

ALASKA STATE LEGISLATURE

LEGISLATIVE BUDGET AND AUDIT COMMITTEE

Division of Legislative Audit



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SUMMARY OF: A Sunset Review on the Alaska Court System, Board of Governors of the Alaska Bar Association (board), July 11, 2012

PURPOSE OF THE REPORT

In accordance with Title 24 and Title 44 of the Alaska Statutes (sunset legislation), we have reviewed the activities of the board. The purpose of this audit was to determine if there is a demonstrated public need for its continued existence and if it has been operating in an effective manner. 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 board should be reestablished. Currently, under AS 08.03.010(c)(2), it will terminate on June 30, 2013 and will have one year from that date to conclude its administrative operations.

REPORT CONCLUSIONS

We conclude that the board's termination date should be extended. The board, through the Alaska Supreme Court, protects the public by ensuring that persons licensed to practice law are qualified. It also provides for complaint investigation and has established a disciplinary process designed to promote competence and professionalism in licensed individuals. We recommend that the board's termination date be extended to June 30, 2021.

One recommendation was made to increase continuing legal education (CLE) for attorneys. CLE contributes to lawyer competence and benefits the public and the profession by ensuring that attorneys remain current regarding the law, the profession's obligations and standards, and the management of their practices.

FINDINGS AND RECOMMENDATIONS

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

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August 14, 2012

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, and the attached report is submitted for your review.

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

July 11, 2012

Audit Control Number
41-20075-12

The audit was conducted as required by AS 44.66.050 and under the authority of AS 24.20.271(1). Alaska Statute 44.66.050(c) lists criteria to be used to assess the demonstrated 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 (board) is scheduled to terminate on June 30, 2013.

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, 2021.

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

Handwritten signature of Kris Curtis.

Kris Curtis, CPA, CISA
Legislative Auditor

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OBJECTIVES, SCOPE, AND METHODOLOGY

In accordance with Title 24 and 44 of the Alaska Statutes (sunset legislation), we have reviewed the activities of the Board of Governors of the Alaska Bar Association (board) 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 legislative committee of reference during the legislative oversight process in determining whether the board's termination date should be extended. Currently, under AS 08.03.010(c)(2), the board will terminate on June 30, 2013. If the legislature takes no action to extend the termination date, the board will have one year from that date to conclude its administrative operations.

Objectives

There were four central objectives of our audit. They were to:

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

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

Scope and Methodology

Our analysis focused on the board's licensing and admissions process, continuing legal education requirements, discipline function, and proceedings. We examined board operations and activities from July 1, 2008, through June 30, 2012.

We also analyzed and evaluated the following:

- Applicable statutes, Bar Rules, Alaska Rules of Professional Conduct, and Bar bylaws to identify board duties and responsibilities as well as board member composition and qualifications. We also identified additions, deletions, and changes to the Bar Rules, Rules of Professional Conduct, and bylaws.

- Board meeting minutes, budget documents, and annual reports issued by the Bar to gain an understanding of board proceedings and activities.
- Files and documentation pertaining to individuals seeking admission to the Bar by examination or reciprocity to ensure that applicants met all requirements for licensure. We also examined documentation to evaluate compliance with continuing education requirements.
- Disciplinary files pertaining to complaints against Bar members to gain an understanding of the nature of complaints and the Bar's procedures for investigating and resolving them. We also examined complaints filed with the Office of the Ombudsman.
- Public notice documentation to ascertain whether public notice for board meetings was published as required by statute.
- Audited financial statements of the board to gain an understanding of the Bar's current financial position.

Additionally, we interviewed the board president and Bar staff including the executive director and Bar counsel. The purpose of these interviews was to identify and evaluate various issues pertaining to board activities. Specific areas of inquiry included board operations, admissions, discipline, and the Bar's activities to improve public service.

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 Association¹ (Bar) and three non-attorney public members who are appointed by the governor and confirmed by the legislature in joint session. Board membership, as of June 2012, is shown in Exhibit 1.

The Alaska Supreme Court is responsible for overseeing the practice of law in Alaska. Through promulgating the Bar Rules, the Alaska Supreme Court delegates the authority for admitting and disciplining attorneys to the board. The board is empowered to approve and recommend rules to the Alaska Supreme Court as well as adopt bylaws and regulations consistent with the Act and the Bar Rules.

