMMENDATIONS

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The board's prior 2012 sunset audit<sup>3</sup> made one recommendation:

- The board should recommend to the Alaska Supreme Court that mandatory minimum continuing legal education (CLE) for attorneys be increased.

This prior recommendation was not resolved and is reiterated as Recommendation 3 below.

Two new recommendations are made as a part of this audit.

## **Recommendation No. 1:**

**The executive director should ensure meetings are properly posted on the State's Online Public Notice System and provide time for public comment.**

The audit found that board meetings were not consistently posted on the State's Online Public Notice System and time for public comment was not routinely scheduled as an agenda item. Specifically, the audit reviewed nine of the 18 meetings held during calendar years 2017, 2018, and 2019. Of the nine reviewed, seven meetings were not published on the State's Online Public Notice System and six did not include public comment as part of the meeting agenda. According to the executive director, the notices were published in the Bar Rag publication and posted on the Alaska Bar Association (Bar) website. Failure to publish meeting notices on the State's Online Public Notice System was due to staff turnover and human error.

Not adequately public noticing board meetings and not scheduling time for public comment may limit public input. Lack of public input may reduce the board's effectiveness in addressing public concerns.

Alaska Statute 44.62.175(a)(2) requires the Alaska Online Public Notice System to include notices of state agency meetings held per AS 44.62.310(e), which requires reasonable public notice be given for meetings. Alaska Statute 44.62.310(a) mandates all meetings of a governmental body be open to the public. Further, section 7(a) of the Bar's bylaws states "the schedule of the board's

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<sup>3</sup> ACN 41-20075-12.

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regular meetings shall be published electronically on the State of Alaska's Online Public Notice System.”

We recommend the executive director ensure meetings are properly posted on the State's Online Public Notice System and provide time for public comment.

**Recommendation No. 2:** The audit identified two deficiencies that could affect the security and availability of data contained in the Bar's online admissions system and case management database.

**The board should improve internal controls over the Bar's online admissions system and case management database.**

Information system control weaknesses increase the risk of loss, misuse, or abuse of data. The details related to the control weaknesses and relevant audit criteria are withheld from this report to prevent the weaknesses from being exploited. Pertinent details have been communicated to agency management in a separate confidential document.

National Institute of Standards and Technology<sup>4</sup> (NIST) Special Publication 800-53r4 provides specific criteria related to the identified deficiencies.

We recommend the board improve internal controls over its online admission system and case management database.

**Recommendation No. 3:** Self-reported compliance with three hours of mandatory CLE for calendar years 2017, 2018, and 2019 was 99.5 percent, 99.7 percent, and 99.8 percent respectively. The percentages of attorneys completing nine voluntary CLE credit hours for the same calendar years were 53 percent, 54 percent, and 55 percent respectively. As of the date of this report, 12 or more credit hours were required by 37 states and commonly considered best practice.

**The board should recommend an increase in mandatory CLE for attorneys.**

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<sup>4</sup> NIST is a non-regulatory agency of the U.S. Department of Commerce responsible for developing information security standards and guidelines, including minimum requirements for federal information systems. NIST standards are considered best practices for all governmental agencies.

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In 2011 the board formed a committee to review the mandatory CLE program. The review included electronically surveying Bar members. Ninety-one percent of over 900 responses indicated that Bar members do not favor increasing the number of mandatory CLE credits. The committee recommended that mandatory CLE remain at three credit hours.

CLE requirements benefit the public and the profession by ensuring that attorneys remain competent regarding the law and the profession's obligations and standards.

Alaska's mandatory CLE remains far below the majority of states. The current requirement of three credit hours per year does not fully achieve the goal of promoting competency and professionalism in Bar members. We again recommend that the number of mandatory CLE credits be increased.

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# OBJECTIVES, SCOPE, AND METHODOLOGY

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In accordance with Title 24 and Title 44 of the Alaska Statutes, we have reviewed the activities of the Board of Governors of the Alaska Bar Association to determine if there is a demonstrated public need for its continued existence.

As required by AS 44.66.050(a), this report shall be considered by the committee of reference during the legislative oversight process in determining whether the Alaska Bar Association (Bar) should be reestablished. Currently, under AS 08.03.010(c)(2), the board will terminate on June 30, 2021, and will have one year from that date to conclude its administrative operations.

## Objectives

The three central, interrelated objectives of our report are:

1. To determine if the termination date of the board should be extended, and for how long.
2. To determine if the board is operating in the public's interest.
3. To determine the status of recommendations made in the prior sunset audit.