The board's purpose includes: cultivating and advancing the science of jurisprudence, promoting reform in the law and in judicial procedure, facilitating the administration of justice, encouraging continuing legal education for 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 responsible for investigating complaints against attorneys. As of June 2012, the Bar employs 20 staff

Exhibit 1

The Board of Governors of the Alaska Bar Association as of June 30, 2012

Hanna Sebold, President
First Judicial District

Peter J. Maassen, President-Elect
Third Judicial District

Michael A. Moberly, Vice President
Third Judicial District

Gene L. Gustafson, Secretary
Second/Fourth Judicial District

William Granger, Treasurer
Public Member

Alexander O. Bryner
At-Large

Blake Chupka
First Judicial District

Donald W. McClintock
Third Judicial District

Krista S. Stearns
Third Judicial District

Geoffrey B. Wildridge
Second/Fourth Judicial District

Vacant
Public Member

Vacant
Public Member

¹Alaska Statute 08.08, Alaska Integrated Bar Act (Act) created the Bar and requires every person licensed to practice law in the state become a Bar member. As of June 2012, the Bar has over 4,000 members.

including the executive director and the Bar counsel.

The two primary functions of the board are the admission and discipline of Bar members.

Bar Member Admission. The board screens applicants for admission to the Bar and certifies to the Alaska Supreme Court that all 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, and the counsel is 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 for 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 issues admission orders to the Bar as well as lawyer disciplinary sanctions involving disbarment, suspension, probation, and public censure.

REPORT CONCLUSIONS

In developing our conclusion regarding whether the termination date for the Board of Governors of the Alaska Bar Association (board) should be extended, we evaluated board operations using the 11 factors set out in AS 44.66.050(c). These factors are to be used in assessing whether an agency has demonstrated a public policy need for continuing operations.

We conclude that the board's termination date should be extended. The board, through the Alaska Supreme Court, protects the public by ensuring that persons licensed to practice law are qualified. It also provides for complaint investigation and has established a disciplinary process designed to promote competence and professionalism in licensed individuals. We recommend that the board's termination date be extended to June 30, 2021.

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FINDINGS AND RECOMMENDATIONS

Three recommendations were made to the Board of Governors of the Alaska Bar Association (board) in the 2008 sunset audit.² The recommendation that the board support mandatory continuing legal education (CLE) was not implemented at a level that accomplishes the goal of promoting competence and professionalism. This issue is reiterated as Recommendation No. 1.

The prior recommendation that the Alaska Bar Association (Bar) consider developing a database of disciplined lawyers has been partially implemented. The Alaska Lawyer Directory on the Bar's website contains a field showing whether an attorney's status is currently active, suspended, or disbarred. Though the Bar could further its transparency by providing a searchable database on its website, current procedures meet the requirements set forth in the Bar Rules. Consequently, the prior recommendation is not reiterated as part of this report.

The prior recommendation that the board adhere to public notice requirements for meetings or modify the bylaws to clearly address conference call board meeting procedures has been implemented. The board voted to change the bylaws and clearly defined what qualified as an emergency meeting. The public notice requirement for emergency meetings was changed from three days to "*as soon as reasonably practical prior to the date of an emergency meeting.*"

Recommendation No. 1

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

Prior Finding

The board voted at the September 2006 meeting to send the mandatory CLE rule, as published, to the Alaska Supreme Court. Based on this rule, the Alaska Supreme Court amended Bar Rule 65 through Supreme Court Order No. 1640 and mandated that all Bar members complete three CLE credit hours each calendar year.³ In addition to completing the mandatory CLE, all members are encouraged to voluntarily complete an additional nine CLE credit hours. Members are required to certify with the Bar the completion of the mandatory CLE and provide the number, or estimated number, of completed voluntary CLE credit hours.

²Alaska Court System, Board of Governors of the Alaska Bar Association, Sunset Review, November 4, 2008, Audit Control No. 41-20057-08.

³The mandatory three credit hours must be in approved ethics CLE.

Supreme Court Order No. 1640 also added Bar Rule 66 for suspending members who have not complied in earning mandatory CLE credits, or members who failed to report the mandatory and voluntary CLE credits earned each year. These rules became effective January 1, 2008.