## Scope

The assessment of operations and performance of the board was based on criteria set out in AS 44.66.050(c). Criteria set out in this statute relates to the determination of a demonstrated public need for the board. We reviewed the board's activities from January 1, 2017, through December 31, 2019. Financial information is presented for the calendar year ended December 31, 2019.

## Methodology

During the course of our audit we reviewed and evaluated the following:

- The prior sunset audit report (ACN 41-20075-12) to identify issues affecting the board and to identify prior sunset audit recommendations.

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- Applicable statutes and Alaska Bar rules within the Alaska Rules of Court to identify board functions and responsibilities, determine whether statutory or regulatory changes enhanced or impeded board activities, and help ascertain if the board operated in the public interest.
  - The State's Online Public Notice System to verify the board meetings were adequately public noticed.
  - Board meeting minutes and annual reports to gain an understanding of board proceedings and activities, the nature and extent of public input, and whether a quorum was maintained.
  - Board investigation data to assess the efficiency of the investigative process.
  - Various state and news related websites to identify complaints against the board or other board-related concerns.
  - Various websites containing information for potential duplication of board activities.
  - Internal controls over the online application and case management database systems were assessed to determine if controls were properly designed and implemented.
  - Other states' continuing legal education requirements each state's bar association members to evaluate the adequacy of Alaska's requirements.

To identify and evaluate board activities, we conducted interviews with judicial staff, Bar staff, and board members. Specific areas of inquiry included: board operations, duties, duplication of effort, continuing education, and complaints against the board.

During the audit, the following samples were selected:

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- A random sample of 15 of the 362 new members admitted to the Bar during calendar years 2017 through 2019. The new member applicant files were reviewed to ensure all applications and admittance requirements were completed as required by Alaska Bar rules. The sample size was based on low control and inherent risk, and high audit risk. Test results were projected to the population.
  - A random sample of 15 of the 566 complaints that were not accepted for investigation by Bar counsel: two of the seven complaints administratively closed, three of the 22 complaints that were dismissed after investigation, and 10 of the remaining 94 complaints filed during calendar years 2017 through 2019. The complaint files were reviewed for appropriate status and unjustified periods of inactivity. The sample size was based on low control and inherent risk, and high audit risk. Test results were projected to the population.

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# APPENDICES

## SUMMARY

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**Appendix A** provides the Alaska Bar Association's financial statements for calendar year 2019, audited by Swalling & Associates, Certified Public Accountants and Advisors. The financial statements are provided for informational purposes and the Division of Legislative Audit provides no assurance over the statements.

**Appendix B** provides the sunset criteria used in developing the conclusion regarding whether the Board of Governors of the Alaska Bar Association's termination date should be extended.

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# APPENDIX A

## Audited Financial Statements - Calendar Year 2019

**ALASKA BAR ASSOCIATION  
STATEMENTS OF FINANCIAL POSITION  
December 31, 2019**

	<u>General Fund</u>	<u>Lawyers' Fund for Client Protection</u>	<u>Total All Funds</u>
<b>ASSETS</b>			
<b>CURRENT ASSETS</b>			
Cash	\$ 546,618	\$ 68,944	\$ 615,562
Cash – group medical plan trust	650,446	-	650,446
Accounts receivable	1,642,304	-	1,642,304
Accrued interest receivable	7,712	4,464	12,176
Due from general fund	-	33,933	33,933
Investments	1,372,541	770,768	2,143,309
Prepaid expenses	<u>119,556</u>	<u>-</u>	<u>119,556</u>
Total current assets	<u>4,339,177</u>	<u>878,109</u>	<u>5,217,286</u>
INVESTMENTS – long-term maturities	1,681,940	687,312	2,369,252
<b>PROPERTY AND EQUIPMENT, at cost</b>			
Video tape library and equipment	8,756	-	8,756
Office furniture and equipment	925,415	-	925,415
Leasehold improvements	128,144	-	128,144
Historical artifacts	<u>3,750</u>	<u>-</u>	<u>3,750</u>
	1,066,065	-	1,066,065
Less accumulated depreciation and amortization	<u>(828,078)</u>	<u>-</u>	<u>(828,078)</u>
	<u>237,987</u>	<u>-</u>	<u>237,987</u>
	<u>\$ 6,259,104</u>	<u>\$ 1,565,421</u>	<u>\$ 7,824,525</u>