Legislative Audit's Current Position

The mandate to earn three CLE credit hours per year is unchanged. Attorneys are still encouraged to earn an additional nine voluntary CLE credit hours.

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.

Calendar year reporting during the four-year period 2008 through 2011 shows that self-reported mandatory CLE compliance increased from 96 percent in 2008 to over 99 percent in 2011. However, the percentage of attorneys completing nine voluntary CLE credit hours was 71 percent in 2008 and decreased to 67 percent in 2011. Currently, 45 states require CLE. Thirty-five of the 45 states require a minimum of 12 to 15 credit hours per year.

CLE contributes to lawyer competence and benefits the public and the profession by ensuring that attorneys remain current regarding the law, the profession's obligations and standards, and the management of their practices.

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. Therefore, we again recommend that the number of mandatory CLE credits be increased.

ANALYSIS OF PUBLIC NEEDD

The following analyses of 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 of Governors of the Alaska Bar Association (board) protects the public's interest by licensing applicants to practice law through an examination process or by motion for reciprocity. The reciprocity option is limited to attorneys actively practicing law for five of the last seven years in states having reciprocity agreements with Alaska.⁴

The board investigates professional conduct matters to ensure attorneys practicing law are fit to be entrusted with professional and judicial matters. This activity protects the public's interest by ensuring that attorneys committing wrongful acts face disciplinary action, up to and including suspension or disbarment.

Additionally, the board administers programs which protect the public's interests. The programs include:

- 1) *Lawyers' Fund for Client Protection* - A committee, established under the bylaws, administers the Lawyers' Fund (Fund) for Client Protection. The Fund receives \$10 from each active member's dues and is used to reimburse clients for losses caused by the dishonest conduct of lawyers⁵ not covered by insurance or fidelity bond. The maximum amount payable to any individual is the lesser of \$50,000 or 10 percent 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.

- 2) *Attorney Fee Dispute Review Committee* - Since 1976, the board has maintained a fee arbitration process allowing a client to resolve attorney fee disputes that have not been determined by statute, 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 public member. Failure by an attorney to participate in this process may be grounds for disciplinary action by the board.

⁴As of June 30, 2012, the Alaska Bar Association has reciprocal agreements with 36 states and Washington D.C.

⁵Bar 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."

- 3) *Mediation* - The board mediates differences between attorneys and their clients. The mediation process is not used to resolve serious allegations such as intentional dishonesty, material misrepresentation, or conduct that could lead to suspension or disbarment. Mediation requires the approval of both parties and the Alaska Bar Association (Bar) counsel. The agreement is considered a contract and is legally enforceable in court.
- 4) *Lawyer Assistance Committee* - The board also has a Lawyer Assistance Committee that provides assistance and counseling to Bar members, their families, or business associates appearing to struggle with substance abuse.

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.

Board operations are entirely funded by membership dues, admission fees, continuing legal education (CLE) charges, lawyer referral fees, convention fees, and interest income. Budgeted revenue for calendar year 2012 is \$2.9 million. The Bar has cumulative net assets of \$3.1 million as of December 31, 2011. The net assets include approximately \$1.3 million in the Fund for Client Protection which cannot be used for general operating expenses. The General Fund net assets include \$1.3 million that the board has designated as a working capital reserve. The purpose of this reserve was to create a “rainy day” fund in case of unforeseen financial difficulties. These funds are not available for general operating expenses. The Bar’s Statement of Financial Position for 2011 is included as Appendix A of this report.

The dues for 2008 through 2010 were set below the amount calculated to cover expenses in order to reduce the level of accumulated net assets. In 2011, dues were adjusted upward to meet expenses. The amount increased from \$500 in 2010 to \$620 in 2011. As of 2012, active members pay \$660 in annual dues.

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 significantly revised the Rules of Professional Conduct. The previous rules were rescinded, and Supreme Court Order No. 1680 adopted the new version in April 2009.

From FY 08 through FY 12, the Alaska Supreme Court adopted 16 board recommended amendments to the Bar Rules. The significant changes that benefit the public’s interest are summarized as follows.

- In October 2009, Bar Rule 13 was amended to provide: (1) a challenge procedure to mediators; and (2) referrals back to grievance investigation or fee arbitration if there

is no response to scheduling requests. The challenge procedure amendment was created to address concerns involved parties might have about an assigned mediator, and the referral provision is intended to prevent stalling due to the failure of one or both parties to cooperate in mediation scheduling.

- In October 2009, Bar Rule 38 was amended to provide for the appointment of a mediator to the Executive Committee of the Fee Dispute Resolution Program. The provision was made in response to an increasing number of petitioners and attorneys requesting and agreeing to mediation rather than arbitration of fee disputes. The mediator's input is expected to help the committee review and improve the mediation program.
- In October 2011, Bar Rule 26(d) was amended to require attorneys to self-report any criminal conviction to the Bar. This amendment was intended to promote prompt notification of criminal actions to allow the board to act in a timely fashion.

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 board held 15 regular meetings between July 1, 2008, and June 30, 2012. Adequate public notice was given for all 15 meetings through the Alaska Online Public Notice System and on the Bar's website. The board assigned time for public comment for all of the meetings except one.

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

The Bar's members also provide input to the board regarding its operations. This may include service on one of the ten standing committees or five Bar Rules committees. Committees make recommendations to the board concerning rules or policy, disciplinary matters, assist in resolving fee disputes, and organize public service activities. Bar members may be appointed to serve in an adjunct organization, such as the Alaska Legal Services Corporation.

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

The board encourages the public to participate by allotting time for public comment in board meetings. Additionally, public members serve on the board and non-attorneys serve on disciplinary hearing committees and fee arbitration panels throughout the State.

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.

Four complaints specifically involving the actions and activities of the board were filed with the Office of the Ombudsman during the period of July 1, 2008, through June 30, 2012. We reviewed the case records and concluded that the disposition of the cases was timely.

There were no complaints filed with the Office of Victims' Rights against the board during our audit period.

The board has a disciplinary process for investigating complaints alleging attorney misconduct. If a complaint does not result in an investigation being opened by the Bar counsel, the complainant may ask that the board discipline liaison review the decision. Additionally, the Alaska Supreme Court may review the Bar counsel and board liaison's decisions – although this is rarely done.

The board imposes sanctions on attorneys violating the Rules of Professional Conduct. The Alaska Supreme Court reviews the most serious disciplinary actions, such as public censure, disbarment, suspension, or probation. Other less serious disciplinary cases are not subject to Alaska Supreme Court review. Lesser sanctions include written private admonition by the Bar counsel and private reprimand by the board. This disciplinary 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.

The board annually received an average of 265 complaints. Analysis of complaints open as of July 1, 2008, and filed from July 1, 2008, through June 30, 2012, shows that all were reviewed, but relatively few were pursued beyond the initial investigation. The most common types of complaints were case neglect, failure to communicate with the client, and unreasonable fees. Fee disputes are handled primarily by the Fee Arbitration Committee. Most of the unreasonable fee complaints were made in conjunction with other types of complaints.

A total of 1,182 complaints were filed from 2008 through June 30, 2012. Of the 1,182 complaints, 180 complaints were accepted for formal investigation. Twenty-nine complaints were still pending the Bar counsel's decision whether to open a formal investigation as of June 30, 2012. From 2008 through June 30, 2012, a total of 200 cases were closed. There were 98 complaints that led to disciplinary sanctions.⁶ Additional statistics pertaining to disciplinary activity are provided in Appendix B of this report.

⁶A single attorney may have multiple complaints filed against them. Numbers shown reflect individual complaints filed.

From the 1,182 complaints filed during our audit period, we tested a random sample of 50 complaints. The sample included 25 initial investigations and 25 formal investigations.

Approximately 85 percent of the 1,182 complaints received were not accepted for investigation due to lack of merit. Based on our case file sample, the most common reasons for a claim being declined for formal investigation were: the attorney showed evidence of work on the case and/or communication with client (24 percent), the alleged actions by the attorney would not constitute an ethical violation (36 percent), or the claim was unsupported (20 percent).

Board procedures provide public notice of disbarred, suspended, put on probation, publicly censured, and/or publicly reprimanded attorneys. The attorneys' names are published in 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 disciplinary actions 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.