# APPENDIX A

## (Continued)

	<u>General Fund</u>	<u>Lawyers' Fund for Client Protection</u>	<u>Total All Funds</u>
<b>LIABILITIES AND NET ASSETS</b>			
<b>CURRENT LIABILITIES</b>			
Accounts payable and accrued expenses	\$ 104,799	\$ -	\$ 104,799
Due to other funds	50,374	-	50,374
Group medical plan dissolution payable	650,446	-	650,446
Deferred dues and fees	<u>2,138,773</u>	<u>31,060</u>	<u>2,169,833</u>
Total current liabilities	<u>2,944,392</u>	<u>31,060</u>	<u>2,975,452</u>
<b>NET ASSETS</b>			
Without donor restrictions			
Designated by the Board of Governors for:			
Working capital	1,775,000	-	1,775,000
Asset acquisition	536,668	-	536,668
Long-term capital	700,000	-	700,000
Undesignated	<u>299,294</u>	<u>1,534,361</u>	<u>1,833,655</u>
	3,310,962	1,534,361	4,845,323
With donor restrictions	<u>3,750</u>	<u>-</u>	<u>3,750</u>
	<u>3,314,712</u>	<u>1,534,361</u>	<u>4,849,073</u>
	<u>\$ 6,259,104</u>	<u>\$ 1,565,421</u>	<u>\$ 7,824,525</u>

# APPENDIX A

## (Continued)

**ALASKA BAR ASSOCIATION  
STATEMENTS OF ACTIVITIES  
For the Year ended December 31, 2019**

	<u>General Fund</u>	<u>Lawyers' Fund for Client Protection</u>	<u>Total All Funds</u>
Revenue and other income			
Dues	\$ 2,093,404	\$ 31,939	\$ 2,125,343
Admission fees	188,400	-	188,400
Continuing legal education	206,583	-	206,583
Lawyer referral fees	30,704	-	30,704
Annual meeting	85,257	-	85,257
Rule 81 fees	126,750	1,950	128,700
Other	86,581	-	86,581
Investment return, net	<u>186,503</u>	<u>78,212</u>	<u>264,715</u>
Total revenue	<u>3,004,182</u>	<u>112,101</u>	<u>3,116,283</u>
Expenses			
Admissions	185,500	-	185,500
Board of Governors	43,872	-	43,872
Discipline	923,550	-	923,550
Fee arbitration	75,276	-	75,276
Lawyer referral	67,996	-	67,996
Continuing legal education	376,463	-	376,463
Administration	635,897	-	635,897
Pro Bono	120,818	-	120,818
Mandatory CLE	41,908	-	41,908
Annual meeting	71,086	-	71,086
Sections	37,294	-	37,294
Other	<u>160,251</u>	<u>300</u>	<u>160,551</u>
Total expenses	<u>2,739,911</u>	<u>300</u>	<u>2,740,211</u>
Increase in net assets without donor restrictions	264,271	111,801	376,072
Net assets without donor restrictions, beginning of year	<u>3,046,691</u>	<u>1,422,560</u>	<u>4,469,251</u>
Net assets without donor restrictions, end of year	<u>\$ 3,310,962</u>	<u>\$ 1,534,361</u>	<u>\$ 4,845,323</u>

# APPENDIX A

## (Continued)

**ALASKA BAR ASSOCIATION  
STATEMENT OF FUNCTIONAL EXPENSES –  
GENERAL FUND  
For the Year ended December 31, 2019**

	<u>Program Services</u>				
	<u>Admissions</u>	<u>Board of Governors</u>	<u>Discipline</u>	<u>Fee Arbitration</u>	<u>Lawyer Referral</u>
Salaries and related expenses	\$ 113,384	\$ -	\$ 736,905	\$ 57,372	\$ 54,584
Rent	15,040	200	55,300	7,307	3,428
Exam questions	10,420	-	-	-	-
Grading and review	17,982	-	-	-	-
Litigation support	-	-	16,083	-	-
Office supplies and expense	2,593	648	3,112	389	389
Telephone	-	131	-	-	206
Travel	-	30,901	13,279	-	-
Dues, publications and training seminars	-	-	9,138	-	-
Equipment lease	1,232	-	9,551	1,232	616
Postage	2,556	492	1,762	240	240
Copying	364	195	1,665	63	24
Accounting fees	-	-	-	-	-
Pension administration	-	-	-	-	-
Insurance	6,035	3,017	7,544	905	604
Repairs and maintenance	3,268	-	25,330	3,268	1,634
Depreciation and amortization	3,217	-	24,932	3,217	1,609
Advertising	-	-	-	-	4,043
Miscellaneous	7,932	2,854	3,245	-	-
Programming	1,238	-	9,598	1,238	619
Seminar costs	-	-	-	-	-
Newsletter	-	-	-	-	-
Public notices	-	-	6,106	-	-
Committee expenses	239	5,434	-	-	-
Legal research services	-	-	-	-	-
Annual meeting expense	-	-	-	-	-
Internet web page design	-	-	-	-	-
Temporary support staff	-	-	-	45	-
Credit card and bank fees	-	-	-	-	-
Foundation accounting services	-	-	-	-	-
Moving expense	-	-	-	-	-
MLK Day	-	-	-	-	-
	<u>\$ 185,500</u>	<u>\$ 43,872</u>	<u>\$ 923,550</u>	<u>\$ 75,276</u>	<u>\$ 67,996</u>