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 licenses applicants to practice law through an examination process. 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.
- Attending a mandatory ethics presentation by the board.⁷

The Alaska Bar Examination is given every February and July in Anchorage, Fairbanks, and Juneau. From July 1, 2008, to June 30, 2012, 484 individuals took the Alaska Bar Examination; of those, 310 (64 percent) passed the examination. See details concerning examination statistics in Appendix C of this report.

The board also admits members by motion for reciprocity. This option is limited to attorneys actively practicing law for five of the last seven years in one or more of the 36 states, and Washington D.C., with which Alaska has a reciprocal agreement. Exhibit 2 (on the following page) summarizes admissions to the Bar.

⁷This requirement may be fulfilled by watching an electronically recorded presentation and signing an affidavit.

Exhibit 2

Bar Admissions Statistics 2008 through June 2012			
Calendar Year	Admission by Examination	Admission by Reciprocity	Total Admitted
2008	76	30	106
2009	66	25	91
2010	98	25	123
2011	70	39	109
January – June 2012	31	25	56
Total	341	144	485

To evaluate the admission process, a random sample of 30 applicants admitted to the Bar were selected. The sample contained individuals admitted by examination as well as individuals admitted by reciprocity. Admission files were examined to determine whether the applicant had met the criteria for admission. No anomalies were detected.

According to Bar Rule 65, all active Bar members must complete three mandatory CLE credit hours each calendar year. Active Bar members are also encouraged to earn an additional nine voluntary CLE credit hours each calendar year. The CLE requirement has been in effect since January 1, 2008. Bar Rule 66 provides for the suspension of members not compliant in earning mandatory CLE credits or members who fail to report the mandatory and voluntary CLE credits completed for the year.

In 2011, a committee consisting of five Bar members and Bar staff was formed to review the CLE program. The review included electronically surveying Bar members. Ninety-one percent of over 900 responses indicated that Bar members were not in favor of increasing the number of mandatory CLE credits. Reporting for calendar years 2008 through 2011 shows an average of 68 percent of Bar members completed nine voluntary CLE credits. The report recommended that the mandatory CLE credits remain at three credit hours. The committee's findings were sent to the Alaska Supreme Court in September 2011. As of June 2012, the Alaska Supreme Court has not issued a response to the findings.

Alaska's mandatory CLE standard falls below the standard imposed by most other states. Currently, 35 states require a minimum of 12 to 15 credit hours per year. This is discussed further in Recommendation No. 1.

The board offers CLE for Bar members and maintains an educational library. The majority of live CLE programs are presented and recorded in Anchorage. Most of these programs are webcast for lawyers located outside of Anchorage. The board began offering these webinars in 2010. The board also has CLE materials available for purchase through the Bar's online

CLE library catalog. Webinars can now be downloaded to mobile devices as well as computers.

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 with disabilities taking the Bar examination.⁸

Based on inquiries with the Alaska State Commission for Human Rights and the Equal Employment Opportunity Commission, there have been no complaints filed against the board.

We found no evidence that the board was not complying with state personnel laws, including affirmative action, in qualifying applicants for licensure.

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.

Thirty-five states currently require between 12 and 15 credit hours of CLE per year. Alaska is well below this standard with the requirement of three credit hours per year. To better serve the public's interests, the board should request that the Alaska Supreme Court modify Bar Rule 65 to increase mandatory CLE credit hours to a level closer to the national average. See Recommendation No. 1 for further discussion.

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

Article I, Section 3 of the Bar's bylaws sets out the five specific purposes of the Bar. (See Exhibit 3.) To achieve these purposes, the Bar has established and maintains various committees. The committees established by the Bar cultivate and advance the science of jurisprudence through the many activities they perform, some of which are discussed below.

The Bar promotes reforms in the law and in judicial procedure through periodic review of the substantive and procedural rules of ethics. For example, effective April 2009, the Alaska Rules of Professional Conduct were rescinded, and the Alaska Supreme Court adopted new rules. The new Rules of Professional Conduct clarified obligations which lawyers have to their clients, the public, and the court system and are intended to improve the quality of practice in Alaska. In 2011, the Bar reactivated the Committee on Fair and Impartial Courts.

⁸Alaska Bar Rule 4, Section 2.

This committee is charged with recommending activities to the board that explain and promote the concept of judicial independence to the public.

To facilitate the administration of justice, the Bar administers the pro bono program. The Bar Association has a Pro Bono Service committee to promote, educate, recognize, and recruit attorneys and other professional services to assist citizens least able to afford access to the justice system. Additionally, the Pro Bono Service committee provides support and policymaking for equal access to justice efforts, technical assistance to legal services provider agencies, and volunteer outreach.

To encourage CLE for its members, a committee assists the CLE director in overseeing the presentation of substantive legal education programs to educate Alaska lawyers about developments in their field of law, and to emphasize ethical responsibilities. The Bar conducted 115 live programs, 119 webcasts/webinars, and 39 CLE classes at annual conventions from 2008 through 2011. Since 2010, attorneys have been able to download online courses from the Bar's CLE library. There were 803 downloads in 2010 and 1,024 downloads in 2011. Total attendance at all types of CLE presentations by the Bar was 2,944 in 2008, 2,319 in 2009, 3,779 in 2010, and 2,996 in 2011. Attorneys may also participate in and receive credit for CLE programs offered by organizations other than the Bar.

The board has made an effort to increase the Bar's public service and efficiency. In 2009, the board unanimously agreed to adopt Martin Luther King Day as a day of service to encourage Bar members to engage in public service and pro bono projects on that day within their communities. In January 2011, there were clinics in Anchorage, Juneau, and Fairbanks, where 175 volunteers served 395 clients in the three communities.

Exhibit 3

Purposes of the Alaska Bar Association

1. Cultivate and advance the science of jurisprudence.
2. Promote reform in the law and in judicial procedure.
3. Facilitate the administration of justice.
4. Encourage legal education for the membership.
5. Increase the public service and efficiency of the Bar.

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. The two principal activities of the board are admission and discipline of Bar members. There are no governmental agencies or private sector organizations designated for these two primary activities. However, the board does participate in some activities which are typically performed by private sector organizations such as fee arbitration, lawyer referral services, sponsorship of a pro bono program, and CLE. As discussed earlier, these activities provide services to the general public and support Bar members, which are part of the board's stated purpose.

APPENDICE**S**

Appendix A: Statement of Financial Position as of December 31, 2011. This statement was audited by the certified public accountancy firm, Swalling & Associates.

Appendix B: Discipline Statistics. The information summarized in this schedule was reported by Alaska Bar Association (Bar) management.

Appendix C: Bar Examination Statistics. The information summarized in this schedule was provided by Bar management.

Appendix A

The Bar maintains three separate funds for accounting and reporting purposes. These include:

- 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 Bar Rules promulgated by the court system, this fund is maintained solely for the purpose of making reimbursements to clients who have incurred non-insured losses of money or property as a result of dishonest conduct by attorneys. Related trustee counsel compensation may be paid from this fund under certain circumstances.
- Court System Library Fund – This fund is maintained by the Bar, pursuant to a cooperative agreement with the Alaska Court System and the Anchorage Bar Association. The purpose of the fund is to account for the portion of receipts generated from copying services provided in the Anchorage Law Library that are to be used for purchasing legal research resources for the Alaska Court Libraries as designated by the State Law Librarian.

Appendix A was prepared based on financial information from the Bar’s audited financial statements for calendar year 2011.

Appendix A
(continued)