# APPENDIX A

## (Continued)

Program Services					Supporting Services	
Continuing Education	Pro Bono	Mandatory CLE	Sections	Annual Meeting and Other	Administration	Total
\$ 200,438	\$ 99,701	\$ 24,726	\$ 14,737	\$ -	\$ 418,913	\$ 1,720,760
13,713	6,857	5,142	10,357	-	60,368	177,712
-	-	-	-	-	-	10,420
-	-	-	-	-	-	17,982
-	-	-	-	810	-	16,893
1,747	259	259	259	-	3,920	13,575
-	-	-	2,117	-	-	2,454
7,771	2,517	-	-	-	15,401	69,869
-	-	-	50	-	1,364	10,552
2,420	1,232	924	1,232	-	12,323	30,762
880	160	160	160	-	5,976	12,626
71	15	22	55	-	2,759	5,233
-	-	-	-	-	23,500	23,500
-	-	-	-	-	3,548	3,548
2,414	604	603	604	-	7,845	30,175
6,537	3,268	2,451	3,268	-	32,683	81,707
6,434	3,217	2,413	3,217	-	32,170	80,426
-	-	-	-	-	-	4,043
313	1,750	-	-	6,207	237	22,538
2,477	1,238	929	1,238	613	12,384	31,572
131,043	-	4,279	-	-	-	135,322
-	-	-	-	34,803	-	34,803
-	-	-	-	-	2,156	8,262
205	-	-	-	8,626	-	14,504
-	-	-	-	24,847	-	24,847
-	-	-	-	71,086	-	71,086
-	-	-	-	8,176	-	8,176
-	-	-	-	-	350	395
-	-	-	-	62,156	-	62,156
-	-	-	-	9,481	-	9,481
-	-	-	-	2,425	-	2,425
-	-	-	-	2,107	-	2,107
<u>\$ 376,463</u>	<u>\$ 120,818</u>	<u>\$ 41,908</u>	<u>\$ 37,294</u>	<u>\$ 231,337</u>	<u>\$ 635,897</u>	<u>\$ 2,739,911</u>

# APPENDIX A

## (Continued)

**ALASKA BAR ASSOCIATION  
STATEMENTS OF CASH FLOWS  
For the Year ended December 31, 2019**

	<u>General Fund</u>	<u>Lawyers' Fund for Client Protection</u>	<u>Total All Funds</u>
<b>CASH FLOWS FROM</b>			
<b>OPERATING ACTIVITIES</b>			
Increase in net assets	\$ 264,271	\$ 111,801	\$ 376,072
Adjustments to reconcile change in net assets to net cash:			
Depreciation and amortization	80,426	-	80,426
Unrealized (gain) on investments	(90,093)	(38,858)	(128,951)
(Increase) decrease in operating assets:			
Accounts receivable	(1,001)	-	(1,001)
Accrued interest receivable	(403)	56	(347)
Due from general fund	-	(552)	(552)
Prepaid expenses	6,548	-	6,548
Increase (decrease) in operating liabilities:			
Accounts payable and accrued expenses	(398)	-	(398)
Due to other funds	12,152	-	12,152
Group medical plan dissolution payable	650,446	-	650,446
Deferred dues and fees	<u>(75,640)</u>	<u>(440)</u>	<u>(76,080)</u>
<b>NET CASH PROVIDED BY OPERATING ACTIVITIES</b>	<u>846,308</u>	<u>72,007</u>	<u>918,315</u>
<b>CASH FLOWS FROM</b>			
<b>INVESTING ACTIVITIES</b>			
Proceeds from maturities of investments	2,300,000	101,000	2,401,000
Purchases of investments	(2,656,712)	(118,408)	(2,775,120)
Purchase of property and equipment	<u>(68,062)</u>	<u>-</u>	<u>(68,062)</u>
<b>NET CASH (USED IN) INVESTING ACTIVITIES</b>	<u>(424,774)</u>	<u>(17,408)</u>	<u>(442,182)</u>
<b>NET INCREASE IN CASH AND CASH EQUIVALENTS</b>	421,534	54,599	476,133
Cash, beginning of year	<u>775,530</u>	<u>14,345</u>	<u>789,875</u>
Cash, end of year	<u>\$ 1,197,064</u>	<u>\$ 68,944</u>	<u>\$ 1,266,008</u>