ALASKA BAR ASSOCIATION
STATEMENT OF FINANCIAL POSITION
December 31, 2011

	<u>General Fund</u>	<u>Lawyers' Fund for Client Protection</u>	<u>Court System Library Fund</u>	<u>Total All Funds</u>
Assets:				
Current Assets:				
Cash	\$ 590,042	\$ 407,717	\$ 26,338	\$ 1,024,097
Investments	1,750,216	849,462	-	2,599,678
Accounts Receivable	1,643,150	-	-	1,643,150
Accrued Interest Receivable	7,792	8,080	-	15,872
Due from General Fund	-	32,732	-	32,732
Prepaid Expenses	83,587	-	-	83,587
Total Current Assets	<u>4,074,787</u>	<u>1,297,991</u>	<u>26,338</u>	<u>5,399,116</u>
Property and Equipment, at Cost:				
Videotape Library and Equipment	7,586	-	-	7,586
Office Furniture and Equipment	502,916	-	-	502,916
Leasehold Improvements	99,056	-	-	99,056
Historical Artifacts	3,750	-	-	3,750
Subtotal Property and Equipment	<u>613,308</u>	<u>-</u>	<u>-</u>	<u>613,308</u>
Less Accumulated Depreciation and Amortization	<u>(593,907)</u>	<u>-</u>	<u>-</u>	<u>(593,907)</u>
Total Property and Equipment	<u>19,401</u>	<u>-</u>	<u>-</u>	<u>19,401</u>
Total Assets	<u>\$ 4,094,188</u>	<u>\$ 1,297,991</u>	<u>\$ 26,338</u>	<u>\$ 5,418,517</u>
Liabilities and Net Assets:				
Current Liabilities:				
Accounts Payable and Accrued Expenses	\$ 127,696	\$ -	\$ -	\$ 127,696
Due to Bar Foundation	3,710	-	-	3,710
Due to Other Funds	37,601	-	-	37,601
Deferred Dues and Fees	2,156,075	30,240	-	2,186,315
Total Current Liabilities	<u>2,325,082</u>	<u>30,240</u>	<u>-</u>	<u>2,355,322</u>

Appendix A
(continued)

**ALASKA BAR ASSOCIATION
STATEMENT OF FINANCIAL POSITION
December 31, 2011**

	<u>General Fund</u>	<u>Lawyers' Fund for Client Protection</u>	<u>Court System Library Fund</u>	<u>Total All Funds</u>
Liabilities and Net Assets (continued):				
Net Assets:				
Unrestricted (designated by the Board of Governors):				
Designated for Working Capital	\$ 1,315,000	\$ -	\$ -	\$ 1,315,000
Designated for Asset Acquisition	165,847	-	-	165,847
Undesignated	<u>284,509</u>	<u>1,267,751</u>	<u>26,338</u>	<u>1,578,598</u>
	1,765,356	1,267,751	26,338	3,059,445
Permanently Restricted	<u>3,750</u>	<u>-</u>	<u>-</u>	<u>3,750</u>
Total Net Assets	<u>1,769,106</u>	<u>1,267,751</u>	<u>26,338</u>	<u>3,063,195</u>
Total Liabilities and Net Assets	<u>\$ 4,094,188</u>	<u>\$ 1,297,991</u>	<u>\$ 26,338</u>	<u>\$ 5,418,517</u>

Appendix B

Board of Governors of the Alaska Bar Association Discipline Statistics Calendar Years 2008 through 2011 and January 1 through June 30, 2012

<u>Disposition of Closed Disciplinary Cases</u>	<u>2008</u>	<u>2009</u>	<u>2010</u>	<u>2011</u>	<u>January through June 2012</u>	<u>Total</u>
Disbarment by Supreme Court	3	7	24	0	0	34
Suspension by Supreme Court	7	21	10	9	0	47
Public Censure by Supreme Court	0	0	0	0	0	0
Public Reprimand by Disciplinary Board	0	0	0	0	0	0
Private Reprimand by Disciplinary Board	6	0	1	0	0	7
Private Admonition by Discipline Counsel	1	3	4	2	0	10
Dismissed	22	22	24	27	7	102
Closed After Mediation	0	0	0	0	0	0
Total Closed Cases	39	53	63	38	7	200
<u>Status of Open Cases at Year End</u>						
Attorney on Probation	1	1	1	1	1	
Pending Supreme Court	6	27	4	0	0	
Pending Disciplinary Board	0	3	2	0	0	
Pending Hearing Committee	29	9	1	6	10	
Pending Stipulation	6	1	1	1	0	
Pending Approval to File Formal Hearing	7	6	2	2	3	
Pending Written Private Admonition	0	0	0	0	0	
Abeyance due to Court Case	9	8	17	18	19	
Pending Bar Counsel Investigation/Decision	45	28	34	23	25	
Pending Complainant Reply	0	2	0	0	0	
Pending Respondent Response	9	13	1	3	4	
Pending Mediation	0	0	0	0	0	
Total Open Cases	112	98	63	54	62	

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Appendix C

**Board of Governors of the Alaska Bar Association
Bar Examination Statistics
July 2008 through February 2012**

Examination Dates	Number Taking Exam	Number Passing Exam	Percent Passing Exam
July 2008	59	40	68%
February 2009	50	26	52%
July 2009	63	40	63%
February 2010	53	35	66%
July 2010	85	63	74%
February 2011	58	38	66%
July 2011	60	32	53%
February 2012	56	36	64%
Total	484	310	64%