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## APPENDIX B

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### **Analysis of Public Need Criteria AS 44.66.050(c)**

A determination as to whether a board or commission has demonstrated a public need for its continued existence must take into consideration the following factors:

1. the extent to which the board or commission has operated in the public interest;
2. the extent to which the operation of the board or commission 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;
3. the extent to which the board or commission has recommended statutory changes that are generally of benefit to the public interest;
4. the extent to which the board or commission 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;
5. the extent to which the board or commission has encouraged public participation in the making of its regulations and decisions;
6. the efficiency with which public inquiries or complaints regarding the activities of the board or commission 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;
7. the extent to which a board or commission that regulates entry into an occupation or profession has presented qualified applicants to serve the public;

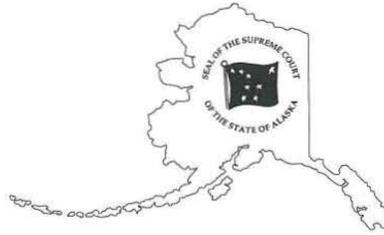
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## APPENDIX B (Continued)

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8. the extent to which state personnel practices, including affirmative action requirements, have been complied with by the board or commission to its own activities and the area of activity or interest;
9. the extent to which statutory, regulatory, budgetary, or other changes are necessary to enable the board or commission to better serve the interests of the public and to comply with the factors enumerated in this subsection;
10. the extent to which the board or commission has effectively attained its objectives and purposes and the efficiency with which the board or commission has operated; and
11. the extent to which the board or commission duplicates the activities of another governmental agency or the private sector.

# Agency Response from the Alaska Court System



## ALASKA COURT SYSTEM State of Alaska

Nancy B. Meade  
GENERAL COUNSEL

SNOWDEN ADMINISTRATIVE OFFICE BUILDING  
820 W. 4TH AVENUE  
ANCHORAGE AK 99501-2005

(907) 264-8264  
Fax (907) 264-8291  
nmeade@akcourts.us

September 23, 2020

**RECEIVED**

OCT 13 2020

**LEGISLATIVE AUDIT**

Kris Curtis, CPA, CISA  
Legislative Auditor  
Alaska State Legislature, Division of Legislative Audit  
P.O. Box 113300  
Juneau, Alaska 99811-3300

Re: Confidential Preliminary Audit Report: Board of Governors of the Alaska Bar Association, June 9, 2020

Dear Ms. Curtis:

This letter responds to the request in your September 16, 2020 transmittal letter concerning the above-referenced preliminary audit report. I am submitting this response on behalf of Supreme Court Chief Justice Bolger, and it conveys the views of the Alaska Court System.

1. The Court System agrees with the conclusion that the board serves the public's interest by effectively admitting qualified members to the Bar and investigating complaints made against Bar members.
2. The Court System has no direct knowledge of, and therefore no position on, the findings and recommendations concerning the need for administrative improvements directed at the Board of Governors of the Alaska Bar Association (i.e., Recommendations 1 and 2, concerning participation at board meetings and database controls).
3. The Court System agrees that the Bar Association requires Bar members to self-report their compliance with the three credit hours of mandatory continuing legal education each year, and agrees that CLE requirements benefit the public and the profession. The Court System does not disagree with Recommendation 3; specifically, the Supreme Court agrees that the Board should make a new recommendation on this issue for the Court's consideration.

September 23, 2020

Page 2 of 2

4. Finally, the Court System concurs in the recommendation to the legislature that the termination date of the Board be extended to June 30, 2029.

Thank you for inviting our response to the conclusions and recommendations in the preliminary audit report. Please feel free to contact the Chief Justice or me if you have any questions.

Sincerely,

A handwritten signature in cursive script that reads "Nancy Meade".