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LEGISLATIVE AUDIT

ALASKA COURT SYSTEM
State of Alaska

Nancy B. Meade
GENERAL COUNSEL

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September 18, 2012

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

Re: Preliminary Audit Report, Board of Governors of the Alaska Bar Association

Dear Ms. Curtis:

Thank you for the opportunity to offer a written response to the preliminary findings and recommendations contained in the above-referenced Preliminary Audit Report. I am submitting this response on behalf of Supreme Court Chief Justice Fabe, who received a copy of the report; this response conveys the views of the Alaska Court System.

As the Court expressed in its July 20, 2012 response to Management Letter No. 1, the Court System takes no position on the findings and recommendations directed at the Board of Governors of the Alaska Bar Association. We agree with the conclusion that the Board protects the public by ensuring that persons licensed to practice law are qualified. We also agree that the Board investigates complaints and has a disciplinary process designed to promote competence and professionalism in licensed attorneys. Further, we concur in the recommendation that the termination date of the Board be extended to June 30, 2021.

Thank you for providing the opportunity to comment on the findings in your preliminary report. Please feel free to contact me if you have any questions.

Sincerely,

Nancy Meade
General Counsel, Alaska Court System

cc: Chief Justice Fabe, Alaska Supreme Court

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ALASKA BAR

A S S O C I A T I O N

September 19, 2012

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

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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, 2021.

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

The Board takes its responsibility to provide continuing legal education (CLE) programs very seriously. Over the past thirty years, the number and variety of programs have increased substantially.

The Board has worked closely with the Alaska Supreme Court in setting the framework for a mandatory CLE program. But it's important to remember that the Supreme Court, in the exercise of its constitutional rule-making

authority under Article IV, Section 15 of the Alaska Constitution, makes the final determination regarding the size and scope of a mandatory CLE requirement.

Those early efforts culminated in a voluntary CLE program enacted by the Court in September 1999 with the first reporting year in 2000. The Court advised that every active member of the Bar Association should complete at least 12 credit hours of approved CLE, including one hour of ethics CLE each year. The Court wrote in its comment to Rule 65 that it wasn't convinced a mandatory rule was necessary and believed that a CLE program could become successful by using incentives to encourage voluntary participation in CLE rather than sanctions to penalize non-compliance with a mandatory rule. It envisioned a three-year pilot project with an assessment at the end of that period of the project's results.

Then in 2008, following committee and Board meetings as well as meetings with the Court itself, the Court decided that the time had come for a mandatory program. As you've noted, the current program requires three credit hours of approved mandatory ethics CLE and a recommended nine additional hours of voluntary CLE. Again, the Court advised that at the end of three years, it would assess the project's results, including recommendations and statistics provided by the Board and would determine whether an expanded mandatory CLE program was necessary.

Those reports have been submitted to the Court together with a proposal for refinement of the current rule to make it easier for members to determine the procedures for compliance. The Board hopes an administrative rules conference will be scheduled so that this proposal can be discussed and to assist the Court in its review of the program since the 2008 amendment.

In this regard, you can be assured that the Board will continue to work with the Court and make suggestions to the Court about a program that, in the introductory words of Bar Rule 65, "promote[s] competence and professionalism in members of the Association" as they provide fulfill their responsibilities to clients, the courts, and the people of the State of Alaska.

Lawyers' Fund for Client Protection

The Lawyers' Fund for Client Protection program is referenced on page 9. However, claims for reimbursement due to a lawyer's dishonest behavior can arise from any circumstances described in Alaska Bar Rule 45 and are not limited to fee arbitration proceedings.

Financial statements.

Attachment 1 lists the total liabilities and net assets for the general fund as \$4.1 million. This amount includes accounts receivable funds. The majority of the accounts receivable is bar dues income which is earned each month. These assets will be spent down through the year by the 2012 budgeted expenses of \$2.8 million. If the Bar Association closed its doors midyear, the unearned bar dues funds would have to be paid back to the Bar members.

Concluding comments.

It is also our belief that the present management system of the Bar Association provides a variety of public service, 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 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 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



Hanna Sebold
President

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