Nancy Meade  
General Counsel, Alaska Court System

cc: Chief Justice Bolger, Alaska Supreme Court

# Agency Response from the Alaska Bar Association



September 25, 2020

Kris Curtis, CPA, CISA  
Legislative Auditor  
Division of Legislative Audit  
P.O. Box 113300  
Juneau, AK 99811-3300

RECEIVED  
SEP 29 2020  
LEGISLATIVE AUDIT

Dear Ms. Curtis:

Thank you for the Division's thorough 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, 2029.

There will be no fiscal note attached to any bill filed with the Legislature to extend the sunset date of the Board, as the Board will not be seeking any state funding for its operational costs. The Board 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 34 years, the Board has paid those expenses without state funding.

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

#### **Response to Recommendation No. 1: The executive director should ensure meetings are properly posted on the State's Online Public Notice System and provide time for public comment.**

We agree that Board meetings were not consistently posted to the State's Online Public Notice System and that time for public comment was not always scheduled as an agenda item. As noted, both of these were due to staff turnover and human error. The executive director has now calendared to follow up that the meetings are posted. Our practice has been to post at one time all the meetings that the incoming President scheduled during their term. The

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Response to Preliminary Audit  
September 25, 2020  
Page 2

executive director will check at the beginning of each President's term that all the meetings for their term have been posted.

Despite the deficiencies noted in the audit about posting to the State's Online Public Notice System, we have consistently posted meeting notices on that site for ten meetings in 2020 and will continue to do so going forward.

Additionally, all Board meetings prior to 2020 were always posted on the Bar's website, and included in the masthead of the Bar's publication, *The Alaska Bar Rag*.

Failure to include public comment on the agenda was human error. If a member of the Bar or public came to a meeting, the Board always gave them opportunity to comment. The executive director will calendar at the time agendas are put together to include public comment on the agenda.

**Response to Recommendation No. 2: The board should improve internal controls over the Bar's online admission system and case management database.**

We have discussed the two deficiencies identified by the auditors to improve the security contained in the Bar's online admissions system and case management database. We responded to their management letter and we agreed with their recommendations to take steps to correct those deficiencies. We have already completed one of their recommendations and will continue to work on the other matter.

**Response to Recommendation No. 3: The board should recommend an increase in mandatory CLE for attorneys.**

The Alaska Supreme Court has the constitutional rule making authority under Article IV, Section 15 of the Alaska Constitution, and it is the court which makes the final determination of the scope of an MCLE requirement. The Alaska Bar Association makes recommendations to the court.

The Alaska Bar takes its responsibility to offer CLE seriously and continues to offer a substantial CLE program. Programs are offered in a variety of formats, including live presentations, webcasts, webinars, and video on demand (VOD). For each of the years 2017 – 2019, there were over 30 live programs, over 42 webinars and over 1,000 VODs downloaded.

In 2011 the board formed a subcommittee to review the MCLE requirements, and at that time the committee did not recommend any changes to the current requirement of three ethics credits per year. More recently, a study published

Response to Preliminary Audit  
September 25, 2020  
Page 3

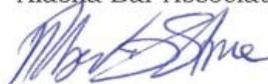
in the *Georgetown Journal of Legal Ethics, Spring 2020* concluded that MCLE has no impact on the number of attorneys who have been disciplined by their state bars, and that MCLE has no impact on reducing malpractice claims. This notwithstanding, it is perhaps appropriate to review whether MCLE should be implemented. At its next meeting on October 26 & 27, 2020, the Board of Governors will discuss the appointment of a committee to review the MCLE rule. The Board will then forward its recommendations to the Alaska Supreme Court.

**Concluding comments.**

It is also our belief that the present management system of the Bar Association provides a variety of public services, ensuring both accountability and good management. As an instrumentality of the state, the Bar Association is subject to legislative audits. Its meetings are open to the public. Members of the public sit on discipline and fee arbitration panels as well as on the Board of Governors. Its rule-making and discipline functions are overseen by the Alaska Supreme Court, which assures a sound investigative and judicial process. The Board provides public service through activities such as its pro bono program, which includes programs such as the Martin Luther King, Jr. Day of Service and the Elizabeth Peratrovich Legal Clinic at the AFN Conference, and through its Sections and committees work, such as the Law Related Education Committee activities in the schools and website legal guides. 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.

Thank you for the opportunity to comment on the audit report. We believe that the Board has demonstrated its continuing commitment to improving the legal profession and service to the public.

Sincerely,  
Alaska Bar Association



Robert D. Stone  
President

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